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April 28, 2011

BUREAU CIRCULAR NO. 869

To All Members of the Bureau:

Re: **DELAWARE WORKERS COMPENSATION INSURANCE PLAN**
DELAWARE INSURANCE PLAN - NWCRA
BUREAU FILING NO. 1102
EFFECTIVE JANUARY 1, 2011

The Delaware Compensation Rating Bureau, Inc. (DCRB) has filed and the Insurance Commissioner has approved the Workers Compensation Insurance Plan in response to recommendation of the National Council on Compensation Insurance, Inc. (NCCI). DCRB also filed and the Insurance Commissioner approved Workers Compensation Insurance Plan Rules which will be published on the DCRB website (dcrb.com) under "Delaware Insurance Plan" and in a Delaware-specific section of NCCI's Basic Manual. In order to maintain congruence between Delaware materials and their counterparts in NCCI, these revisions become **effective retroactively as of 12:01 a.m., January 1, 2011**.

Attached to this circular is a copy of the approved Workers Compensation Insurance Plan. The Plan Rules will be available on the DCRB website at a future date.

Timothy L. Wisecarver
President

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Remember to visit our web site at www.dcrb.com for more information about this and other topics.

DELAWARE COMPENSATION RATING BUREAU, INC.

WORKERS COMPENSATION INSURANCE PLAN

Pursuant to the authority granted by Title 19, Section 2618 of the Delaware Code, a Workers Compensation Insurance Plan ("Plan") has been established which provides a means by which Employers who are in Good Faith entitled to Workers Compensation Insurance, but who are unable to procure such insurance in a Regular Manner, may obtain such insurance. This Plan provides that the Employers so situated shall be equitably apportioned among the participating insurers. This Plan and any future modifications thereof are subject to the approval of the Insurance Commissioner (the "Commissioner") of this state.

SECTION I

DEFINITIONS

Affiliated Companies	means two (2) or more insurers that are under common ownership, control, operation or management the same management and are required to participate in this Plan pursuant to Section III.
NWCRA By Laws <i>or</i> By Laws	the method of providing reinsurance to the Servicing Carriers on Employers assigned to them under this Plan.
Assigned Carrier	the insurer that has been assigned to provide coverage to an Employer who has applied for Workers Compensation Insurance pursuant to this Plan. An Assigned Carrier can either be a Servicing Carrier as defined herein or a Direct Assignment Carrier as defined herein.
Delaware Compensation Rating Bureau, Inc. <i>or</i> DCRB	the advisory organization licensed in this State to make and file rating values, classifications, and rating plans for Workers Compensation Insurance including rates for Employers that obtain their Workers Compensation Insurance through the Plan.
Direct Assignment Carrier	an insurer, other than a Servicing Carrier, that has elected and been authorized to receive direct assignments pursuant to Option 1 under Section III of this Plan.
Dispute Resolution Procedure	the process as outlined in Section VIII of this Plan pertaining to disputes arising under the administration of this Plan.
Employer	any business organization or enterprise that is required by statute to maintain Workers Compensation Insurance in this State. The term shall include any business organizations or enterprises that are Affiliated Companies.
Good Faith	the absence of the elements that are listed in Section II (1) hereunder as constituting the lack of Good Faith.
Net Premiums Written	the gross direct premiums charged less all premiums (except dividends and savings refunded under participating policies) returned to insureds for all Workers Compensation and Occupational Disease Insurance, exclusive of premiums for Employers subject to this Plan, and for Employers written under the National Defense Projects Rating Plan and under excess policies.
Plan Administrator	Delaware Compensation Rating Bureau, Inc. or its authorized assignee or designee as provided in Section IV of this Plan
Producer	an insurance broker as defined in Chapter 17, Section 1703 of the Delaware Code and whose privileges under the Plan have not been suspended or revoked.
Regular Manner	the process in which an employer procures workers compensation insurance in accordance with any rating plan authorized for use by the regulatory authority in Delaware from sources other than the Workers Compensation Insurance Plan.

Servicing Carrier

an insurer, other than a Direct Assignment Carrier, selected by the Plan Administrator pursuant to Section V, paragraph (1), to receive assignments. Workers Compensation Insurance:

- (a) Statutory workers compensation and occupational disease including liability under the Longshore and Harbor Workers' Compensation Act, as amended, and the Federal Coal Mine Health and Safety Act of 1969, as amended;
- (b) Employers liability insurance written in connection with a Workers Compensation policy; and
- (c) Such other coverages as determined by the Plan Administrator and approved by the Commissioner.

SECTION II

RULES FOR ELIGIBILITY AND ASSIGNMENT

The following rules shall govern the insuring of Employers who are in Good Faith entitled to Workers Compensation Insurance as defined herein, but who are unable to procure such insurance in the Regular Manner. Any dispute arising hereunder shall be subject to Section VIII of this Plan.

1. Application for insurance shall be filed in duplicate with the Plan Administrator by the Employer or its representative on a form approved by such office. Within sixty (60) days preceding the date of application, the Employer must apply for Workers Compensation Insurance to at least two (2) insurers licensed to write Workers Compensation Insurance within the state of Delaware, specifically including, where applicable, the insurer providing Workers Compensation Insurance to the Employer at the time of application. All such insurers must reject the Employer by refusing to offer or provide to the Employer workers compensation coverage that meets the requirements of the state of Delaware. The application must show the name of each such insurer and the representative contacted.

Good Faith will be presumed in the absence of compelling evidence to the contrary. An Employer is not in Good Faith entitled to insurance if any of following circumstances exist:

- a. If, at the time of application, a self-insured Employer is aware of pending or anticipated bankruptcy proceedings, insolvency, cessation of operations, or conditions that would probably result in occupational disease or cumulative injury claims from exposures incurred while the Employer was self-insured;
 - b. If the Employer, while insurance is in force, knowingly refuses to meet reasonable health and safety requirements;
 - c. If the Employer has an outstanding obligation for premium on previous Workers Compensation Insurance; or
 - d. Other evidence exists that such Employer is not in good faith entitled to Workers Compensation Insurance.
2. Coverage may be bound under the Plan, consistent with Plan rules, in accordance with the following procedures:

The Producer shall forward the completed applications to the Plan Administrator with a certified, cashier's, or agency check payable to the Plan Administrator for the estimated annual or deposit premium as computed by the Producer, or determined by contacting the Plan Administrator prior to submission of the application. For all Employers other than those formerly self-insured, coverage will be bound at 12:01 A.M. on the first day following the postmark time and date on the envelope in which the application is mailed, including the estimated annual or deposit premium, or the expiration of existing coverage, whichever is later. If there should be no postmark, coverage will be effective 12:01 A.M. of the date of receipt by the Plan Administrator, unless a later date is requested. Those applications hand delivered to the Plan Administrator will be effective as of 12:01 A.M. the date following receipt by the Plan Administrator, unless a later date is requested.

For Employers formerly self-insured, coverage will be bound at 12:01 A.M. not later than sixty (60) days following the postmark time and date on the envelope in which the application is mailed including the estimated annual or deposit premium, or the expiration of existing coverage, whichever is later. If there should be no postmark, coverage will be effective 12:01 A.M. not later than sixty (60) days following the date of receipt by the Plan Administrator, unless a later date is requested. Those applications hand delivered to the Plan Administrator will be effective 12:01 A.M. not later than sixty (60) days following the date of receipt by the Plan Administrator, unless a later date is requested.

If coverage is bound pursuant to the above, the Plan Administrator shall issue a thirty (30) day binder with copies to the Producer, insured, appropriate state agency, and the Assigned Carrier.

Except where otherwise provided in this Plan, all assignments under this Plan are to be made on an intrastate basis.

3. Assignments shall not be made under this Plan unless all workers compensation premium obligations on any previous insurance have been met by the Employer. If, subsequent to policy issuance, the Employer has not met all Workers Compensation Insurance premium obligations incurred under a previous policy or under a present policy, the insured's present Assigned Carrier retains the right to cancel a policy currently in force under this Plan.

4. The policy shall be issued for a term of at least one (1) year, unless insurance for a shorter term has been requested. A copy of the policy information page and all endorsements, properly stamped WCIP, must be filed with the Plan Administrator and with its designee.
5. If, after the issuance of a policy, the Assigned Carrier determines that an Employer is not entitled to insurance, or has failed to comply with reasonable safety requirements, or has violated any of the terms and conditions under which the insurance was issued, and after providing opportunity for cure, the Assigned Carrier believes that cancellation is in order, the reasons therefor shall be filed with the Plan Administrator for approval prior to issuance of cancellation notice. However, approval shall not be required when cancellation is for nonpayment of premium.
6. All insurance written pursuant to this Plan shall utilize the classifications, forms, rates, and rating plans established by the DCRB; provided, however, as to any Employer with annual estimated standard premium of at least \$100,000, the utilization of a retrospective rating plan may be required by the Plan Administrator. Unless the Employer, its Assigned Carrier, and the Plan Administrator agree to the utilization of another retrospective rating option on file with the appropriate regulatory authority, Retrospective Rating Option V, as filed with the appropriate regulatory authority, subject to a maximum retrospective premium not greater than 150% of the audited annual standard premium, shall be required. If required by the Plan Administrator, Retrospective Rating Option V shall be mandatory notwithstanding any rule or endorsement indicating that Retrospective Rating Option V is an optional rating plan. Any dispute arising regarding the established classifications, rates or rating data shall be subject to Section VIII of this Plan.
7. At least sixty (60) days prior to the expiration date of insurance, the Assigned Carrier shall send a renewal proposal or notice of impending expiration of coverage to the Employer, Producer, and Plan Administrator. Upon receipt of the required premium, the policy shall be issued and a copy or tape record of such policy and all endorsements, properly identified as WCIP, shall be furnished to the Plan Administrator.
8. Any Assigned Carrier unwilling to renew an Employer assigned to it shall notify the Employer and the Plan Administrator at least thirty (30) days in advance of expiration, giving the Plan Administrator the reasons therefor.
9. If any Employer to which this Plan applies is dissatisfied with its Assigned Carrier, the Employer may request reassignment upon expiration, giving the Plan Administrator the reasons therefor. Such request must be given to the Plan Administrator at least thirty (30) days in advance of expiration.
10. Any insurer that wishes to insure an Employer voluntarily, not under the Plan's auspices, may do so at any time. If such insurer is not the Assigned Carrier, the Assigned Carrier shall cancel its coverage pro rata, and the assignment shall automatically terminate as of the effective date of the voluntarily provided insurance.
11. Any Employer desiring insurance for operations in states other than those covered by its Assigned Carrier may request its Assigned Carrier to furnish insurance in such additional states in accordance with Section VI of this Plan.
12. The Employer may designate a Producer and, with respect to any renewal of the assigned insurance, may change the designated Producer by notice to the Assigned Carrier prior to the date of such renewal or, with the consent of the Assigned Carrier, at any other time. The Assigned Carrier shall pay a fee to the Producer designated by the Employer on new and renewal policies effective (date) and thereafter upon payment of all premium due under the policy. The fee shall be based on the state standard premium and paid at the rate as determined by the Plan Administrator and filed with the State of Delaware, Department of Insurance.
13. The Plan Administrator will designate an Assigned Carrier to issue the policy in accordance with Section VII.

SECTION III

PARTICIPATION

All insurers licensed to write Workers Compensation Insurance in this State are required to participate in this Plan. An insurer must satisfy its participation requirement by selecting one of the following options:

- Option 1 - becoming a Direct Assignment Carrier and receiving direct assignments from the Plan Administrator as provided for in this Plan; or
- Option 2 - contracting with either an approved Direct Assignment Carrier or a Servicing Carrier appointed by the Plan Administrator to accept assignments on its behalf which contract is to be filed and approved by the Commissioner. Any policy issued under this option shall not be eligible for reinsurance under the National Workers Compensation Reinsurance Association NFP - NWCRA By Laws (this option shall not be available to any Plan participant until January 1 next following the first year anniversary of the approval of this Plan); or
- Option 3 - subscribing to the NWCRA By Laws which are attached hereto and by this reference are incorporated as a part of this Plan.

Any insurer wishing to select Option 1 must receive prior approval from the Commissioner. Except for making an initial selection under Section X and for newly licensed insurers, application for such approval must be made at least ninety (90) days prior to the end of any calendar year. The Commissioner must review the application and approve or disapprove it within sixty (60) days. If the application is approved, that insurer will become a Direct Assignment Carrier on January 1 of the year following the Commissioner's approval. An insurer seeking to become a Direct Assignment Carrier must also comply with the withdrawal provision in the NWCRA By Laws.

An insurer applying to be licensed in this State to write Workers Compensation Insurance after this Plan has been approved and desiring to become a Direct Assignment Carrier must submit its application to become a Direct Assignment Carrier at the time it submits its application for a license. The Commissioner shall approve or disapprove the application at the same time the license is issued. All Affiliated Companies must select the same option; however, one insurer may be designated to accept direct assignments on behalf of all its Affiliated Companies. The Plan Administrator shall have no responsibility for determining and monitoring financial strength or enforcing levels of service or performance of a Direct Assignment Carrier.

Whenever membership under the NWCRA By Laws consists of those insurers cumulatively writing less than forty (40) percent of the total net Workers Compensation Insurance premiums written by all insurers in this State as calculated in accordance with the preceding calendar year figures or whenever the Plan Administrator determines the capacity of Servicing Carriers to handle assignments made pursuant to Section II falls below a level which is adequate to handle all the assignments being made, or whenever the reinsurance mechanism provided pursuant to the By Laws is terminated, those insurers that selected Option 3 shall, as of January 1 of the following year, automatically be deemed to have selected Option 1 for Employers insured effective on or after said January 1. Under this provision all licensed insurers shall automatically be deemed approved as direct assignment carriers except for those insurers that have previously made separate arrangements under Option 2.

SECTION IV

PLAN ADMINISTRATOR

The Plan Administrator shall be selected by the insurers required to participate in this Plan pursuant to the procedures contained in Section X.

The Plan Administrator shall have the following duties and responsibilities in addition to any others set forth in this Plan and the NWCRA By Laws:

- (1) administering, managing and enforcing the Plan subject to the provisions contained herein;
- (2) determining the methodology and formula for making assignments to Direct Assignment Carriers and Servicing Carriers pursuant to Section VII and processing the necessary information in order to make the assignments;
- (3) processing Plan applications pursuant to the requirements of this Plan;
- (4) establishing eligibility criteria for Servicing Carriers and appointing Servicing Carriers;
- (5) establishing written performance requirements for Servicing Carriers, including, but not limited to:
 - verifying ongoing eligibility of the Employer to be insured through the Plan
 - issuing policies and endorsements
 - making filings with administrative agencies
 - maintaining premiums on policies consistent with the DCRB's manual rules, rates, rating plans, and classifications
 - completing and billing of final audits
 - collecting premiums
 - providing claims services, including investigation, disability management, and medical cost control
 - providing loss control services and safety information to encourage Employers to make safety a part of their business
 - paying Producer fees

- issuing renewal proposals and nonrenewal notices
 - insured and insurer compliance with all terms and conditions of the policy contract
 - resolving complaints and responding to Employer and Producer inquiries
 - reporting financial and statistical data
- (6) monitoring Servicing Carrier performance and enforcing performance requirements and incentives;
 - (7) administering the Dispute Resolution Procedure as provided in Section VIII;
 - (8) developing and implementing Plan operating rules and forms to the extent necessary to carry out the purposes of this Plan;
 - (9) informing the Commissioner of any insurer that is not participating in this Plan; and
 - (10) monitoring the performance and operation of the Plan and initiating amendments thereto as appropriate.

In recognition of the interests of the member companies who have signed the By Laws, the Plan Administrator shall carry out its duties and responsibilities with respect to the establishment of servicing carrier eligibility requirements and performance standards subject to the review and acceptance of the Board of Directors. The Plan Administrator shall also be responsible for determining the expenses for the operation of the Plan (including, without limitation, the Plan Administrator's fees), and shall charge a fee to each insurer participating in the Plan for those expenses on an equitable basis as determined by the Plan Administrator. The Plan Administrator shall provide, upon written request of the Board of Directors, the Commissioner, or any direct assignment carrier, the amount of fees and any other additional charges billed by the Plan Administrator in such detail as the parties may agree.

The Plan Administrator shall have the right to assign all or any of the foregoing duties and responsibilities or those under the Plan or NWCRA By Laws upon such terms and conditions as it deems acceptable without the approval or consent of the insurers or insureds participating in the Plan.

SECTION V

SERVICING CARRIERS

With respect to the Servicing Carriers appointed by the Plan Administrator the following shall apply:

- (1) **Eligibility to Act As a Servicing Carrier.** The Plan Administrator shall establish written requirements that an insurer must meet in order to be eligible to act as a Servicing Carrier. In recognition of the interests of the member companies who have signed the By Laws, the Plan Administrator shall provide a copy of such written requirements to the Board of Directors for review and acceptance. Those requirements shall consider, among other things, the insurer's financial standing, availability of resources, experience in the state writing Workers Compensation Insurance, and market share. An insurer that has been approved as a Direct Assignment Carrier pursuant to Option 1 under Section III is not eligible to be appointed as a Servicing Carrier under this Plan. From among those insurers that are eligible and have applied to act as Servicing Carriers, the Plan Administrator shall appoint a sufficient number of Servicing Carriers that are needed to handle the assignments made pursuant to this Plan. Before the selection process begins, the Plan Administrator may confer with the Board of Directors in determining the number of servicing carriers that are needed to service the assignments made pursuant to this Plan. The Plan Administrator may terminate the Servicing Carrier status of any insurer that fails to meet the Servicing Carrier requirements on a continuing basis. During the first year this Plan is in effect, any insurer that is qualified as a Servicing Carrier under any similar Plan which was previously in effect in this State and continues to be qualified as of the date this Plan takes effect will be deemed to be a qualified Servicing Carrier under this Plan.
- (2) **Quarterly Operations Report.** Each Servicing Carrier shall provide a quarterly report to the Plan Administrator in such format and at such times as determined by the Plan Administrator. This report, among other things, shall provide information on the Servicing Carrier's business related to the Plan in the following areas: underwriting, auditing, claims, loss control, premium collection, and customer service.
- (3) **Standards for Servicing Carrier Performance, Compensation, and Incentives.** The Plan Administrator shall establish written minimum levels of acceptable performance for Servicing Carriers and shall establish procedures for measuring Servicing Carrier performance. In recognition of the interests of the member companies who have signed the By Laws, the Plan Administrator shall, upon written request by the Board, provide a copy of such written performance standards to the Board of Directors for review and acceptance. Servicing Carriers shall manage losses in compliance with the performance standards established hereunder. The Plan Administrator shall also establish the compensation for Servicing Carriers which shall take into consideration, among other things, provisions for (a) rewarding Servicing Carriers for positive action targeted at reducing losses and costs, (b) disincentives for inefficiencies and poor service, and (c) Servicing Carrier capacity.

- (4) Monitoring and Enforcement.** The Plan Administrator shall monitor and review Servicing Carrier performance by (1) reviewing the quarterly reports; (2) requiring and reviewing self audits; (3) conducting on-site audits; and (4) reviewing any other information available that relates to the Servicing Carrier. The Plan Administrator shall require Servicing Carriers to maintain desired performance levels and will take appropriate remedial action where necessary including, but not limited to, establishment and administration of a progressive discipline program which may lead to terminating an insurer's Servicing Carrier status.. Any action taken by the Plan Administrator under this provision is subject to review under the Dispute Resolution Procedures outlined in Section VIII. In order to fulfill its responsibilities under this Plan, the Plan Administrator shall have the right, itself or through authorized representatives, at all reasonable times during regular business hours, to audit and inspect the books and records of any Servicing Carrier with respect to any policies, claims, or related documents coming within the purview of this Plan, the By Laws, or the reinsurance mechanism established under the By Laws. Upon request, the Plan Administrator will make available to the regulatory authority and the Board of Directors a formal written report on the Plan Administrator's monitoring and enforcement activities related to servicing carriers.

SECTION VI

INTERSTATE ASSIGNMENTS

Any Employer assigned under this Plan and desiring Workers Compensation Insurance for its operations in states other than those covered by this Plan may request its Assigned Carrier to furnish such insurance in such additional states. Workers Compensation Insurance in such additional states may be written by the Assigned Carrier (on a voluntary basis) and in accordance with the Workers Compensation Insurance law, rates, rules, classifications, and regulations applicable to the voluntary workers compensation market in those states.

If the Assigned Carrier does not wish to provide the additional states on a voluntary basis, such Assigned Carrier may provide Plan coverage in such additional states subject to the following:

- (a) Workers Compensation Insurance may only be provided in accordance with Section II above in those states that have a Workers Compensation Insurance Plan that is similar to this Plan and that allows Employers applying for coverage under those Plans to obtain coverage for operations in this State.
- (b) An Assigned Carrier providing such insurance shall collect all premiums due on operations located in such other states. The effective date of such insurance in such additional states shall be the day after premium is received; however, in the event coverage in such additional states is on an "if any" basis, the effective date of such coverage shall be the day following receipt of an acceptable request for such insurance by the Assigned Carrier. A copy or tape record of the policy Information Page and all endorsements, properly identified as WCIP, shall be submitted to the appropriate Plan Administrator having jurisdiction in the state where the coverage is effected.
- (c) The rates, rating plans, classifications, and policy forms used to provide coverage in such additional states shall be those applicable to Employers insured by Workers Compensation Insurance Plans similar to this Plan on file and authorized by the regulators for use in those additional states.
- (d) In the event the Assigned Carrier is a Servicing Carrier, it must also be a signatory to an agreement providing reinsurance for Assigned Risks similar to the NWCRA By Laws in each state where the coverage will be provided. If the Assigned Carrier is a Direct Assignment Carrier pursuant to Section III - Option 1, it must also be authorized to act as a Direct Assignment Carrier in each state where the coverage will be provided.

An Assigned Carrier unwilling or unable to provide insurance for an Employer in additional states either voluntarily or in accordance with (a) above shall refer the request to the Plan Administrator.

Employers who make application for Workers Compensation Insurance under another state's Workers Compensation Insurance Plan may purchase coverage for operations in this State without meeting the application requirements of this Plan, provided: (1) the Employer qualifies for such insurance under the other state's Plan; (2) the Employer is in Good Faith entitled to insurance under this Plan; (3) the other state's Plan is similar to this Plan; (4) the other state's Plan also provides for interstate assignments; and (5) the payroll for the Employer's operation in this State is not greater than the payroll in the other state.

The rates, rating plans, classifications, and policy forms used to provide coverage in Delaware shall be those that are applicable to Employers insured through the Plan in Delaware and are on file and authorized for use in Delaware by the Commissioner.

The administrator of the other Plan is authorized to assign Employers with operations in this State to the other Plan's Assigned Carriers subject to the following conditions:

- (1) If the Assigned Carrier is a Direct Assignment Carrier, it must also be a Direct Assignment Carrier in this State pursuant to Section III - Option 1 or a Servicing Carrier in this State pursuant to Section V, paragraph (1).

- (2) If the Assigned Carrier is a signatory to an agreement providing reinsurance for Residual Market risks similar to the By Laws in this State, it must also be a signatory to the By Laws in this State or a Direct Assignment Carrier in this State. In addition, if the payroll for the Employer's operation in this State is greater than \$250,000 and if the Assigned Carrier is a signatory to the By Laws or a similar document in the other state, it must also be a Servicing Carrier in this State.
- (3) The other state's Plan must give the Plan Administrator in this State similar authority to make interstate assignments.

With regard to interstate assignments and policies, this Plan shall have jurisdiction over all disputes resulting from the application of rules, programs, and procedures that are specific to this State. Disputes regarding application requirements shall be under the jurisdiction of the state's Plan where the application was filed.

SECTION VII

ASSIGNMENT FORMULA

The Plan Administrator shall develop procedures for the equitable distribution of Employers under this Plan to Assigned Carriers. These procedures shall provide a method for the distribution of all Employers based on each Direct Assignment Carrier's allocable percentage and the combined allocable percentage of all Servicing Carriers and the amount of estimated premium in the Plan so far as practicable. The procedures shall also define those circumstances where the Plan Administrator will have the discretion to override the prescribed selection process.

The allocable percentage for each Assigned Carrier shall be determined as follows:

- (1) If the Assigned Carrier is a Direct Assignment Carrier, its allocable percentage will be equal to its Net Premiums Written as compared to the total Net Premiums Written in this State. If the Direct Assignment Carrier is designated to accept direct assignments on behalf of one or more of its affiliated companies, its allocable percentage will be increased to reflect the assignment percentages of each insurer.
- (2) If the Assigned Carrier is a Servicing Carrier, it will be responsible for providing services on behalf of those insurers that have elected to meet their Plan assignment requirements by subscribing to the NWCRA By Laws pursuant to Section III - Option 3. Its allocable percentage will be determined by the Plan Administrator; however, the combined allocable percentages for all Servicing Carriers shall be equal to the combined Net Premiums Written for all signatories to the By Laws as compared to the total Net Premiums Written in this State.
- (3) If the Assigned Carrier has entered into contracts to accept assignments on behalf of other insurers, pursuant to Option 2 in Section III, its participation percentage will be increased to reflect the assignment percentages of such insurers.

SECTION VIII

DISPUTE RESOLUTION PROCEDURE

Any person affected by the operation of the Plan including, but not limited to, NWCRA member companies, insureds, Producers, and Assigned Carriers, who may have a dispute with respect to any aspect of the Plan, including any dispute arising under the NWCRA By Laws, may seek a review of the matter by the Plan Administrator by setting forth in writing with particularity the nature of the dispute, the parties to the dispute, the relief sought and the basis thereof. The Plan Administrator may secure such additional information as it deems necessary to make a decision.

Appeals from Employers and insurers in the Plan on matters not specifically related to the operation of the Plan shall continue to be within the jurisdiction of the established procedures for handling such appeals.

All disputes relating specifically to the Plan and its operation shall be handled as follows:

- (1) If the dispute relates to the general operation of the Plan, the Plan Administrator will review the matter and render a written decision with an explanation of the reasons for the decision within thirty (30) days after receipt of all the information necessary to make the decision. Any party affected by a decision made by the Plan Administrator may seek a review by a committee appointed by the DCRB or its designee. A request for a review by such committee must be made to the Plan Administrator in writing within thirty (30) days of the date of the Plan Administrator's decision. Any party affected by the decision of such committee may seek a *de novo* review by the Commissioner by requesting such review, in writing, within thirty (30) days after the date of such decision.

In reviewing any such matter, the Commissioner shall follow those procedures applicable to administrative hearings in this State. The Commissioner shall decide the dispute in accordance with the Delaware laws, regulations, and policies and the interests of the reasonable and proper administration of this Plan. The Commissioner's decision shall be final and subject to review under Title 19, Section 2384, of the Delaware Code.

- (2) Except as provided below, if the dispute arises under the NWCRA By Laws, the Administrator designated under the By Laws shall first review the matter and render a written decision with an explanation of the reasons for the decision within thirty (30) days after receipt of all the information necessary to make the decision. Any party affected by the decision may seek a review by the Board of Directors established under the By Laws by requesting such review, in writing, within thirty (30) days of the date of the decision by the Administrator under the NWCRA By Laws. The Board of Directors must then review the matter and render its written decision pursuant to the procedures set forth in the NWCRA By Laws. Any party affected by a decision of the Board of Directors may seek a *de novo* review by the Commissioner by requesting such a review in writing within thirty (30) days of the date of the Board of Directors' decision.

If the dispute relates to the expulsion of a member company under the NWCRA By Laws by the Board of Directors or the non-continuation of the reinsurance afforded under the By Laws, any appeal may be taken directly to the Commissioner without first complying with the procedures contained herein. The Commissioner shall have exclusive jurisdiction over all such disputes. In reviewing any such matter, the Commissioner shall follow those procedures applicable to administrative hearings in the state. The Commissioner shall decide the dispute in accordance with the state law, regulation and policy, and in the interests of the efficient, cost-effective, reasonable and proper administration of the By Laws. The Commissioner's decision shall be final subject to court review under Title 19, Section 2384, of the Delaware Code.

SECTION IX

DATA REPORTING

The DCRB or its designee shall maintain necessary ratemaking data in order to permit the actuarial determination of rates and rating plans appropriate for the business insured through the Plan. All Assigned Carriers are required to report their experience on business written under the Plan to the DCRB or its designee in a format prescribed by the DCRB or its designee. It is the responsibility of the DCRB or its designee to monitor both rate adequacy and Plan results. The DCRB or its designee shall notify the Commissioner if excessive losses are indicated to enable the Commissioner to take corrective action.

SECTION X

NOTICE

Within sixty (60) days after this Plan has been approved by the Commissioner, the DCRB or its designee shall provide notice to all insurers that are required to participate in this Plan under Section III. The notice shall include a copy of this Plan, as well as the dates the Plan is approved and effective, and shall advise each insurer of the obligation to select one of the options under Section III.

An insurer is presumed to select Option 3 unless it has previously elected not to participate in the reinsurance mechanism in Delaware under the Articles. Within thirty (30) days after such notice is issued, any insurer which is not a signatory to the Articles for this State must make application to the Commissioner for approval to participate under Option 1 or Option 2. If the Commissioner fails to act on such application within ninety (90) days, it is deemed disapproved. During the period of time an application is pending, such insurer will be treated under the option it has selected. If the application is disapproved, such insurer will then automatically revert to Option 3 as of that date.

In addition, the DCRB or its designee will recommend a Plan Administrator for approval to the insurers required to participate in the Plan. A copy of such recommendation shall be sent to the Commissioner. The Plan Administrator recommended by the DCRB or its designee shall be deemed approved unless those insurers writing at least 50.1 percent of the workers compensation Net Premiums Written in this State submit a written objection to the DCRB or its designee within thirty (30) days from the date such recommendation is made. Once the Plan Administrator has been approved pursuant to this procedure, it will serve continuously from the effective date of this Plan unless it resigns by giving ninety (90) days advance written notice to the insurers and the Commissioner or unless those insurers required to participate in this Plan writing at least 50.1 percent of the workers compensation Net Premiums Written in this State submit a petition terminating the Plan Administrator and providing that a new Plan Administrator be appointed. Such a change would then be effective ninety (90) days after the petition is received by the current Plan Administrator.

APPROVAL

I have reviewed the foregoing Plan and all matters incorporated therein and have determined that it is reasonable, complies with the laws and regulations of this State, and provides for an equitable means of providing insurance to those Employers who are in Good Faith entitled to Workers Compensation Insurance and are unable to procure such insurance in a Regular Manner. I hereby approve this Plan for use in Delaware. This Plan shall take effect on January 1, 2011 , except that Section X shall take effect immediately.

Date: _____

Insurance Commissioner
State of Delaware

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Revised 1/1/2011