

# **RULE 099.31**

## ***Table of Contents***

### ***Section***

- I. Purpose and Scope**
- II. Definitions**
- III. Accident Prevention Services**
- IV. Accident Prevention Services Required Inspection**
- V. Accident Prevention Services Notification Requirements**
- VI. Annual Report Requirements**
- VII. Field Safety Representatives (FSR)**
- VIII. Approved Professional Safety Sources (APSS)**
- IX. Penalties**
- X. Severability**

## RULE 31

### ACCIDENT PREVENTION SERVICES

#### I. Purpose and Scope

A. The purpose of this rule is to promote safer Arkansas workplaces by ensuring that Arkansas employers are provided adequate accident prevention services from their workers' compensation insurance companies as provided for in Ark. Code Ann. § 11-9-409(d).

B. All insurance companies licensed to write or seeking license to write workers' compensation insurance policies in Arkansas are subject to the provisions of this rule.

C. This rule does not apply to self-insured employers.

#### II. Definitions

A. "Accident Prevention Services Plan" (APSP) – A document describing the policies and procedures used by the insurance company to provide accident prevention services to its policyholders in accordance with Rule 31.

B. "Approved Professional Safety Source" (APSS) – Occupational health and safety consultant approved by the Arkansas Workers' Compensation Commission Health and Safety Division to service employers defined in AWCC Rule 32.

C. "Commission" – Arkansas Workers' Compensation Commission.

D. "Days" – Calendar days.

E. "Direct Premium Written" – The amount charged to the policyholder for the workers' compensation policy which shall include the expense constant, any allowable deviated discounts, any experience rating modification, any premium discount or debit, any reinsurance or deductible arrangement as common with fronting carriers, any dividend consideration, or other trade discount.

F. "Division" – AWCC Health and Safety Division.

G. "Employee" – Any person in service of an employer as defined by Ark. Code Ann. § 11-9-102(9).

H. "Employer" – Any individual, partnership, association, or corporation as defined by Ark. Code Ann. § 11-9-102(10).

I. "Field Safety Representative" (FSR) – Occupational health and safety consultant approved by the division to service workers' compensation accounts.

J. "Loss analysis" – An in-depth examination of root causes of losses, which may include a loss run as one, but not the sole component.

K. "Loss Ratio" – Losses incurred during the policy year, both paid and expected/reserved, divided by the written manual premium. In the context of this rule "loss ratio" is used as an indicator of whether accident prevention services must include an annual on-site visit or other appropriate services.

L. "Policyholder" – The person or entity owning the policy of insurance.

M. "Rule 32 Program" – The program established by Ark. Code Ann. § 11-9-409(c) with criteria established by the Amended Rule 32.

N. "Workplace" – Each business operation, facility, or location of an employer where employees are present during part of or for the entire work shift.

O. "Written Manual Premium" – Premium produced in a given year by the manual rates in effect during the experience period which shall exclude the premium produced by the expense constant. Further, "written manual premium" means premium before any allowable deviated discounts, any experience rating modification, any premium discount, any reinsurance or deductible arrangement as common with fronting carriers, any dividend consideration, or other trade discount.

#### III. Accident Prevention Services

A. An insurance company desiring to write workers' compensation insurance in Arkansas shall have the ability to provide accident prevention services described in Section III. B. - E., subject to inspection by the commission, as a prerequisite to obtaining or maintaining a license to write such insurance.

B. An APSP must be filed with the commission at the time an insurance company pays its filing fees prior to writing workers' compensation policies in Arkansas. If these fees have already been paid, an APSP must be on file with the commission.

C. An insurance company shall provide or make available basic accident prevention services to policyholders at no additional charge or change in premium. These may include visits to each policyholder workplace. Accident prevention services required under Rule 32 must be provided or made available at no additional charge to each policyholder workplace identified under that rule.

D. The insurance company, using only commission approved FSRs/APSSs, shall:

1. Provide appropriate accident prevention services to its clients as listed below. For services to be appropriate, the insurance company must demonstrate that it actively evaluated the insured's performance and loss potential stated in Section III. D. and then offered to provide services to correct or alleviate hazards recognizable by an occupational health and safety professional;

2. Respond to requests from policyholder for services within fifteen (15) days of the date services were first requested and provide the actual services within sixty (60) days;

3. Provide appropriate services to each Arkansas policyholder. At a minimum, appropriate services shall include:

a. Annual on-site workplace visit(s) or other appropriate services to each policyholder with a direct premium written of \$25,000 or greater.

b. Annual workplace visit(s) or other appropriate services to each policyholder with a direct premium written of \$5,000 up to \$24,999 whose loss ratio is equal to or greater than 100%.

c. Annual workplace visit(s) or other appropriate services to each policyholder with a direct premium written of less than \$5000, whose loss ratio is equal or greater than 150%.

d. Contacting all policyholders not serviced under the guidelines of Section III. D. 1. – 3. at least once during the policy year within 60 days of policy inception or renewal date, separate from the actual workers' compensation insurance policy to determine their need for assistance and to advise them accident prevention services are available at no additional cost. The insurance company may determine the method of contact (e.g., visit, letter, telephone call, e-mail, etc.).

E. The insurance company shall provide accident prevention services which meet the standards of the division as required by Arkansas Code Ann. § 11-9-409(d). The program shall provide at a minimum:

1. An annual evaluation of accident prevention services for policyholders and their workplaces, based on the following criteria:

a. Hazard, probability of serious accidents, probability of catastrophic accidents, accident frequency, and probability of occupational illnesses or diseases;

b. Loss experience, including loss ratio as defined by this rule, experience modifiers, frequency rates, and severity rates;

c. Total number of employees, number of workplaces, and number of employees per workplace;

2. Procedures for determining the appropriate accident prevention services to be provided to a policyholder and to each policyholder's workplace;

3. Procedures indicating the time frame and manner in which the requested accident prevention services as stated in Section III. C. will be provided;

4. Records, reports, and evidence of all accident prevention services provided to each policyholder and each workplace;

5. Procedures for providing safety training and safety material for each policyholder;

6. At a minimum of once a year, written notification to policyholders and policyholder workplaces of their actual claims experience including reserves and, if the policyholder meets the criteria of Section III. D. 3. or if the policyholder is identified under Rule 32, a loss analysis;

7. Procedures for providing internal documentation and written reports to the policyholders and policyholders' workplaces when the FSR/APSS has identified hazardous conditions and work practices; and

8. Evidence that the notice required by Section V. is provided to policyholders.

F. The insurance company shall provide the following to the division's Accident Prevention Services staff:

1. An APSP, updated as necessary. The plan shall describe how the company will meet all the requirements relating to the provision of accident prevention services presented in this rule and Ark. Code Ann. § 11-9-409(d). The plan must meet the requirements of the division before it is accepted;

2. Annual reports as required by Section VI.; and

3. Other information as requested by the division.

#### IV. Accident Prevention Services Required Inspection

A. Each insurance company's accident prevention services program will be inspected in accordance with Ark. Code Ann. § 11-9-409(d) and may be inspected more frequently at the division director's discretion. For insurance companies licensed to write workers' compensation insurance in the State of Arkansas, but not actively writing workers' compensation insurance, the inspection shall consist of a review of their APSP. Once an insurance company starts actively writing workers' compensation insurance in the State of Arkansas, it is subject to an inspection of its accident prevention services in accordance with the Ark. Code Ann. § 11-9-409(d).

B. The division shall notify the insurance company in writing of the date, time, and location of the inspection at least one-hundred-twenty (120) days prior to the inspection.

C. Within thirty (30) days after Notification of Inspection, the insurance company or company group shall provide the division, in the format requested, the following:

1. A list of policyholders with Arkansas exposures, separated by insurance company, with physical addresses of all Arkansas workplaces as defined in AWCC Rule 3, direct premium written and written manual premium for Arkansas based on the insurance company's most current records.

a. The insurance company shall list the policyholders by written manual premium in descending order for each year or portion of year requested.

b. For policyholders with corporate headquarters outside the state of Arkansas, the insurance company shall list the corporate location.

c. The insurance company may send the list(s) electronically in a format agreed upon by the division.

d. The commission will keep the list of policyholder accounts confidential.

2. A list of the names, whether employee or contractor, and AWCC FSR/APSS identification number for each person acting as an FSR/APSS for the insurance company.

D. The division shall select the specific accounts to be evaluated and return the selected policyholder list to the insurance company no later than fifteen (15) days after receipt of the policyholder list. For the policyholders identified, the insurance company shall provide the following to the division to arrive no later than thirty (30) days after receipt of the selected policyholder list:

1. Loss control files of the policyholders identified to include any survey reports and correspondence, in the manner and format specified by the division;

2. Documentation of all accident prevention services provided;

3. Copy of loss runs for each account;

4. A sample of training materials, and other material as requested; and

5. An Accident Prevention Services Worksheet, Form AWCC-HS-31D, for each policyholder selected by the division.

E. An insurance company's failure to meet one or more of the specified requirements of Rule 31 may be construed as a failure to provide appropriate accident prevention services to policyholders. The division may reschedule the inspection, impose fines, and/or ask the Arkansas Insurance Department to take action. The division director shall report the insurance company's failure to provide the information in the format and in the time specified to other divisions within the commission for appropriate action.

F. The division shall determine the depth and scope of the inspection.

G. The division's staff and the insurance company's representative(s) shall review:

1. The results and recommendations of any previous inspections of the company by the commission;

2. The insurance company's APSP, including quality control and quality analysis provisions;

3. The insurance company's accident prevention services provided to policyholders and policyholders' workplaces;

4. Any changes completed in response to recommendations made during previous inspections;

5. Any written complaints from policyholders relating to accident prevention services; and

6. Policyholder worksheets, questionnaires, and results of site visits by commission staff, including information obtained through Rules 32 and 36 activities.

H. The division's staff may make scheduled or unscheduled inspections of the policyholder's workplace during normal work hours to obtain additional information regarding the insurance company's accident prevention services.

I. The division staff shall prepare and file a written report of the inspection within thirty (30) days of the close of the inspection. The report shall contain.

1. Results of the inspection including a list of deficiencies, if any, and
2. Required corrective actions, if any.

J. The division shall provide a copy of the report to the insurance company and the Arkansas Insurance Department.

K. Insurance companies that meet the requirements of Rule 31 will receive a Certificate of Inspection from the commission.

L. Insurance companies with accident prevention services that do not meet the standards of Rule 31 will be notified of the specific deficiencies. The commission shall determine the appropriate amount of time for the insurance company to address the identified problems. The insurance company shall respond in writing with the corrective actions to be taken. When the division director determines that the insurance company has taken appropriate measures to correct the deficiencies, the division shall issue the Certificate of Inspection. A request for review of the decision may be made to the director of the division and, if desired, the Chief Executive Officer of the commission.

M. The commission may require another complete inspection of accident prevention services before issuing a Certificate of Inspection.

#### V. Accident Prevention Services Notification Requirements

A. Each workers' compensation insurance policy delivered or issued for delivery in Arkansas shall contain the following notice on the front of the insurance policy eminently visible to policyholder or, if the format does not permit, on a separate page placed in front of or on the declaration page, in a least 10 point bold type:

**[Name of company] is required to provide its policyholders with certain accident prevention services at no additional cost as required by Ark. Code Ann. § 11-9-409(d) and AWCC Rule 32. If you would like more information, call [company's loss control division or provider's telephone number]. If you have any questions about this requirement, call the Health and Safety Division, Arkansas Workers' Compensation Commission at 1-800-622-4472.**

B. Certain accident prevention services are basic services as described in Ark. Code Ann. § 11-9-409(d).

C. Extensive sampling of environmental conditions and exposures, writing detailed safety plans (with the exception of Rule 32 activities), and on-site management of specific safety programs, e.g., respirator, hearing conservation, etc., are beyond the scope of basic services. The division will determine the scope of basic services on an issue-by-issue basis if necessary.

#### VI. Annual Report Requirements

A. Each insurance company licensed to write workers' compensation insurance in Arkansas shall submit to the division an annual report quantifying the accident prevention services it provided to its policyholders in Arkansas over the previous year. AWCC Form HS 31-C, or an alternate form as approved by the division, shall be used.

B. The division director shall send the annual report notification to each insurance company licensed to write workers' compensation insurance in Arkansas.

C. The insurance company shall send the report so that it is received no later than April 1 of each year.

D. The report shall not include the expenses of underwriting visits to policyholders' premises unless accident prevention services are provided during the visit. In such case, the costs of the accident prevention services shall be included in the report.

#### VII. Field Safety Representative (FSR)

A. An individual seeking to become an FSR shall apply to the division using application AWCC Form HS-31-A.

B. To be approved as an FSR, an individual must have at least two (2) years experience in the occupational health and safety profession during the past ten (10) years and must meet at least one of the following qualifications:

1. An associate's degree in safety, industrial hygiene, or related field. The college or university must submit a certified transcript directly to the division.

2. A current certification by the Board of Certified Safety Professionals as a Certified Safety Professional or Associate Safety Professional;

3. A current certification by the American Board of Industrial Hygiene as a Certified Industrial Hygienist or Industrial Hygienist in Training; or

4. A current certification by the World Safety Organization as a Certified Safety Manager, or Certified Safety Specialist.

C. If applicants do not meet these requirements, they may still be eligible for approval as an FSR if, out of the previous ten (10) years, they have worked at least seven (7) years as an occupational health and safety professional with a minimum of fifty percent (50%) of their time devoted to workplace health and safety.

D. If applicants meet the education requirements listed in Subsection B. above, but do not have the required occupational health and safety experience, they may be approved as an FSR in training. The following is required to be approved as an FSR in Training:

1. A copy of AWCC Form HS-31-A completed and submitted to the division;

2. The FSR in Training shall work under the direct supervision of an approved FSR with all accident prevention services work documents (reports, recommendations, etc.) signed by the approved FSR as well as the FSR in Training;

E. When two (2) years of occupational health and safety experience have been obtained, the FSR in Training may resubmit an AWCC Form HS-31-A requesting approval as an FSR.

F. If an applicant is not approved, the division shall notify the applicant in writing and state the reason(s) for the denial. Any applications not approved shall be destroyed after ninety (90) days.

G. All FSR performances are subject to review by the division. The division may rescind FSR approval for cause. A request for review of the decision may be made to the director of the division and, if desired, the Chief Executive Officer of the commission.

#### VIII. Approval of Professional Safety Sources

A. An individual seeking to become an APSS pursuant to the AWCC Rule 32 Program shall apply to the division using application AWCC Form HS-31-A.

B. To be approved as an APSS, an individual must meet the FSR requirements and provide verification of at least three (3) additional years of occupational health and safety experience and must attend the commission's APSS Seminar.

C. If an applicant is not approved, the division director shall notify the applicant in writing and state the reason for the denial. Any applications not approved will be destroyed after ninety (90) days.

D. All APSS performances are subject to review by the division staff. The division may rescind APSS approval for cause. A request for review of the decision may be made to the director of the division and, if desired, the Chief Executive Officer of the commission.

E. APSSs who have been inactive in the State of Arkansas for a period of more than five (5) years shall attend the commission's APSS Seminar again before providing APSS services to employers in the Rule 32 program.

#### IX. Penalties

The commission may assess a civil penalty in an amount up to one thousand dollars (\$1,000.00) per day of violation against an insurance company that does not maintain or provide the accident prevention services required by Ark. Code Ann. § 11-9-409, payable to the Death and Permanent Total Disability Trust Fund. Furthermore, the insurance company shall be subject to suspension or revocation of license to do business in this state by the Insurance Commissioner.

#### X. Severability

If any provision of this rule or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

(Effective December 30, 1993; revised June 10, 2003, effective July 1, 2003; revised October 5, 2007, effective January 1, 2008.)