PROPOSED RULES AND ADMENDMENTS TO THE
RULES OF THE OKLAHOMA WORKERS' COMPENSATION COMMISSION
Submitted to Governor & Cabinet Secretary 12/22/17

CHAPTER 1. GENERAL INFORMATION

810:1-1-2. Definitions

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S. § 1, et seq.

"Certificate of noncoverage" or **"CNC"** means a certificate which may be issued by the Oklahoma Workers' Compensation Commission after proper application and reasonable investigation to a sole proprietor or the partners of a partnership who do not elect to be covered by the AWCA.

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"Claim administrator" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"Claim Information" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"Electronic Data Interchange" means the transmission of claim information through electronic means, in a format established by the Commission.

"EDI" means electronic data interchange.

"Executive Director" means the Executive Director of the Commission.

"**FROI**" means first report of injury.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Mandatory EDI implementation date" means September 1, 2018, unless a subsequent date is adopted by the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self-fund its workers' compensation obligations.

"**SROI**" means subsequent report of injury.

"**Trading Partner**" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' Compensation Commission fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"**Written**" means that which is expressed in writing, and includes electronic records.

810:1-1-6. Requests for agency public information

(a) Public access to Commission records is subject to the Oklahoma Open Records Act, 51 O.S. § 24A.1, et seq. and 85A O.S. § 120. Any person making a request for a Commission record shall comply with the following:

(1) The request must be in writing and directed to the Clerk of the Commission when the request is to access information on workers' compensation claims ~~information~~, to the Commission's Insurance Division Director when the request is for workers' compensation insurance related information maintained by the Commission, or to the Executive Director for all other requests.

(2) Requests to access information on workers' compensation claims ~~information~~ are subject to the written request and search fee requirements of 85A O.S. § 120, unless an exemption outlined in the law applies. The Commission may request information of a requester sufficient to determine whether or not an exemption pertains.

(A) To access information on workers' compensation ~~claim information~~claims, the request must be made in writing, on a form prescribed by the Commission. The request form requires identification of the person requesting the information and the person for whom a search is being made. The request form must contain an affidavit signed by the requester under penalty of perjury stating that the information sought is not requested for a purpose in violation of state or federal law. Those making a request shall pay the Commission One Dollar ($1.00) per search request, not to exceed One Dollar ($1.00) per claims record of a particular worker, plus applicable copy charges set forth in 85A O.S. § 119(A), any applicable fees according to the Oklahoma Open Records Act, 51 O.S. § 24A.5(3), and certification fees if any.

(B) Electronic searches of workers' compensation claims data using public terminals at the Commission's offices may be made. The search function permits searches using the name of a claimant or the Commission file number. Certain information related to the search criteria will be displayed on the terminal. Access to additional information on claims ~~information~~ pertaining to the search results is subject to the written request and search fee requirements described in this Paragraph.

(3) Requests not subject to Paragraph (2) of this Subsection, should describe the record(s) requested, indicate the name of the party making the request, and have the party's mailing address and telephone number. The requesting party shall pay for copies and research of such records in accordance with 85A O.S. § 119(A) and the Oklahoma Open Records Act, 51 O.S. § 24A.5(3), and, if applicable, for certification of the record according to a fee established by the Commission if any.

(4) Copy charges may be waived at the Commission's discretion for copies requested by the media or by a public officer or public employee in the performance of his or her duties on behalf of a governmental entity.

(b) This Section does not apply to records specifically required by state or federal law, or by state or federal administrative rule, or by order of a court of competent jurisdiction, to be kept confidential, including, but not limited to, financial data obtained by or submitted to the Commission for the purpose of obtaining a license or permit and records subject to proprietary agreements, confidentiality orders and sealed exhibits.

810:1-1-8. Electronic data interchange

(a) **Mandatory compliance.** Mandatory compliance with all provisions of Commission rules pertaining to electronic data interchange shall commence ~~January 1, 2018~~on the mandatory EDI implementation date. ~~Beginning January 1, 2018~~On the mandatory EDI implementation date, claim

administrators shall submit all claim information via EDI, according to electronic record layouts adopted by the International Association of Industrial Accident Board and Commissions (IAIABC) in its Release ~~3~~3.1 standards, until such time as the Commission may adopt a subsequent release of the IAIABC standards. Any subsequent version of the IAIABC standards is deemed adopted upon approval by the Commission. Claim administrators shall adhere to the IAIABC standards most recently adopted by the Commission. Paper forms ~~postmarked~~received before the mandatory EDI implementation date ~~of January 1, 2018~~ will be accepted and filed.

(b) **Trading partner profile.** Each claim administrator shall submit to the Commission's EDI vendor a completed EDI trading partner profile at least two (2) business days before submitting claim information via EDI. A claim administrator shall have a trading partner profile on file with the Commission before EDI submissions from that claim administrator will be accepted. The claim administrator shall report changes to its profile information at least two (2) business days prior to sending transactions containing revised profile-related information to the Commission. Failure to report changes to the trading partner profile information may result in the rejection of an entire transmission or individual transaction(s) containing profile information different from information reported on profile documents mostly recently submitted to the Commission.

(c) **Trading partner agreement.** If required by the Commission, a trading partner agreement adopted by the Commission shall be submitted by each trading partner prior to submitting claims information via EDI. The signing party understands 85A O.S., §6 is applicable to each FROI and SROI submission, and the party is signing under penalty of perjury as prescribed by 85A O.S., §123.

~~(c)~~(d) Implementation guides incorporated by reference. Claim administrators shall file all claim information according to the IAIABC EDI Implementation Guide for claims, the Oklahoma Workers' Compensation Commission EDI Implementation Guide, which includes, but is not limited to, the Event Table, Element Requirements and Edit Matrix as referenced, and as otherwise specified in these rules. The IAIABC EDI Implementation Guide for claims and the Oklahoma Workers' Compensation Commission EDI Implementation Guide are herein incorporated by reference. The Commission's EDI Implementation Guide can be found at www.okwccedi.info.

~~(d)~~(e) **Paper forms.** On or after ~~January 1, 2018~~the mandatory EDI implementation date, paper copies of the following forms will not be accepted and will only be satisfied by filing FROI and SROI as specified in the Oklahoma Workers' Compensation Commission EDI Implementation Guide:

(1) CC-Form-2 Employer's First Notice of Injury;

(2) CC-Form-2A Employer's Intent to Controvert Claim;

(3) CC-Form-2A Extension Employer's Application and Authorization for Extension of Time to File CC-Form-2A; and

(4) CC-Form-4 Report of Compensation Paid/Suspension of Payments.

~~(e)~~(f) **Social security number.** All EDI reports submitted to the Commission shall include the last five (5) digits of the claimant's social security number, in addition to other information that may be required. If no social security number can be obtained, the report shall include the worker's USCIS (green card) number, employment visa number, or passport number.

~~(f)~~(g) **Catastrophic event.** Claim administrators, who directly or through a third party vendor, experience a catastrophic event resulting in the insurer's failure to meet timely filing requirements, shall submit a written or electronic request to the Commission for approval to submit required electronic form equivalents in an alternative filing timeline. The request shall be sent to the Commission within fifteen (15) days after the catastrophic event. The request shall contain a detailed explanation of the nature of the event, date of occurrence, and measures being taken to resume electronic submission. The claim administrator shall also provide an estimated date by which electronic submission of affected EDI filings will be resumed. Approval to submit in an alternative filing timeline shall be granted by the Commission if a catastrophic event prevents electronic submission. If approved, the electronic form equivalents that

were due to be filed during the time the claim administrator was unable to file due to a catastrophic event, shall be sent with Late Reason Code "LB" (Late notification/payment due to Natural Disaster) or "LC" (Late notification/payment due to an act of Terrorism).

CHAPTER 10. PRACTICE AND PROCEDURE

SUBCHAPTER 1. GENERAL PROVISIONS

810:10-1-3. Definitions

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"Attorney" means an attorney licensed to practice law in Oklahoma and a member in good standing of the Oklahoma Bar Association, or an out-of-state attorney.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S. §§1, et seq.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Certified workplace medical plan" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"Claim administrator" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"Claim for compensation" means a Commission prescribed form filed by or on behalf of an injured worker or the worker's dependents to initiate a claim for benefits pursuant to the AWCA for an alleged work injury, occupational disease or illness, or death.

"Claim Information" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"Commission Chair" means the Chair of the Oklahoma Workers' Compensation Commission.

"Continuance" means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

"Controverted claim" means there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation.

"Discovery" means the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses.

"Document" means any written matter filed in a cause, including any attached appendices.

"Electronic Data Interchange" means the transmission of claim information through electronic means, in a format established by the Commission.

"EDI" means electronic data interchange.

"Electronic Signature" means an electronic symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Executive Director" means the Executive Director of the Commission.

"FROI" means first report of injury.

"Good cause" means, in the context of a request for continuance or failure of a party to comply with the Rules of this Chapter, circumstances beyond the party's control or that the party could not reasonably foresee. In the context of a claim, defense, or order, it means a reasonable legal basis.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Joint Petition Settlement" means a settlement between the employer/insurance carrier and the employee, of all or some issues and matters in a claim for compensation.

"Legal holiday" means only those days declared legal holidays pursuant to 25 O.S. § 82.1 or by proclamation of the Governor of Oklahoma.

"Mandatory EDI implementation date" means September 1, 2018, unless a subsequent date is adopted by the Commission.

"Mediation" means the process of resolving disputes with the assistance of a mediator, outside of a formal administrative hearing.

"Out-of-state attorney" means a person who is not admitted to practice law in the State of Oklahoma, but who is admitted in another state or territory of the United States, the District of Columbia, or a foreign country.

"Pro se" means without an attorney.

"Proceeding" means any action, case, hearing, or other matter pending before the Commission.

"Representative" means a person designated in writing by an injured employee, person claiming a death benefit, employer, insurance carrier or health or rehabilitation provider, to assist or represent them before the Commission in a matter arising under the AWCA.

"Sanction" means a penalty or other punitive action or remedy imposed by the Commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of the AWCA or a rule, judgment, order, or decision of the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Subpoena" means a Commission issued writ commanding a person to attend as a witness to testify or to produce documents, including books, papers and tangible things, at a deposition or at a hearing.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

810:10-1-4. Reporting injuries or deaths

(a) **Employer's first report of injury ~~(formerly CC-Form 2)~~.**

(1) Within ten (10) days after the date of receipt of notice or of knowledge of death or injury which results in the loss of time beyond the shift or which requires medical attention away from the work site the ~~claim administrator~~employer shall file a CC-Form-2 Employer's First Notice of Injury with the Commission or effective on or after the mandatory EDI implementation date, the claim administrator shall file a FROI with the Commission via EDI.

(2) The report shall contain the information required by 85A O.S. § 63 and any additional information prescribed by the Commission.

(3) Failure or refusal of an ~~insurer~~employer to comply with the reporting requirements of this Section may subject the ~~insurer~~employer to sanctions prescribed in 85A O.S. § 63.

(b) **Employer's First or Subsequent Report of Injury ~~(formerly, CC-Form 2A and CC-Form 2A Extension)~~.**

(1) Each ~~insurer~~employer is required by 85A O.S. § 86 to file a report of controversion, if intending to controvert, within fifteen (15) days of notice or knowledge of injury. ~~Insurer~~Employer, if intending to controvert, shall do so by ~~the claim administrator making the appropriate~~filing the CC-Form-2A Employer's Intent to Controvert Claim or, effective on or after the mandatory EDI implementation date, by the claim administrator submitting the appropriate FROI and/or SROI filings as provided in the Oklahoma Workers' Compensation Commission EDI Implementation Guide.

(2) A ~~FROI UI (Under Investigation) or SROI UI (Under Investigation)~~CC-Form-2A Extension is submitted to request an extension to investigate compensability of the claim. Effective on or after the mandatory EDI implementation date, a FROI UI (under investigation) or SROI UI (under investigation) shall be filed to request such extension. The request must be submitted within the fifteen (15) days after notice of the injury, or by such later date as fixed by the Commission, in its discretion. The extension shall be deemed granted upon request, and extends the filing deadline for a standard time period of thirty (30) days from the original due date of the CC-Form-2A or FROI or SROI, as applicable, for a total of forty-five (45) days from the date of the employer's notice or knowledge of injury/death. The Commission reserves the right to alter the extension period and may audit extension requests.

(3) ~~ithin fifteen (15) days of notice or knowledge of injury~~Effective on or after the mandatory EDI implementation date, the claim administrator, if not controverting, shall report first payment of benefits on either a FROI or SROI within fifteen (15) days of notice or knowledge of injury, in accordance with the Oklahoma Workers' Compensation Commission EDI Implementation Guide.

(c) **Employer's Subsequent Report of Injury, Report of Compensation Paid ~~(formerly CC-Form 4)~~.**

(1) ~~Within~~Effective on or after the mandatory EDI implementation date, the claim administrator shall, within fifteen (15) days of the initial payment of a benefit, change in benefit amount, change in benefit type, reinstatement of a benefit or suspension of a benefit, ~~the employer shall~~ file a SROI reporting such initial payment, change, suspension or reinstatement and the reason therefore.

(2) Within thirty (30) days of making the final payment of compensation, including payments made for medical treatment, the employer shall file a CC-Form-4. Effective on or after the mandatory EDI implementation date, the claim administrator shall file a SROI FN (Final) reporting such final payment.

(3) ~~The~~Effective on or after the mandatory EDI implementation date, the claim administrator shall file a sub-annual report (SROI SA) every 6 months for every indemnity or medical only claim

where indemnity and/or medical benefits were paid during the reporting year. For ongoing claims, reports are due six months from the date of injury and every six months following. If the claim is closed prior to the initial six months from when the SROI SA (Sub-Annual) is due, a SROI FN (Final) shall be filed.

(d) **Additional reporting requirements.** Reports or additional reports with respect to the death, injury and of the condition of the employee shall be sent by the employer to the Commission at such time and in such manner as the Commission may prescribe.

(e) **Evidentiary effect of reports.** Any report provided pursuant to this Section shall not be evidence of any fact stated in the report in any proceeding with respect to the injury or death for which the report is made.

810:10-1-7. Forms and other documents generally

(a) All forms, pleadings, proposed orders, correspondence or other documents submitted to the Commission shall:

(1) be typewritten or printed legibly on 8 ½" by 11" paper, unless electronically filed;

(2) refer to the Commission file number if assigned;

(3) bear the typed or printed name, mailing address, telephone number, and signature, of the person who prepared the document, including the firm name if applicable; and

(4) include the attorney's Oklahoma Bar Association number, if the document is submitted by an attorney licensed to practice law in Oklahoma.

(b) The signature of an attorney or party constitutes the following:

(1) a certification that the claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, form, motion, or other paper has been read;

(2) that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(3) that it is not brought for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(c) If a claim, request for benefits, request for additional benefits, request for hearing, pleading, motion, or other paper:

(1) is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant; or

(2) is signed in violation of the AWCA, the Commission, including Administrative Law Judges, on motion or on their own initiative, shall impose an appropriate sanction as prescribed in 85A O.S. § 83.

(d) An electronic signature using acceptable electronic signature technology may be used to sign a document or a form and shall have the same force and effect as a hand written signature.

(e) All documents filed with the Commission shall be served on all parties and shall have a certificate of service setting forth the manner of such service. A copy of all correspondence addressed to the Commission with respect to a pending matter shall be sent to all parties at the time it is sent to the Commission and shall list the parties to whom copies were sent.

(f) All forms filed with the Commission, except forms submitted ~~viaEDI~~electronically, shall be file-stamped by the Clerk of the Commission on the date of receipt.

(g) All FROI and SROI filings properly submitted through EDI according to the standards specified in 810:1-1-8 shall be deemed to comply with the requirements of this section.

810:10-1-10. Contact information for service of notice; entry of appearance; leave to withdraw

(a) **Contact information for service of notice.**

(1) Each party, upon instituting or responding to any proceedings before the Commission, shall file with the Commission the party's address, or the name and address of any agent upon whom notices shall be served to such party or agent at the last address so filed with the Commission. A party, including a claimant acting pro se, shall promptly communicate any change of address to the Commission's Docket Office.

(2) An attorney of record, as defined in Subsection (d) of this Section, shall give notice of a change of address by providing the Commission's Docket Office with a copy of the letterhead containing the new address and a list containing the Oklahoma Bar Association number of each attorney member of the firm who regularly appears before the Commission.

(3) Notice and service of documents may be made as prescribed in 12 O.S. § 2005(B). It is the responsibility of parties to an action before the Commission to provide a current mailing address, and email address if available, to Commission staff. Notices and documents sent to the last known address or email address on file with the Commission, are presumed delivered in a timely manner, and presumed received.

(b) **Entry of appearance.**

(1) An entry of appearance shall be filed by any attorney or law firm representing any party in any proceeding before the Commission. No attorney or law firm will be recognized in any case before the Commission unless the attorney or law firm duly entered their written appearance. When an entry of appearance has been duly filed by a law firm, any attorney member of that firm may appear and be recognized by the Commission. All entries of appearance when filed shall be accompanied by a written authorization signed by the client and attorney identifying the attorney or law firm as the client's representative, as defined in 810:10-1-3, to provide services in the workers' compensation matter, including the presentation of evidence as provided in 85A O.S. § 71(C)(1)(a).

(2) An appearance on behalf of the employer/insurance carrier shall be filed no later than ten (10) days after the employer/insurance carrier's receipt of a file-stamped copy of a claimant's claim for compensation filed pursuant to 810:10-5-2. The entry of appearance for the employer/insurance carrier shall identify whether or not the employer is an active member of a certified workplace medical plan in which the claimant is potentially enrolled, and if so, the name of the plan.

(c) **Leave to withdraw.**

(1) Once an entry of appearance has been filed, Leave to Withdraw can only be had upon written order of the Commission following appropriate notice to the client and the opposing side. Substitution of Counsel may be had by filing with the Commission and serving on the opposing party a notification of the substitution, signed by the attorney of record, the substituted attorney and the client. Notification of the substitution when filed shall be accompanied by a written authorization signed by the client and substituted attorney identifying the attorney as the client's representative to provide services in the workers' compensation matter, including the presentation of evidence as provided in 85A O.S. § 71(C)(1)(a).

(2) Except when an attorney's representation has been terminated at the client's initiative, no attorney shall be allowed to withdraw as an attorney for a party when that attorney has signed the pleadings necessary to perfect an appeal to the Commission en banc. This prohibition shall apply until the appeal has been fully submitted to the Commission en banc for consideration. This prohibition shall not apply if another attorney has entered an appearance for the appealing party before the filing of the application to withdraw.

(d) **Attorney of record.**

(1) The attorney of record for the claimant in a case shall be the attorney signing the first claim for compensation filed in the case for the claimant as provided in 810:10-5-2. Any other attorney who files an entry of appearance on behalf of any party in the case or who is identified as a substitute attorney pursuant to a notice of substitution of attorney shall also be considered an attorney of record. The Commission shall send notices to all attorneys of record until a substitution of attorney has been filed or an Application for Leave to Withdraw has been filed and granted by the Commission. Various attorneys may appear before the Commission in a matter, but notice shall be sent only to those attorneys who are an "attorney of record" as defined in this Subsection.

(2) Attorneys of record who change law firms shall notify the Commission of the status of the representation of their clients, and shall immediately seek Leave to Withdraw, when appropriate.

(e) **Attorney leave requests**. Attorneys must make leave requests at least seven (7) weeks in advance. Requests for leave that exceed a total of two (2) consecutive weeks or thirty-five (35) days per calendar year must be approved by the Chief Administrative Law Judge and Presiding Court of Existing Claims Judge. Leave requests ~~may~~must be submitted via the online request form on the Commission's website at www.ok.gov/wcc ~~or submitted directly to the Commission's docket office~~.

810:10-1-14. Electronic Filing [NEW]

(a) This Rule shall become effective upon implementation of a Case Management System by the Workers' Compensation Commission. Implementation of the Case Management System will be a phased implementation.

(b) The Commission recognizes that documents in proceedings before the Commission may be filed, served and preserved in electronic format. This Rule shall supplement but not replace the existing statutes and Commission rules regulating the practice and procedure before the Commission. Nevertheless, where this Rule specifies a practice or procedure, this Rule shall control with respect to those matters filed using the Case Management System.

(c) Electronic Filing. Whenever the Oklahoma Workers' Compensation Commission Rules of Practice and Procedure, OAC 810:10, require a pleading, motion, document or other instrument to be filed or delivered to the Clerk of the Commission, such requirement may be satisfied by electronic filing as authorized by the Case Management System, and any other applicable statute or Commission rule.

SUBCHAPTER 3. INFORMAL DISPUTE RESOLUTION PROCESSES

810:10-3-3. Counselor program

(a) The Commission shall maintain a workers' compensation counselor program to assist injured employees, employers and persons claiming death benefits under the AWCA. The program shall be administered by the Counselor Division of the Commission.

(b) A Division counselor shall:

(1) meet with or otherwise provide information to injured employees;

(2) investigate complaints;

(3) communicate with employers, insurance carriers, individual own risk employers, group self-insurance associations, and health care providers on behalf of injured employees;

(4) provide informational seminars and workshops on workers' compensation for medical providers, insurance adjusters, and employee and employer groups; and

(5) develop informational materials for employees, employers and medical providers.

(c) Notice of the availability of the services of the counselor program and of the availability of mediation and other forms of alternative dispute resolution to assist injured workers shall be mailed to

the injured worker within ten (10) days of the filing of the applicable Employer's First Notice of Injury or FROI as provided in 810:10-1-4(a). Information about the counselor program and the availability of alternative dispute resolution also shall be made part of the Commission's training materials for self-insurers and claims representatives handling Oklahoma workers' compensation claims.

SUBCHAPTER 5. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

PART 1. COMMENCEMENT OF CLAIMS

810:10-5-2. Claim for compensation

(a) A claim for compensation for benefits for an injury, including a cumulative trauma injury and death, or occupational disease or illness, occurring on or after February 1, 2014, shall be commenced by filing, in quadruplicate, an executed notice form with the Commission that includes the employer's Federal Employer Identification Number and the worker's full name and date of birth, and the last ~~four~~five digits of the worker's Social Security number. The following forms shall be used, as appropriate:

(1) CC-Form-3 claim for compensation for benefits for a single event or cumulative trauma injury;

(2) CC-Form-3A claim for compensation for death benefits; and

(3) CC-Form-3B claim for compensation for occupational disease or illness benefits.

(b) A proceeding under 810:15-15-3 to address payment of disputed fees for health services (e.g. physician fees, hospital costs, etc.), vocational rehabilitation or medical case management, shall be commenced by filing an MFDR Form 19. A CC-Form-9 shall be filed to request a hearing on an MFDR Form 19 dispute.

(c) Within ten (10) days of the filing of a claim for compensation (i.e. CC-Form-3, CC-Form-3A or CC-Form-3B), the Commission shall mail or send electronically a copy of the claim form bearing the assigned file number to the service agent designated by the self-insured employer, group self-insurance association, or insurance carrier , or as otherwise directed in that Section.

PART 3. SUBSEQUENT PLEADINGS

810:10-5-15. Response to initial pleading; notice of contested issues

(a) An employer or its insurance carrier may respond to any issue related to a claim and liability therefor, including a claim for compensation, a claim for discrimination or retaliation, a claim for payment of health care or rehabilitation expenses, or a claim against the Multiple Injury Trust Fund for combined disabilities, by timely filing a CC-Form-10 Answer and Notice of Contested Issues, CC-Form-10C, or an MFDR Form 10M, pursuant to 810:10-5-16 or 810:15-15-3, as appropriate.

(b) A general denial or failure to timely file a CC-Form-10, CC-Form-10C, or MFDR Form 10M shall be taken as admitting all allegations in the claim form except jurisdictional issues; and

(1) the extent, if any, of the claimant's disability, for a CC-Form-3 or CC-Form-3B claim; or

(2) the amount due, if any, for a death claim.

(c) Unless excused by the Commission for good cause shown, denials and affirmative defenses shall be asserted on the CC-Form-10, CC-Form-10C, or MFDR Form 10M, or shall be waived. No reply to the CC-Form-10, CC-Form-10C, or MFDR Form 10M is required.

(d) When exercising the right to choose a treating physician under 85A O.S. § 50(A), an employer shall designate the treating physician on the CC-Form-10. This Section shall not be construed to limit the employer's right to challenge the reasonableness or necessity of treatment.

810:10-5-18. Continuances

(a) A request for a continuance will not be granted as a matter of course. Any motion for a continuance may be granted only by the assigned Administrative Law Judge for good cause shown. All motions for continuance shall be signed by the party on whose behalf the motion is made.

(b) No continuance of an appeal scheduled for review by the Commission en banc is permitted before the date of an oral argument authorized as provided in 810:10-5-66 without approval of the Commission Chair, or in the absence of the Commission Chair, the Commission Vice Chair. Continuances requested on the date of the oral argument will be granted only upon a majority vote of the Commission en banc.

(c) Continuances in appeals to the Commission en banc are governed by 810:10-5-66.

810:10-5-31. Discovery

(a) **Generally.** Discovery in administrative proceedings before the Commission is governed by the Oklahoma Rules of Civil Procedure, unless otherwise specified in this Section.

(b) **Authority of the Administrative Law Judge.** Any party may commence with discovery methods such as depositions, issuance of subpoenas and requests for production, prior to or after invoking the jurisdiction of the Administrative Law Judge. Discovery disputes may be resolved by filing a CC-Form-13 requesting a prehearing conference. The Administrative Law Judge, upon the judge's own motion or on the motion of either party, may permit or perform such discovery or other appropriate action as the judge decides is appropriate in the circumstances, taking into account the needs of the parties to the proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective. If discovery is permitted or performed, the Administrative Law Judge may order a party to the proceeding to comply with the judge's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, including a deposition, and take action against a noncomplying party as appropriate and consistent with 85A O.S. § 73(B) and 85A O.S. § 83(B).

(c) **Protective orders.** The Commission may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state, including any orders with respect to subpoenas and attendance of a witness as may be appropriate for the protection of persons, including an order quashing a subpoena, excusing attendance of witnesses, or limiting documents to be produced.

(d) **Subpoenas; costs; fees; service.**

(1) When a witness is required to appear or to produce documentary evidence, a subpoena shall be issued by an attorney authorized to practice law in Oklahoma or under the seal of the Clerk of the Commission. The party requesting the subpoena under the seal of the Commission shall fill it in before issuance. The subpoena may be served by certified mail with return receipt requested or it may be hand delivered. The party requesting the subpoena shall bear the cost of serving it. Except as otherwise provided by law or this Title for physician testimony, fees of a nonparty witness who is subpoenaed to appear before the Commission shall be the same as those allowed to witnesses appearing before the district courts of this state. Party witnesses are not entitled to witness fees.

(2) The party who takes the deposition of a witness or of a party shall bear all expenses thereof, including the cost of transcription, except as otherwise provided in 85A O.S., § 112(J) and 810:10-5-49.

(e) **Completion of discovery by the employer or insurance carrier in contested claims.** Pursuant to 85A O.S. § 111, if the compensability of a claim is contested, the employer or insurance carrier shall complete and secure a medical evaluation of the claimant within sixty (60) days of the filing of a claim for compensation pursuant to 810:10-5-2.

(f) **Filing Discovery.** No depositions, interrogatories, interrogatory answers, requests for production of documents and things, requests for admissions, or responses thereto, shall be filed with the Commission, except as ordered by the assigned Administrative Law Judge.

PART 7. INITIAL AND SUBSEQUENT PROCEEDINGS

810:10-5-45. Submission to medical examination; appointment of medical or vocational expert; travel expenses

(a) **Submission to medical examination.** Upon reasonable advance notice from the employer or insurance carrier, the employee must submit to a medical examination by a physician selected by the employer or insurance carrier. If the claimant refuses to submit to the examination, the employer or insurance carrier may file a CC-Form-13 requesting the claimant's compensation and right to prosecute any proceeding under the AWCA be suspended during the period of refusal as provided in 85A O.S. § 50(E). The claimant must show cause at the hearing why the request of the employer or insurance carrier should not be granted. If the claimant's failure to appear for the scheduled examination was without good cause, the Commission shall order the claimant to reimburse the respondent for payment of the physician's charge for the missed examination, but not in excess of Two Hundred Dollars ($200.00).

(b) **Appointment of medical or vocational expert.** Appointment of an independent medical examiner is governed by 810:15-9-4. Appointment of a medical case manager is governed by 810:15-11-4. Appointment of a vocational rehabilitation provider is governed by 810:20-1-4.

(c) **Travel expenses.** ~~The~~Within sixty (60) days from receipt of a request for reimbursement, the employer or insurance carrier shall reimburse the employee for the actual mileage in excess of twenty (20) miles round-trip to and from the claimant's home to the location of a medical service provider for all reasonable and necessary medical treatment, for vocational rehabilitation or retraining, for an evaluation by an independent medical examiner and for any evaluation, including an evaluation for vocational rehabilitation or vocational retraining, made at the respondent's request, but in no event in excess of six hundred (600) miles round-trip. Mileage and necessary lodging expenses are limited to the provisions of the State Travel Reimbursement Act, 74 O.S. §§ 500.1, et. seq. Meals will be reimbursed at the rate of Fifteen Dollars ($15.00) per meal per four hours of travel status, not to exceed three meals per day.

PART 9. POST ORDER RELIEF

810:10-5-66. Appeal of Commission Administrative Law Judge order

(a) **Request for Review.** Any party aggrieved by a judgment or award of an Administrative Law Judge, which party for purposes of this Section shall be known as the "appellant", may appeal the order to the Commission en banc by filing an original and two (2) copies of a Request for Review with the Commission within ten (10) days of when the order was issued as reflected by the file-stamped date on the order. The Request for Review shall:

(1) be in writing;

(2) include a copy of the order being appealed;

(3) clearly and concisely rebut each issue in the Administrative Law Judge's order that the appellant wants reviewed, and state the relief sought. General allegations of error do not suffice. Allegations of error concerning matters not included in a timely filed Request for Review shall be deemed waived;

(4) be served on all other parties of record, which for purposes of this Section shall be known as the "respondents";

(5) have a certificate of service setting forth the manner of such service as required by 810:10-1-7;

(6) be accompanied by a designation of record filed by the appealing party and a copy submitted to the Commission reporter and all parties in the case concurrently with or before filing a Request for Review in all actions which are appealed to the Commission en banc. The cost of preparing the transcript shall be advanced immediately by the designating party. The transcript shall be prepared and sent to all parties to the appeal within thirty (30) days from the date the designation of record is filed; and

(7) be accompanied by a non-refundable filing fee in the sum of One Hundred Seventy-five Dollars ($175.00) pursuant to 85A O.S. § 78(B).

(b) **Timeliness of filings.** The timeliness of the filing of a Request for Review is governed by 810:10-1-13. Untimely Requests for Review do not invoke the jurisdiction of the Commission en banc and will not be reviewed by the Commission en banc.

(c) **Oral argument.** Oral argument before the Commission en banc shall be limited to ten (10) minutes per side, unless the time is enlarged by leave of the Commission en banc. Any party failing to appear when the appeal is called for oral argument shall be deemed to have waived the right to argue the case, and the Commission en banc may hear argument on behalf of the present party and decide the appeal on the briefs and argument heard. If no party appears, the appeal shall be considered as submitted on the record.

(d) **Written argument.** In any case pending on a Request for Review, the parties of record shall submit written arguments, including a statement of facts and legal authority for their respective positions, as an aid to the Commission en banc. The written argument shall not exceed five (5) pages in length, and shall be double spaced and prepared in at least ten point font size on 8 ½" x 11" paper with one inch margins. No appendix or other documents shall be attached to the written argument. ~~The appellant has~~ Appellants and cross-appellants have forty-five ~~days~~ (45) days after the filing of the designation of record within which to file an original and four (4) copies of the written argument with the Commission, with a copy served on all opposing parties. The opposing parties shall have ten (10) days within which to submit a response. When submitted, the original and four (4) copies of the response shall be filed with the Commission and a copy served on the appellant or cross-appellant.

(1) Extensions of time for the filing of written arguments shall be granted only for cause.

(2) The failure of any party to timely file a written argument under this section may result in the striking of that party's brief from consideration, or if the untimely brief is that of an appellant or cross-appellant, in the dismissal of the appellant's or cross-appellant's appeal.

(e) ~~**Dismissal for failure to file.** An appeal may be dismissed with prejudice by the Commission's Presiding Appellate Officer when appellant has failed to timely file the written argument and has failed to timely respond to the Commission's order to file the required written argument.~~**Motions.** For the purposes of this Section, "motion" means a formal request or application by a party for specific action by the by the Chair or Commission en banc, which is made orally, in the presence of all other parties, or in writing, served on all other parties.

(1) Prior to filing any motion, the movant shall personally confer with the opposing party or parties or, if represented, their attorneys of record to attempt to amicably resolve the subject matter of the motion. All motions shall include a statement that the movant has personally conferred or has used good-faith efforts to confer with all other parties and, if known, shall state whether any party has an objection to the motion. Any document referenced in the motion shall be attached to the motion.

(2) Written motions shall have a title describing the relief requested and be served on all other parties, or if represented, the attorneys of record. Any party may respond to a motion within ten (10) days, unless otherwise specified by the Chair or the Commission en banc. Hearings on motions will not be set unless a hearing is specifically requested and good cause is shown in the motion or response.

(3) No continuance of an appeal scheduled for review by the Commission en banc is permitted before the date of an oral argument without approval of the Commission Chair. Continuances requested on the date of the oral argument will be granted only upon a majority vote of the Commission en banc.

(4) Except for the time periods in subsection (a), the Chair or Commission en banc may order time periods or procedures that differ from those specified in this Section. The Chair may rule on procedural motions and shall issue written notice of any change ordered under this subsection to the parties to any appeal affected by the change.

(f) ~~**Default judgment for failure to file.** Default judgment may be entered by the Commission's Presiding Appellate Officer against the opposing parties when opposing parties have failed to timely file the written response and have failed to timely respond to the Commission's order to file the required written argument.~~**Voluntary dismissals.** A request for review by the Commission en banc may be dismissed upon the agreement of all parties to the review. If a settlement is reached, the appellant shall promptly notify the Commission en banc.

(g) **Description of appeal proceeding.**

(1) In appeals pursuant to this Section, the Commission en banc may:

(A) modify the decision of the Administrative Law Judge;

(B) reverse the decision of the Administrative Law Judge and render a new decision;

(C) reverse the decision of the Administrative Law Judge and remand the matter to the Administrative Law Judge with instructions or for a new administrative hearing; or

(D) affirm the decision of the Administrative Law Judge~~.~~; or

(E) remand for further proceedings and appropriate action with or without relinquishing the Commission's jurisdiction of the appeal.

(2) The Commission en banc may reverse or modify the decision of an Administrative Law Judge only if it determines that the decision was against the clear weight of the evidence or was contrary to law. Any judgment of the Commission en banc which reverses a decision of the Administrative Law Judge shall contain specific findings relating to the reversal. In any case in which it appears that a prior controlling appellate decision is dispositive of the appeal, the Commission may summarily affirm or reverse, citing in its order this Section and the controlling decision.

(3) All proceedings of the Commission en banc shall be recorded by a court reporter, if requested by a party. Any party requesting a transcript of the proceedings shall bear the costs associated with its preparation. During the pendency of an appeal to the Commission en banc, the Administrative Law Judge shall retain jurisdiction over any issue not affected by the eventual ruling of the appellate body.

(h) **Appeal to Supreme Court.** An order of the Commission en banc may be appealed to the Oklahoma Supreme Court, as provided in 85A O.S. § 78, within twenty (20) days of being sent to the parties as reflected by the file-stamped date on the order.

810:10-5-69. Nunc pro tunc orders [NEW]

Any party may file a motion to request a nunc pro tunc change to an order issued by the Commission. No nunc pro tunc change may be made in any order without an adversary hearing set upon notice to all parties or written stipulation of consent signed by all parties.

PART 11. CONTEMPT

810:10-5-75. Contempt procedure

(a) **Commencement.** A cause filed for contempt for disobedience to or violation of law or a rule, order or judgment of the Commission shall be commenced by the filing of a verified complaint, which must be copied to all opposing parties.

(b) **Complaint.** The complaint shall state:

(1) The name of the person, firm, trust, corporation, limited liability company or association against whom the complaint is made.

(2) Each law, rule or order of which violation is charged.

(3) In general terms, the acts or omissions constituting the violation of which complaint is made. If complaint is made of more than one violation, each violation shall be separately stated.

(c) ~~**Citation.** When a complaint is filed, the Clerk of the Commission shall issue in the name of the state a citation directed to the person against whom complaint is made, which citation shall be accompanied by a copy of the complaint. The citation shall state:~~

~~(1) The name of the complainant and the date the complaint was filed.~~

~~(2) A brief description of the nature of the complaint.~~

~~(3) Reference to the accompanying copy of the complaint.~~

~~(4) The date upon which the complaint is set for hearing, which shall not be earlier than ten (10) days from the date the citation is served.~~

~~(5) A statement that, unless the person complained against shall on or before the date for hearing file a response to the complaint, the allegations and charges therein will be taken as confessed.~~

~~(d) **Service of citation.** Service of the citation for contempt may be made by a person directed to do so by order of the Commission. Service shall be made by mailing the citation for contempt by certified mail to the respondent's last known address as listed in Commission records. The respondent is responsible for notifying the Commission of any change of address.~~

~~(e) **Return of service.** The person making the service shall make his return thereof, and file the same with the Clerk of the Commission. The return shall show the time when the citation was received by him, and the time and manner the same was served by him, and such return shall be verified by the person making the service. Service of the citation for contempt on the respondent by certified mail shall be considered effective if returned from the last known address as listed in Commission records for the following reasons, including, but not limited to:~~

~~(1) Signed for by any person at the address listed.~~

~~(2) Undeliverable - no forwarding address, forwarding address expired, unclaimed and/or refused.~~

~~(f) **Default.** If no response to the complaint is filed on or before the date set for hearing, or if a respondent fails to appear at the time set for hearing, as specified in the citation, the Commission may immediately proceed to hear the complaint. After hearing the evidence, the Commission shall impose such fine pursuant to 85 O.S. § 73(B) as the facts and circumstances warrant, or dismiss the complaint.~~

~~(g) **Response.** A respondent who desires a hearing shall, on or before the time specified in the citation for hearing, file a response to the merits of the cause and shall appear at the time set for hearing. The response shall include all objections and defenses of any nature to the complaint and may include a motion to dismiss the complaint for reason of insufficiency thereof or lack of jurisdiction.~~

~~(h)~~ **Hearing procedures.** Proceedings related to a contempt complaint shall be governed by the contested hearings rules set forth in Subchapter 5 of this Title. At the hearing, the Commission shall first hear all objections and defenses other than to the merits of the complaint and shall enter an appropriate order thereon. Amendments may be permitted upon terms that are just, with or without grant of a

continuance. After all preliminary questions are heard, the Commission shall hear the merits of the complaint, and at the conclusion thereof, shall impose such fine pursuant to ~~85 O.S. § 73(B)~~85A O.S., § 73(B) as the facts and circumstances warrant, or dismiss the complaint.

~~(i) **Hearing date.** Every cause instituted under this Section shall be tried on its merits on the date specified in the citation, or at such other time to which such cause shall be continued for hearing by the Commission.~~

PART 15. SETTLEMENTS

810:10-5-95. Joint petition settlements

(a) Under 85A O.S. § 87 and 85A O.S. § 115, upon and after the filing of a claim for compensation, or, in the absence of a claim for compensation, the filing of the applicable Employer's First Notice of Injury or FROI per 810:10-1-4(a) in a claim involving a pro se employee, the parties may engage in a compromise and release of any and all liability which is claimed to exist under the AWCA on account of the injury or occupational disease or illness, subject to approval by the Commission, an Administrative Law Judge, or a Benefit Review Officer.

(b) The parties in interest to a claim for compensation may settle upon and determine any and all issues and matters by agreement, subject to the terms and conditions of this Section.

(c) Any agreement submitted to the Commission, Administrative Law Judge or Benefit Review Officer of the Commission's Counselor Division, for approval shall be set forth in a Commission prescribed CC-Joint Petition Settlement. Nothing in this rule shall preclude the Multiple Injury Trust Fund from compromising a claim as authorized by 85A O.S. § 32(F).

(d) No CC-Joint Petition Settlement agreement shall be binding on the parties in interest unless it is approved by the Commission pursuant to 85A O.S. § 22, Administrative Law Judge of the Commission pursuant to 85A O.S. § 115, or a Commission Benefit Review Officer pursuant to 85A O.S. § 70. The CC-Joint Petition Settlement, including any attached appendix as provided in 85A O.S. § 115(B), identifying the outstanding issues that are subject to the Commission's continuing jurisdiction and possible reopen, shall be approved unless it is determined that:

(1) The agreement is unfair, unconscionable, or improper as a matter of law; or

(2) The agreement is the result of an intentional misrepresentation of a material fact; or

(3) The agreement, if for permanent disability, is not supported by competent medical evidence as required by 85A O.S. § 2(33).

(e) As used in this Section, "parties in interest" means the respondent (employer and the employer's insurance carrier if insured), and an employee. An employee who is not represented by legal counsel may effect a CC-Joint Petition Settlement upon the employer's filing of the applicable Employer's First Notice of Injury or FROI as provided in 810:10-1-4(a), or the employee's filing of a claim for compensation (CC-Form-3 or CC-Form-3B), regarding the injury or occupational disease or illness which is the subject of the CC-Joint Petition Settlement.

(f) In no instance shall the total attorney's fee amount provided for in a CC-Joint Petition Settlement exceed the maximum attorney fee allowed by law.

(g) No CC-Joint Petition Settlement shall be made upon written interrogatory or deposition except in cases where the claimant is currently engaged in the military service of the United States, is outside of the state, is a nonresident of Oklahoma, or in cases of extreme circumstances.

(h) A stenographic record of the terms and conditions of an approved joint petition settlement and the understanding of the claimant concerning the effect of the settlement must be made by a Commission court reporter and transcribed at the expense of the employer or insurance carrier. The transcript shall be prepared and provided to the parties within ninety (90) days. Medical reports and other exhibits

submitted in support of a CC-Joint Petition Settlement shall not be transcribed. The original exhibits or duplicate copies thereof shall be affixed to the original transcript and placed in the Commission file.

(i) A file-stamped copy of an approved CC-Joint Petition Settlement shall be mailed by the Commission to all unrepresented parties and attorneys of record.

(j) A CC-Joint Petition Settlement that fully and finally resolves all issues in a claim for compensation between the employee and the employer, shall not be deemed an adjudication of the rights between the medical or rehabilitation provider and the employer for reasonable and necessary medical and rehabilitation expenses incurred by the employee due to the injury before the file-stamped date of the approved CC-Joint Petition Settlement.

(k) Within seven (7) days of the date a medical provider provides initial treatment for a work-related accident, the medical provider shall provide notice in writing to the Commission, if and only if, a CC-Form-3 or CC-Form-3B has been filed with the Commission, and in all cases shall provide notice in writing to the patient's employer, and if known, the employer's insurance carrier. If the medical provider fails to provide the required notification, the medical provider forfeits any rights to future notification, including those circumstances where a case is fully and finally settled by a CC-Joint Petition Settlement, unless the medical provider is actually known to the employer or insurance carrier or is listed by the employee.

(l) If the issue of medical treatment is fully and finally settled by a CC-Joint Petition Settlement, the employee shall provide to the employer or insurance carrier a list of all medical providers known to the employee. The Commission prescribed Form CC-Joint Petition Settlement shall be used for that purpose. Within ten (10) days from the file-stamped date of the CC-Joint Petition Settlement, the employer or insurance carrier shall send notice of the CC-Joint Petition Settlement to all medical providers listed by the employee and to all medical providers known to the employer or insurance carrier. The employee is liable for payment of any medical services rendered after the CC-Joint Petition Settlement is filed. The employee also is responsible for informing any future medical providers that the case or issue of medical treatment was fully and finally disposed of by a CC-Joint Petition Settlement and that the employee, rather than the employer or insurance carrier, is the party financially responsible for such services.

CHAPTER 25. WORKERS' COMPENSATION INSURANCE AND SELF INSURANCE

SUBCHAPTER 1. GENERAL PROVISIONS

810:25-1-2. Definitions

In addition to the terms defined in 85A O.S., § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" means the person designated by the supervisory board of members of a group self-insurance association to oversee the financial affairs of the association, accept service of process on behalf of the association, act for and bind the association and members in all transactions either relating to or arising out of the operation of the association.

"Advisory loss costs" means the National Council on Compensation Insurance's projections of future claims costs and loss adjustment expenses by classification code.

"Aggregate excess insurance" means an insurance product that limits a group self-insurance association's annual aggregate liability to an agreed upon amount.

"Association" or **"Group Self-Insurance Association"** means a duly qualified group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

"Board" or **"Members' Supervisory Board"** means the supervisory board of members of an association.

"Cancellation short rate penalty" means a penalty imposed on the member for cancelling its policy before the expiration date of the policy.

"Certificate of noncoverage" or **"CNC"** for purposes of 85A O.S. § 36 means a certificate ~~which may be~~ issued by the Oklahoma Workers' Compensation Commission ~~after proper application and reasonable investigation to~~that certifies that the Commission received a completed, signed and notarized affidavit and application for certificate of noncoverage by a sole proprietor or ~~the~~ partners~~s~~ of a partnership ~~who do~~on the form prescribed by the Commission and that the information provided by the applicant, if true and correct, indicates that the applicant does not elect to be covered by the AWCA.

"Certified audit" means a financial audit performed by a certified public accountant, accompanied by the auditor's opinion regarding the audit.

"Claims reserves" means workers' compensation claim losses expected to be paid in the future, but does not include IBNR.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an administrative law judge to whom the Commission has delegated responsibility as authorized by 85A O.S., § 21(D).

"Common interest" means employers engaged in the same industry or members of an Oklahoma trade association that has been in business for at least five (5) years.

"Expense constant" means a flat charge included in a workers' compensation policy to cover the costs of issuing and servicing the policy.

"Experience modifier" means a modification to premium based on the claims history of the policyholder.

"IBNR" means incurred but not reported reserves. It includes a reserve for claims that have been incurred, but not yet reported to the individual own risk employer or group self-insurance association, as applicable, and reserves for adverse loss development on known claims.

"**Incurred loss**" means the total of the paid indemnity and medical losses plus claims reserves, reported by accident year.

"Insurance Department" means the Insurance Department of the State of Oklahoma.

"Joint and several liability" means mutual and individual responsibility of members for the liabilities of the association.

"Loss portfolio transfer" means the transfer of the liabilities of the association to an insurance carrier for an agreed upon premium.

"Member" means an individual member of an association.

"NCCI" means the National Council on Compensation Insurance, a national source for information on workers' compensation insurance, tools and services, and the provider of advisory ratemaking and statistical services in Oklahoma.

"~~Partnership~~Partner of a partnership" means for purposes of 85A O.S. §36 ~~a type of unincorporated business organization in which two or more individuals own the business and are equally liable for its debts~~any partner of a partnership or any member of a Limited Liability Company that is treated as a partnership for federal income tax purposes.

"Pro forma financial statement" means a hypothetical financial statement showing revenues and expenses that may be recognized in the upcoming fiscal year.

"Proof of coverage" means the statutory filings of workers' compensation policy information to the NCCI.

"Scopes Manual" is a catalog of four-digit workers' compensation codes based on the nature of business and estimated risk to its workers.

"Self insured retention" means the individual own risk employer's or group self-insurance association's retained amount of risk under a specific excess insurance policy, before the liability is transferred to an insurance carrier.

"Sole proprietor" means for purposes of 85A O.S. § 36 ~~an~~one individual ~~(~~or married couple~~) who is sole owner of a~~in business alone ~~that is neither a partnership nor an incorporated~~ or the sole member of a ~~limited liability company~~Limited Liability Company that is treated as a disregarded entity for federal income tax purposes.

"Solvency" means a member whose assets are greater than its liabilities and who is capable of meeting its financial obligations to the association.

"Specific excess insurance" means an insurance product that limits the liability of an individual own risk employer or group self-insurance association specific occurrence liability to an agreed upon amount.

"Standard premium" means experience modified workers' compensation premium that has not been discounted.

"Statutory limits" means an insurance carrier's amount of liability under a specific excess insurance policy, capped at the maximum amount allowed by statute.

"TPA" or **"Third-Party Administrator"** means any person defined in 36 O.S., § 1442 of the Third-Party Administrator Act as an "administrator".

"Unearned premium" means the share of the members' premiums applicable to the unexpired portion of the policy terms.

SUBCHAPTER 3. PROOF OF COVERAGE

810:25-3-1. Proof of coverage requirements

(a) Any insurer issuing a policy to provide benefits pursuant to the AWCA, or group self-insurance association approved by the Commission, must report its statutorily required notices of insurance coverage and cancellation electronically with the Commission using the NCCI Proof of Coverage (POC) system. To do so, the insurer must elect with the NCCI to use the NCCI POC system, authorize the NCCI to make the required filings on behalf of the insurer, and report its policy information, including, but not limited to, new and renewal policies, binders, cancellations, reinstatements, and endorsements, with the NCCI in accordance with NCCI reporting requirements for the State of Oklahoma.

(b) Compliance with 85A O.S., § 42(B) is required to effect cancellation of a workers' compensation insurance policy. Notice of intent to cancel provided to NCCI or to the Commission pursuant to 85A O.S., § 42(B) does not constitute service upon the insured employer of notice of intent to cancel.

(c) An insurer shall electronically file its cancellations with the NCCI, in lieu of mailing to the Commission. The date the cancellation is electronically received by the NCCI will constitute the beginning date for the ten and thirty day waiting periods referenced in 85A O.S., § 42(B)(2) for the cancellation to become effective.

(d) A policy must be reported to the NCCI no later than thirty (30) days after the effective date of the policy. Every named insured and covered location in the State of Oklahoma must be reported as well. The date the policy is first received by the NCCI will count as the received date for purposes of this deadline. For purposes of mid-year endorsements or jurisdictional additions to policies, the date the original policy was received by the NCCI will count as the received date for purposes of this deadline. Any insurer who fails to timely and accurately file ~~their policies~~a policy with the NCCI~~,~~ shall be subject to a fine by the Commission of not more than One Thousand Dollars ($1,000.00) per policy as determined by the Commission.

SUBCHAPTER 5. DOCUMENTATION OF EXEMPT STATUS

810:25-5-1. Certificate of noncoverage requirements

(a) To request a CNC as authorized by 85A O.S., §36, an individual doing business as a sole proprietor

or the partner of a partnership who does not elect to be covered by the AWCA and be deemed an employee thereunder, shall:

(1) Submit a signed and completed Application for Certificate of Noncoverage on a form prescribed by the Commission, to the following address: Oklahoma Workers' Compensation Commission, Attention: ~~INSURANCE~~PERMITTING SERVICES DIVISION, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. The application shall be notarized and signed by the applicant under penalty of perjury. Illegible, incomplete or unsigned applications will not be considered and shall be returned. A copy of the application form may be obtained from the Commission at the address set forth in this Paragraph, or from the Commission's website;

(2) Pay to the Commission a nonrefundable application fee of Fifty Dollars ($50.00) with the Application for Certificate of Noncoverage. The fee may be charged and shall be collected from each individual who applies for a CNC;

(3) Provide such substantiating documentation in support of the application as may be required by the Commission; and

(4) Verify that the applicant will notify the Commission in writing ~~upon~~within thirty (30) days of any change affecting the applicant's qualifications as provided in this Subsection.

(b) The application shall be reviewed by the Commission's Insurance Division. If the application is determined to be sufficient, the Division will issue a Certificate of Noncoverage, for a period of two years. If the application is determined to be deficient, the Division will notify the applicant thereof, stating the reasons for the deficiency. If the deficiency cannot be resolved within the stated time from the Division, the application will be denied.

SUBCHAPTER 7. ENFORCEMENT OF WORKERS' COMPENSATION INSURANCE REQUIREMENTS

810:25-7-2. Hearing process and consent agreements

(a) A proposed judgment issued under 810:25-7-1 may be contested by the employer as provided in 85A O.S., § 40, and is subject to a hearing process conducted pursuant to 85A O.S., § 70 through 78.

(b) An employer served with a proposed judgment, may waive its right to a contested hearing and execute a consent agreement with the Commission for a reduced penalty. The employer shall secure the payment of compensation within the meaning of 85A O.S., § 38 as a condition to executing a consent agreement. In determining the rate of reduction in penalty, consideration shall be given to the appropriateness of the penalty in light of the business of the employer charged, the gravity of the violation and the extent to which the employer charged has complied with the provisions of 85A O.S. § 38 or has otherwise attempted to remedy the consequences of the violation. The penalty amount shall never be reduced to less than the amount in premiums saved by the employer's non-compliance, unless an employer can show that such a penalty would cause an undue financial hardship that would have a significant impact on employer's business or livelihood.

(c) The consent agreement becomes void if the employer defaults on payment under the agreement or if the agreement was obtained by fraud or misrepresentation of a material fact.

(d) The Commission may institute collection proceedings independently or in District Court, including, but not limited to, an asset hearing, garnishment of income and wages, judgment lien against personal and/or business properties, upon any penalties becoming final under the provisions of 85A O.S. § 40.

SUBCHAPTER 9. INDIVIDUAL OWN RISK EMPLOYER PERMIT

810:25-9-1. Application for Individual Own Risk Employer Permit

(a) To request a permit to self fund its workers' compensation obligations as authorized in 85A O.S., § 38(A)(3), an employer shall:

(1) Submit a signed and completed Application for Individual Own Risk Employer Permit ~~on a form~~in the manner prescribed by the Commission, together with all required supporting documentation and attachments completed in their entirety, at least sixty (60) days before the desired effective date of the permit~~, to the following address: Oklahoma Workers' Compensation Commission, Attention: INSURANCE DIVISION, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105~~. The application shall be ~~signed~~submitted under penalty of perjury by an authorized representative of the employer. ~~Illegible, incomplete~~Incomplete ~~or unsigned~~ applications will not be considered and shall be ~~returned~~rejected. ~~A copy of the~~The application ~~form~~ may be ~~obtained from the Commission at the address set forth in this Paragraph, or~~accessed from the Commission's website;

(2) Pay to the Commission a nonrefundable application fee of One Thousand Dollars ($1,000.00) ~~with~~for the Application for Individual Own Risk Employer Permit;

(3) Submit its current audited financial statement for the two (2) previous years, including balance sheet, statement of income, statement of cash flows and notes. If audited financial statements are unavailable, submit its financial statement for the two previous fiscal years signed by two (2) company executives, including balance sheet, statement of income, statement of cash flows and notes;

(4) Submit the employer's most recent available interim financial statements, including balance sheet and statement of income; and

(5) Provide such additional records and information germane to the application as may be required by the Commission.

(b) The application shall be reviewed by the Commission's ~~Insurance~~Permitting Services Division. If the application is determined to be sufficient, the Division will issue a permit licensing the applicant to carry its own risk without compensation insurance, for a period of one year. If the application is determined to be deficient, the Division will notify the applicant thereof, stating the reasons for the deficiency. If the deficiency cannot be resolved within the stated time frame from the Division, the application will be denied.

(c) An applicant may withdraw its pending Application for Individual Own Risk Employer Permit at any time. Once withdrawn, no further action regarding the application will be taken by the Commission and the Commission's file on the application request will be considered closed.

(d) The Commission's ~~Insurance~~Permitting Services Division may extend or amend an existing permit, in its discretion, if necessary for the completion of a renewal application or a change in facts of the permit.

810:25-9-10. ~~Parental~~Own risk guaranty

(a) ~~A parental~~An own risk guaranty, on a form approved by the Commission, must be submitted for any additional named insured included on the permit.

(b) If the individual own risk employer has a parent company that is not included on the permit, and the employer is relying on its parent company's financial statements to apply, then ~~a parental~~an own risk guaranty, on a form approved by the Commission, must be submitted from the parent company for its subsidiary.

810:25-9-11. Governmental entities

(a) Governmental entities may carry their own risk without insurance as provided in 85A O.S. § 107. They must apply using the same application ~~form~~ as private employers, and submit the same required documents, with the exception of interim financial statements. Governmental entities will be exempted from posting a security deposit if they make an appropriation into a segregated workers' compensation fund. The amount of the appropriation must be at least the entity's average yearly workers' compensation losses paid for three (3) calendar or fiscal years immediately preceding the application date.

(b) Certain public trust employers will be required to post a security deposit in lieu of an appropriation. The Commission will make this determination at the time of application review.

810:25-9-14. Revocation of permit

(a) The individual own risk employer permit may be revoked by the Commission at any time upon reasonable notice and hearing, for good cause shown, including, but not limited to~~,~~: failure to comply with the rules of the Commission; failure to pay compensation when due; and financial impairment of the employer which has or will bring the employer below the minimum net worth requirement of 810:25-9-2.

(b) The employer is expected to secure its workers' compensation obligations at all times as provided by law, notwithstanding the revocation. Failure to do so may subject the employer to sanctions pursuant to 85A O.S., § 40 and enforcement proceedings as provided in Subchapter 7 of this Chapter.

810:25-9-17. Designation of service agent

An individual own risk employer must designate a service agent to receive service of notice. The designation must be ~~on a form~~made in a manner prescribed by the Commission and filed with the Commission as provided in 810:10-1-11.

810:25-9-18. Former own risk employers; continuing requirements

(a) A former individual own risk employer remains responsible for:

(1) Paying all workers' compensation obligations incurred during its period as an approved individual own risk employer;

(2) Reporting its workers' compensation losses on an annual basis to the Commission, ~~on a form~~in a manner prescribed by the Commission;

(3) Paying Self Insurance Guaranty Fund assessments as provided in 85A O.S., § 98; and

(4) Maintaining an adequate security deposit with the Commission.

(b) A former individual own risk employer is not liable for Multiple Injury Trust Fund assessments for periods beyond the last quarter in which it was an active own risk employer.

SUBCHAPTER 11. GROUP SELF-INSURANCE ASSOCIATION PERMIT

810:25-11-1. Application

(a) Two or more employers having a common interest, as defined in Section 810:25-1-2, may be approved by the Commission as a group self-insurance association for the purpose of entering into agreements to pool their liabilities under the AWCA. Such application shall be ~~made on a form~~submitted in a manner prescribed by the Commission and shall be verified by the oath of at least two members of the board or the administrator.

(b) The application shall be reviewed by the Commission's ~~Insurance~~Permitting Services Division. If the application is determined to be sufficient, the Division will issue a permit licensing the applicant to act as a group self-insurance association, for a period of one year. If the application is determined to be deficient, the Division will notify the applicant thereof, stating the reasons for the deficiency. If the deficiency cannot be resolved within the stated time frame from the Division, the application will be denied.

(c) The association's application may be approved if the Commission has satisfactory proof of:

(1) The solvency of each member of the association;

(2) The financial ability of each employer to meet its obligations as a member;

(3) The ability of the association to pay or cause to be paid the compensation in the amount and manner and when due as provided in the AWCA;

(4) A minimum collective net worth of the members of at least Two Million Dollars ($2,000,000.00);

(5) Standard premium of Five Hundred Thousand Dollars ($500,000.00) at the start up date of the association; and

(6) The common interest of the members as defined in 810:25-1-2.

(d) Any ~~application~~permit so approved shall be subject to all conditions and requirements of this Subchapter. In order to determine continued compliance with the law and this Subchapter, the ~~application shall~~permit, or any renewed permit, may be reviewed ~~on an annual basis~~ or ~~whenever~~when deemed necessary by the Commission.

(e) An applicant may withdraw its pending Application for Group Self-Insurance Association Permit at any time. Once withdrawn, no further action regarding the application will be taken by the Commission and the Commission's file on the application request will be considered closed.

(f) The Commission's ~~Insurance~~Permitting Services Division may extend or amend an existing permit, in its discretion, if necessary for the completion of a renewal application or a change in facts of the permit.

810:25-11-2. Additional application requirements

The Application for a new Group Self-Insurance Association Permit provided for in 810:25-11-1 shall be submitted in a manner prescribed by the Commission at least sixty (60) days before the desired effective date~~, bound in a hardcover notebook, and accompanied by~~and include all of the following:

(1) A One Thousand Dollar ($1,000.00) nonrefundable application fee, made payable to the Commission;

(2) A sample of the members' indemnity agreement and power of attorney, as required by 810:25-11-15, binding the association and each member thereof, jointly and severally, to comply with the provisions of the AWCA;

(3) An executed copy of the application of each employer for membership in the association. The application must ~~be on a form approved by the Commission and include the following:~~comply with 810:25-11-3;

~~(A) An indemnity agreement and power of attorney executed by the employer;~~

~~(B) A joint and several liability agreement executed by the employer;~~

~~(C) The employer's current audited financial statement for the two previous fiscal years, including a balance sheet, statement of income, statement of cash flows, and notes;~~

~~(D) If audited financial statements are not available, the employer should provide the employer's financial statement for the two previous years signed by two (2) company executives, including a balance sheet, statement of income, statement of cash flows and notes; and~~

~~(E) A balance sheet and income statement for the current fiscal year.~~

(4) A pro forma financial statement of the association, showing the estimated revenues and expenses for the first fiscal year of the association. Project estimated expenses in dollar amount and percentage of the expected estimated premium;

(5) A statement of the collective net worth of the members of the association;

(6) The estimated standard and discounted premium each association member will pay during the first fiscal year of the association;

(7) ~~A~~Underwriting guidelines that will be used by the association, including a listing of the type, amount and eligibility requirements of discounts available for the association members;

~~(8) Projected expenses for the association for the first fiscal year, in dollar amount and a percentage of the standard premium to be generated;~~

~~(9)~~(8) Specific and aggregate excess insurance binders for the first fiscal year;

~~(10) Underwriting guidelines that will be used by the association;~~

~~(11)~~(9) A copy of the association's bylaws and any other governing instruments of the proposed association;

~~(12)~~(10)A designation of the initial members' supervisory board and of the administrator of the association, including properly executed biographical affidavits for each;

~~(13)~~(11)~~The name and contact information of the association's TPA, including a~~A copy of the ~~contract~~contract(s) between the association and ~~the~~all ~~TPA~~TPAs, including a cover page for each contract which indicates the nature of services provided by the TPA (i.e., claims management, safety, marketing, underwriting or accounting services);

~~(14)~~(12)A copy of all fidelity bonds and errors and omissions policies secured by the association, its administrator, ~~its TPA,~~ and ~~other~~ organizations providing services to the association, with the exception of any TPAs;

~~(15)~~(13)Copies of all marketing materials to be utilized by the association; and

~~(16) If the TPA does not provide safety, marketing, underwriting, or accounting services, the name or names of the organization or organizations who will, and a copy of the contract between the association and these organizations;~~

~~(17) A designation of the association's auditing and actuarial firms; and~~

~~(18)~~(14)A list of workers' compensation rates to be charged to its members, broken down by classification code. The rates should be calculated in accordance with 810:25-11-8.

810:25-11-3. Approval of new members of the association

(a) A new membership may not become effective without Commission approval. All applications for membership, in a form approved by the Commission, shall be filed with the Commission. New member applicants must be reported to the Commission and NCCI no later than thirty (30) days after the effective date of each new member applicant. The date the application is received by the Commission will be the received date for purposes of this deadline. The Commission will review the application for completeness.

(b) The application for membership shall include the following:

(1) An indemnity agreement and power of attorney executed by the applicant, as required by 810:25-11-15;

(2) A joint and several liability agreement executed by the applicant, as required by 810:25-11-15;

(3) Signed approval of the applicant by the association;

(4) A balance sheet and income statement for the new applicant's current fiscal year; ~~and~~

(5) The employer's current audited financial statement for the two previous fiscal years, including a balance sheet, statement of income, statement of cash flows, and notes;

(6) If audited financial statements are not available, the employer should provide the employer's financial statement for the two previous years signed by two (2) company executives, including a balance sheet, statement of income, statement of cash flows and notes; and

~~(5)~~(7) The estimated standard and discounted premium the applicant will pay during the period between the application effective date and the association's renewal.

(c) The application will be reviewed by the Commission's ~~Insurance~~Permitting Services Division. If the application is determined to be sufficient, the application will be approved with the effective date as applied for. ~~The application may be approved if the Commission has satisfactory proof of:~~

~~(1) The solvency of the applicant;~~

~~(2) The financial ability of the applicant to meet its obligations as a member; and~~

~~(3) A common interest with other members of the association, as defined in 810:25-1-2.~~

(d) The application may be approved if the Commission has satisfactory proof of:

(1) The solvency of the applicant;

(2) The financial ability of the applicant to meet its obligations as a member; and

(3) A common interest with other members of the association, as defined in 810:25-1-2.

810:25-11-8. Rates, experience modifications, and discounts

(a) All workers' compensation rates to be charged to its members must be approved in advance by the Commission. The rates should be based on the latest advisory loss costs provided by the National Council on Compensation Insurance (NCCI), must be actuarially certified, and must be sufficient to cover the association's estimated losses and expenses for the upcoming year. The actuary's report must accompany the rate request to the Commission. The actuary must be a member in good standing with the Casualty Actuarial Society.

(b) Experience modifiers for the members must be promulgated by the NCCI on an annual basis.

(c) All premium discounts must be approved by the Commission. The aggregate of all discounts allowed to a member cannot exceed twenty-five percent (25%) of the member's standard premium. Types of acceptable discounts include:

(1) Prompt Pay;

(2) Safety program;

(3) Premium volume;

(4) Experience rated; and

(5) Other discounts approved by the Commission.

(d) Changes in discounts must be approved by the Commission.

810:25-11-10. Surplus distributions

(a) Any surplus monies may be declared refundable by the board, and the amount of such declaration shall be a fixed liability of the association at the time of the declaration. The date and manner of the distribution shall be declared by the board. The manner of the distribution shall be in accordance with the association's bylaws. The board shall submit the distribution request to the Commission, with all supporting documents. The payment of any distribution shall not be made without Commission approval.

(b) The following distribution guidelines shall apply:

(1) Distributions from profitable years can be assigned to unprofitable years;

(2) Full and final distributions of all surplus remaining for a particular year cannot be made until all claims incurred during that year are permanently closed;

(3) Distributions will not be approved if the association has an overall deficit, or the distribution will place the association in an overall deficit; and

(4) Distributions shall be made in ~~a~~an equitable manner as provided in the association's bylaws.

810:25-11-12. Renewal applications

(a) An application for renewal of a group self-insurance association permit shall be submitted at least sixty (60) days before the expiration date of the existing permit, ~~bound in a hardcover notebook, and accompanied by~~along with all of the following:

(1) A One Thousand Dollar ($1,000.00) nonrefundable application fee, made payable to the Commission;

(2) A sample of the members' indemnity agreement and power of attorney, as required by 810:25-11-15, binding the association and each member thereof, jointly and severally, to comply with the provisions of the AWCA;

(3) A copy of the association's current audited financial statements, unaudited midyear statements, and all current actuarial reports;

(4) An attestation from the administrator ~~or~~and chair of the board that~~ the collective net worth of the members of the association exceeds Two Million Dollars ($2,000,000.00);~~:

(A) the collective net worth of the members of the association exceeds Two Million Dollars ($2,000,000.00);

(B) the association is and has been in full compliance with the rules of the Commission during the current fiscal year; and

(C) all appropriate proof of coverage filings have been made with the NCCI during the current year;

(5) ~~The estimated standard and discounted premium each association member will pay during the next fiscal year of the association;~~A list of the association's members which includes the following information for each member:

(A) A report of the premiums paid and losses incurred by each member of the association during the current fiscal year;

(B) The estimated standard and discounted premium each association member will pay during the next fiscal year of the association;

(6) ~~A~~Underwriting guidelines that are used by the association, along with a listing of the type, amount and eligibility requirements of discounts available for the association members, including scheduled discounts;

(7) Projected expenses for the association for the next fiscal year, in dollar amount and a percentage of the standard premium to be generated;

(8) Specific and aggregate excess insurance binders for the next fiscal year, and copies of the policies for the current year;

~~(9) Underwriting guidelines that are used by the association;~~

~~(10)~~(9) A copy of the association's bylaws and any other governing instrument;

~~(11)~~(10)A designation of the members' supervisory board and of the administrator of the association;

~~(12)~~(11)~~The name and contact information of the association's TPA, including a~~A copy of the ~~contract~~contract(s) between the association and ~~the TPA~~all TPAs, including a cover page for each contract which indicates the nature of services provided by the TPA (i.e., claims management, safety, marketing, underwriting or accounting services);

~~(13)~~(12)A copy of all fidelity bonds and errors and omissions policies secured by the association, its administrator, ~~its TPA,~~ and ~~other~~ organizations providing services to the association, with the exception of any TPAs;

~~(14)~~(13)Copies of all marketing materials utilized by the association;

~~(15) If the TPA does not provide safety, marketing, underwriting, or accounting services, the name or names of the organization or organization who does, and a copy of the contract between the association and these organizations;~~

~~(16)~~(14)A list of workers' compensation rates to be charged to its members, broken down by classification code. The rates should be calculated in accordance with 810:25-11-8;

~~(17)~~(15)Copies of the minutes of all board meetings held during the current year; and

~~(18) A report of the premiums paid and losses incurred by each member of the association during the current fiscal year;~~

~~(19) Affidavit from the chairman of the board that the association is and has been in full compliance with the rules of the Commission during the current fiscal year;~~

~~(20) Confirmation of proof of coverage filings made with the NCCI; and~~

~~(21)~~(16)A listing of investments currently held by the association.

(b) The renewal application shall be reviewed and processed by the Commission in the same manner as the original application.

810:25-11-16. Administrator

The members' supervisory board must designate an administrator to administer the financial affairs of the association, who shall furnish a fidelity bond with the association as obligee, in an amount sufficient to protect the association against the misappropriation or misuse of any monies or securities. The amount of the bond shall be determined by the Commission and evidence of such shall be filed with the Commission.

810:25-11-17. Third-party administration

(a) The association must contract with a third party to provide claims adjusting, underwriting, industrial safety engineering, marketing and accounting functions. More than one organization can be contracted with to provide these services. The company providing the claims adjusting and marketing must be a third-party administrator licensed by the Commission.

(b) All copies of contracts between the association and any organization providing services to association shall be filed with the Commission. Any change in contract must be filed with the Commission ten (10) days' before the effective date.

(c) Any contract with a TPA for claims adjusting must state the TPA agrees to handle all claims incurred to their conclusion, unless approval to transfer the claims is obtained from the Commission before such transfer.

(d) A company providing marketing services to a self-insurance program must be approved by the Commission's ~~Insurance~~Permitting Services Division. The company requesting approval must submit to the Commission's ~~Insurance~~Permitting Services Division all marketing material prior to being utilized by an association.

810:25-11-19. Revocation

(a) The group self-insurance association permit may be revoked by the Commission at any time upon reasonable notice and hearing, for good cause shown, including, but not limited to~~,~~: failure to comply with the rules of the Commission; failure to pay compensation when due; and financial impairment of the association which has or will make the association insolvent. The association will be given forty five (45) days to cancel its members and for the members to obtain alternative workers' compensation coverage authorized by law.

(b) The association's members are expected to secure their workers' compensation obligations at all times as provided by law, notwithstanding the revocation. Failure to do so may subject the member to sanctions pursuant to 85A O.S., § 40 and enforcement proceedings as provided in Subchapter 7 of this Chapter.

810:25-11-21. Responsibilities of members' supervisory board

(a) The members' supervisory board shall be responsible for holding and managing the assets and directing the affairs of an association and shall be elected in the manner prescribed by the association's governing instruments. All board members must be members of the association. A board member shall not be an owner, officer, or employee of any entity under contract with the association.

(b) The board shall supervise the finances of the association and the association's operations to such extent as may be necessary to assure conformity with this Subchapter, the members' indemnity agreement and power of attorney, and the association's governing instruments. The members' supervisory board shall take all necessary precautions to safeguard the assets of the association, including, but not limited to the following:

(1) Monitoring the financial condition of each member of the association, and doing all other acts to the extent necessary to assure that each member continues to be able to fulfill the obligations of membership. The board shall promptly report to the Commission any grounds for

believing that either a change in any member's financial condition, withdrawal of a member, or any other circumstances might or does affect the association's ability to meet its obligations;

(2) Retaining control of all monies either collected or disbursed by and for the association. All loss funds of any type shall remain in the custody of the board or the authorized administration; provided, however, if a revolving fund is established for payment of compensation due, and other related expenses, for the use of any authorized TPA, the TPA shall furnish a fidelity bond covering its employees, with the association as obligee, in an amount sufficient to protect all monies placed in the revolving fund;

(3) Having the accounts and records of the association audited annually or at any time the Commission deems necessary. The Commission may prescribe a uniform accounting system to be used by group self-insurance associations and/or TPAs and the type of audits to be made in order that it may determine the solvency of the association. Copies of the audit shall be filed with the Commission within one hundred twenty (120) days after the close of the fiscal year. An association's fiscal year may not be changed without prior Commission approval;

(4) Active efforts to collect delinquent accounts resulting from any unpaid premiums by members. Any member of an association who fails to pay the required premiums after due notice shall be ineligible for the self-insurance privilege until such past due account, including cost of collection, has been paid;

(5) The members' supervisory board shall hire legal counsel when deemed to be necessary to represent the membership in contested workers' compensation matters. Board members will be responsible for monitoring fees paid to legal counsel;

(6) Neither the members' supervisory board nor the administrator shall utilize any of the monies collected as premiums for anything unrelated to the purposes of the group self-insurance association, to workers' compensation, or to securing the members' liability under the AWCA. Furthermore, they shall be prohibited from borrowing any monies from the association without advising the Commission of the nature and purpose of the loan and obtaining the Commission's approval. The board may, at its discretion, invest its funds in accordance with 810:25-11-4;

(7) The members' supervisory board shall assure that the administrator of the association and all records necessary to verify the accuracy and completeness of records submitted to the Commission, are maintained at a central location within the State of Oklahoma;

(8) The members' supervisory board and the Commission should be notified in writing of all disputes regarding proper rate classification codes. The Commission may appoint a professional to review the Scopes Manual to determine the applicable classification code. The expense of the professional service will be paid for by the association;

(9) The members' supervisory board shall notify the Commission at least ten (10) days before all board meetings. Copies of the minutes of all board meetings shall be submitted to the Commission within thirty (30) days of the date of the meeting;

(10) The Commission must be notified within ten (10) days of any change in the association's board. Any new board member must submit to the Commission a properly executed biographical affidavit; and

(11) The members' supervisory board may designate a marketing firm or individuals to market the association's program. The marketer or marketers of an association's program must be either licensed insurance agents in the State of Oklahoma, or approved by the Commission. All marketing materials must be submitted to the Commission before being utilized by an association. Each sales interview must include a clear presentation of a proposed member's joint and several liability.

810:25-11-22. Miscellaneous operating guidelines

(a) The assets of a group self-insurance association and control thereof are property of the members

under the direction of its supervisory board members.
(b) The association's standard premium by the end of its first fiscal year and for all subsequent fiscal years shall not be less than One Million Dollars ($1,000,000.00);
(c) Any change in the bylaws and/or contracts with the association must be filed promptly with the Commission.
(d) Any false or misleading solicitation of membership in the group self-insurance association may be cause for cancellation of approval of the TPA, marketing organization, and the group self-insurance association as a whole.
(e) Any recalculation of premium, due to experience modification, cannot be retroactive more than one hundred eighty (180) days.
(f) A cancellation short rate penalty may not be ~~changed~~charged if the member has been a member of the association at least twelve (12) months before the cancellation.
(g) Any trade membership dues must be collected separate from the group self-insurance association. Services provided by the trade association must be fully explained to members joining the trade association.
(h) A separate safety program may not be sold to a member by a marketer of the association.
(i) At least ninety percent (90%) of all expense constant fees collected shall be deposited directly into the association's general revenues. No portion of these fees may be paid to any group or individual contracted with the association in an amount greater than that of the normal sales commission allowed.
(j) All billing and receiving will be supervised and reviewed by the TPA and the administrator of the association. All monies must be deposited promptly in the association's designated Oklahoma depository account.
(k) Wrongfully changing employee classification codes or rates are grounds for immediate revocation of the approval of the TPA, marketing organization, and the group self-insurance association as a whole.
(l) The members' supervisory board can be reimbursed its travel and incidental expenses incurred during its services as a member of the board. Board members may not be paid a salary. ~~(m) A group self-insurance association shall comply with Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), including all MMSEA workers' compensation reporting requirements, to the extent and as provided by Federal law.~~
(m) A group self-insurance association shall comply with Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), including all MMSEA workers' compensation reporting requirements, to the extent, and as provided by, federal law.

810:25-11-23. Winding down of association's affairs
(a) The members' supervisory board, the administrator, and the TPA shall remain in place if the association relinquishes its approval, and shall wind down the affairs of the association. A change in board membership, administrator, or TPA, must be approved by the Commission.
(b) A loss portfolio transfer or equivalent may be obtained by the association to transfer its liability to a licensed insurance company. Any transfer or equivalent must be filed with the Commission.
(c) Annual financial statements, as required in 810:25-11-5, will still be required once an association relinquishes its approval, unless otherwise approved by the Commission.
(d) Distributions of surplus, as referenced in 810:25-11-10, may be made upon application to the Commission. A full and final release of all funds from the association will not be allowed absent compliance with the criteria specified in 85A O.S., § 102(B).

810:25-11-25. Designation of service agent [NEW]
A group self-insurance association must designate a service agent to receive service of notice. The designation must be made in a manner prescribed by the Commission and filed with the

Commission as provided in 810:10-1-11.

SUBCHAPTER 13. THIRD-PARTY ADMINISTRATOR PERMIT FOR WORKERS' COMPENSATION PURPOSES

810:25-13-1. Application

(a) Any person desiring authorization to act as a TPA for workers' compensation purposes shall make application ~~on a form~~in a manner prescribed by the Commission. The application must be completed in its entirety, including all attachments and supporting documents required in the application, and submitted at least thirty (30) days before the desired effective date of the permit. A One Thousand Dollar ($1,000.00) nonrefundable application fee, made payable to the Commission, must also be submitted ~~with the application~~. The applicant must receive approval from the Commission before contracting with any client to provide administrative services for Oklahoma workers' compensation self-insurers.

(b) The application shall be reviewed by the Commission's ~~Insurance~~Permitting Services Division. If the application is determined to be sufficient, the Division will issue a permit licensing the applicant as a Third-Party Administrator, for a period of one year. If the application is determined to be deficient, the Division will notify the applicant thereof, stating the reasons for the deficiency. If the deficiency cannot be resolved within the stated time from the Division, the application will be denied.

(c) An applicant may withdraw its pending Application for approval as a TPA for workers' compensation purposes at any time. Once withdrawn, no further action regarding the application will be taken by the Commission and the Commission's file on the application request will be considered closed.

(d) The Commission's ~~Insurance~~Permitting Services Division may extend or amend an existing permit, in its discretion, if necessary for the completion of a renewal application or a change in facts of the permit.