

**PERMANENT RULES OF THE WORKERS' COMPENSATION COMMISSION**  
**As Last Amended Effective September 14, 2018**

*The text of Chapter 25 of the Commission Rules appear below. You may wish to consult the full Rules, located at [www.ok.gov/WCC](http://www.ok.gov/WCC), Legal, Governing Documents.*

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION**  
**CHAPTER 25. WORKERS' COMPENSATION INSURANCE AND SELF INSURANCE**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**810:25-1-1. Purpose**

This Chapter establishes procedures and standards for proof of coverage (85A O.S., § 42); issuance of certificates of noncoverage; regulation of individual own risk employers, group self-insurance associations and third-party administrators for workers' compensation purposes (85A O.S., §§ 22, 29, 38, 102 and 103); and enforcement of workers' compensation insurance requirements (85A O.S., § 40), as authorized in the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

**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"** 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.

**"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"** means a type of unincorporated business organization in which two or more individuals own the business and are equally liable for its debts.

**"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 an individual (or married couple) who is sole owner of a business that is neither a partnership nor an incorporated or limited liability company.

**"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.

### **810:25-1-3. Proceedings related to permit actions**

The Commission may deny an application, refuse to issue or renew, or revoke a Certificate of Noncoverage (Subchapter 5 of this Chapter), or a permit for Individual Own Risk Employer (Subchapter 9 of this Chapter), Group Self-Insurance Association (Subchapter 11 of this Chapter) or Third-Party Administrator (Subchapter 13 of this Chapter) as provided in this Chapter. Proceedings related to such Commission actions shall be governed by 810:10-5-50 on show cause hearings and the contested hearings rules set forth in Subchapter 5 of Chapter 10 of this Title.

### 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 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 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 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.

### **810:25-5-2. Revocation of certificate of noncoverage**

The Commission may revoke a CNC for cause, including, but not limited to, material misrepresentation on the CNC application, or refusal or substantial failure of the CNC holder to notify the Commission of any change affecting the holder's qualifications as provided in 810:25-5-1.

### **810:25-5-3. Renewal process**

The criteria for renewal of a certificate of noncoverage shall be the same as that for a new applicant.

## **SUBCHAPTER 7. ENFORCEMENT OF WORKERS' COMPENSATION INSURANCE REQUIREMENTS**

### **810:25-7-1. Proof of insurance**

(a) Whenever the Commission has reason to believe that an employer is required to secure the payment of compensation under the AWCA and has failed to do so, the Commission may make reasonable inquiry of the employer, issue subpoenas and demand proof of current workers' compensation insurance coverage compliant with 85A O.S., § 38 or documentation substantiating the employer's exemption from coverage requirements. Subpoenas issued under this Section shall be governed by 810:10-5-31.

(b) As authorized in 85A O.S., § 40, if no proof of insurance or exemption is provided; or the documentation offered does not substantiate a claimed exemption or is not current, valid proof of insurance in accordance with 85A O.S., § 38; or the employer fails to respond in a timely manner, the Commission shall serve on the employer a proposed judgment declaring the employer to be in violation of the workers' compensation insurance coverage requirements mandated by law and assess a monetary fine against the employer in an amount not to exceed One Thousand Dollars (\$1,000.00) per day of violation.

### **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.

### **810:25-7-3. Interference of duty**

No person shall interfere with, obstruct or hinder by force or otherwise, the Commission or its personnel while in the performance of their duties, or refuse to properly answer questions asked by the Commission or its personnel, pertaining to the Commission's enforcement of the workers' compensation insurance coverage requirements mandated by the AWCA.

### **810:25-7-4. Injunctive relief against a noncompliant employer**

As authorized in 85A O.S., § 40, if an employer fails to comply with workers' compensation insurance coverage requirements or pay any civil penalty assessed against it after a judgment issued under 810:25-7-1 becomes final, the Commission may pursue relief in district court to enjoin the employer from engaging in further employment during the period of noncompliance.

## **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 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. The application shall be submitted under penalty of perjury by an authorized representative of the employer. Incomplete applications will not be considered and shall be rejected. The application may be accessed from the Commission's website;

(2) Pay to the Commission a nonrefundable application fee of One Thousand Dollars (\$1,000.00) 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 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 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.

### **810:25-9-2. Minimum eligibility requirements**

(a) Unless waived as provided in Subsection (b) of this Section and except for governmental entities subject to 810:25-9-11, to be eligible for an Individual Own Risk Employer Permit, the applicant must:

(1) have been continuously engaged in business for not less than three (3) years immediately preceding the Application for Individual Own Risk Employer Permit;

(2) have at least one hundred (100) employees (all states included); and

(3) have at least One Million Dollars (\$1,000,000.00) in net assets.

(b) An applicant that does not satisfy the minimum eligibility requirements of Subsection (a) of this Section, may petition the Commission for a waiver of the requirements. The Commission may waive some or all of the requirements for good cause, subject to any security deposit and/or excess insurance requirements determined by the Commission to be appropriate should the permit be approved.

### **810:25-9-3. Financial information review**

(a) Factors used to determine an applicant's financial ability to pay compensation to its employees include:

- (1) Profit and loss history;
- (2) Profitability, solvency, debt and liquidity ratios;
- (3) Cash flow;
- (4) Ratio of net worth to annual workers' compensation losses.
- (5) Source and reliability of financial information;
- (6) Excess insurance coverage;
- (7) Number of employees;
- (8) Workers' compensation loss history;
- (9) Estimated manual premium; and
- (10) Other relevant factors as determined by the Commission.

(b) An Application for Individual Own Risk Employer Permit may be denied if the employer cannot demonstrate its ability to pay its compensation obligations.

### **810:25-9-4. Security deposit**

(a) As a condition to self fund its workers' compensation obligations, an employer approved as an individual own risk employer shall post acceptable security with the Commission, in such form and amount as determined by the Commission.

(b) Acceptable forms of security, are:

- (1) An irrevocable letter of credit issued by a financial institution, whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The financial institution must be approved in advance by the Commission. The letter of credit must be on a form prescribed by the Commission, include an automatic renewal clause, and cannot be non-renewed without at least sixty (60) days' prior written notice to the Commission. The letter of credit shall be made payable to the Commission. The Commission may make demand and collect on the posted letter of credit in whole or in part, in the case of actual or imminent default of the employer to pay compensation liabilities, or the cancellation of the letter of credit without an adequate replacement;
- (2) A surety bond from an admitted or surplus lines insurer with an AM Best Rating of B+ or better, and on a form prescribed by the Commission; and
- (3) Such other forms of security approved by the Commission.

(c) The amount of the security deposit shall be determined by the Commission after evaluating the financial ability of the individual own risk employer to pay its compensation and workers' compensation exposure. The determination may include consideration of a factor for IBNR for the prior claims' years and the permit year applied for. The Commission may require an actuarial report of estimated claims reserves and IBNR from a Commission approved actuary. The minimum amount of the security required in Subsection (b)(1) or (b)(2) of this Section shall be the greater of:

- (1) One Hundred Thousand Dollars (\$100,000.00); or
- (2) The employer's average yearly incurred workers' compensation losses for three (3) calendar or fiscal years immediately preceding the application date; or
- (3) If the company is a renewal applicant, the amount of outstanding claims reserves for the employer, as determined by an approved third-party administrator or benefits administrator. Outstanding reserves submitted by an approved self-insured entity or organization must use a standardized approach to assessing future exposure. All future liabilities should be reserved to at least the "most probable outcome." The Commission defines "most probable outcome" as the expected amount of money to cover a claim based upon information known at the time of the report. An organization or entity that discounts either future indemnity or medical payouts based upon present value or a reduced life expectancy must identify said claims and acknowledge the potential future value.

(d) The security required of an individual own risk employer, and any proceeds thereof collected upon

demand, including any interest thereon, shall be maintained by the Commission as provided in the AWCA until each claim for workers' compensation benefits is paid, settled or lapses under the AWCA, and costs of administration of those claims are paid, or until the security is released by the Commission as provided in 810:25-9-19.

#### **810:25-9-5. Renewals**

The criteria for renewal of an individual own risk employer permit shall be the same as that for a new applicant.

#### **810:25-9-6. Effectiveness of previously authorized permits, security deposits and guaranties**

(a) Individual own risk employer permits previously authorized by the Workers' Compensation Court Administrator pursuant to 85 O.S., § 351 and in effect on January 31, 2014 shall remain in full force and effect for the duration of the permit term thereafter, unless voluntarily terminated by the own risk employer or revoked by the Commission.

(b) All security deposits and parental guaranties posted by an individual own risk employer with the Workers' Compensation Court Administrator pursuant to 85 O. S., § 351 before February 1, 2014 as a condition for the own risk employer to self fund its workers' compensation obligations, which are maintained by the Court Administrator and in effect on January 31, 2014, shall remain in full force and effect, pursuant to their respective terms, on and after February 1, 2014, notwithstanding assumption by the Commission of the Court Administrator's regulatory responsibilities regarding individual own risk employers beginning February 1, 2014. At that time, the Commission shall be considered the successor entity to the Workers' Compensation Court Administrator in all respects regarding the security deposit and parental guaranty, with full power and authority in its own name to make demand and collect thereon in the same manner and to the same extent as and if the Commission were the Court Administrator. The Commission may require an individual own risk employer to post an adequate replacement security deposit or parental guaranty, or both, made payable to the Commission.

#### **810:25-9-7. Claims administration**

An individual own risk employer must use a third-party administrator licensed by the Commission, or an in-house benefits administrator approved by the Commission, to adjust its workers' compensation claims. The in-house benefits administrator must hold a current and unrestricted workers' compensation adjuster license for the State of Oklahoma. An out-of-state employer may request waiver of the license requirement for an in-house benefit administrator.

#### **810:25-9-8. Excess insurance**

The Commission may require an individual own risk employer to provide proof of excess coverage with such terms and conditions as is commensurate with the employer's ability to pay the benefits required by the provisions of the AWCA. Such excess insurance must be from an admitted or surplus lines insurer with an AM Best Rating of B+ or better. The self insured retention must be approved by the Commission, and the excess carrier's limits of liability must be statutory. An amount less than statutory limits must be approved in advance by the Commission. Aggregate excess insurance may be required by the Commission if necessary.

#### **810:25-9-9. Additional named insureds**

(a) Subsidiaries, subdivisions, and affiliated employers may be included on the individual own risk employer permit as additional named insureds. A schedule listing the additional employers' names, addresses and federal employer identification numbers (FEIN) must be submitted. The additional employers' workers' compensation losses, payroll and employee counts must be aggregated with the primary permit holder and included on the application. A guaranty from the primary permit holder for these additional employers must be submitted in accordance with 810:25-9-10.

(b) A subsidiary may apply for a separate individual own risk employer permit from its parent

company if desired, but must meet all qualifications of this Subchapter.

**810:25-9-10. Own risk guaranty**

- (a) 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 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 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.

**810:25-9-12. Interim monitoring**

- (a) An individual own risk employer may be placed on quarterly reporting by the Commission for purposes of monitoring its financial condition and workers' compensation loss history. Companies on quarterly reporting shall submit financial statements and loss runs to the Commission within sixty (60) days after the end of each of their fiscal quarters. An adjustment in the individual own risk employer's security deposit may be required after the Commission reviews the quarterly results.
- (b) The Commission reserves the right to audit any insureds that they have determined a concern exists with an insureds ability to meet its financial obligations. These audits will focus on the reserve estimates and ensure that all claims are reserved to at least the "most probable outcome". The Commission defines "most probable outcome" as the expected amount of money to cover a claim based upon information known at the time of the report. The costs of these audits will be borne by the individual own risk employer and/or association.

**810:25-9-13. Notification of changed status**

An individual own risk employer must notify the Commission in advance of any change in its financial condition, such as a bankruptcy filing, potential bankruptcy, or negative net income for a fiscal year, or any change in ownership during the interim period between applications. Failure to notify the Commission in a timely manner may result in revocation of the own risk permit. If there is a change in majority ownership of an individual own risk employer, the own risk privilege granted to the employer shall be at the discretion of the Commission and the new entity shall be required to qualify under this Subchapter.

**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.

**810:25-9-15. Assessments**

An individual own risk employer must pay all applicable Multiple Injury Trust Fund assessments (85A O.S., § 31) and all Self Insurance Guaranty Fund assessments (85A O.S., § 98), when due and timely report payment thereof to the Commission as prescribed by law. Failure to do so is grounds for revocation of the individual own risk employer permit, imposition of fines by the Commission, or both revocation and fines. No report to the Commission or Insurance Department shall be required where no payment is due.

**810:25-9-16. Medicare reporting**

An individual own risk employer 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.

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

An individual own risk employer must designate a service agent to receive service of notice. The designation must be 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, 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.

**810:25-9-19. Release of security deposit**

- (a) A security deposit posted with the Commission as required by 810:25-9-4 must remain in place, at its existing amount, for two years after an individual own risk employer voluntarily leaves self-insurance. The Commission may review the adequacy or excess of the security deposit in advance of the own risk permit termination date and require modifications to the security deposit amount as necessary.
- (b) A security deposit may be reduced at the Commission's discretion after the two year waiting period upon application by the employer and submission of current financial statements and workers' compensation loss runs.
- (c) A security deposit may be released at the Commission's discretion upon application by the employer and submission of current financial statements and a signed and notarized affidavit, from a duly authorized officer of the employer, affirming that all workers' compensation claims incurred under the own risk permit of the employer have been permanently closed, and the statute of repose for reopening the claims has passed.
- (d) The security deposit shall be released in full by the Commission within a reasonable period following receipt of proof of an assumption agreement or equivalent, from a licensed insurance carrier, whereby the claims liability under the individual own risk employer permit is transferred to and assumed by the insurance company. The assumption agreement or equivalent may be entered into before expiration of the two year waiting period provided in Subsection (a) of this Section.

**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 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 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 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 permit, or any renewed permit, may be reviewed or 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 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 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:
  - (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) 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) Specific and aggregate excess insurance binders for the first fiscal year;
- (9) A copy of the association's bylaws and any other governing instruments of the proposed association;
- (10) A designation of the initial members' supervisory board and of the administrator of the association, including properly executed biographical affidavits for each;
- (11) A copy of the contract(s) between the association and 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);
- (12) A copy of all fidelity bonds and errors and omissions policies secured by the association, its administrator, and organizations providing services to the association, with the exception of any TPAs;
- (13) Copies of all marketing materials to be utilized by the association; and
- (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 Permitting Services Division approval. All applications for membership, in a form approved by the Permitting Services Division, shall be filed with the Commission. New member applicants must be reported to the Permitting Services Division 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.
- (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, or if a new business, a pro forma financial statement signed by two (2) executive officers of the business entity, for the new applicant's current fiscal year; and
  - (5) 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 Permitting Services Division. If the Permitting Services Division determines the application is sufficient, the Permitting Services Division will approve the application with the effective date as applied for. The application may be approved if the Permitting Services Division has satisfactory proof of: a common interest with other members of the association, as defined in 810:25-1-2.

**810:25-11-4. Investment and reserve requirements**

- (a) The members' supervisory board of an association may, in its discretion, invest its funds in either of the following investments:
  - (1) Savings accounts or certificates of deposit in a Federal Deposit Insurance Corporation (FDIC) insured institution; or
  - (2) Direct obligations of the United States Treasury, either as notes, bonds, or bills that are backed by the full faith and credit of the United States Government.
- (b) An association shall maintain unearned premium and claims reserves computed in a matter

acceptable to the Commission.

#### **810:25-11-5. Financial and related reports**

(a) On or before the one hundred twentieth (120) day after the end of its fiscal year, every association shall file a certified audit of its annual financial condition prepared by a certified public accountant acceptable to the Commission. Audits must include a complete breakdown of all monies collected by the association, including the amount discounted and a complete breakdown of expenses. The audit should footnote and analyze completely all paid claims and claims reserved but not reported. A footnote must also be included to indicate if payments to contracted parties are in accordance with current contracts.

(b) An interim financial statement shall be filed sixty (60) days following the midyear fiscal anniversary of the association. This statement need not be audited, but should reflect pertinent data regarding income, claims reserves and IBNR, standard premium, discounts, interest earned, expense constant fees, as well as a breakdown of the association's expenses.

(c) An actuarial report of the association's estimated reserves must be filed with the certified financial audit required in Subsection (a) of this Section. The reserves recommended by the actuarial report must be used by the association. If the actuary gives a range of reserves, the association should use the midrange or higher. The actuary completing the report should be a member in good standing with the Casualty Actuarial Society.

#### **810:25-11-6. Excess insurance**

(a) A group self-insurance association must obtain specific and aggregate excess insurance from an admitted or surplus lines insurer with an AM Best Rating of B+ or better. The self insured retention must be approved by the Commission and the excess carrier's limits of liability must be statutory. An amount less than statutory limits must be approved in advance by the Commission. The attachment point of the aggregate excess insurance should not exceed one hundred percent (100%) of an association's estimated standard premium, unless authorized by the Commission.

(b) The policy required in Subsection (a) of this Section must not be terminable for any reason except upon thirty (30) days' written notice by certified mail or overnight courier to the Commission and the association.

(c) Copies of the complete policy required by Subsection (a) of this Section must be filed with the Commission.

(d) Under certain conditions, an irrevocable letter of credit may be presented in lieu of aggregate excess insurance. The form and amount of the letter of credit must be approved by the Commission.

(e) Two or more group self-insurance associations may pool together to purchase aggregate excess insurance, upon application and approval of the Commission and the excess carrier.

#### **810:25-11-7. Operating expenses**

The maximum operating expenses of the association should not exceed thirty-three percent (33%) of the standard premium. These expenses include the following:

- (1) Administrator's fee;
- (2) TPA fee;
- (3) Marketing fees, billing and collection fees, and sales commissions;
- (4) General operating expenses, including audits and actuarial reports;
- (5) Cost of excess insurance; and
- (6) Any other fees approved by the Commission.

#### **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.

#### **810:25-11-9. Premium deposits**

On the association's effective date, the premium deposit of at least twenty-five percent (25%) of the first year's discounted premium payable by each member of the association, shall have been paid into a designated depository, which shall certify receipt of same to the Commission. The balance of the first year's premium shall be paid, either in quarterly or monthly installments at the discretion of the board, no later than the end of the ninth month of the association's fiscal year. For subsequent years, the board of each association shall determine the amount of advance deposit required, or if the deposit shall remain permanent, with distribution only after termination of the membership and all premium audits and adjustments completed, and all premiums due paid in full. The Commission may require an association to make its deposits permanent.

#### **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 an equitable manner as provided in the association's bylaws.

#### **810:25-11-11. Deficits and assessments**

- (a) If the association incurs a deficit for a particular year, the board must address the issue with the Commission. If the loss is significant, the board may be required to increase rates or to reduce expenses and discounts to return the group to profitability. If the cumulative net worth of the association is in a deficit position, the board may be required to assess its membership to make up the deficit. If an assessment is made, it shall be done in an equitable manner in accordance with the association's bylaws.
- (b) The following assessment guidelines shall apply:
  - (1) Assessments must be declared by the board, and approved by the Commission. On the date the declaration is made, the assessment can be recorded as a receivable on the association's financial statements;
  - (2) A member cannot be assessed for a deficit in a fiscal year it was not a member;
  - (3) The assessment can be payable over a thirty-six (36) month period, or shorter time frame, if desired by the board or required by the Commission; and

- (4) Any member who does not pay its assessment when due, shall be cancelled from the group with ten (10) days' notice to the member and the Commission.

#### **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, 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 and chair of the board that:
    - (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) 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; and
    - (B) The estimated standard and discounted premium each association member will pay during the next fiscal year of the association;
  - (6) 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) A copy of the association's bylaws and any other governing instrument;
  - (10) A designation of the members' supervisory board and of the administrator of the association;
  - (11) A copy of the contract(s) between the association and 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);
  - (12) A copy of all fidelity bonds and errors and omissions policies secured by the association, its administrator, and organizations providing services to the association, with the exception of any TPAs;
  - (13) Copies of all marketing materials utilized by the association;
  - (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;
  - (15) Copies of the minutes of all board meetings held during the current year; and
  - (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.

#### **810:25-11-13. Security deposit**

A group self-insurance association may be required to post an irrevocable letter of credit with the Commission, in an amount determined by the Commission. The actual amount of the letter of credit will be determined by the Commission after evaluating the financial status of the association, including the following:

- (1) The association's available surplus;
- (2) The gap between the amount of premium estimated to be collected and the attachment point of the aggregate excess insurance policy; and
- (3) The financial strength of the collective membership.

**810:25-11-14. Letter of credit requirements**

- (a) An irrevocable letter of credit authorized pursuant to 810:25-11-6 or required pursuant to 810:25-11-13 must be issued by a state or national chartered bank, whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The bank must be approved in advance by the Commission. The letter of credit must be on a form prescribed by the Commission, include an automatic renewal clause, and cannot be non-renewed without sixty (60) days' prior written notice to the Commission. The letter of credit shall be made payable to the Commission. The Commission may make demand and collect on the posted letter of credit in whole or in part, in the case of actual or imminent default of the association to pay compensation liabilities, or the cancellation of the letter of credit without an adequate replacement.
- (b) All letters of credit referenced in Subsection (a) of this Section, and any proceeds thereof collected upon demand, including any interest thereon, shall be maintained by the Commission as provided in the AWCA until each claim for workers' compensation benefits is paid, settled or lapses under the AWCA, and costs of administration of those claims are paid, or until otherwise released by the Commission.

**810:25-11-15. Indemnity agreements and power of attorney**

- (a) Every member of a group self-insurance association shall execute an indemnity agreement and power of attorney which shall set forth the rights, privileges and obligations of the member and the association and the powers and duties of the administrator. Such indemnity agreement and power of attorney shall be subject to the approval of the Commission and shall contain in substance the following:
- (1) An agreement on a form approved by the Commission, under which each member agrees to assume and discharge, jointly and severally, liability under the AWCA of any and all employers party to such agreement;
  - (2) Provisions requiring that the members' supervisory board designate and appoint an administrator empowered to accept service of process on behalf of the association and authorized to act for and bind the association and members in all transactions either relating to or arising out of the operation of the association;
  - (3) Provisions for the right of substitution of the administrator and revocation of the power of attorney and right hereunder; and
  - (4) Provisions that clearly state all of the coverages of the policy.
- (b) One copy of the indemnity agreement and power of attorney shall remain in the member's possession at the time the application for membership is made. One copy must be filed with the Commission.
- (c) An affidavit of acknowledgment of joint and several liability, on a form approved by the Commission, must accompany the indemnity agreement and power of attorney, one copy shall remain with the member, and one copy must be filed with the Commission.

**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 Permitting Services Division. The company requesting approval must submit to the Commission's Permitting Services Division all marketing material prior to being utilized by an association.

**810:25-11-18. Termination of members**

A member of an association may not be terminated unless at least ten (10) days' written notice has been given to the member and the Commission if the termination is due to nonpayment of premium or assessment. If the cancellation is for other reasons, then the member may not be terminated unless at least thirty (30) days' written notice is given to the member and the Commission.

**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.

**810:25-11-20. Examination of association**

Whenever the Commission deems it expedient for the protection of the interests of the people of the State of Oklahoma, it may make or direct to be made an examination into the affairs of any association, member, marketing firm, or TPA approved in the State of Oklahoma.

**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 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.

#### **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).

#### **810:25-11-24. Effectiveness of previously authorized permits and security deposits**

- (a) Group self-insurance association permits previously authorized by the Workers' Compensation Court Administrator pursuant to 85 O.S., § 351 and in effect on January 31, 2014 shall remain in full force and effect for the duration of the permit term thereafter, unless voluntarily terminated by the association or revoked by the Commission.
- (b) All security deposits posted by a group self-insurance association with the Workers' Compensation Court Administrator pursuant to 85 O. S., § 351 before February 1, 2014 as a condition for the association to self fund its workers' compensation obligations, which are maintained by the Court Administrator and in effect on January 31, 2014, shall remain in full force and effect, pursuant to their respective terms, on and after February 1, 2014, notwithstanding assumption by the Commission of the Court Administrator's regulatory responsibilities regarding group self-insurance associations beginning February 1, 2014. At that

time, the Commission shall be considered the successor entity to the Workers' Compensation Court Administrator in all respects regarding the security deposit, with full power and authority in its own name to make demand and collect thereon in the same manner and to the same extent as and if the Commission were the Court Administrator. The Commission may require a group self-insurance association to post an adequate replacement security deposit, made payable to the Commission.

#### **810:25-11-25. Designation of service agent**

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 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. 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 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 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.

#### **810:25-13-2. Renewals**

The criteria for renewal of a TPA permit shall be the same as that for a new applicant.

#### **810:25-13-3. Termination or revocation of authority**

(a) Any TPA may surrender its authority to act as a TPA for workers' compensation purposes by notifying the Commission in writing of the effective date of the surrender.

(b) The TPA permit may be revoked by the Commission at any time upon reasonable notice for good cause shown, including, but not limited to, failure to comply with the rules of the Commission.

#### **810:25-13-4. Operating requirements**

The TPA must:

- (1) Have adequate personnel on staff to handle the volume and type of work. The TPA may subcontract for services not provided by the TPA, but requested from the self-insurer;
- (2) Be financially solvent, and must report its financial statements on an annual basis to the Commission in an approved form and manner;
- (3) Maintain an adequate Errors and Omissions policy;
- (4) Maintain an adequate Fidelity Bond;
- (5) Establish claims reserves at the most likely outcome. Best case reserving is not allowed.

- (6) Retain its independence when setting claim reserves. The TPA shall not let the self-insurer influence the amount of the reserve or the closing of a claim;
- (7) Maintain an Oklahoma office, if handling a group self-insurance association program; and
- (8) Maintain adequate computerized records and paper claims files on each claim. A copy of this information must be made available for the Commission's review at all times upon request.