

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF SELF-INSURANCE PLANS**

INITIAL STATEMENT OF REASONS

Workers' Compensation – Self-insurance (Title 8, California Code of Regulations, Sections 15201, 15203, 15203.2, 15203.3, 15203.5, 15203.6, 15203.7, 15203.10, 15204, 15205, 15209, 15210, 15210.1, 1510.2, 15211.1, 15211.2, 15216, 15220, 15220.2, 15230, 15251, 15353, 15405, 15422, 15426, 15431.1, 15471, 15472, 15475.2, 15475.3, 15476, 15479, 15480, 15481, 15482, 15482.1, 15482.2, 15483, 15484, 15486, 15486.1, 15487, 15491, 15496 and 15497)

1. Introduction

Labor Code section 3700 requires every employer in California, except the State, to secure the payment of workers' compensation either by being insured against liability to pay compensation by one or more insurers duly authorized to write workers' compensation insurance in this state, or by securing from the Department of Industrial Relations ("Department") a certificate of consent to self-insure. A certificate of consent to self-insure may be secured either as an individual employer, or as one employer in a group of employers, upon furnishing proof satisfactory to the Director of the Department of Industrial Relations ("Director") of ability to self-insure and to pay any compensation that may become due to its employees. Labor Code section 3701 requires private self-insuring employers, including groups of self-insuring employers, to post security deposits with the Department and specifies how those deposits are to be calculated. Labor Code sections 3701.3 through 3705, along with section 3701, establish the requirements for approval and administrative oversight of self-insurance plans by the Director. Labor Code sections 55 and 3702.10 authorize the Director to adopt, amend, and repeal regulations reasonably necessary to implement and make specific the provisions of Chapter 2 of Division 1 of the California Labor Code and to carry out the purposes of Article 1 (commencing with section 3700), Article 2 (commencing with section 3710), and Article 2.5 (commencing with section 3740) of the California Labor Code. The Office of Self-Insurance Plans ("OSIP") manages the self-insurance programs on behalf of the Director.

The amendments proposed in this rulemaking action function primarily to update and clarify existing regulations. Several proposed amendments make substantive changes to clarify and simplify the documentation and evaluation of the financial qualifications of self-insureds and to simplify and streamline procedural requirements. Existing requirements pertaining to claims loss history and evaluation of illness prevention program are eliminated as no longer necessary. The rulemaking also updates existing forms, implements new forms in some cases and provides for an online platform for submission of annual forms by self-insureds.

2. Technical, Theoretical, or Empirical Studies, Reports, or Documents

The Department did not rely on any technical, theoretical or empirical studies, reports or documents in proposing this regulatory action.

3. Problem Addressed with this Rulemaking

The proposed amendments are designed to streamline OSIP regulations for self-insureds by clarifying existing requirements, updating and renumbering forms and creating an online platform for submission of annual forms. The amendments eliminate certain financial and reporting requirements which have been determined to be unnecessary and unduly burdensome. Existing application and reporting forms are simplified or replaced, further streamlining the forms completion process and simplifying existing requirements for both the application and renewal processes.

The proposed amendments correct problems where current regulations and forms require and collect unnecessary and redundant information that is not utilized by OSIP. Overall, the proposed amendments to the regulations simplify the procedures to become and remain self-insured, creating a more business friendly environment while maintaining the necessary protections for the public and regulatory process.

Finally, some changes to the regulations are purely grammatical, or consist of a word change without a definition change. Those amendments have no substantive impact and are addressed under each regulation in this Initial Statement of Reasons. There is a global change involving the addition of a hyphen throughout the proposed regulations whenever the terms “self-insured(s),” “self-insure,” “self-insurer(s)” and “self-insurance” appear. The hyphen change is necessary to make the regulations grammatically consistent with the Labor Code sections addressing self-insureds (Lab. Code §§ 3700, et seq.). For brevity, this particular amendment to the regulations will not be addressed under each proposed regulation.

4. Specific Technologies or Equipment

The proposed regulations require individual private self-insureds to submit annual financial statements electronically via an online platform provided by the Department. This will require internet access.

The Director assumes that all businesses of a size eligible for participation in self-insurance will have internet access either through the business or via a public access point such as a library. In any rare instance where this is not the case, self-insurers without internet access can contact the Office of Self-insurance Plans for assistance in filing required forms.

5. Reasonable Alternative to the Proposed Regulations and Reasons for Rejecting Those Alternatives

The Director has not identified any equally effective and less burdensome alternative to the regulation at this time. The public is invited to submit such alternatives during the public comment process. The Director believes the proposed regulations will decrease existing burdens on self-insureds.

6. Duplication or Conflicts with Federal Regulations (Gov. Code section 11346.2, subd. (b)(7).)

The proposed regulations do not duplicate or conflict with any federal regulations. There are no federal regulations that prescribe rules for self-insured employers.

7. Facts, Evidence, Documents, Testimony, or Other Evidence on Which the Agency Relies to Support an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business. (Gov. Code section 11346.2, subd. (b)(6)(A)).

The proposed regulations concern the application process and continuing requirements for employers who wish to obtain a certificate of self-insurance from the Department. OSIP developed the proposed amendments in consultation with self-insured industry groups and the Self-Insurers Security Fund to update, streamline and simplify the application and annual reporting procedures for new and existing self-insured employers and self-insured groups. Because the regulations and proposed amendments are primarily procedural, eliminating prior requirements which are no longer necessary and streamlining the application process, they will not have a significant impact on business. To the extent that the proposed regulations do have any economic impact on new or current self-insured employers and self-insured groups, that impact will be in the form of savings in both time and money due to streamlining of the application and reporting processes, simplification and reorganization of application and reporting forms, and elimination of prior requirements. Consequently, the Director has determined that the proposed regulations will not have a significant adverse economic impact on business, rather, it appears that any anticipated economic impact on business is likely to be positive.

8. Economic Impact Analysis ((Gov. Code section 11346(b)(1)(A)-(D)).

Purpose

The proposed regulations update, clarify and streamline existing rules for self-insured employers. The proposed regulations implement certain new forms in the application process, as well as provide an online platform for the submission of annual forms. The proposed regulations delete certain prior financial and reporting requirements creating a more streamlined approach in assessing a self-insured's financial capacity to participate in the self-insurance program.

The Creation or Elimination of Jobs within the State of California

The Director has determined that the proposed regulations will not have a significant impact on jobs within the State of California.

The proposed amendments to the existing procedural regulations are specifically aimed at eliminating duplicative requirements and streamlining the application procedure for employers who wish to obtain a certificate of consent to self-insure from the Department. Any resulting

cost savings are likely to be minimal and not anticipated to significantly increase jobs within California. There is no anticipated negative impact on jobs.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The Director has determined that the proposed regulations will not significantly create or eliminate businesses within the State of California.

Because the proposed amendments generally alleviate the employer's burden in the application process for certificates of consent to self-insure, there is likely to be a minimal cost savings for applying employers. The anticipated minimal savings are unlikely to result in a significant increase of new businesses in California. There is no anticipated negative impact on existing businesses.

The Expansion of Businesses Currently Doing Business within the State of California

The Director has determined that the proposed regulations will not significantly expand businesses within the State of California.

The proposed amendments to the existing regulations should result in minimal resource and cost savings to employers applying for certificates of consent to self-insure. The amendments are aimed at reducing paperwork, eliminating onerous and outdated regulations, and simplifying existing processes and procedures for the prospective employer applicant. It is possible that any ensuing cost savings could be directed towards the expansion of an employer applicant's own business. However, given the relatively minor anticipated resource and cost savings involved, the proposed amendments are not likely to result in a major expansion of California businesses.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulations will help ensure the viability and integrity of the Department's self-insurance program so that eligible employers have the option to self-insure for workers' compensation and injured workers are covered for claims.

9. The Specific Purpose, Rationale, and Necessity of Each Section of the Proposed Revisions and Proposed New Regulations (Gov. Code section 11346.2, subd. (b)(1)).

The specific purpose, rationale, and necessity of each section of the proposed revisions and proposed new regulations in accordance with Government Code section 11346.2, subdivision (b)(1) is provided below.

PROPOSED REGULATIONS

Section 15201. Definitions.

Specific Purpose:

Existing section 15201 provides definitions for commonly used terminology related to workers' compensation self-insurance.

Necessity:

The proposed amendments provide clarification to existing terms, eliminate others that are no longer used in the regulations and add one new definition. The first proposed amendment to section 15201 eliminates the location of original records as an alternate definition of "adjusting location." The definition for "claim file" no longer includes references to a "separate file" or "companion claim." A new "closed claim" definition is added, as is language further clarifying the meaning of "compensation." The "core group member" is eliminated from the section as the term is deleted throughout the regulations as amended. Further clarification is provided regarding "temporary disability" in the definition of "indemnity claim." Finally, "United States" is added to clarify the reference to the Department of Commerce in the definition of "industry."

These amendments are necessary to update applicable definitions to insure the definitions are accurate and remain consistent with the changes contained within these proposed regulations.

Section 15203. Application and Required Forms.

Specific Purpose:

Existing section 15203 outlines the application process and identifies required forms.

Necessity:

The proposed amendments introduce new or updated forms to be implemented in 2016. The website address for OSIP is updated in subdivision (a). Form A4-1 is amended to A-1, Form A4-2 is amended to A-2 and Form A4-5 is amended to A-3B (subdivisions (a)(1)(2) and (3)). In subdivision (c), Form A4-1 is amended to A-1. The requirement for the submission of a financial statement is eliminated for subsidiary or affiliate applicants in subdivision (c)(1). The existing requirement in subdivision (c)(3) for each individual, private employer to submit as an attachment to its application an Agreement of Assumption and Guarantee of Liabilities is amended to add new Form A-4. This form is to be submitted for each self-insurer applicant, while prior language specifying "and subsidiary or affiliate" is deleted in the subdivision.

The requirement in subdivision (c)(4) of a Resolution/authorization attachment to the application is amended to add new Form A-5. Further language is added specifying that authorization extends to the execution of new Form A-4 (Agreement of Assumption and Guarantee of Liabilities). Subdivision (c)(5), which previously extended authorization to execute the

Agreement of Assumption and Guarantee of Liabilities, is deleted. Subsequent subdivisions are renumbered accordingly. The requirement for a written evaluation of an applicant's injury and illness prevention program is eliminated in renumbered subdivision (c)(6) in favor of the requirement for certification that the applicant has implemented an effective injury and illness prevention program and provided the contact name of the person responsible for overseeing the applicant's safety services. Form A4-2 is amended to Form A-2 in subdivision (d). Subdivisions (d)(1) and (d)(2) are amended to reference new Forms A-4 and A-5.

Subdivision (e) is amended to update Form A4-3 to S-1, while subdivision (f) is amended to update Form A4-3M to S-2B. The term "Manager" has been replaced with "Chief" in subdivision (g). This change is applied consistently throughout the remainder of the proposed regulations to bring the regulations in line with current usage. Subdivision (h) is amended to shorten the time to notify private individual employer applicants, while subdivision (i) is amended similarly for public entity applicants. These last two amendments will result in a more expeditious response to applicants.

The amendments to this section are necessary because they streamline the application process for self-insurance by eliminating unnecessary and redundant information that is currently gathered, but is no longer necessary or used as a result of other previous statutory and regulatory changes. The changes in the regulations make it necessary to change the forms as less information is now required to be collected with the new streamlined processes. There is no new or substantive information being added to the forms. Rather, they are being reduced, shortened and renumbered to make it easier to understand the logical sequence for their completion. The elimination of the requirement for a safety evaluation completed by an independent safety professional eliminates the costs associated with this requirement and eliminates redundancy, as workplace safety is the responsibility of a different division within state government.

Section 15203.2. Continuing Financial Capacity for Individual Private Self-Insurers.

Specific Purpose:

Existing section 15203.2 specifies requirements for private self-insurers holding an active or revoked Certificate of Consent to Self-Insure.

Necessity:

Subdivision (a) is amended to implement an online platform provided by OSIP for the submission of annual forms. The electronic submission option should result in a more efficient, streamlined system for submission of annual form. The term "Manager" is changed to "Chief" throughout. Subdivision (c) is amended to eliminate the lack of minimum net worth requirement under subdivision (e) as cause for an increased security deposit pursuant to section 15210.1 and/or involuntary revocation of certificate to self-insure pursuant to Labor Code section 3702.

Subdivision (d) is amended to eliminate the requirement of \$5,000,000.00 net worth and average net income of \$500,000.00 for private individual employer applicants for the preceding 5 years. The subdivision is amended to add new minimum conditions: (1) three calendar years in a

legally authorized business; (2) have three years of independently audited financial statements; and (3) have an acceptable credit rating for each of the three full calendar years prior to the date of application.

Subdivision (e), which requires private self-insurers granted a certificate prior to 7/1/1994 to demonstrate a net worth of \$2,200,000.00 and average net income of \$300,000.00 for the preceding five years, is eliminated.

These amendments are necessary to eliminate unnecessary requirements because other sections enable OSIP to evaluate the continuing financial capacity of individual private self-insurers, and a one-size-fits-all approach is not an effective evaluation metric given all of the variables such as company size, public versus private versus non-profit structures, and different industries. The prior regulations were arbitrary and not based on any specific business requirement. They also have become unnecessary in light of new statutes and regulations previously implemented that more effectively accomplish the evaluation of a self-insurer's continuing financial capacity. Specifically, SB863 created new statutory requirements (Lab. Code §3701). Previously implemented regulations (Cal. Code Regs., tit. 8, §§15209, 15410, 15477, 15481, and 15484) provide greater clarity over the specific risk exposure and greater involvement by the Self-Insurers' Security Fund in evaluating the individual financial risks.

Section 15203.3. Resolution to Authorize Self-Insurance for an Individual Private Plan.

Specific Purpose:

Existing section 15203.3 provides for a resolution to authorize self-insurance of workers' compensation for an individual private plan.

Necessity:

Subdivision (a) is amended to include new Form A-5 as the resolution to authorize self-insurance required pursuant to section 15203, subdivision (c) in the application process. The term "Manager" is changed to "Chief" throughout. Subdivision (c) is amended to add Form A-5 as the model corporate resolution. These changes are necessary to streamline the forms process and maintain consistency.

Section 15203.5. Agreement and Undertaking for Security Deposit.

Specific Purpose:

Existing section 15203.5 requires each private individual employer applicant for self-insurance to execute an Agreement and Undertaking for Security Deposit.

Necessity:

Subdivision (a) is amended to include Form A-6 as a new number for an existing form for the Agreement and Undertaking for Security Deposit. The new form number is referenced again in

subdivisions (b), (c) and (d). The term “Manager” is changed to “Chief” and prior Form A4-1 is amended to A-1 in subdivision (c). These changes are necessary to streamline the forms process and maintain consistency.

Section 15203.6. Delayed Start-up of a Self-Insurance Program.

Specific Purpose:

Existing section 15203.6 addresses the issue of when updated financial status information may be required for a private employer applicant who does not initiate a self-insurance plan within a specified timeframe.

Necessity:

Subdivision (b) is amended to expand the time frame for a private employer applicant to initiate a self-insurance plan to six months from notification of approval by the Director. If the private employer applicant fails to initiate the plan within the designated time frame, it may be required to provide current financial information and establish current good standing with the Secretary of State.

The amendment is necessary to harmonize with the timeframe in subdivision (a), which indicates that a certificate of consent to self-insure for a public or private employer shall be initially valid for six months after the date of approval by the Director. The proposed amendment to subdivision (b) provides individual private employer more time in which to initiate a self-insurance plan.

Section 15203.7. Documentation of Consent to Self-Insure and Notice to Employees of Self-Insured Status.

Specific Purpose:

Existing section 15203.7 provides for notice requirements to employees and the public of an employer’s self-insured status.

Necessity:

Subdivision (c) is amended to reflect the new website address for OSIP.

Section 15203.10. Reinstatement of a Certificate of Consent to Self-Insure.

Specific Purpose:

Existing section 15203.10 provides for reinstatement of a certificate of consent to self-insure for private and public employers whose self-insurance privilege terminated due to a legal change in business or corporate structure.

Necessity:

Subdivision (b) is amended to specify that an employer applicant may request reinstatement of a certificate of consent to self-insure “without a lapse in coverage” (added language) as long as the employer applicant follows the ensuing requirements related to the guarantee of and assumption of liability for all workers’ compensation liabilities incurred during the periods prior to reinstatement. The term “Manager” is changed to “Chief” throughout.

New subdivision (c) is added addressing a self-insured entity that has had its certificate of consent to self-insure voluntarily revoked. Subdivision (c) specifies that these entities may request reactivation in writing and that the Chief may reactivate a certificate provided the former self-insurer is current in filing all required reports. A certificate that has been reactivated will not cover any workers’ compensation claims or liabilities that arise during the period between the prior revocation and the date of reactivation. All claims during the period between the two self-insured periods must have been covered by an insurance policy.

The proposed amendments to the regulations are necessary because they streamline requirements and allow employers falling under (b) to show continuous coverage as a self-insured without submitting a full application, thereby eliminating a redundant process. Subdivision (c) addresses reactivation after voluntary revocation. This new subdivision will cut down on the burden of a full reapplication process, as a voluntarily revoked self-insurer is required to maintain full compliance with all reporting requirements after revocation by other statutes (Lab. Code §3702.8) and existing regulations (Cal. Code Regs., tit. 8, §§15251, 15427, and 15428, subd. (a)).

Section 15204. Application Filing Fee.

Specific Purpose:

Existing section 15204 establishes a filing fee for private employer applicants.

Necessity:

Subdivision (a) is amended to eliminate subsections (1), (2) and (3), thereby streamlining the initial filing fee of \$500.00 as applicable for all subsequent filings. The amendment eliminates tiered filing fees related to Interim Certificates.

The proposed amendment standardizes the filing fee to a flat \$500 as already exists, but eliminates the requirement to pay the fee in two different payments. This streamlines both the payment and receipt process for the employer and the State.

Section 15205. Interim Certificates.

Specific Purpose:

Existing section 15205 outlines the circumstances and requirements for the Chief to issue Interim Certificates.

Necessity:

The term “Manager” is changed to “Chief” throughout. Subdivision (a) eliminates the Chief’s ability to extend the Interim Certificate beyond the 180 days allowed by the section. Subdivision (b)(1) is amended to eliminate the requirement that the existing private self-insurer demonstrate a net worth of \$10 million. Subdivision (b)(1) is amended to add the requirement that the existing private self-insurer comply with the requirements of section 15203.2.

The proposed amendments are necessary because they hold the Office of Self-Insurance Plans to a higher standard by shortening the maximum time frame for the issuance of a certificate. The amendments promote a more strictly defined process for the benefit of the public.

Section 15209. Actuarial Studies and Summaries.

Specific Purpose:

Existing section 15209 specifies the content and deadline for submission of the annual actuarial reports required by Labor Code section 3701, subdivision (c), as amended, and echo the statutory requirements. The section applies to current and former self-insurers, other than public self-insurers.

Necessity:

The only amendment to this section corrects a typographical error in subdivision (i).

Section 15210. Security Deposit.

Specific Purpose:

Existing section 15210 specifies the minimum security deposit requirements for individual private self-insured employers.

Necessity:

The proposed amendment lowers the security deposit to 60% of the one year average incurred liability calculated by averaging the prior three years incurred liability. Previously, subdivision (d) of this section required a full three years of incurred liability as one of the methods of calculating a security deposit.

This amendment will allow private self-insured employers to post a smaller security deposit, freeing up capital for the insured and making self-insurance more accessible to businesses within California. Because new self-insurers do not bring any prior or tail liabilities with them into self-insurance, they initially begin with no liabilities. However, liabilities grow over time. There currently exists an annual requirement to reevaluate the exposure making the proposed lower deposit amount more aligned with the potential exposure a new self-insurer might represent.

Subdivision (e) is eliminated, so there is no longer a separate requirement to post a security deposit for the addition of a new subsidiary or affiliate private self-insurer to the holder of an existing individual private certificate.

This amendment streamlines the security deposit requirements. Eliminating subdivision (e) streamlines the process and eliminates an undeterminable requirement that is inconsistent with newer, previously implemented statutes and regulations (Lab. Code §3701; Cal. Code Regs., tit. 8, §§15209 and 15210).

Section 15210.1. Adjustments in the Amount of Security Deposit.

Specific Purpose:

Existing section 15210.1 specifies the procedures for annual review and adjustment of the required security deposits for private self-insured employers.

Necessity:

In subdivision (a), the requirement that private self-insured employers submit an Actuarial Study and Summary to the Chief for review in connection with security deposit adjustments is added.

This amendment is necessary to make section 15210.1 consistent with other regulations that previously implemented new actuarial requirements established by SB863. There is no impact as this is already a requirement within other provisions of existing regulations (Lab. Code §3701; Cal. Code Regs., tit. 8, §§15209 and 15210).

Section 15210.2. Deposit Adjustment Upon Revocation of Certificate to Self-Insure.

Specific Purpose:

Existing section 15210.2 allows the Chief to exercise greater flexibility in determining a deposit adjustment for private self-insureds whose Certificate to Self-Insure is revoked pursuant to sections 15422 and 15423.

Necessity:

The term “Manager” is changed to “Chief.” In subdivision (b), superfluous language regarding “deposit rate” is eliminated. Also, the Chief’s discretion to adjust the amount of deposit to the

statutory minimum is eliminated, leaving the Chief discretion to simply adjust the amount of deposit down to secure the remaining workers' compensation liabilities as necessary over time.

The proposed amendment eliminates requirements and references to "deposit rate" and "statutory minimum deposit" that were previously eliminated by statute with the passage of SB863. The change makes these regulations consistent with other regulations (Lab. Code §3701; Cal. Code Regs., tit. 8, §§15210 and 15210.1).

Section 15211.1. Appeals to Increase in Security Deposit Due to Impaired Financial Condition of Self-Insurer.

Specific Purpose:

Existing section 15211.1 addresses the process by which a private self-insured employer may appeal an increase in security deposit.

Necessity:

"Manager" is changed to "Chief" throughout. In subdivision (a), the requirement that a third party financial evaluation include a Dun & Bradstreet Risk Assessment Report is eliminated.

The proposed amendment is necessary because it eliminates references and requirements of third party assessment resources that are no longer published or available and updates these requirements with similar but current resources that accomplish the same purpose.

Section 15211.2. Agreement of Assumption and Guarantee of Liabilities.

Specific Purpose:

Existing section 15211.2 allows for an agreement of assumption and guarantee of liabilities as between a public, private individual, subsidiary, or affiliate self-insurer and any other legal entity or person.

Necessity:

The term "Manager" is changed to "Chief" throughout. Form A4-6 is updated and changed to Form A-4 in subdivision (b). Also, the website address for OSIP is updated.

The amendments make no substantive change but are necessary to update the regulations to refer to new form numbering and website addresses.

Section 15216. Administration of Defaulted Self-Insurer's Claims.

Specific Purpose:

Existing section 15216 provides for the use of a self-insurer's security deposit to cover existing and new claims in the event the self-insurer defaults on its workers' compensation obligations.

Necessity:

Subdivision (c) is eliminated, no longer requiring the Manager to determine the adequacy of an existing security deposit within 90 days of the default. Subsequent subdivisions are renamed due to the elimination of subdivision (c). Subdivision (c)(2) adds language providing for the forfeit by the self-insurer or its estate to all rights in the security deposit. The term "Manager" is changed to "Chief." New subdivision (g) is added, exempting the Self-Insurers' Security Fund from any penalties assessed for an act or omission on the part of any person other than the Self-Insurers Security Fund.

This change streamlines the defaulting process and removes an unnecessary requirement to determine the adequacy of the deposit. It further shields the Self-Insurers Security Fund from penalty assessments incurred by the defaulting self-insurer. This change ensures that any monies derived from a defaulting self-insurer are used towards the payment and administration of individual workers' compensation claims. The Self-Insurers Security Fund is relieved of the burden to defend penalty assessments incurred by others.

Section 15220. Participation in Alternative Composite Deposits.

Specific Purpose:

Existing section 15220 provides the requirements for whether private self-insured employers may be eligible for participation in the alternative composite deposit program.

Necessity:

The term "Manager" is changed to "Chief" throughout. Subdivision (b)(1), which allows for the exclusion from the alternative composite deposit program of a private self-insured employer in their first three full years of self-insurance, is eliminated. Subdivision (b)(3) is amended to eliminate the exclusion applying to former private self-insured employers who possess a revoked Certificate of Self-Insurance and who are required to possess no more than the minimum security deposit amount pursuant to Labor Code section 3701, subdivision (b). The remaining exclusions under subdivision (b) are renumbered accordingly.

Subdivision (d)(2) is eliminated, no longer requiring a participating private self-insured employer to meet the minimum financial requirements in its last published annual financial report as provided in section 15203.2. The remaining requirement under subdivision (d) is renumbered accordingly. Renumbered subdivision (d)(2) eliminates the prior requirements related to the

showing of an acceptable credit rating and replace those with the showing of any “A” or “B” rating published by Moody’s Investor Service, Standard & Poor’s, Fitch Rating, or equivalent.

This amendment eliminates previous requirements for financial statement evaluation and the posting of a “minimum deposit.” Both of these were eliminated as a requirement in status in the SB863 update. The private self-insured employer is now evaluated by a more comprehensive credit rating method. More flexibility has been created in procuring the rating so that the process is not overly restrictive and does not favor one group/size of employer over another, thus better serving all self-insured employers. This section also creates greater specificity and clarity surrounding actions which constitute good cause for enforcement action. These reasons resulted in statutory changes requiring actuarial studies to be filed (Lab. Code §3701).

Subdivision (e)(2) addresses which employers shall qualify as partially participating members of the alternative composite deposit program. This subdivision is amended to include the following circumstances as cause: failure to file a complete and timely Actuarial Study and Summary, and upon written request by the Self-Insurers Security Fund to make an employer partially instead of fully participating. Under subdivision (h)(2), cause for the Chief to downgrade a participating employer is amended to include failure to file a complete and timely Actuarial Study and Summary, and upon written request by the Self-Insurers Security Fund to down grade an employer’s status. Both subdivision (e)(2) and (h)(2) expand the circumstances under which the Chief may qualify self-insured employers as partially participating, or otherwise downgrade their participation status.

The Actuarial Study and Summary is referenced here in order to make the regulations consistent with changes in statute implementing actuarial requirements, and to comport with its addition as a requirement in section 15210.1. The amendments are necessary to streamline statutory and regulatory requirements to timely file an actuarial study, and to clarify what consequence may occur for failing to timely file the actuarial study.

Section 15220.2. Listing of Security Deposit Amount Required.

Specific Purpose:

Existing section 15220.2 provides for the annual listing of the security deposit required for each private self-insured employer.

Necessity:

The term “Manager” is changed to “Chief” throughout. Subdivision (a) is amended to provide for the calculation of security deposits pursuant to sections 15210 and 15496. The prior specifications regarding the use of total liability reported on the private self-insured employer’s year-end report are eliminated. In subdivision (b), the terms “required” and “Actuarial Study and Summary” are added to clarify existing requirements which, if not met by May 1 of each year, allow the Chief to impute twice the liabilities indicated on the prior year’s report for the purpose of determining the required security deposit in the yearly listing.

Subdivision (c) is amended to provide a deadline of May 15 each year for the Chief to provide the listing of required security deposits to the Securities Fund.

These changes bring this regulation into conformity with the new statutory requirements and other regulatory changes requiring actuarial studies to be the basis for determining the amount of security deposit to be posted. The specific dates are to create clarity in the regulation.

Section 15230. Private Sector License Fee Assessment.

Specific Purpose:

Existing section 15230 outlines the requirement for an annual license fee to be paid by each private self-insurer.

Necessity:

The term “Manager” is changed to “Chief” throughout. The October 1 annual deadline for the Chief to invoice each private self-insurer is changed to December 1 in subdivision (c). In subdivision (d), each private self-insured certificate holder whose certificate has been revoked after June 30, 2001 shall pay the full license fee for the next five full calendar years or until it is no longer required to post a security deposit.

The amendments are necessary in order to bring this regulation into conformity with statutory changes where minimum deposits were eliminated and to update the date when invoices will be issued.

Section 15251. Self-Insurer’s Annual Report.

Specific Purpose:

Existing section 15251 outlines the requirements for a self-insurer’s annual report.

Necessity:

The term “Manager” is changed to “Chief” throughout. An online platform is established for the submission of a self-insurer’s annual report. Existing forms are updated. Subdivision (b)(1)(A) requires the first three digits of NAICS, as amended from four. Form DE-6 is amended to Form DE-9 in subdivision (b)(1)(F). Subdivision (b)(5) addresses the need for a self-insurer to submit open indemnity claims information. Subdivision (b)(5)(A) is amended to eliminate the form requirement. Subdivision (b)(5)(B) is entirely eliminated, simplifying the open claims list requirements for self-insurers.

The change is necessary to update the regulation and reflect that forms are now filed via an on-line platform. The amendment further updates changes that have occurred to forms numbering.

Subdivision (b)(6) is streamlined to no longer include the deposit calculation requirements of subdivision (b)(7). Subdivision (b)(7), outlining the details of a deposit calculation, is eliminated as a requirement of information included in the self-insurer's annual report. This amendment lessens the self-insurer's obligations for information relevant to the annual report. Subdivision (b)(8) is amended to no longer require the original signature of the company officer, nor to require that the company officer be authorized by Board Resolution.

In subdivision (c)(1)(F), Form DE-6 is changed to Form DE-9. In subdivision (g), page 2 of the annual report is no longer referenced, and page 3 of the annual report is added as a reference regarding reporting location reports. Subdivision (h)(1) no longer requires the signing officer or employee of the self-insurer be authorized by the Board of Director's Resolution.

The amendments to the regulations are necessary to further streamline procedures for completing the self-insurer's annual report. The changes eliminate unnecessary and redundant signatures, maintain consistency in form numbers, and address the change in how the deposit calculation is performed as a result of changes in related statutes and regulations.

Section 15353. Injury and Illness Prevention Program.

Specific Purpose:

Section 15353 requires individual private sector applicants for a Certificate to Self- Insure to certify they have implemented an effective Injury Illness Prevention Program as required by Labor Code section 6401.7.

Necessity:

Former subdivisions (a)(1)-(c) outlining specific requirements for written reports relating to an applicant employer's Injury and Illness Prevention Program are eliminated. Applicant employers need only certify they have such a program in place and provide contact information for the person within their organization who is responsible for workplace safety.

This amendment will reduce the burden and costs to the applicant employer associated with a prior requirement to contract and pay an independent safety engineer for an evaluation report of the employer's Injury and Illness Prevention Program. Requirements related to an employer's Injury and Illness Prevention Program are statutorily mandated and under the authority of the Division of Occupations Safety and Health. Requiring self-insured employer applicants to certify what is already overseen and enforced by a different Division of State Government results in an unnecessary cost and burden for the employer. Thus, the amendment operates to simplify the application process, reduce costs for employers, and eliminate unnecessary redundancy currently contained within the regulations.

Section 15405. Confidentiality.

Specific Purpose:

Existing section 15405 provides for maintaining the confidentiality of any self-insurer, applicant to be self-insured, third party administrator, or of a guarantor of a self-insurer or applicant to be self-insured.

Necessity:

The term “Manager” is changed to “Chief” throughout. The amendment in subdivision (a)(2) allows the Chief to provide financial information to the Self-Insurers’ Security Fund for any self-insurer needed to determine and set deposits for self-insured employers.

Subdivision (b)(2) contains a similar amendment in that the Chief may provide to the Self-Insurers’ Security Fund copies of any and all self-insurer’s annual reports needed to determine and set deposits for self-insured employers, no longer limited to self-insured employers participating in the alternative composite deposit program.

Subdivision (d) is amended to protect information obtained from all actuarial reports, not limited to those filed by group self-insurers.

These changes update the regulation to reflect changes in statute from SB863 (Lab. Code §§ 3701 and 3701.8) giving the Security Fund responsibility and authority over financial evaluation of all self-insured employers, not just those that participate in the alternative security program. This further brings the regulation into conformity with other regulations that already require all self-insurers to provide financial information to the Security Fund. The Self-Insurers Security Fund is a non-profit organization representing all private self-insured employers in California, including Self-Insured Groups. The Security Fund manages the collective liabilities of workers compensation claims arising when former private self-insured employers become insolvent.

Section 15422. Voluntary Revocation.

Specific Purpose:

Existing section 15422 provides for the voluntary revocation by any self-insurer or administrative agency of a Certificate to Self-Insure or Certificate to Administer.

Necessity:

Subdivision (b) is eliminated, no longer requiring the self-insurer or administrative agency to surrender the Certificate to Self-Insure or Certificate to Administer.

This change eliminates an unnecessary requirement and results in no impact.

Section 15426. Release of Security Deposit.

Specific Purpose:

Existing section 15426 addresses the issue of release of security deposit upon revocation of a private employer's certificate to self-insure.

Necessity:

The term "Manager" is changed to "Chief" throughout. In subdivision (b), "statutory minimum" is replaced with "required amount." New subdivision (c) is added specifying that a self-insurer, or its estate, forfeit all rights to its security deposit upon the issuance of an order of default pursuant to Labor Code section 3701.5.

This amendment brings the regulation into conformity with statutory changes that eliminate a "statutory minimum" deposit and updates language to accurately reflect a "required amount". The proposed amendment (c) makes clear that the self-insurer forfeits its deposit in the event of default. This change is necessary to update the regulation to conform with current law.

Section 15431.1. Appeals and/or requests for Hearings.

Specific Purpose:

Existing section 15431.1 provides for an appeals process by an employer or aggrieved party.

Necessity:

The term "Manager" is changed to "Chief" throughout. The address for submission of written appeals is amended in subdivision (b).

This amendment updates the regulation to reflect the current OSIP mailing address for making a request for appeal.

Section 15471. Initial Feasibility Study.

Specific Purpose:

Existing section 15471 applies to group self-insurers and provides for a feasibility study report to be included in the initial application.

Necessity:

The requirement of an evaluation of the historical workers' compensation claims costs for the anticipated initial group members is eliminated in subdivision (d), along with the requirement of an actuarial projection. Subsequent subdivisions are renamed due to the elimination of subdivision (d). In new subdivision (d), formerly subdivision (e), the sentence mandating that

the claims payout schedule be calculated using the 80th percent actuarial confidence level figures from the actuarial study is deleted to comport with the elimination of the actuarial projection study.

This information is no longer needed as a result of other statutory and regulatory changes (Lab. Code §3701; Cal. Code Regs., tit. 8, §§15477, 15481, and 15484). The amendment to the regulation reduces time and costs for new group applicants, further simplifying the evaluation and approval process.

Section 15472. Minimum Financial Requirements for a Group Self-Insurer.

Specific Purpose:

Existing section 15472 provides for the minimum financial requirements for private group self-insurers.

Necessity:

The proposed amendments to subdivision (a) specify that no private group shall continue as a group self-insurer unless it meets funding and solvency requirements specified in section 15484, subdivision (e) as demonstrated in independently audited financial statements meeting the requirements specified in section 15484, subdivisions (a) and (b). The exception to this amendment is a group self-insurer operating under a corrective action plan approved by the Chief.

This amendment makes the regulation consistent with other and prior changes to regulations. Specifically, section 15484 was previously changed to establish a new method for evaluation financial solvency as a result of statutory changes contained in SB863. This change also reflects the elimination of core members as an evaluation method for the overarching group.

The remaining portions of section 15472 (subdivisions (a)(1)-(d)(2)) are eliminated. Those portions specified net worth requirements and other procedures for the Manager/Chief to assess whether financial requirements are met for a group self-insurer to continue.

The amendments to section 15472 simplify the financial requirement procedure for continuing group self-insurers and streamline the process by incorporating the financial requirements of other existing sections.

Section 15475.2. Restriction on Use of Funds.

Specific Purpose:

Existing section 15475.2 restricts group self-insurers from using funds collected from group members, other parties, or via investments for any purpose other than the payment of claims, the

payment of fees related to funding the group. The group self-insurer is not permitted to lend money or issue debt instruments to any group member.

Necessity:

Subdivision (b) allows the group self-insurer to permit fixed installment plans not to exceed twelve months (amended from ten) to collect contributions for the payment of current group members. The term “Manager” is changed to “Chief.” The amendment to subdivision (d) further specifies that surplus funds declared as excess funds are to be transferred to an escrow account pursuant to section 15477, subdivision (a)(1).

This last amendment requiring an escrow account supports the remaining language prohibiting the comingling of excess funds in checking accounts established for the payment of and administration of existing liabilities.

Section 15475.3. Investment of Funds.

Specific Purpose:

Existing section 15475.3 provides for the investment of funds by group self-insurers.

Necessity:

Subdivision (a)(3) is amended to provide for a maximum maturity of no more than five years for investments in eligible certificates of deposit.

This amendment reflects changes in the financial services marketplace and is necessary to provide for greater flexibility in the maturity of investments. It allows Groups and their members to benefit from the opportunity to earn greater returns on their capital. This change was made at the request of the California Alliance of Self-Insured Groups, Inc. (a non-profit mutual benefit corporation also known as CA-SIG) for the benefit of its members. CA-SIG exists as an industry representative, providing a unified voice for self-insured groups (“SIGs”) in California, both with the Legislature and the Department of Industrial Relations.

Section 15476. Advanced Contribution Discounts.

Specific Purpose:

Existing section 15476 disallows discounts to members of a group self-insurer.

Necessity:

The proposed additional language to this section specifies that the contributions for the funding of the group self-insurer’s program year[s] shall be no less than the funding required under section 15484, subdivision (e). This amendment is necessary to establish the absolute minimum

amount of funding required according to the parameters contained in section 15484, subdivision (e).

Section 15479. Indemnity Agreement and Power of Attorney.

Specific Purpose:

Existing section 15479 specifies that each member of a group self-insurer shall execute an indemnity agreement and power of attorney and further outlines the requirements associated with such.

Necessity:

The form requirement in subdivision (a) is simplified to provide for the submission of revised Form S-4 (previously Form A4-8), and eliminates the alternative form option. The change to Form S-4 is referenced in subdivision (b)(5), and the term “Manager” is changed to “Chief.”

Section 15480. Termination of Membership in a Group Self-Insurer.

Specific Purpose:

Existing section 15480 provides for the procedure by which a member may be involuntarily cancelled or terminated from group membership by the group self-insurer.

Necessity:

The advance notice requirement for cancellation or termination of a member is reduced from 60 days to 45 throughout the section. The term “Manager” is changed to “Chief” throughout.

Subdivision (g) is added to require a member of a group self-insurer that is involuntarily revoked by the group for non-payment of any contribution to bring current all outstanding unpaid amounts in order to exercise their right to appeal the notice of intent to revoke.

This change is made at the request of CA-SIG for the benefit of its members. The reason for the reduced notice requirement is to provide adequate notice to a member being revoked, while not allowing them excess time to take advantage of the Group and fellow members paying for workers’ compensation coverage for the revoked member with little leverage to collect payments for the coverage being provided. The impact of this change allows for appropriate timely notice to a member being revoked, while protecting the rights of the Group and the remaining members from unfair and unnecessary expenses.

Section 15481. Actuarial Studies and Summaries.

Specific Purpose:

Existing section 15481 requires self-insured groups to obtain an annual actuarial study.

Necessity:

This change corrects a misspelled word.

Section 15482. Private Group Application.

Specific Purpose:

Existing section 15482 outlines procedures and requirements for private groups of employers seeking a private group Certificate of Consent to Self-Insure.

Necessity:

The term “Manager” is changed to “Chief” throughout. The application for a certificate of consent to self-insure by a group of employers and applications for any affiliate certificates shall be submitted no less than 30 days before the requested effective date of self-insurance.

The time frame is shortened requiring the Office of Self-Insurance Plans to process applications within 30 days. The shortened timeframes require a greater responsiveness to the business requirements of applications for new certificates and create a more defined certainty of when a certificate will be issued.

Form A4-3 is updated and amended to S-1, while Form A4-3M is amended to S-2B. Subdivision (b)(1), requiring a current financial statement, is eliminated. Subsequent sections are renumbered as a result. In newly numbered subdivision (b)(3), Form A4-3G is amended to Form S-5, and the requirement of listing each initial proposed group member is eliminated. Newly numbered subdivision (b)(5) is amended to require a certification that the group has implemented an effective injury and illness prevention program and contact name, eliminating the prior requirement of a written evaluation of DOSH report. This change is necessary to streamline the procedures regarding injury and illness prevention programs, and will result in savings to group self-insurers.

Section 15482.1. Private Group Member Application.

Specific Purpose:

Existing section 15482.1 requires each member of a group to submit a complete group member application to self-insure.

Necessity:

Form A4-3M is amended to Form S-2B. The requirement of a current financial statement in subdivision (a)(1) is eliminated. Form A4-8 is amended to form S-4. Subdivision (a), requiring employers with projected contributions of 25% or more of the group self-insurer’s projected total

contributions for the coming program year to submit a financial statement, is eliminated. Subsequent subdivisions are renamed accordingly.

This amendment makes the regulation consistent with other regulations and reflects the elimination of core members and unnecessary member financial statements.

Section 15482.2. Interim Certificates to Group Members.

Specific Purpose:

Existing section 15482.2 allows the Chief to issue interim certificates of consent to self-insure to group members.

Necessity:

The term “Manager” is changed to “Chief” throughout. The Chief’s ability to extend the Interim Certificate for an additional 90 days is eliminated. Subdivision (b)(1) requiring core members of a group self-insurer to document that they meet the financial requirements is eliminated. Subsequent subdivisions are renumbered accordingly. Form A4-7 is amended to Form S-2A. Subdivision (c)(3) is amended to eliminate the need for future estimates of payroll and proposed annual contributions of the proposed group member.

Amendments to subdivision (c)(4) specify the three digit NAICS code and alternatively a two digit SIC Code of the proposed member shall be submitted by the Group Administrator to the Chief.

This proposed change is necessary to simplify the process and create greater predictability of timeframes by eliminating the ninety day extension option. Furthermore, it makes the regulation consistent with others eliminating the core member designation, and clarifies the specific section of the NACIS and SIC code numbers that are relevant.

Section 15483. Agreement of Assumption and Guarantee of Group Member’s Liabilities.

Specific Purpose:

Existing section 15483 requires each group self-insurer to provide an Agreement of Assumption and Guarantee of Liabilities of Workers’ Compensation Liabilities for Group Members.

Necessity:

Subdivision (a) is amended to eliminate the option of a single Agreement of Assumption and Guarantee of Liabilities of Workers’ Compensation Liabilities for Group Members listing all members. The requirement in subdivision (b) that each subsidiary or affiliate group member to submit an Agreement of Assumption and Guarantee of Liabilities is eliminated. This is necessary to comport with the change in subdivision (a) whereby an Agreement of Assumption and Guarantee of Liabilities is required for each group member. Also in subdivision (b), Form

S-4 “Indemnity Agreement and Power of Attorney” is substituted for the prior Agreement of Assumption and Guarantee of Liabilities, required to be executed by a new holding company (in the event a group member is acquired by another entity). Form A4-3G is amended to Form S-5 in subdivision (c).

This amendment to the regulation is necessary to simplify and streamline the process by eliminating redundancy and unnecessary duplicative paperwork.

Section 15484. Continuing Financial Capacity of Group Self-Insurers.

Specific Purpose:

Existing section 15484 requires group self-insurers to submit annual financial statements to OSIP and to provide any additional financial documentation necessary to demonstrate the group’s financial capacity to fund the group’s workers’ compensation liabilities.

Necessity:

The requirement that annual financial statements be certified and independently audited in subdivision (c)(1) is eliminated and replaced with a requirement that the financial statements show that members of the group self-insurer are financially suitable for continued membership in the group. The requirement that members meet in aggregate the financial requirements provided in section 15472, subdivision (a) is eliminated. Subdivision (c)(2) is amended to delete “other” when referring to group members, thus specifying that the provisions of this subdivision apply to all group members.

Subdivision (f) deletes the term “core members”, thus specifying application of the subdivision to a group self-insurer. The group self-insurer must advise the Chief if it does not meet the financial requirements set forth in section 15472, subdivision (a); the modifying term “in aggregate” is eliminated.

Subdivision (g)(3) is amended to eliminate “core members” so that the subdivision applies to the group and eliminates the reference to subsection (c)(1).

This amendment makes the regulation consistent with other regulations and reflects the elimination of core members and unnecessary member financial statements.

Section 15486. Agreement and Undertaking for Director to Utilize Security Deposit to Pay Benefits Due.

Specific Purpose:

Existing section 15486 requires each group self-insurer to execute an Agreement and Undertaking for Director to Utilize Security Deposit to Pay Benefits Due.

Necessity:

Form A4 GAU is amended to Form S-6 in subdivision (a). This change is necessary to streamline form numbering and simplify the form process.

Section 15486.1. Group Self-Insurer Injury and Illness Prevention Program.

Specific Purpose:

Existing section 15486.1 addresses the requirements for a group insurer relevant to Injury and Illness Prevention Program.

Necessity:

The proposed amendment specifies that the section applies to a group self-insurer “affiliate member” applicant, and requires such applicant to certify they have implemented an effective Injury Illness Prevention Program as required by Labor Code section 6401.7 and provide the name and contact information for the person within their organization responsible for workplace safety. Subdivisions (a)(1)-(d) are eliminated, no longer requiring group self-insurer applicants to comply with additional specifications.

Subdivision (e) is amended to subdivision (b) due to the elimination of former subdivisions (b)-(d).

This amendment is necessary to comport with other proposed amendments regarding Injury and Illness Prevention Programs. As with the amendment to section 15203, this change reduces the burden to the group self-insurer affiliate member applicant by eliminating the need and expense for an evaluation and report of the applicant’s Injury and Illness Prevention Program, thus simplifying the application process. It further makes this section consistent with section 15203.

Section 15487. Delayed Start-Up of a Group Self-Insurer or Group Member Participation in Group Self-Insurance.

Specific Purpose:

Existing section 15487 provides for a six month period after approval by the Director to grant a certificate of consent to self-insure during which the group self-insurer or any group member shall initiate its self-insurance program.

Necessity:

The term “Manager” is changed to “Chief” throughout. In subdivision (c), the requirement that a group self-insurer or member initiate a self-insurance plan is specified as six months, as amended from the prior three month period. The change to six months brings subdivision (c) into harmony with the six month approval period contained in subdivision (a) of the regulation.

Section 15491. Group Self-Insurer and Group Member Application Filing Fee.

Specific Purpose:

Existing section 15491 provides for group self-insurer and group member filing fees.

Necessity:

The additional \$500.00 filing fee for each group member application submitted with the group self-insurers application is eliminated in subdivision (a)(1). However, subdivision (a)(2) is amended to delete the term “additional” when referring to group member applications, and specifies a fee of \$500.00 for each group member application. Prior language providing for a tiered fee based on the existence of Interim Certificates is deleted, including elimination of subdivision (a)(3).

The amendment in subdivision (b) corrects a reference to subsections (a)(1) or (a)(2) to account for the deletion of subsection (a)(3).

These amendments are necessary to streamline filing fees for group self-insurers and group members and provide for a single payment instead of breaking the payment into two parts. The change simplifies the payment process, resulting in time and cost savings for both the employer and the state.

Section 15496. Group Self-Insurer’s Security Deposit.

Specific Purpose:

Existing section 15496 specifies the minimum security deposit requirements for self-insured groups.

Necessity:

The word “for” is replaced with “of” in subdivision (b) for grammatical purposes. The requirement in subdivision (b), relating to the posting of an initial security deposit in an amount “no less than the greater of the following” is amended to “no less than the following.” Subdivision (b)(1), listing the statutory minimum amount pursuant to Labor Code section 3701, subdivision (b), is eliminated. Prior subdivision (b)(2) is renamed (b)(1) and is amended to specify an amount equal to 60% of one year average incurred losses of the initial affiliate member(s). The average incurred losses shall be determined by taking the previous three years of incurred losses and averaging such for one year. The additional amendments provide for a time frame of installment payments on the initial deposit.

Subdivisions (b)(3)-(d), providing for additional time frames and conditions based on actuarial data and allocated loss adjustment expense, are eliminated. This amendment further streamlines procedures related to minimum security deposit requirements for self-insured groups.

This change is necessary to provide greater clarity on how the deposit will be determined and greater specificity on how and when the deposit will be posted.

Section 15497. Adjustments in the Amount of a Group Self-Insurer's Security Deposit.

Specific Purpose:

Existing section 15497 specifies the procedures for annual review and adjustment of the required security deposits for self-insured groups.

Necessity:

Subdivision (e) provides for a perfected security interest in the group self-insurer's assets in favor of the Director pursuant to Labor Code section 3701, subdivision (k) in the event a security deposit increase is required. Subdivision (e) is amended to include each affiliate group member's assets as well as those of the group self-insurer. The reference to former Labor Code section 3701, subdivision (j) is amended to reflect the updated subdivision (k).

This amendment is necessary to bring the assets of each affiliate group member within the purview and reach of section 15497. The change broadens and clarifies the Director's reach regarding the security interest.