

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

**NOTICE OF RULEMAKING**

**Workers' Compensation – Self Insurance Regulations  
(Title 8, California Code of Regulations, Sections 15201, 15214, 15251, 15300,  
15400.2, 15405, 15430.1, 15478, 15481 and 15484)**

**PROPOSED REGULATORY ACTION**

**NOTICE IS HEREBY GIVEN** that the Director of the Department of Industrial Relations proposes to adopt, amend, and repeal regulations to implement the provisions of Labor Code Sections 3700, 3701, 3702, 3702.2, and 3702.8 of the California Labor Code regarding the administration of Self Insurance Plans described below after considering all comments, objections and recommendations regarding the proposed action.

**INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW**

Existing Section 3702.10 of the Labor Code authorizes the Director of Industrial Relations to adopt, amend, and repeal regulations reasonably necessary to carry out the purposes of Labor Code Sections 3700, 3701, 3702, 3702.2, and 3702.8 of the California Labor Code. Existing Labor Code Section 3700 requires every employer except the state to secure the payment of compensation by either being insured against liability to pay compensation by one or more insurers or by securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer or as one employer in a group of employers. Existing Labor Code Section 3701 requires private self-insuring employers, including groups of self-insuring employers, to post security deposits with the Department of Industrial Relations. Existing Section 3702 establishes cause for the Director of Industrial Relations to revoke consent to self-insure. Existing Labor Code Section 3702.2 requires each self-insured employer to file a self-insurer's annual report to enable the director to determine the amount of security deposit required by Section 3701. Existing Labor Code Section 3702.8 establishes obligations of employers who have ceased to be self-insured.

The Department of Industrial Relations proposes to amend existing Chapter 8, Subchapter 2, Article 1, Section 15201, Article 3, Section 15214, Article 5, Section 15251, Article 6, Section 15300, Article 9 Sections 15400.2 and 15405, Article 13, Sections 15478, 15481 and 15484 in Title 8 of the California Code of Regulations.

The affected article of Chapter 8, Subchapter 2 define terms in Article 9 set requirements for providing financial information of any self insurer needed to determine and set deposit assessments for self insured employers participating in the alternative composite deposit program.

### **PUBLIC HEARING**

The Department has not scheduled a formal public hearing on this proposed action. However, the Director will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to Office of Self Insurance Plans. The written comment period closes November 29, 2010. The Department will consider only comments post marked or received at the Office of Self Insurance Plans by that date. Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

James A. Ware, Chief  
Office of Self Insurance Plans  
2265 Watt Avenue, Suite 1  
Sacramento, CA 95825

### **AUTHORITY AND REFERENCE**

Labor Code Sections 55 and 3702.10, authorize the Director of Industrial Relations to adopt, amend, and repeal regulations which would implement and make specific the provisions of Chapter 2 of Division 1 of the California Labor Code and to carry out the purposes of Articles 1 (commencing with Section 3700) Article 2 (commencing with Section 3710) and Article 2.5 (commencing with Section 3740, 2) of the California Labor Code.

#### **Article 1**

Existing Section 15201 contains definitions of terms contained in Articles 2 through 13, dealing with self insurance of workers' compensation liabilities. The proposed amendment to 15201 (cc) is needed for clarifying the definition of a medical only claim.

### **Article 3**

Existing Section 15214 provides that a self insured employer can post cash in the form of a corporate check, cashier's check certificate check or money order, made payable to Department of Industrial Relations In Trust for, the legal name of the self insured employer.

One of the methods of security deposit a self-insured employer can post to secure their self-insured workers' compensation liabilities is with cash which could then be placed into an interest bearing savings account or into a Certificate of Deposit (CD) not to exceed a one (1) year term. If in form of CD, the original CD is held at the bank or financial institution in which the CD was purchased. A receipt showing evidence of the CD, its terms and amount is provided to the OSIP. After the CD receipt is received from the bank by OSIP an Approval of Certificate of Deposit and Authorization to State Treasurer is prepared (which basically shows the self-insured employer's name, the terms of the certificate and the amount) and sent to the State Treasurer's Office (STO) wherein it is recorded and a receipt is then generated by the STO and sent back to the OSIP.

The STO bills OSIP for being the "custodian" of the CD even though the Treasurer does not actually hold a certificate. The charges to the OSIP are determined by the number of CD documents created during a quarter for each account which is then divided by the number of documents created by all accounts to arrive at a weighted percentage. This weighted percentage is then multiplied by  $\frac{1}{4}$  of the treasurer's section yearly budget to arrive at the quarterly amount invoiced to the OSIP. The average yearly cost is approximately \$45,000.

Existing regulations require the State Treasurers' Office to be the custodian of CD's even though they do not hold the original certificate. The proposed amendment provides that the bank or financial institution issuing the certificate and holding the original certificate to be the custodian at the expense of the self-insurer and not at the expense of the Office of Self-Insurance Plans, thereby eliminating unnecessary expense incurred by OSIP for the STO to be the custodian. The Office of Self-Insurance Plans will continue to maintain internal documentary evidence of such deposits as was done when such deposits were held by the STO.

The proposed amendment to the regulation replaces the term "passbooks" with "savings account", allows for certificates of deposit to be issued by credit unions that meet the standards contained in Section 15215, and changes the current manner on how cash is processed by the Department of Industrial Relations, Office of Self-Insurance Plans when received from private self-insured private employers for their security deposit posting. The bank or financial institution holding the Certificate of Deposit will be the "custodian" instead of the STO, and the OSIP will maintain documentary evidence of the deposit. The proposed changes also allow for "brokered" Certificates of Deposit" as another form of security deposit, in addition

to regular Certificates of Deposit (referenced by banks and financial institutions as “callable” Certificates of Deposit).

### **Article 5**

Existing Section 15251 specifies the reporting requirements and when public and private self insured employers are required to file with the Office of Self Insurance Plans (SIP) within Department of Industrial Relations.

Existing Section 15251(b)(1)(f) provides that employment and wages paid in calendar in the calendar year as reported on the Employment Development Department on the employers Form

DE-6 be reported on the Self Insurer’s Annual Report.

Existing Section 15251(c)(1)(f) provides that employment and wages paid in calendar in the fiscal year as reported on the Employment Development Department on the employers Form DE-6 be reported on the Self Insurer’s Annual Report.

The proposed amendments would also permit the use of any other equivalent EDD employment and wage reporting document applicable to the self insured employer. This clarification is necessary as all public self insurers and some private self insurers do not utilize the DE-6 form and must utilize other EDD required reporting forms. In addition, some larger public agencies and joint powers authority (JPA) self insurers submit required employment and wage information to EDD by downloading specified information electronically, so that technically no “form” is filed in hard copy at all. Subsection (c)(1)(F) is therefore being editorially revised to correct this oversight and allows the annual report information on employment and wages to come from whatever EDD reporting is utilized or required of the self insured by EDD.

### **Article 6**

Existing Article 6 contains four regulatory sections, Section 15300 – 15303, which address estimating and reporting of work injury claims; revision of estimates; medical reports; and medical, surgical, hospital contracts, respectively. The Workers’ Compensation Insurance Rating Bureau has proposed changes in the medical component reporting requirements for workers’ compensation insurance carriers with respect to the reporting of medical cost containment programs effective January 1, 2011, that would be applicable to all workers’ compensation insurance carriers, but would not be applicable to self insured employers. The amendments proposed to Section 15300 would make corresponding revisions for the reporting of the medical component expenses by excluding fees for bill review services and utilization review services along with self imposed increases, interest payments or MSA evaluation fees reported on the Self Insurer’s Annual Report applicable to self insured employers. The proposed revisions would make the expense of medical and/or utilization cost containment programs an allocated or unallocated expense item depending upon whether or not the expense was related to a particular claim. Medical cost containment program costs are broadly categorized as bill audit expenses for any medical service rendered, hospital and other treatment utilization reviews, and/or access fees and other

expenses incurred with respect to managed care reviews. By making the proposed changes, both workers' compensation insurance carriers and self insured employers would report the medical component of work injury claims in the same manner, providing for consistency and clarity in the reporting of medical costs of workers' compensation claims.

### **Article 9**

Existing Section 15400.2 requires all claim files be kept and maintained for at least five years from the date of injury or date that benefits are last provided, whichever is later, and indicates that claims may be closed two years after benefits are last provided and that inactive and closed claim files may be microfilmed and original paper files shall be maintained for at least two years after the claim has been closed or becomes inactive. The proposed amendment to this section would allow for claims files to include electronic storage.

Existing Section 15405 addresses confidentiality of financial information of self insured employers submitted to the Director or Manager, including data related to an employer's solvency and to its claim liabilities, and lists exceptions related to data needed by the Self Insurers' Security Fund on employers that have defaulted on their liabilities, audit reports submitted to the Division of Workers' Compensation, and information required by subpoena or court order. This section is amended to also provide Self Insurers' Security Fund financial information to include actuarial report of any group self insurer so that Self Insurers' Security Fund can determine if the group self insurer can participate in the alternative security system

### **Article 11. Hearings and Appeal Procedures**

Existing Section 15430 is the first section in Article 11 of self insurance regulations that discusses self insurance matters that the Director may investigate or that may result in hearings.

Existing Section 15430.1 addresses definitions used in Article 11. This subsection is amended to clarify the definition of who the custodian for cash deposits and approved securities are, to clarify the definition of an aggrieved party and to typographically fix Appeal a Board to read as Appeals Board.

### **Article 13**

Existing subsection 15478 addresses the requirements for excess insurance for group self insurers. Existing subsection (a) requires all group self insurers to have and maintain a specific excess workers' compensation insurance policy from a California admitted carrier admitted to transact business in California by the Department of Insurance, and requires that the excess policy not have a minimum retention level above \$500,000. Existing subsection (a) also provides that the policy may not be cancelled or "non renewed" without prior written notice to the Manager and to the

group self insurer at least 30 days in advance. The proposed amendment is also necessary to allow the Manager to take market conditions into account when and if policies with \$500,000 retention become unavailable or too costly for the level of protection provided. The subsection (b) is amended to include the word “no” which was inadvertently left out because the upper limit of the policy requirement is no less than twenty-five million (\$25,000,000).

Existing Section 15481(a) requires each group self insurer “...at least annually...” to “... have an actuarial analysis done of its historical loss development and a projection of anticipated loss development...” The section specifies requirements for the actuary performing the study. In practice, group self insurers obtain actuarial studies no less frequently than annually, and often as frequently as semi-annually or quarterly. As well as projecting losses for the current year, the actuarial reports include projected ultimate costs for years past, thus projecting loss development from year to year. Most group self insurer’s add and lose members every year, and loss experience changes with the numbers of employers and employees covered, the frequency and severity of injuries, and changes to compensation rates required by law. Projected losses, and the contribution rates necessary to generate funds to pay for those losses, are more likely to be inaccurate the less frequently actuarial studies are conducted. For past years, costs on individual claims may change substantially as injured workers’ injuries require more or less treatment or other costs than initially estimated.

Existing subsection (b) requires the analysis and results of the study to be presented to the group self insurer’s Board of Trustees and to any group member requesting a copy, and requires the study to “... be commenced immediately following the close of program year...” with “... the written report presented to the Board of Trustees.” Subsection (b) is amended to change the required 90 days that the report is to be submitted to the Board of Trustees to 75 days after the end of the group self insurer’s program year. This change is necessary in order to allow sufficient time after the end of the program year to complete the study.

Existing subsection (c) requires the written report to be presented to the Manager by March 1 of each year that it is required and requires a written actuarial report to be submitted no later than 120 days after end of the group self insurer’s program year. This section is amended to change the requirement from 120 days to 90 days. This change is necessary in order to allow sufficient time to make sure the groups are financially stable.

Existing Section 15484 requires group self insurers to annually submit a certified, independently audited financial statement and that the financial statement shall be prepared according to Generally Accepted Auditing Principles (GAAP) and shall be submitted by July 1 following the end of the program year. This section is amended to change the submission date to March 1<sup>st</sup> because it is crucial that the Manager be able to ascertain the financial stability of the group self insurer at least annually in order to determine if assets exceed liabilities so that surplus funds may be released

pursuant to amended Section 15477. In order to make that determination, the Manager must be able to look at a financial statement that is guaranteed to be conducted independently, and in according to standard audit procedures. In addition, the Manager must be able to fully evaluate a group's expenses in order to address any corrective action that may be needed in the event the group self insurer is experiencing financial instability. This itemization in the financial statement is necessary in order to fully evaluate the group's performance.

A new subsection (i) is added to require that the Group Administrator on March 1<sup>st</sup> of each year to file with Office of Self Insurance Plans the budget plan for the group's current year along with the rates of contribution And a new subsection (j) is added to require any change in the rates of contribution from members as indicated in section (i) (1) through (3) be filed within 30 days of such change. This change is necessary in order to allow a prospective view of the financial capacity of a group. Financial reports are retrospective. The larger problem with groups in deficit is not having sufficient contribution. These documents will allow SIP to monitor groups earlier and be more proactive in preventing deficits.

### **Disclosures Regarding the Proposed Action**

#### Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

#### Determination of Mandate

The Director of Industrial Relations has determined that the proposed regulations do not impose a mandate on local agencies or school districts or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California constitution."

#### Cost or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or schools are required to be reimbursed in accordance with Government Code Sections 17500 through 17630.

#### Other Non-discretionary Costs or Savings Imposed on Local Agencies or School Districts

This proposal does not impose non-discretionary costs or savings imposed on local agencies or school districts.

#### Costs or Savings in Federal Funding to the State

This proposal will not result in costs or savings in federal funding to the state.

### Impact on Housing Costs

The Department of Industrial Relations has made an initial determination that the amendment of this regulation will not have a significant effect on housing costs.

### Cost Impact on Representative Private Persons or Businesses

The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Individual group self insurers may find the new security deposit requirements to be slightly higher than current requirements, but the increased costs are necessary to ensure that the security deposits posted for group self insurers are adequate to cover their liabilities.

### Impact on Business

The Department of Industrial Relations has made an initial determination that the amendment of this regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.

### Small Business Impact

This regulation will have no adverse impact on small business, but, to the contrary, is likely to have a positive impact on small businesses by allowing them to participate in group self insurance without incurring the unnecessary costs of obtaining reviewed financial statements for their business in instances where the group self insurer has already qualifies financially to self insure. Increases in application fees are minimal and are off-set by the elimination of pro-rata first year annual license fees.

### Assessment of Job/Business Creation or Elimination

The Department has made an assessment that the proposed amendment to the regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, and (3) affect the expansion of businesses currently doing business within California.

## **ALTERNATIVES CONSIDERED**

The Director must determine that no reasonable alternative has been considered by the agency or has otherwise been identified and brought to it's attention that would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. No reasonable alternative has been brought to the attention of the Director that would be less effective or less burdensome to affected persons than the proposed action.



**AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF  
PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS  
SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the Regulations Coordinator named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, pre-rulemaking and the Form 399.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at <http://www.dir.ca.gov/SIP/>. To access them, click on the "Proposed Regulations – Rulemaking" link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Office of Self Insurance Plans, 2265 Watt Avenue, Suite 1, Sacramento, California 95825, between 8:00 A.M. and 5:00 P.M., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the Regulations Coordinator.

**CONTACT PERSON FOR GENERAL QUESTIONS**

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Tina Freese  
Workers' Compensation Compliance Officer/Regulations Coordinator  
Department of Industrial Relations  
Office of Self Insurance Plans  
2265 Watt Avenue, Ste 1  
Sacramento, CA 95825  
E-mail: [tfreese@dir.ca.gov](mailto:tfreese@dir.ca.gov)

The telephone number of the contact person is (916) 574-0737.

### **CONTACT PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

James A. Ware  
Chief  
Department of Industrial Relations  
Office of Self Insurance Plans  
2265 Watt Avenue, Ste 1  
Sacramento, CA 95825  
E-mail: [jware@dir.ca.gov](mailto:jware@dir.ca.gov).

The telephone number of this contact person is (916) 574-0300.

### **AUTOMATIC MAILING**

A copy of this Notice, the Initial Statement of Reasons and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations with any final amendments will appear in Title 8 of the California Code of Regulations, commencing with section 1. The text of the final regulations also may be available through the website of the Office of Administrative Law at [www.oal.ca.gov](http://www.oal.ca.gov).

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, RULEMAKING FILE AND EXPRESS TERMS OF THE PROPOSED REGULATIONS**

The Agency has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Office of Self Insurance Plans at 2265 Watt Avenue, Suite 1, Sacramento, California 95825 during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Agency Contact Person designated in this Notice.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the close of the forty-five (45) day public comment period, the Director of the Department may adopt the proposed regulations. As a result of public comments, either oral or written, that are received by the Director regarding this proposal, the Director may determine that changes to the proposed regulation are appropriate. If the Director makes substantive modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Director adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Tina Freese at the above address. The Department will accept further written comments on the modified regulations for 15 days after the date on which they are made available.

### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

The Department is required to prepare a Final Statement of Reasons. Once the Department has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Department Contact Person identified in this Notice.

### **DEPARTMENT INTERNET WEBSITE**

The Department maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <http://sip.dir.ca.gov>.