

**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 – 15499.5)**

**Cal-OSHA Targeted Inspection Assessment
(Title 8, California Code of Regulations, Section 15601.7)**

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 2 sections 15203, 15203.1, 15203.2, 15203.3, 15203.4, 15203.5, 15203.6, 15203.7, 15203.8, 15203.9, 15203.10, 15204, and 15205, Article 3 sections 15210, 15210.1, 15210.2, 15210.3, 15211, 15211.1, 15211.2, and 15215, Article 4, Section 15230, Article 5 Section 15251, Article 7, Section 15353, Article 8, Section 15360, Article 9 Section 15405, Article 13, sections, 15470, 15471, 15472, 15473, 15474, 15475, 15476, 15477, 15478, 15479, 15480, 15481, and Subchapter 2.06, Article 2, Section 15601.7 in Title 8 of the California Code of Regulations, and add to Chapter 8, Subchapter 2, Article 13 new sections, 15475.1, 15475.2, 15475.3, 15482, 15482.1,

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15482.2, 15483, 15484, 15485, 15486, 15486.1, 15487, 15488, 15489, 15489.1, 15490, 15490.1, 15491, 15496, 15497, 15497.1, 15498, 15499, and 15499.5 in Title 8 of the California Code of Regulations.

The affected articles of Chapter 8, Subchapter 2 define terms in Articles 1 through 13, set requirements, including fees, for obtaining a Certificate of Consent to Self Insure, establish security deposit requirements, specify annual license fees and other assessments, specify annual report filing requirements, specify recordkeeping and audit requirements, and set requirements for obtaining consent to self-insure as members of self insured employer groups. The affected article of Subchapter 2.06 specifies the manner in which assessments are made to fund workers' compensation related funds.

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 at 5:00 p.m. on April 7, 2008. 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:

Mark Johnson, 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.

Chapter 8, Subchapter 2, Article 1

Existing Section 15201 provides definitions for commonly used terminology related to workers' compensation self-insurance. Amendments to this section will add as an amended subsection (p) the definition of Core Group Member as related to private group self insurers and provide that the Core Group Members need not be the same each year, re-order subsections so as to retain alphabetical order of the definitions contained in the section, and expand the definition of a group self insurer in subsection (t), formerly subsection (s), to add a private, non-profit charitable corporation, a private, non-profit public benefit corporation, or a private, non-profit religious corporation, substitute "homogeneous grouping" for "industry" and add clarification that a group self insurer issued a Certificate of Consent to Self Insure is not deemed to be an Insurance Company and not subject to regulations covering insurance companies. In addition, the definition of "Group Administrator" in subsection (v), formerly subsection (u), is amended grammatically and to clarify that the term "Group Administrator" can apply to a business entity as well as to an individual.

Article 2

Existing Section 15203 specifies the application forms to be used by every type of employer to procure an initial certificate to self-insure its workers' compensation liabilities. Amendments will remove the application and financial requirements for group self-insurers and group members from this section so that they will be included in Article 13, thus addressing all private group self insurance requirements in the same article rather than scattered around several articles in Subchapter 2. Amendments will be re-ordered to accommodate these changes and subsection (a) will be amended to specify that forms are available on the website of the Office of Self Insurance while removing the note referencing the location of application forms as being contained in the index of the regulations (that were enacted in prior years) Subsection (c)(7), formerly (b)(7), is amended to clarify that the required evaluation of an injury and illness prevention program be in writing, and subsection (h) is amended to add that a notice of deficiency including a list of items to be corrected is an action that may be taken on an application, and delete reference to a maximum processing time for applications.

Existing Section 15203.1 provides that a corporate parent must execute an Agreement of Assumption and Guarantee of Liabilities for any subsidiary or affiliate private sector applicant for self insurance, and provides that if the parent company will not execute an agreement, the Director may require a deposit level of 200% of the company's estimated future liabilities, or higher, or deny the application. This section is amended to limit its application to individual private self insurance applicants and removing reference to private group self insurers so that private group requirements will all be addressed in Article 13, and for grammatical clarity

Existing Section 15203.2 requires annual filing of financial statements by current self insurers. Subsection (a) provides that if a private self insurer has not prepared a certified, independently financial statement, it shall advise the Manager and submit a consolidated financial statement prepared by an independent certified public accountant. Subsection (b) provides that joint powers authorities that are responsible for their members' claims shall submit consolidated reports of their financial conditions to the Manager, and subsection (c) specifies private group self insurance financial reporting requirements. Subsection (d) provides that impairment of solvency of a self insurer is good cause for an increased security deposit and/or revocation of consent to self insure. Subsection (e) specifies net worth and net earnings requirements for private individual self insurers

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after July 1, 1994, and subsection (e) specifies those requirements for existing self insurers granted consent to self insure before July 1, 1994. Subsection (f) indicates financial requirements for private group self insurers.

This section is amended to limit its application to private individual self insurers, deleting the private group financial statement, net worth, and net earnings requirements from subsections (c) and (f) so that all private group self insurance requirements will be relocated to Article 13, Section 15484, and is amended for grammatical clarity and to reorder the remaining subsections accordingly. Subsection (a) is also amended to provide that the failure to submit a financial statement pursuant to this may result in an increased security deposit and/or revocation of a Certificate of Consent to Self Insure, and subsection (c), formerly subsection (d), is amended to include the failure to submit a financial statement of a revoked, as well as a current, private self insured employer as among the reasons that constitute good cause for an increased security deposit and/or revocation of a Certificate of Consent to Self Insure.

Existing Section 15203.3 requires a self insured application to include a resolution adopted by the company's Board of Directors to authorize application for self insurance, and requires the resolution to identify the employer by legal name, state, and date of incorporation. Subsection (b) requires that in the event of a reincorporation or other change of legal identity the company shall execute a new resolution to ratify the maintenance of self insurance within 30 days of the change, and subsection (c) provides that the manager shall include a model resolution as part of the application. This section is amended for grammatical clarity and to limit its applicability to private individual self insurers in order to relocate group self insurance resolution requirements to a new Section 15485 so that all private group regulations will be in Article 13

Existing Section 15203.4 provides that a resolution to self insure for a public entity or joint powers authority be executed by the governing board, and is amended for grammatical clarity.

Existing Section 15203.5 provides that applicants to self insure execute an Agreement for Undertaking For Security Deposit, provided as part of the application, and is amended to add the word "individual" to limit the section to individual self insurers in order to relocate group self insurance requirements for the form to a new Section 15486 in Article 13.

Existing Section 15203.6 provides that if a private self insurer does not start its self insurance within six months of approval, the approval shall be invalid and a new application shall be required, and provides that if self insurance has not begun within three months of approval, the employer may be required to provide current certification of good standing with the Secretary of State and current financial information, and is amended to limit its application to private individual self insurance in order to relocate requirements related to delayed start up of private group self insurance to a new Section 15487 in Article 13.

Existing Section 15203.7 addresses the issuance of a Certificate to Self Insure. Subsection (a) provides that an employer shall receive written confirmation of its self insured status within seven days after it has posted an assumption agreement and an adequate security deposit, and subsections (b) and (c) provide posting requirements for a self insured employer to display its Certificate of Consent to Self Insure and notify employees of coverage and how and where to file claims. Subsection (d) provides that if an employer is required to provide evidence of its self insured status, the Manager shall provide certification.

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The section is amended by limiting its applicability to private individual self insurers in order to relocate requirements related to the issuance of certificates to group self insurers for private group self insurance to a new Section 15488 in Article 13. Subsection (a) is eliminated, and subsection (c), formerly subsection (d), is amended to specify that the public can determine the status of a self insured employer at the website of the Office of Self Insurance Plans or obtain signed certification for a \$10 fee beginning July 1, 2008.

Section 15203.8 specifies that self insured employers must notify the Manager of any changes in its legal status within 30 days of a change and provides requirements for the self insured employer to retain its self insured status. This section is amended for grammatical clarity and to limit its application to public self insurers and private individual self insurers in order to relocate requirements related to change of status of private group self insurers to a new Section 15489.1 in Article 13.

Existing Section 15203.9 addresses the validity of a Certificate of Consent to Self Insure issued to a private self insurer, and provides that the Manager shall not issue a certificate with an effective date earlier than the date the complete application and required documents were submitted for approval. This section is amended for grammatical clarity and to limit its application to private individual self insurers in order to relocate requirements related to the validity of certificates for group self insurers to a new Section 15490 in Article 13. A new subsection (c) is added to provide that once the self insurance program has been initiated, other than through an Interim Certificate of Consent to Self Insure, the certificate is valid until revoked by the Director.

Existing Section 15203.10 addresses the circumstances under which a Certificate of Consent to Self Insure may be reinstated, including the requirement that the applicant issues a statement indicating that it assumes and guarantees all liabilities incurred during its prior period of self insurance. This section is amended to require the employer to submit a properly executed Assumption and Guarantee of Workers' Compensation Liabilities within 90 days of issuing the signed statement guaranteeing liabilities, and is amended for grammatical clarity and to limit its application to public self insurers and private individual self insurers in order to relocate requirements related to the validity of certificates for group self insurers to a new Section 15490.1 in Article 13.

Existing Section 15204 addresses application filing fees for private employers. This section is amended to limit its application to private individual self insurers in order to relocate requirements related application filing fees for group self insurers and group members, including requests for Interim Certificates, to a new Section 15491 in Article 13. In addition, this section is amended to specify that there will be a \$100 filing fee for a request for an Interim Certificate and that application fees shall be \$500 per application for a private individual, affiliate, or subsidiary certificate rather than \$500 for a single application and \$100 for each application submitted together with the first application, except that the application fee shall be reduced to \$400 if the application is to replace an Interim Certificate.

Existing Section 15205 provides that the manager shall issue an Interim Certificate of Consent to Self Insure for qualifying subsidiaries or affiliates of existing private self insurers, and specifies the information and documentation that must be submitted with the request for an Interim Certificate. The section provides that the Interim Certificates will be issued for a period not to exceed 180 days, and that an application and application filing fee must be submitted within 90 days of issuance of the Interim Certificate. This section is amended to delete the requirement that the application be submitted within 90 days of the issuance of the Interim Certificate and to allow the Manager to

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extend an interim period of self insurance for up to 90 additional days upon a showing of cause by the Interim Certificate holder.

In addition, this section is amended to limit its applicability to public and private individual self insurers so that requirements related to Interim Certificates will be relocated to a new Section 15482.2 in Article 13.

Article 3

Existing Section 15210 addresses security deposit requirements for all private self insurers and is amended to limit its application to private individual self insurers and for grammatical clarity.

Existing Section 15210.1 addresses adjustments to security deposit requirements for all private self insurers and is amended to limit its application to private individual self insurers and for grammatical clarity.

Existing Section 15210.2 addresses audits and increases of all private self insurers and is amended to limit its application to private individual self insurers.

Existing Section 15210.3 addresses authority for all self insurers to insure part of their liabilities and is amended for clarity and to limit its application to private individual and public self insurers.

Existing Section 15211 permits private self insured affiliates and subsidiaries that are granted Certificates of Consent to Self Insure under the master Certificate of Consent to Self Insure of a parent company to post separate security deposits under that Master Certificate. This section is amended to limit its application to private individual (non-group) self insurers and to prohibit the posting of separate security deposits that apply only to subsidiaries or affiliates included under the master certificate.

Existing Section 15211.1 authorizes the Manager to order an independent financial evaluation of a private self insurer in the event that self insurer wishes to appeal the Manager's requirement for an increased security deposit because of the self insurer's impaired financial status, and specifies that the appeal will be considered by the Manager upon receipt of the report. This section is amended to limit its application to private individual (non-group) self insurers and to specify that if the matter is not resolved between the self insurer and the Manager, the appeal will be addressed pursuant to Labor Code Section 3701.5(g) and Article 11 of these regulations

Existing Section 15211.2 provides that at the discretion of the Manager, the liabilities of any self insurer may be assumed and guaranteed by any other legal entity or person, and specifies the form required for such a guarantee. The section also provides that a private affiliate or subsidiary self insurer shall provide a guarantee agreement executed by its parent company, but allows the Director to waive the requirement for the parental guarantee if the self insurer maintains "... a minimum of a 200% deposit rate..." The section also requires board resolutions authorizing signature authority for execution of guarantee agreements and establishes parameters for the termination of guarantee agreements. This section is amended to limit its application to private individual (non-group) self insurers, for grammatical clarity, and to specify that an increased security deposit may be required pursuant to Section 15203.1.

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Existing Section 15215 sets the requirement for institutions offering letters of credit as security deposits for private self insured employers. This section is amended for grammatical clarity, to substitute the term “financial institution” for “savings institution”, and to add federally or state chartered credit unions insured by the National Credit Union Share Insurance Fund to the list of institutions acceptable for providing letters of credit. The section is also amended to specify that letters of credit must conform to the “current revision” rather than the “1993 Revision” of the Uniform and Practices for Documentary Credits published by the ICC...

Article 4

Existing Section 15230 addresses annual license fees paid by all private self insured employers, and is amended for clarity to specify that payment is due 30 days after the date of the invoice rather than stating that the “assessment is due 30 days after the invoice mailing.” In addition, the requirement that each new private self insurer pay a pro rata share of the annual license fee is rescinded.

Article 5

Existing Section 15251 sets requirements for the filing of self insurers’ annual reports. Subsection (a) is amended for clarity to specify that self insurers must continue filing annual reports until all claims have been closed. This subsection is also amended to state the Manager shall post the annual report and instructions for filing the report in the website of the Office of Self Insurance Plans no later than 60 days before the required filing date, and to eliminate reference to the availability of the forms in the appendices of regulations promulgated in various earlier years. Subsection (a) is also amended to eliminate the requirement that private group self insurers file their annual reports on a different form than individual private self insurers, and to eliminate the requirement that public sector self insurers that belong to joint powers authorities file their reports on a different form than individual public sector self insurers, therefore requiring all private self insurers to file on one form already existing in regulations, and all public self insurers to file on another form already existing in regulations

Subsection (b) is amended to eliminate reference to filing separate location reports for subsidiaries of self insurers that post separate security deposits under the same master certificate in order to conform to amended Section 15211 and new Section 15499, and to eliminate that the provision requiring claims of a self insurer that merges into another self insurer be merged into the surviving self insurer’s file after five years. This section is also amended for grammatical clarity and to provide that credit against the security deposit for specific excess insurance reported on a private self insurer’s annual report shall not exceed \$500,000 per occurrence unless the excess carrier meets specified financial rating requirements.

Subsection (c) is amended for grammatical clarity and to eliminate the requirement that public sector self insurers that are members of joint powers authorities submit separate location reports even if claims are adjusted at the same location, so long as the employer for each employer is indicated for each claim listed on the list of open indemnity claims., to indicate that no deposit calculation page is required for public self insurers, and to eliminate requirements for joint powers authorities’ annual reports that are separate for public individual self insurer requirements provided in subsection (b).

Article 7

Existing Section 15353 sets requirements for evaluation of employers' injury and illness programs that are applying to self insure, and is amended to clarify the designation of a "Certified Safety Professional."

Article 8

Existing Section 15360 addresses the provisions for a self insured employer to transfer its self insured liabilities to a third party. This section is amended to adopt and publish minimum insurer financial rating standards for companies issuing special excess workers' compensation policies assuming liabilities of a self insured employer, as required by Labor Code Section 3702.8(c)(3).

Article 9

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 re-order subsections to address information related to financial statements in subsection (a), Self Insurer's Annual Reports in subsection (b), and audit reports in subsection (c). Subsection (a) is amended to specify that financial data needed to evaluate self insurers for the alternative security program shall be provided to the Self Insurers' Security Fund pursuant to Labor Code Section 3701.8, and to specify that the board of trustees of any group self insurer shall make the group financial statement available to group members on request. Subsection (b) is amended to specify that Self Insurers' Annual Reports of employers whose liabilities have been assumed by the Security Fund, and of employers participating in the alternative security program, shall be provided to the Security Fund, and that portions of Self Insurers' Annual Reports indicating aggregate liabilities shall be provided to parties on request Public Records Act requests, pursuant to Labor Code Section 3702(c) and Government Code Section 6253. Subsection (c) is amended to provide that audit reports of employers whose liabilities have been assumed by the Security Fund shall be provided to the Security Fund, and those of any self insured employers that are the subject of investigation or audit by the Division of Workers' Compensation shall be provided to the Division of Workers' Compensation.

Article 13

Existing Section 15470 sets forth general requirements for group self insurance, including specifying in subsection (a) that a group must be a California not-for-profit mutual benefit corporation formed to pool the workers' compensation liabilities. Subsection (a) is amended for grammatical clarity and to apply to for-profit members only, and a new subsection (b) is added to provide that non-profit charitable corporations, non-profit public benefit corporations, non-profit mutual benefit corporations, and non-profit religious or apostolic corporations may also be formed to pool liabilities of non-profit corporations.

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Existing subsections (b) through (i) are re-lettered as subsections (c) through (j) and amended for clarity and to add appropriate references to other specific regulations. Subsection (d), amended from subsection (c), is also amended to provide that initial qualifying group member applications shall be submitted together with the group application for consent to self insure. A new subsection (k) is added to provide that group self insurers are subject to assessments for annual license fees set forth in Article 4, and a new subsection (l) is added to specify that a group self insurer is not an insurance company and not subject to regulations governing insurance carriers unless otherwise provided by statute or Title 8 regulations.

Existing Section 15471 provides that each application to be self insured as a group self insurer shall include a feasibility study, and sets forth required components of the feasibility study. The section is amended for grammatical clarity and to add additional items to be addressed in the feasibility study report, including requirements that the actuarial projections of expected claims costs be completed by an actuary with current experience in making California workers' compensation actuarial projections for self insured employers or group insurance, that the group's operating plan include descriptions of policies related to commissions, fees, and other expenses, that any restrictions imposed by the specific excess carrier be specified in the report, and that the report include an indication of how frequently actuarial reports will be completed.

Existing Section 15472 sets minimum net worth requirements of group self insurers through reference to existing Section 15203.2(f), which is rescinded in order to provide group self insurers' net worth requirements in this section. Subsection (a) is amended to include the provision from Section 15203.2(f) that group self insurers can meet financial requirements to self insure by demonstrating aggregate net worth of \$5 million and aggregate average net earnings of \$500,000 per year from certified, independently audited financial statements of group members. Subsection (a) is also amended to provide two additional options for meeting financial requirements for group self insurers – by demonstrating \$10 million in aggregate net worth from certified, independently audited financial statements of group members if those qualifying group members do not demonstrate average net earnings of \$500,000 per year, or by demonstrating \$15 million in aggregate net worth from qualifying group members if documented with reviewed financial statements of qualifying group members rather than certified, independently audited financial statements, or if the qualifying members consist, in whole or in part, of IRS Subchapter S – Corporations.

Subsection (b) is amended to change the requirement that the group administrator “maintain a copy of the current and immediate past year's independently audited financial statement of each group member” to a requirement that the group administrator shall provide to the Manager within 30 days of request documentation showing that the group self insurer's core members continue to meet the requirements of subsection (a). Subsection (b) is also amended to specify that the core members of the group need not be the same affiliate group members from year to year.

A new subsection (d) is added to specify that financial statements submitted to qualify group members pursuant to subsection (a) must be prepared according to Generally Accepted Accounting Principles (GAAP), and allow the Manager to accept as meeting requirements documentation that up to 75% of the fair market value of real property to be considered as net worth and up to 50% of the corporate owner/officer's payroll to be considered as net earnings.

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Existing Section 15473 sets forth the manner in which group self insurers must demonstrate and maintain homogeneity of their group members. Subsection (a) is amended to replace demonstrating homogeneity by sharing the same two-digit Standard Industrial Classification (SIC) code with sharing the same three digit North American Industry Classification System (NAICS) code, and by replacing demonstrating homogeneity by sharing three-digit SIC codes if sponsored by trade associations with sharing the same governing class code as established by the Workers' Compensation Insurance Rating Bureau (WCIRB).

Subsection (b) is amended to replace the provision that the Manager shall also consider other information available on the nature of the business of each group member with a provision that the group self insurer may demonstrate homogeneity of a member by showing that the risk factors of the group member are comparable to those contemplated in the feasibility study, or if a group member is a wholly owned subsidiary of a group member that has demonstrated homogeneity and the payroll of the subsidiary does not exceed its total payroll and no more than 25% of its payroll fails to meet homogeneity requirements as set forth in this section, or if no less than 75% of its payroll is distributed among two industry specific payroll classifications that are within 10% of each other.

The provision that the Manager may require the group self insurer to submit additional information or documentation to demonstrate homogeneity is amended grammatically for clarity and re-located to a new subsection (d).

Existing Section 15474 requires self insurance groups to administer their groups on a calendar year basis and to file an annual report as required by Section 15251, and is amended grammatically and to clarify that the first year's annual report must be filed by March 1 and may be for a period shorter than 12 months, but the group self insurer's first program year may be for a period longer or shorter than 12 months..

Existing Section 15475 sets forth the duties and responsibilities of the Board of Trustees of a group self insurer. The section is amended grammatically and for clarity and to specify additional responsibilities and duties that may be delegated to the group administrator.

Subsection (b) is amended to specify that no service provider or person with financial interest in a service provider shall serve as a voting member of the group self insurer's board of trustees.

Subsection (d)(1) is amended to specify that the Board of Trustees must ensure that there are no conflicts of interest involving board members, the group administrator, or other service providers, Subsection (d)(3) is amended to must contract with a third party administrator to handle claims, Subsection (d)(5) is amended to must ensure that any financial institution handling accounts for the group self insurer must be located in California, Subsection (d)(6) is amended to must obtain an annual audit of the group self insurer's financial accounts, Subsection (d)(7) is amended to must contract with an actuary to complete annual actuarial studies that comply with Section 15471(a)(4), Subsection (d)(8) is amended to must ensure that group funds are handled pursuant to Section 15475.2 and/or invested pursuant to Section 15471.3 and that no group member is extended credit for contributions, and Subsection (d)(9) is amended to change the requirement that the board restrict investments to certain bonds and/or securities to a requirement that the Board ensure surplus funds are invested only as provided by new Section 15475.3. In addition, a new subsection (d)(10) is added to require the Board to ensure that board meetings are held no less frequently than annually to

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adopt a budget, approve contribution rates, and review investments, and a new subsection (d)(11) is added to require the Board to ensure that the group administrator immediately reports in writing to the Board any non-compliance with statutory or regulatory requirements for the group self insurance program or any instance where a group member's membership is terminated for cause.

Subsection (e) is amended grammatically for clarity and to specify that duties delegated by the Board of Trustees must be specifically authorized in the Group By-Laws, including advising the Board if prospective members do not fully meet group underwriting criteria and establishing accounts in financial institutions and procedures for accounting and controlling group funds.

A new Section 15475.1 is proposed to require separation among service providers for group self insurers. Proposed subsection (a) prohibits a group self insurer's claims administrator or claims bill reviewer or any of their employees, officers, or directors from having any direct or indirect management or financial interest in the group administrator or any affiliate member of a group self insurer, or vice versa. Proposed subsection (b) prohibits a group administrator, claims administrator, or insurance broker from serving as the certified public accountant for any group self insurer that it provides services to, and prohibits any owner or employee of an affiliate group member from serving as the certified public accountant of the group self insurer. Proposed subsection (c) prohibits any insurance broker of a private self insured group or employee, officer, or director of the insurance broker with a direct or indirect management or financial interest in the self insured group's claims administrator from being an employee, officer or director of, or having a direct or indirect management or financial interest in the Group Administrator of the same private self insured group unless the group self administrator notifies the Board of Trustees of the group self insurer in writing of its relationship, and prohibits the group self insurer from being required by the Group Administrator to utilize only the Group Administrator as broker of record. Proposed subsection (d) prohibits the actuary of a private self insured group preparing a written actuarial report pursuant to Section 15475(d)(7) from being an employee, officer or director of, or have a direct or indirect management or financial interest in the Group Administrator of the same private self insured group unless the Group Administrator notifies the group self insurer and the Manager in writing of its relationship; and provides that the Manager at his or her discretion may require that a written actuarial report pursuant to Section 15475(d)(7) be prepared at the expense of the group self insurer by an independent actuary with no relationship to the group administrator.

A new Section 15475.2 is proposed to restrict the use of funds by the group. Proposed subsection (a) requires that all expenses and costs be fully disclosed to the group membership and reported to the Manager as a separate exhibit in the annual financial report of the group, and that contributions for each program year be adequate to pay incurred but not reported (IBNR) and unallocated loss adjustment expense (ULAE) at the 80% actuarial confidence level. Proposed subsection (b) prohibits the group, trustees, group administrator, claim administrators, and other agents and vendors of the group self insurer from utilizing funds for any purpose not directly related to the payment of claims or of fees related to funding the group, including the posting of a security deposit, penalties, excess insurance premiums, or for any other reasonable obligations or costs of operation of the group as determined by the Board, including the refunding of surplus funds authorized pursuant to Section 15477. Proposed subsection (c) prohibits the board trustee, group administrator, claim administrators and other agents and vendors from borrow money from the private group self insurer or in the name of the group, lending or permitting any lending or issuance of debt instruments or other encumbrances or obligations, or extending credit to any group member for the payment of

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contributions or assessments. Proposed subsections (c)(1) through (c)(3) allow the group self insurer to permit fixed installment plans not to exceed ten (10) months for the payment of contributions or of special assessments to make up funding insufficiencies of current members, and prohibit the commingling of funds or assets of any group member or any other group self insurer. Proposed subsection (d) specifies that once surplus funds of the private group self insurer have been declared, they shall not be commingled in the checking account(s) dedicated to the payment of and administration of current liabilities of group member claims, assessments, or other claims related costs of the group's operation.

A new Section 15475.3 is proposed to address the investment of funds by a group self insurers. . Subsection (a) provides that, subject to the limitations set forth in proposed Section 15475.2, the board may invest funds not immediately needed for the payment of group liabilities in United States Treasury Bills, Notes, U.S. Bonds, bond that are insured or guaranteed by the federal government, certificates of deposit insured or collateralized as long as they have a maximum maturity of two years and do not exceed 15% of the total portfolio, money market accounts in financial institutions in California that are insured by a federal agency, and other state or local government bonds..

Proposed subsection (b) provides that the board may invest funds in other instruments as long as they are invested through a registered investment advisor, including prime bankers acceptances of the 50 largest global banks, commercial paper meeting specified rating requirements, as long as the maximum maturity does not exceed 270 days or 25% of the total portfolio, medium-term notes with a maximum maturity of five years or less as long as they do not exceed 30% of the total portfolio, preferred stock not exceeding 10% of the total portfolio, and equities as long as they do not exceed 30% of the total portfolio.

Proposed subsection (c) prohibits the practice of "selling short", and proposed subsection (d) prohibits investment in group funds in commodities, futures contracts, stock not listed on an exchange or sold to the public, stock options, or limited partnerships. Proposed subsection (e) limits the investment of group funds in a single issuer or mortgage-related security, with the exception of government notes or bonds, to 5% of the group's total portfolio. Proposed subsection (e) specifies that the weighted average portfolio maturity may not exceed five years.

Existing Section 15476 prohibits contribution discounts to any group members, and is amended for clarity.

Existing Section 15477 addresses surplus and insufficient funding of group self insurers. Subsection (a) is amended to specify that surplus funds may be declared when a group self insurer's assets exceed its liabilities and when funds for a given program year exceed the amount of funds needed for any given program year, and substitutes the term "program year" for "calendar year." Subsection (a) is also amended to change the provision that surplus funds may be declared to be refundable at any time to provisions that the amount of the surplus need not be known at the time of the declaration, that surplus funds may not be distributed to group members any sooner than 23 months after the end of the program year without the express written consent of the Manager but that they may be transferred to an escrow account before that time, and the provision that surplus funds may be refunded to group members after 23 months after the end of the program year without the Manager's consent, but only if funding for the year remains at the 80% confidence actuarial level.

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Subsection (a) is also amended to provide that the Manager may authorize earlier release of surplus funds or a declaration based on a lesser actuarial confidence level, but may require a special audit or an independent actuarial study for such a refund, and to prohibit a reduction in contribution rates for group members unless supported by an actuarial study conducted pursuant to Section 15481.

Subsection (b) is amended grammatically for clarity and to add the options that the Manager may approve to correct funding deficiencies of a group, including, but not limited to, re-evaluating and increasing contribution rates, prohibiting the addition of new members to a group, suspending the release of over-collected contributions or investment earnings, the immediate collection of all assessments, or an examination and restructuring of group self insurer's operations.

Subsection (d) is amended to correctly identify it as subsection (c) and to change the provision that the Manager may require the board of trustees of a group self insurer to show cause before the Director why it should not immediately assess its members to make up a deficiency or require that surplus funds distributed to members during the previous year be immediately returned to the group self insurer, and/or why the Director should not order the appointment of a conservator or liquidator.

Subsection (e) is amended as subsection (d) to correct the lettering sequence, for grammatical clarity, and to specify that the Self Insurer's Security Fund may be appointed as a group self insurer's conservator or liquidator.

Existing Section 15478 specifies requirements for specific excess insurance for group self insurers. Subsection (a) is amended to specify that one more, rather than just one, excess policy must be maintained, increases the mandatory self insurer's retention level from \$500,000 to \$1,000,000, but only with written consent of the Manager, specifies that the minimum upper limit of excess insurance coverage shall be no less than \$25,000,000, establishes credit rating standards for an excess carrier providing specific excess coverage for the group self insurer, and requires the group self insurer to obtain coverage through another carrier that meets financial standards if the carrier falls below the required financial standards.

A new subsection (b) is proposed to provide that a group self insurer wishes to obtain approval for a retention level above \$500,000, it must demonstrate its ability to assume such a retention level through its audited financial statement and a current actuarial study, provides that the Manager may require other factors to determine whether a higher retention level may be allowed, and provides that in no event shall the retention level be above \$ one million per occurrence.

Existing subsection (b) is amended as subsection (c), and eliminates requirements for aggregate excess insurance if it is obtained, and specifies that no security deposit credit will be allowed for any aggregate excess insurance obtained by the group self insurer. Existing subsection (c) is amended as subsection (d) and eliminates unnecessary reference to a group self insurer's inability to pay claims. Existing subsection (d) is amended as subsection (e), eliminates reference to aggregate excess insurance, adds a requirement that any direct or indirect ownership in a group self insurer's specific excess carrier by the group administrator or any other service provider be disclosed to the group self insurer's board of trustees along with the price quoted for coverage, and prohibits a group self insurer or group member from functioning as a re-insurer for the group's specific excess carrier.

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Existing Section 15479 prides requirements for the execution of an Indemnity Agreement and Power of Attorney for each group member, and is amended for grammatical clarity and to include the internet location of the Indemnity Agreement and Power of Attorney form.

Existing Section 15480 addresses requirements for an affiliate group member's termination of group membership. Subsection (a) is amended for grammatical clarity and to provide that notification to a broker of involuntary termination or membership in a group self insurer shall not be deemed as notice to the member. Subsection (b) is amended for clarity, to specify that a group member whose membership is terminated shall remain liable for contributions and assessments during its membership, and to eliminate the notes following the subsection.

Subsection (c) is amended to delete the provision that notice to the Manager of termination of a group member's membership in a group is good cause for cancellation of consent to self insure of the group member, which is re-located to a new subsection (d), and to add provisions that a group self insurer shall not incur liability for any claim of a group member after the effective date of coverage through a standard workers' compensation insurance policy obtained by the member, and to add instances in which a group member may transfer its claims from the group to another entity, including through the purchase of special excess insurance, transfer to another group or to another individual self insurer.

A new subsection (e) is proposed to provide that group member leaving group self insurer coverage shall provide proof of insurance to the Manager unless the employer no longer has employees in California, and to provide that the Manager shall notify the labor Commissioner if the employer still operating with California employees leaves the group without providing proof of insurance. A new subsection (f) is proposed to provide that a group member may leave a group self insurer at the end of a program year, but if the Group Bylaws require a specified period of membership, the group may specify penalties, loss of return of surplus funds or other sanctions.

Existing Section 15481 requires group self insurers to submit an actuarial analysis at least every two years and present it to the group self insurer's board of trustee, requires the group self insurer's board of trustees to submit the written actuarial report to the Manager by March 1 of each required year, and requires the board of trustees to ensure that funding of claims for the group be based on the actuarial projection at the 80% confidence level. This section is amended to require that the actuarial analysis be conducted annually rather than every two years, that projections be conducted at both the 80% and the 70% confidence factor and include incurred but not reported and unallocated loss expense projections, that the report be presented to the board of trustees and the group administrator within 90 days of the end of the group's program year and to the Manager within 120 days of the end of the program year. Subsection (c) is amended to require that the report shall project the amount of losses projected at both the 80% and 70% confidence levels and include the amount of contributions collected and the amount of surplus funds distributed to members for the program year.

A new Section 15482 is proposed to address the requirements for applications for Certificates of Consent to Self Insure for private groups of employers. The requirements pertaining to applications for group self insurers from existing Section 15203(a), (d), and (e) are re-located to this new proposed section with relatively few changes. Proposed subsection (a) adds the requirement that applications be submitted no less than 60 days before the requested date of self insurance and

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include applications for qualifying group members. Proposed subsection (b) includes new requirements that applications include financial statements from qualifying group members, that applicants may qualify based on their parent companies' financial statements if the parent company has guaranteed liabilities of the applicant, and that certification that an employer is licensed to do business in California is dated within 90 days of receipt by the Manager. In addition the former requirement from amended Section 15203 that all financial statements be certified, independently audited financial statements is not included in proposed Section 15482.

A new Section 15482.1 is proposed to address the requirements for applications for Certificates of Consent to Self Insure for private group members of employers. These requirements are re-located from amended Section 15203(e) to this proposed section with relatively few changes. Proposed Section 15482.1(a)(1) provides that financial statements are not required for new non-core members of approved groups that have already financially qualified for self insurance, and proposed subsection (b) provides that notwithstanding subsection (a)(1) the Manager may require a financial statement for any new group member with projected contributions of 25% or more of the group's total contribution. Proposed subsection (c) provides that a separate application is required for any new or separate subsidiary or affiliate of an existing group member in order for it to be considered for self insurance, and proposed subsection (d) requires a new application if a group member reincorporates, merges, or otherwise changes its identity.

A new Section 15482.2 is proposed to address the requirements for allowing new group members to qualify and be approved for self insurance on an interim basis. Provisions addressing the granting of Interim Certificates for private group members are re-located from existing Section 15205, which is amended to apply to subsidiaries and affiliates of individual self insurers, but not group members. Provisions related to the issuance of Interim Certificates for group members remain the same as under Section 15205, except that proposed Section 15482.2(a) provides that the Manager may extend the duration of the Interim Certificate for an additional 90 days beyond the 180 day duration of the Interim Certificate. In addition, subsection (b) provides that to qualify for the issuance of Interim Certificates, the group self insurer must demonstrate that core members meet the financial requirements of Section 15472(a), and the group self insurer must not be prohibited from adding new members pursuant to Section 15474(b)(5). Proposed subsection (c) provides that a request for an Interim Certificate must include the new member's experience modification and NAICS code as well as information required under amended Section 15205, as well as a signed statement from the group administrator certifying that the new member meets homogeneity and underwriting requirements of the group self insurer and that the group self insurer shall be financially responsible to pay all of the member's workers' compensation liabilities incurred during the interim period. Proposed subsection (f) provides that if the interim certificate is revoked before the expiration date or allowed to expire, the group self insurer shall provide proof of workers' compensation insurance to the Manager and the group administrator and shall remain responsible for liabilities incurred from the effective date of the member's self insurance until the effective date of the insurance coverage, the expiration date of the Interim Certificate, or the 60th day after any Notice of Intent to Revoke the Certificate issued by the Manager whichever comes first. Proposed subsection (f) also provides that the Manager shall notify the Labor Commissioner has not provided proof of insurance within 45 days after denial of a permanent certificate.

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A new Section 15483 is proposed to address requirements for the group self insurer to execute Agreements of Assumption and Guarantee of Workers' Compensation Liabilities for all group members. The provision in existing Section 15203.1(b) that states that the Manager may require a 200% security deposit in lieu of a guarantee agreement is rescinded, so that if a group administrator declines to execute the agreement, the Director must revoke the certificate or deny the application. In addition, subsection (b) is proposed to provide that the Director may deny an application for a group member if the member's parent company declines to execute a guarantee for the group member.

A new Section 15484 is proposed to specify requirements for a group's certified, independently audited financial statement. Requirements for the group self insurer to annually submit a financial statement to demonstrate its continuing financial capacity to pay all claims are relocated from existing Section 15203.2 to this new section with clarifying language to identify the requirements of the financial statement, by indicating that the statement must meet Generally Accepted Auditing Standards (GAAP). In addition, proposed subsection (a) establishes a deadline, requiring that the financial statement be submitted by July 1 following the end of a program year, and proposed subsection (b) lists certain financial data required to be itemized in the financial statement, including fees and commissions paid to the group administrator, brokers, and the third party administrator, and costs associated with posting a security deposit, obtaining actuarial reports accounting services, and other expenses. Other requirements related to the continuing financial capacity of group self insurers in proposed Section 15484 are provisions indicating that the group self insurer shall annually obtain necessary financial statements from core members to ensure that the group continues to meet financial requirements, providing that the group self insurer may determine other members' suitability for membership from other documentation, and requiring the group administrator immediately in writing if the group's core members no longer meet the financial requirements of Section 15472(a).

A new Section 15485 is proposed to require corporate resolutions to authorize self insurance for group self insurers and their members. These requirements are re-located from existing Section 15203.3 with no substantive changes other than to tailor the language to apply to group self insurance, and not to individual self insurers.

A new Section 15486 is proposed to require all private group self insurers to execute an Agreement and Undertaking for Security Deposit, and for all security deposits of group self insurers to be posted in accordance with the provisions of the Agreement and Undertaking. These provisions are re-located to this proposed new section for group self insurers with no substantive changes.

A new Section 15486.1 is proposed to require group self insurers to obtain written evaluations of the injury and illness prevention programs of their initial core members and submit them with their applications to become self insured. The requirements from existing Section 15353 in Article 7 as they pertain to group self insurers are relocated to this section with no substantive changes, except that proposed this Section 15486.1 requires evaluations of the initial core members of the group self insurer when the group self insurance application are submitted, and the Board of Trustees is then required to ensure that the group self insurer maintain an effective safety and risk control program among the group's membership. In addition, a qualified safety professional is required to

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submit a report of safety and risk control activities to the group's Board of Trustees no less frequently than annually.

A new Section 15487 is proposed to address requirements involving the delayed start up of any group self insurer after approval by the Director for a Certificate of Consent to Self Insure. The provisions of this proposed section are re-located from the portions of existing Section 15203.6 that involve group self insurance with the no substantive changes other than to add a provision in subsection (b) that the Manager may extend the approval for a new group self insurer for an additional three months upon a showing of good cause, and to provide that the required security deposit amount may be recalculated in the event that start up is delayed.

A new Section 15488 is proposed to address the initial issuance of a Certificate of Consent to Self Insure to a group self insurer and to set forth requirements for the posting of the Certificate of Consent to Self Insure and required Notice to Employees and to set forth the requirements for obtaining certification of self insurance for the public. The provisions of this proposed section are re-located from the portions of existing Section 15203.7 that involve group self insurance with no substantive changes other than to specify that the Certificate of Consent to Self Insure will be provided to the group administrator, which will issue the certificate to the group member instead of being provided to the group member directly from the Manager within seven days of approval. In addition, the indication that a sample of a Certificate of Consent to Self Insure is in the appendix of regulations adopted in 1992 is omitted, and the provision that certification of self insured status can be obtained from the Manager is changed to indicate the address of the website of the Office of Self Insurance Plans where the status of self insurance of self insured employers can be determined, and to specify that there is a \$10 fee for signed certification of self insured status effective July 1, 2008.

A new Section 15489 is proposed to require the group self insurer and/or group administrator of a group self insurer to notify the Manager in writing and provide copies of any amendments, changes or updates to a group self insurer's charter, by-laws, underwriting criteria, or operating agreement.

A new Section 15489.1 is proposed to require a group self insurer and/or group member that changes its business structure or ownership in a material manner from the status that existed at the time of the issuance of its Certificate to Self Insure to notify the Manager in writing within 30 days of the change, and to provide documentation of the change. The provisions of this proposed section are re-located from the portions of existing Section 15203.8 that involve group self insurance with no substantive changes.

A new Section 15490 is proposed to provide that a Certificate of Consent to Self Insure issued to a group self insurer or affiliate group self insurer is valid only to the entity to which it is issued, that except as provide in Labor Code Section 3701.7 a Certificate shall not be issued with an effective date earlier than the date of approval of the group member by the Board of Directors of the group self insurer, and to specify that except for Interim Certificates, a Certificate is valid until revoked by order of the Director. These provisions are re-re-located from the portions of amended Section 15203.9 that pertained to group self insurers with no substantive changes, except that the earliest

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effective date for self insurance is changed from the date of approval by the Director to the date of approval by the group self insurer's board of trustees.

A new Section 15490.1 is proposed to address reinstatement of a Certificate of Consent to Self Insure for a private group self insurer or affiliate member of a group self insurer. These provisions for group self insurers are re-located from the portions of amended Section 15203.10 with no substantive changes other than for grammatical clarity, to tailor the language for group self insurance, to provide that the group administrator will provide a statement indicating that the group self insurer's Assumption and Guarantee of all workers' compensation liabilities will include any additional self insured liabilities incurred after the group member's change in status, or, if indicated, execute a new Assumption and Guarantee Agreement regarding the affected group member. In addition, proposed subsection 15490.1(c) specifies that the Manager shall prepare and issue an order reflecting the change in status of the group self insurer and/or group members and reinstating its Certificate(s) to Self Insure.

A new Section 15491 is proposed to address application fees for private group self insurers and group members, and fees for Interim Certificates of Consent to Self Insure for group members. Fees specified in existing Section 15204 for all private self insurers are changes for private individual self insurers and their subsidiaries and affiliates in that section, and for group self insurers and group members in this section. Application fees for group self insurers are increased from \$500 to \$1,000, and fees of \$100 are established for requests for Interim Certificates. In addition the application fee structure for applications bundled together is changed from \$500 for a single application and \$100 for additional applications submitted together with the first application to a structure wherein there is a \$500 fee for each application, whether bundled together with other applications or not, but \$400 per application if an Interim Certificate had been issued and is in effect. No other changes to the application fee structure are being proposed.

A new Section 15496 is proposed to address security deposit requirements for group self insurers. Security deposit requirements for all private self self insurers, including employers self insured or as members of groups, have been addressed pursuant to Section 15210(c) once a self insurer has been self insured more than three years, Section 15210(d) from the date of approval of self insurance until after the self insurer has been self insured for three full years, and Section 15210(e) to cover the addition of new group members that were not covered when the initial security deposit was calculated. Those requirements are re-located to this proposed Section 15496 for group self insurers with no substantive changes other than for clarity. In addition, an alternative method for calculating a group self insurer's initial security deposit is added as proposed Section 15496(b)(2), which provides that the initial deposit may be calculated as no less than the greater than the statutory minimum deposit, 60% of one year's projected losses as indicated in the actuarial report submitted with the application, or a higher amount approved by the Director. Proposed subsection (c) provides that if the deposit is based on 60% of projected one year's losses, the deposit will be increased in three installments over the group self insurer's first year of self insurance in order to be no less than 135% of estimated future liabilities by the end of the first year of self insurance.

A new subsection (d) provides that the group self insurer's deposit shall be increased by an amount equal to one year's average losses over the past three years for the new member, or, if the new member has no loss history, based on one year's projected contributions, and provides that the

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increase shall be posted within 30 of issuance of the Interim Certificate. Proposed subsection (e) relocates the provisions covering the types of security deposits permissible from Section 15210(f) to specify the same manner in which the security deposit may be posted for group self insurers – by surety bond, letter of credit, cash, securities, or a combination of those instruments. Proposed subsection (f) re-locates for group self insurers the provision in existing Section 15210(g) that failure to maintain a security deposit may result in the assessment of civil penalties and/or revocation of the Certificate of Consent to Self Insure. Proposed subsection (g) provides that a self insurer requesting a hearing related to action taken for failure to maintain a security deposit shall provide proof of workers' compensation insurance coverage for the period of time without the required security deposit or deposit increase.

A new Section 15497 is proposed to address adjustments in the security deposit amounts for group self insurers. Proposed subsection (a) specifies that the Manager shall review each group self insurer's security deposit requirement each year following receipt of its Self Insurer's Annual Report, calculate the deposit requirement pursuant to Labor Code Section 3701 and Section 15496(a) of these regulations, and the group self insurer shall post any required increase no later than May 1 of that year. This amendment relocates for private group self insurers the requirement to post a deposit increase annually if indicated from existing Section 15210.1(b) in Article 2, and specifies the same deadline for group self insurers as provided in existing Section 15210.1(b).

Proposed subsection (b) provides that the Manager may require amounts additional to the amount calculated pursuant to subsection (a) in the event that new members are added to the group that have not yet reported a full year of losses, and proposed subsection (c) provides that a group self insurer shall not decrease its security deposit based on calculations made pursuant to subsection (a) without prior written authorization from the Manager. Proposed subsection (d) provides that the Manager may require a group self insurer to increase its security deposit for good cause, and provides that good cause includes increases in group membership, increased losses as indicated on the group self insurer's annual reports or by audits, or by failure of the group self insurer to maintain total assets greater than its total liabilities. Proposed subsection (e) relocates for group self insurers the provisions of existing Section 15210.1(e) that written notification from the Manager for an increased security deposit creates a perfected security interest for the Self Insurer's Security Fund.

A new Section 15497.1 is proposed to relocate for group self insurers the provisions of existing Section 15210.2 that upon revocation of a Certificate of Consent to Self Insure of a private group self insurer or affiliate group self insurer, the Manager shall determine the need for a special revocation audit of the claims of the group self insurer and/or the need for a deposit adjustment to secure future liabilities of the revoked group self insurer or group member, and that the amount or rate of the deposit may be at a rate or amount higher than as determined by Labor Code Section 3701.

A new Section 15498 is proposed to address requirements related to additional or complete insurance coverage obtained by private group self insurers or group members. Most of the requirements of existing Section 15210.3 in Article 3 related to insurance coverage for all self insurers are located in new Section 15498 with editorial revisions to apply to private group self insurers and their members. Additional requirements unique to private group self insurers and their

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members are added as well. Proposed Section 15498(a) provides that any group self insurer or group member shall be permitted to insure all or part of its liability to secure the payment of compensation pursuant to Labor Code Section 3700 by obtaining a standard workers' compensation insurance policy from a carrier licensed to do business in California, and that full coverage for all workers' compensation liabilities under a standard policy shall be cause for revocation of consent to self insure. Two provisions not in Section 15210.3 are added to provide that insurance obtained must be from a carrier licensed to do business in California and that complete coverage of all members or a number of group members sufficient to reduce the size of the group to the extent that it no longer meets net worth and/or financial requirements is cause for revocation of the private group self insurer's Certificate of Consent to Self Insure.

Proposed Section 15498(b) provides that any group self insurer or group member shall provide the Manager upon request any information regarding standard workers' compensation insurance policies, specific excess insurance policies, and/or any aggregate excess insurance policies, as well as any documentation related to such insurance coverage, including Certification of Insurance, any binders or endorsements, or Notices of Cancellation. .

Proposed Section 15498(c) provides that the Group Administrator of the group self insurer shall provide a Certificate of Insurance, a copy of the workers' compensation insurance policy or policies maintained by the group self insurer or its group members, and copies of insurer loss runs related to any affiliate group self insurer upon request of the Manager, adding for group self insurers a provision to specify that it is the group administrator's obligation to provide the documentation, including loss runs for group members if requested. Proposed Section 15498(d) provides that a group self insurer that elects to purchase an aggregate excess policy shall not be given any credit or reductions in its security deposit requirement based on its aggregate excess coverage. This provision is taken from existing Section 15210.3(d) with no substantive changes other than for grammatical clarity and to tailor the language to apply to private group self insurers. However, the provision in existing Section 15210.4(d) that specific excess insurance is not required is not applied to private group self insurers in this section because specific excess insurance is required pursuant to Section 15478. Proposed Section 15498(e) provides that a private group self insurer or group member may sell off any or all of its workers' compensation liabilities through the purchase of special excess workers' compensation insurance policy pursuant to Labor Code Section 3702.8(c).

A new Section 15498 is proposed to provide that a group self insurer's security deposit shall apply to all group members, prohibiting the group self insurer from posting separate deposits that apply to certain group members only.

A new Section 15499.5 is proposed to set forth the procedure that a group self insurer must follow to appeal a security deposit increase required by the Manager because of the group self insurer's impaired financial condition. Subsection (a) provides that in the event that the Manager requires a group self insurer to increase its security deposit based on the impaired financial status of the group self insurer, and the group self insurer appeals the increase, the Manager shall order a detailed, independent third party financial and/or actuarial evaluation of the private group self insurer by a group self insurance risk and/or actuarial consultant. The evaluation shall be completed at the group

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self insurer's expense. These provisions as related to group self insurers are relocated from existing Section 15211.1 in Article 3, with the only changes being to apply the requirements to group self insurers only, except that the requirement that the evaluation include a "Dun and Bradstreet Risk Assessment Report" is changed to provide that the evaluation may be an actuarial evaluation and may be completed by a group self insurance risk and/or actuarial consultant. Proposed subsection (b) provides that if the appeal is not resolved after consideration by the Manager, it will be addressed pursuant to Article 11 of these regulations, a change from the provision in Section 15211.1 that the appeal will be "considered by the Manager."

Existing Section 15211.1 in Article 3 provides that on receipt of a written appeal of a security deposit increase based on the employer's impaired financial condition, the Manager shall order a detailed, third-party financial evaluation of the private self insurer in order to determine the employer's financial strength, and provides that "... (s)uch a third party financial evaluation shall include, but not be limited to, a Dun & Bradstreet Risk Assessment Report...." Existing Section 15211.1 provides that the cost of the report shall be paid by the self insurer, and that upon receipt of the report, "... the appeal will be considered by the Manager."

While existing Section 15211.1 indicates only that "... (u)pon receipt of the evaluation report, the appeal will be considered by the Manager..." proposed Section 15499.5 adds the provision that if the appeal is not resolved after consideration by the Manager, it will be addressed pursuant to Article 11 of these regulations. This provision is necessary to permit due process as established for all self insurers pursuant to Labor Code Section 3701.5(g) and Article 11.

Subchapter 2.06, Article 2

Existing Section 15601.7 of Subchapter 2.06, Article 2 addresses the determination of self insured employers subject to the Targeted Inspection Assessment pursuant to Labor Code Section 62.7. This section is amended with no regulatory effect to replace references to the Standard Industrial Classification Code (SIC Code) with references to the North American Industry Classification Code (NAICS Code).

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.

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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 is considered or that 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.

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 9:00 A.M. and 4:30 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

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 Ware
Acting Manager
Department of Industrial Relations
Office of Self Insurance Plans
2265 Watt Avenue, Ste 1
Sacramento, CA 95825
E-mail: 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.

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

Notice of Proposed Rulemaking

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>.