

**Department Of Industrial Relations
Title 8, Chapter 8, Subchapter 2
Office of Self Insurance Plans**

**NOTICE OF PROPOSED RULEMAKING
July 18, 2003**

Notice is hereby given that the Director of the Department of Industrial Relations proposes to adopt the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

Proposed Regulatory Action

The Director of the Department of Industrial Relations adopted on an emergency basis on May 30, 2003 new sections 15220 through 15220.9, and amendments to sections 15210 through 15210.2, 15216 and 15430 of Title 8 of the California Code of Regulations in order to implement, interpret and make specific Labor Code section 3701.8, relating to new alternative composite deposit program for private self insurers of workers' compensation liabilities. The Director is now accepting written comments on the regulations.

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 September 1, 2003. The Department will consider only comments post marked or received at the Office of Self Insurance Plans by that date. Submit comments to:

Mark Johnson, Manager
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825

Authority and Reference

Labor Code Sections 55 and 3702.10, authorizes the Director of Industrial Relations to adopt the proposed regulations, which would implement and make specific the provisions of Labor Code Sections 3700, 3701 and 3701.8.

Informative Digest and Policy Statement Overview

The Department of Industrial Relations proposes to adopt new sections 15220 through 15220.8 and to amend existing sections 15201, 15210, 15210.1, 15210.2, 15216 and 15430 in Title 8 of the California Code of Regulations. These sections provide for a new security deposit program for qualified private self insurers. This program will be known as the alternative composite deposit program. The proposal will require specific self insurers, as identified by the Office of Self Insurance Plans as eligible, to participate in the program. The program will require the eligible self insurer to secure its worker's compensation liabilities through the Self Insurers Security Fund (Fund). The self insurer will secure its liabilities through the payment of a deposit assessment to the Fund. The self insurer participating in the program will no longer be required to post an individual security deposit for the portion of its liabilities covered by the Fund.

Existing Section 15201 provides definitions for commonly used terminology related to workers' compensation self insurance. This section will be amended to include definitions of "alternative security deposit" and "Security Fund."

Existing Sections 15210, 15210.1 and 15210.2 require all private self insured employers to post and maintain a security deposit in accordance with the provisions of Labor Code Section 3701. These sections will be amended to add references to the new alternative composite deposit program requirements and to provide authority for summary revocation of a certificate to self insure for failure to secure workers' compensation liabilities for 60 days.

Existing Section 15216 provides for administration of insolvent self insurers claims. This proposal will provide for calling the security deposit for a defaulting self insurer's liabilities secured by an alternative composite deposit with the Fund.

A new Section 15220 will establish participation criteria in the alternative composite deposit program. The proposal provides that the Manager of Self Insurance Plan will identify each eligible private self insured employer as a fully participating member, a partially participating member, or as excluded from participation. All self insurers identified as eligible for the program are required to participate in the alternative composite deposit.

A new section 15220.1 will identify a method for evaluating the financial status of each private self insurer companies without an annual independently, prepared financial statement or published credit rating. The section will establish a new form, A4-7, Financial Summary, for rating the financial stability of that self insurer. This section will require the private self insurer to provide the financial information needed to evaluate the company.

A new section 15220.2 will specify that Self Insurance Plans will annually develop a list of the security deposit amounts required for each self insurer designated for the alternative composite deposit program. This section will provide that a private self insurer that fails to file its Annual Report by April 1 of each year, shall be deemed to have twice the liabilities indicated on their prior year's Annual Report for the purpose of preparing the listing of required security deposits.

A new section 15220.3 will establish the Security Fund provisions for securing the liabilities covered by the Alternative Composite Deposit. This section requires the Security Fund to make a proposal in writing to the Manager of Self Insurance Plans and specifies the contents in the proposal.

A new section 15220.4 will establish three deposit assessments to be paid by the self insurer participating in the alternative composite deposit program. The assessment will be the Default Loss Fund Fee, Excess Liability Protection Fee, and the Pre-Existing Deposit Shortfall Fee.

A new Section 15220.5 will establish that the Security Fund is responsible for the collection of the assessments provided for in section 15220.4 and will also provide for penalties for failure to pay the assessments.

A new section 15220.6 will provide for an assessment made by the Security Fund for new self insurers. The assessment will be the New Self Insurers' Fair Share Contribution Fee and will be a pro rata contribution based on the first ten years of the Default Loss Fund.

A new Section 15220.7 will establish appeal procedures on alternative composite deposit assessments and penalties.

A new Section 15220.8 will require the Security Fund to provide detailed accounting reports to the Director on all the assessments and to post all cash collected with the Director. This section will also provide the Security Fund with an option to invest the cash outside the State Treasury. This section also provides for the release of cash to pay workers compensation benefits.

Existing Section 15430 provides for hearing procedures by the Director. This proposal will add the alternative composite deposit assessment as a provision for investigating or holding a hearing by the Director.

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 cost 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 significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Individual private self insurers may find the new deposit assessment to be higher than current costs for providing individual security deposits. However, because of the need to increase the pre-existing deposit shortfall fund, the costs would have increased substantially even if the composite deposit program were not enacted. Even so, any cost increases should be offset by the release or reduction of individually posted security deposits to participating self insurers, thus making other assets available to those employers. In addition, the deposit assessments are expected to be reduced over time. Costs are determined by the Security Fund's Board of Trustees, not the Department of Industrial Relations, pursuant to Labor Code Section 3701.8.

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 because it does not impose any new requirements on employers nor does it amend any existing requirements impacting small business. In addition, small businesses are not affected by Self Insurance regulations, since small businesses cannot qualify for self insurance and the banks affected by these regulations are not defined as small businesses.

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 its 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.

Contact Persons

Inquiries concerning the proposed administrative action may be directed to:

Mark Johnson, Manager
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825
916-483-3392
mjohnson@dir.ca.gov

The backup contact person for these inquiries is:

Tina Freese
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825
916-483-3392
tfreese@dir.ca.gov

Questions on the substance of the proposed regulation should be directed to Mr. Johnson.

Please direct requests for copies of the proposed text, the initial statement of reasons, the modified text of the regulations, if any, or any other rulemaking documents to Tina Freese at the above address.

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 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 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>.