

Adopt new Article 3.1 to read:

Article 3.1

Alternative Composite Deposits

Adopt new Section 15220 to read:

§15220. Participation in Alternative Composite Deposits

(a) All private self insured employers, active or revoked, shall be annually determined by the Manager to be either eligible or non-eligible for participation in the alternative composite deposit program. Participation shall be as a fully participating self insured employer or as a partially participating self insured employer as provided in subsection(c)(1).

(b) All non-eligible self insurers shall be deemed "excluded". The following self insured employers shall be excluded from the alternative composite deposit program:

(1) Any new private sector self insured employer during their first three full years of self insurance. An employer shall be considered a new self insured employer if, when it applied to become self insured, it did not possess an active Certificate of Consent to Self Insure issued pursuant to Labor Code Section 3700(b) for itself or for its parent, a subsidiary, or an affiliate employer.

(2) Any former private self insured employer that possesses a revoked Certificate of Consent to Self-Insure and is no longer required to submit a Self-Insurer's Annual Report pursuant to Section 15251 of this subchapter 2 because all known claims costs have been reported and all known claims are closed.

(3) Any former private self insured employer that possesses a revoked Certificate of Consent to Self Insure and is required to post no more than the minimum security deposit amount pursuant to Labor Code Section 3701(b).

(4) Any current or former private self insured employer to the extent it has sold off all or any portion of its workers' compensation liabilities under a special excess workers compensation insurance policy to an admitted carrier and has continued to post security deposit to secure such sold off liabilities for 3 years from the policy issuance date.

(5) All private group self insurers of workers' compensation liabilities as provided for in Article 13 of this subchapter 2.

(6) Any private self insured employer to the extent that it transfers any or all of its existing self insured workers' compensation liabilities to either: (A) a fully insured employer, such as in the merger, reorganization, sale or spin off of a division or subsidiary; or, (B) a carrier through a contractual sell off that is not a

special excess workers' compensation insurance policy pursuant to Labor Code Section 3702.8(c) and (d).

(7) Any current or former private self insured employer that has defaulted on the payment of its self insured workers' compensation liabilities and whose liabilities have been turned over to the Security Fund by the Director.

(8) Any current or former private self insured employer that has failed to post the full amount of security deposit required by Section 15210 for more than 60 consecutive days.

(9) Any former private self insured employer that has posted a surety bond that contains no provision to release the carrier's liabilities under the surety bond.

(10) Any private self insured employer that does not meet the minimum credit rating criteria for participation in the alternative composite deposit contained in subsection (d)(3).

(11) Any current or former private legally self insured employer that is a member of a public sector healthcare joint powers authority pursuant to Government Code Section 6527.

(12) Any self insured employer that has been specifically excluded by written request of the Security Fund.

(c) All private self insured employers determined by the Manager to be eligible shall be required to participate in the alternative composite deposit program.

(1) The Manager shall identify each eligible participant as one of the following:

(A) Fully participating employer, or

(B) Partially participating employer.

(d) To qualify as a fully participating private self insured employer, the employer shall meet all the following requirements:

(1) The employer is not excluded by subsection (b) of this regulation;

(2) The self insured employer meets the minimum financial requirements in its last published annual financial report as provided in Section 15203.2;

(3) The employer possesses an acceptable credit rating on the date of the Security Fund's written alternative composite deposit proposal. An acceptable credit rating shall be any "A" or any "B" rating or equivalent as determined by section 15220.1, in either of the following publications:

(A) Moody's Investor Service Corporate Finance monthly subscription rating guide entitled "Moody's Global Rating Guide", or

(B) Standard & Poor's Credit Market Services monthly subscription rating guide entitled "Global Ratings Handbook".

In the event that ratings have been determined pursuant to both subsection(d)(3)(A) and (B), and the ratings differ, the lowest rating shall be utilized.

(e) The following self insured employers shall qualify as partially participating members of the alternative composite deposit program:

(1) The employer is not excluded by subsection (b) of this regulation;

(2) The employer meets the qualifications of subsection (d) but has been identified as a partially participating self insured employer by action of the Manager for cause. Cause may include, but is not limited to, failure to provide a parental agreement of assumption and guarantee; failure to file a complete and timely Self Insurer's Annual Report; failure to post the required security deposit by the required date; failure to report all claim liabilities or to estimate claims liabilities pursuant to Section 15300 of these regulations as determined in a routine audit or special audit; and/or, failure to post alternate deposit for new subsidiaries or affiliates of the self insurer after the end of the cycle for the previous year's alternate composite deposit.

(f) Excluded self insured employers shall not be eligible for any portion of their security deposit to be covered by the alternative composite deposit. The excluded private self insurer shall continue to secure its workers' compensation liabilities as required in Article 3 and to pay assessments as provided in Article 4.

(g) Any private self insured employer that is eligible only as a partially participating member or is excluded to participate in the alternative composite deposit shall post the balance of the amount of required security deposit with the Director pursuant to Labor Code Section 3701 and Article 3 of this subchapter 2.

(h) For cause, the Manager may downgrade an eligible private self insured employer from:

(1) fully participating employer to partially participating employer as provided in subsection (e)(2); or

(2) from partially participating employer to excluded.

Cause may include, but is not limited to, failure to submit the Self Insurers' Annual Report and/or failure to estimate future claim liabilities on the Self Insurers' Annual Report fully pursuant to Section 15300 as determined in an audit; inclusion of claim liabilities of subsidiaries or affiliates in their self insurance program that have not been granted a Certificate to Self Insure by the Director; failure to post a security deposit pursuant to Labor Code Section 3701 and these regulations; failure to meet the financial requirements for self insurance pursuant to Section 15203.1; failure to submit an Assumption and Guarantee Agreement pursuant to Section 15203.1; and/or, failure to pay any assessments, fees, and/or penalties pursuant to Labor Code Section 3702.9, this article, and/or Articles 4 or 9 of this subchapter 2.

Note: Authority Cited: Sections 3701.8(a) and 3702.10, Labor Code.

Reference: Section 3701.8, Labor Code and Section 6527, Government Code.

Adopt new Section 15220.1 to read:

§15220.1. Financial Summary.

(a) In addition to the existing requirements to provide the current financial statement to the Manager contained in Section 15203.2 of these regulations, the Manager shall require a Financial Summary Form, Form A4-7 (4/03), hereby incorporated by reference, from any private self insured employer that:

(1) does not have public financial statements (such as closely held or privately held employers) or has no published credit rating; and

(2) has a required security deposit equal to or greater than \$2,000,000 or fails to meet the financial requirements to be self insured as contained in Section 15203.2.

~~(e)~~ (b) The Financial Summary Form, Form A4-7 (4/03), shall include the following designated general information and key financial items:

(1) General Information Items:

(A) Name of Employer

(B) Date of Last Annual Financial Statement

(2) Key Financial Information:

(A) Cash and Marketable Securities

(B) Inventory

(C) Total Current Assets

(D) Total Intangible Assets

(E) Total Assets

(F) Total Short Term Debt

(G) Total Current Liabilities

(H) Total Long Term Debt

(I) Long Term Pension Obligations

(J) Total Liabilities

(K) Total Shareholders' Equity

(L) Total Preferred Stock

(M) Retained Earnings

(N) Net Sales

(O) Cost of Goods Sold

(P) Selling, General & Administrative Expenses

(Q) Operating Profit/ (Loss)

(R) Earnings before Interest and Taxes

(S) Total Interest Expenses

(T) Rental Expense

(U) Net Income

(V) Depreciation & Amortization

(W) Extraordinary Items

~~(d)~~ (c) A private self insured employer that fails to file Form A4-7, Financial Summary Form, as determined by this section, shall be ineligible to participate as a fully participating member in the current alternative composite deposit.

(1) The Manager shall utilize available financial information to assign a non-investment grade rating to any self insured employer that fails to submit a Financial Summary Form, Form A4-7 (4/03), for eligibility as a partial participating member.

(2) The Manager shall be authorized to determine that a private self insurer that fails to submit a Financial Summary Form, be ineligible for partial participation in the current alternative composite deposit program.

Note: Authority Cited: Sections 3701.8(a) and 3702.10, Labor Code.

Reference: Sections 3701.8 and 3702.10, Labor Code.

Adopt New Form A4-7 (4/03) to read:

(See next page)

Note: Authority Cited: Sections 3701.8(a) and 3702.10, Labor Code.

Reference: Sections 3701.8 and 3702.10, Labor Code.

Adopt new Section 15220.2 to read:

§15220.2 Listing of Security Deposit Amount Required

(a) The Manager shall annually prepare a listing of the security deposit amount required to secure workers' compensation liabilities for each private self insured employer pursuant to Labor Code Section 3701 and Article 3 of this subchapter 2. This listing of required security deposits shall be calculated by using the total amount of liability reported on the private self insured employer's year-end Self Insurer's Annual Report, and shall reflect deposit adjustments from audit results, additions of subsidiaries or affiliates, each applicable rate of deposit, and/or other deposit adjustments as determined by the Manager for all private self insured employers. This list shall be submitted to the Director annually.

(b) Any private self insured employer that fails to file its Self Insurer's Annual Report as required by Section 15251 of this subchapter 2 by April 1 of each year shall be deemed by the Manager to have twice the liabilities indicated on the prior year's Annual Report for the purpose of determining and recording the required security deposit in the above listing.

(c) The Manager shall provide the listing of required security deposits to the Security Fund. The Manager may submit the listing in a series of partially complete lists as the Self Insurers' Annual Reports are processed each year.

Note: Authority Cited: Section 3701.8(a) and 3701.10, Labor Code.

Reference: Sections 3701.8 and 3702.10, Labor Code.

Adopt new Section 15220.3 to read:

§15220.3. Alternative Composite Deposits.

(a) The Security Fund shall secure the aggregate security deposit amount required, in whole or part, for all eligible private self insured employers in the alternative composite deposit program, utilizing any one or combination of security instruments listed in Labor Code Section 3701 and/or Section 3701.8 and as provided for in subsection (b) of this section.

(b) These security instruments may include, but not be limited to, letters of credit, surety bonds, approved securities, and cash subject to the regulatory requirements for each contained in Article 3 (commencing with Section 15210) of this subchapter 2. It may also include, but not be limited to, insurance coverage, such as specific or aggregate excess policies, or special excess workers' compensation policies; or other financial instruments, such as commercial paper or reinsurance contracts; or financial guarantees, including the Security Fund's own guarantee backed by cash or securities.

(c) The Security Fund shall submit a written proposal as required in subsection (d) each year that the Security Fund proposes to replace individual security deposits with an aggregate composite deposit.

(d) Each formal written proposal for an alternative composite deposit to the Manager shall include:

(1) A complete description of the proposed composite deposit including what portions are cash and non-cash; any retentions, deductibles, or co-payments that are contemplated in each layer, if any; and any insurance or reinsurance being utilized as part of the proposal;

(2) A list of all proposed self insured employers to be covered; their amount of coverage; their applicable credit rating or equivalent credit rating as determined by Section 15220.1 of this subchapter 2; and the credit rating agency utilized to determine the credit rating;

(3) Specification of the call order, if any, of the instruments proposed to be posted as part of the alternative composite deposit.

(4) A proposed starting date for the proposed alternative composite deposit that is at least 30 days after the date of the official written proposal to the Manager.

(e) The Manager shall advise the Director of all written proposals submitted by the Security Fund for an alternative composite deposit and the details of the proposal.

(f) The Manager shall review and approve or reject the alternative composite deposit proposal in whole or part and shall advise the Security Fund of the decision within 30 days. If approved, the Security Fund shall have 30 days to post the alternative composite deposit instrument(s) with the Director, unless the Security Fund's approved proposal sets forth some other acceptable timetable for delivery of the instrument(s).

(g) The Manager shall not release security deposits posted by individual self insured employers pursuant to Labor Code Section 3701 until after the alternative composite deposit permitted by Labor Code Section 3701.8 is fully posted.

(h) The Security Fund may subsequently propose additions, extensions, replacements, substitutions, or other changes to the initial alternative composite deposit posted with the Manager, in whole or part, in the same manner as set forth in this section. Approval and posting of any changes in the alternative composite deposit shall comply with the provisions of this section.

(i) The Security Fund may provide its own guarantee for any portion of the alternative composite deposit in the form of a retention, a deductible, or its own guarantee, provided the guaranteed amount is secured by segregated cash or securities posted with the Director as set forth in Section 15220.8.

Note: Authority Cited: Sections 3701.8(a) and 3702.10, Labor Code.

Reference: Section 3701.8, Labor Code.

Adopt new Section 15220.4 to read:

§15220.4. Deposit Assessments by the Security Fund for Participants of the Alternative Composite Deposit.

(a) The Security Fund shall collect an annual deposit assessment from all private self insurers participating in the alternative composite deposit as follows:

(1) A pro-rata cash contribution to build the net worth of the Security Fund to pay existing or future defaults on covered workers' compensation liabilities of eligible private self insured employers under an alternative composite deposit. This portion of the deposit assessment shall be called the Default Loss Fund Fee.

(2) A pro-rata cash contribution to pay the cost of any aggregate loss protection in excess of the level of liability provided through the Default Loss Fund. This portion of the deposit assessment shall be called the Excess Liability Protection Fee.

(3) A pro-rata cash contribution to fund security deposit shortfalls from existing private self insurer insolvencies and defaults formerly funded exclusively by the Security Fund's Insolvency Assessment pursuant to Labor Code Section 3745. This portion of the deposit assessment shall be called the Pre-Existing Deposit Shortfall Fee.

Exception: Private self insurers whose Certificate of Consent to Self Insure was revoked before January 1, 2003~~7~~ shall remain subject to the assessments as provided by Labor Code Section 3745.

(b) Each private self insured employer participating in an alternative composite deposit with the Security Fund shall be required to annually pay the Security Fund deposit assessment.

(c) The Security Fund shall determine the pro-rata amount of the deposit assessment for each fully participating and partially participating private self insured employer based on all the following:

(1) Labor Code Section 3701.8(b) requirements;

(2) the cost of the security instruments permitted in Section 15220.2 including any cash holdings that will make up the Default Loss Fund and/or the Excess Liability Protection Fee portions of any alternative composite deposit proposed to the Director;

(3) the amount of the security deposit required by the Manager for each participating private self insured employer to secure its self insured workers' compensation liabilities;

(4) the participating private self insured employer's credit rating or equivalent credit rating as determined by Section 15220.1 or Section 15220.3;

(5) an amount, if needed, for the pro-rata share of incurred but not fully reported liabilities aggregated across all private self insurers;

(6) an amount for the pro-rata share of pre-existing, unfunded defaulted liabilities of the Self Insurers' Security Fund to be collected for funding cash flow needs by the Pre-Existing Deposit Shortfall Fee;
(7) other measures of each private self insured employer's contribution to the cost of the alternative composite deposit proposed to the Director; and
(8) the amount, if any, of the security deposit required to be separately posted with the Director pursuant to Labor Code Section 3701 to secure that portion of the employer's self insured workers' compensation liabilities that is not secured in the alternative composite deposit.
(d) Excluded private self insured employers shall be required to participate in the assessments. The Manager shall determine the amount of each deposit assessment due from private self insured employers excluded from participation in any alternative composite deposit and submit it to the Security Fund. The Security Fund shall collect the deposit assessments from excluded employers.

Note: Authority Cited: Sections 3701, 3701.8(a), 3701.8(b), 3702.10, 3745. Labor Code.
Reference: Sections 3701, 3701.8(a), 3701.8(b), 3702.10, 3745. Labor Code.

Adopt new Section 15220.5 to read:

§15220.5. Deposit Assessments; Failure to Pay; Assessment Liability.

(a) Each alternative composite deposit posted with the Director by the Security Fund shall be a binding agreement for all private self insured employers, fully participating and non-fully participating.

(b) Individual deposit assessment determinations, billings, and collection of these individual deposit assessments from participating private self insured employers shall be the responsibility of the Security Fund. The Security Fund shall advise the Manager in writing of any employer that fails to pay the assessment within the time period allocated by the Security Fund.

(c) The Manager shall assess a civil penalty pursuant to Labor Code Section 3701.8(d) against each private self insured employer who fails to pay the deposit assessment in the time allocated by the Security Fund. In addition to the civil penalty, the private self insured employer shall post a separate security deposit pursuant to Labor Code Section 3701 within 30 days of notice by the Manager.

(d) Failure by any participating private self insured employer to pay the deposit assessment in the time specified by the Security Fund, and/or failure to post and maintain the full amount of required security deposit pursuant to Labor Code Section 3701 for 60 days shall be good cause for the Manager to summarily revoke the private self insured employer's Certificate to Self Insure without a hearing as set forth in Section 15210.1.

(e) Any civil penalty assessed by the Manager pursuant to Labor Code Section 3701.8 shall not be discharged by the employer subsequently posting a security deposit. Any civil penalty or unpaid portion of the deposit assessment shall not be discharged by revocation of the employers' Certificate of Consent to Self Insure.

Note: Authority Cited: Sections 3701.8(a) and 3702.10. Labor Code.

Reference: Section 3701.8. Labor Code.

Adopt new Section 15220.6 to read:

§15220.6. New Self Insurers Fair Share Contribution Surcharge Fee

(a) The Security Fund shall develop and track an annual historical schedule of cash contributions covering the initial ten years of the alternative security deposit program to build the net worth of the Default Loss Fund. A private self insured employer issued a Certificate to Self Insure after January 1, 2004, shall be surcharged a fair share contribution for the portion of the initial ten years that they did not contribute to the Default Loss Fund. This initial ten-year contribution for new self insurers shall be called the "New Self Insurer Fair Share Contribution Surcharge Fee" and shall be assessed and collected as a surcharge in addition to any other payment required of that new private self insurer into the Default Loss Fund. The Self Insurers Fair Share Contribution may be calculated as an average over a period of up to ten years.
(b) All funds collected from the New Self Insurer Fair Share Contribution Surcharge Fee shall be subject to the requirements of Section 15220.8.

Note: Authority Cited: Sections 3701.8 and 3702.10, Labor Code.

Reference: Section 3701.8, Labor Code.

Adopt new Section 15220.7 to read:

§15220.7. Appeals of Deposit Assessments and Appeals of Deposit Assessment Penalties

(a) Any private self insured employer assessed a deposit assessment by the Security Fund may object or appeal the calculation or any other aspect of its deposit assessment to the Director as set forth in Article 11 (commencing with Section 15430). However, it shall be a condition precedent of such appeal that the full amount of the deposit assessment must first be paid to the Security Fund.

(b) Any private self insured employer assessed a civil penalty by the Manager for non-payment of the deposit assessment may appeal any civil penalties resulting from non-payment of the deposit assessment to the Director as set forth in Article 11 (commencing with Section 15430).

Note: Authority Cited: Sections 3701.8 and 3702.10, Labor Code.

Reference: Section 3701.8, Labor Code.

Adopt new Section 15220.8 to read:

§15220.8 Requirements for Use and Investment of Cash
Generated from Deposit Assessments

(a) The Security Fund shall provide the Director with a detailed accounting report of the monies collected for each deposit assessment within 90 days of the payment due date of the assessment.

(b) The accounting report shall include a summary of all funds collected, costs of each instrument posted as alternative composite deposit, all commissions and costs due or paid related to the alternative deposit system for that cycle, and any remaining excess funds.

(c) Following the purchase of any non-cash financial instruments to secure the liabilities of the alternative composite deposit, excess funds collected by the Security Fund in any deposit assessment and any additional funds subsequently collected shall be posted with the Director.

(d) All remaining cash collected from the assessments shall be deposited with the Director or as provided in subsection (f).

(e) All Security Fund cash deposits posted with the Director shall be held in the name of "Director of Industrial Relations in Trust for Self Insurers' Security Fund".

(f) The Director shall deposit and invest the Security Fund's cash in the Surplus Money Investment Fund pursuant to Labor Code Section 3702.5(b) and subject to the restrictions of use contained in Labor Code Section 3701.8, or the Director may permit the Security Fund to hire its own funds manager and invest the deposited cash on behalf of the Security Fund outside of the State Treasury subject to the following:

(1) As a condition precedent to the Security Fund managing such funds, the Security Fund shall adopt a cash investment policy outlining the types of investments in which such cash may be invested to preserve and protect the principal.

(2) The Security Fund shall insure that the Investment Fund manager submit a quarterly report to the Manager covering any of the Director's cash managed by the Security Fund.

(3) None of the Director's cash may be commingled with Security Fund cash, nor may any specific investments made with the Director's cash be commingled in the same instrument with Security Fund cash.

(4) Regardless of whether the Director or the Security Fund manages the cash posted, the funds shall remain in the name of the Director as set forth in subsection (e) of this section until such time as the Director may order any or all of the funds released to the Security Fund or refunded to the private self insured employers.

(g) Whenever the Director initially turns over the compensation liabilities of a private self insured employer to the Security Fund pursuant to Labor Code Section 3701.5 and such liabilities are covered in whole or part by the

cash portion of an alternative composite deposit, the Director shall order the Manager to release enough cash to fund the payment of expected workers' compensation benefits for the remainder of the calendar year. If the amount released is inadequate, the Manager in consultation with the Security Fund shall advise the Director and request the Director to authorize the release of an additional amount to fund the payment of benefits and expenses for the period.

(h) The Security Fund shall annually notify the Manager and the Director in writing of the amount of funds that it will need to operate for the next calendar year for payment of benefits due, legal and administrative expenses, and other expenses of the Security Fund that will be funded from alternative composite deposits. The Manager shall be authorized to release the cash portion of the funds to the Self Insurers' Security Fund's possession.

Note: Authority Cited: Sections 3701.8 and 3702.10, Labor Code.

Reference: Section 3701.8, Labor Code.

Amend Section 15430

§15430. Hearing.

The Director may initiate an investigation or hold a hearing to implement the law and regulations with respect to the following self insurance matters:

(a) Disputes specified in Labor Code section 3701.5(g) arising between or among a surety, the issuer of an agreement of assumption and guarantee of workers' compensation liabilities, the issuer of a letter of credit, any custodian of the security deposit, a self-insured employer, or the Self-Insurers' Security Fund;

(b) Disputes between any self-insurer and the Manager involving action by the Manager to involuntarily revoke an existing certificate for cause pursuant to Labor Code section 3702;

(c) Disputes involving action by the Manager to revoke or deny issuance of a certificate to administer pursuant to Labor Code sections 3702.1 and 3702.7;

(d) An appeal by a private sector self-insurer concerning the amount of the security deposit to be posted pursuant to Labor Code section 3701(b) or section 15210 of these regulations;

(e) An appeal by any self-insurer concerning any civil penalty assessment made pursuant to Labor Code section 3702.9;

(f) The appeal of an employer alleging its application for a certificate or by an administrator that its application for a certificate to administer has not been processed in a timely manner;

(g) To determine whether good cause exists to revoke any self-insurers' certificate for willful or repeat serious violations of occupational safety and health regulations as noted in Cal/OSHA citations issued by the Division of Occupational Safety and Health;

(h) An appeal by a private self insurer concerning the calculation, posting, or any other aspect of its deposit assessment after payment of the deposit assessment in the time provided to the Security Fund, and;

(i) An appeal by a private self insurer of any civil penalty assessed for failure to pay a deposit assessment to the Security Fund.

NOTE: Authority cited: Sections 54, 55, 3701.8, and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3701.8, 3702, 3702.1, 3702.5, 3702.6, 3702.7, 3702.9, 3705, and 3740-3747, Labor Code. Sections 11181-11188, and 15378, Government Code.