

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

FINAL STATEMENT OF REASONS

Workers' Compensation – Self-Insurance

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

UPDATED INFORMATIVE DIGEST

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Rulemaking and Initial Statement of Reasons.

**ADDITIONAL DOCUMENTS RELIED UPON
OR INCORPORATED BY REFERENCE**

None.

DETERMINATION OF MANDATE

The Director 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 regulations 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."

DETERMINATION OF ALTERNATIVES

In accordance with Government Code section 11346.9, subdivision (a)(4), the Director has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the Department's attention would be more effective in carrying out the purpose for which the regulations are proposed, would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost effective to affected private persons and equally effective in carrying out the purpose for which the regulations are proposed. The Department invited interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period. To date, no reasonable alternative has been brought to the

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attention of the Director that would be as effective and less burdensome to affected persons than the proposed action.

MODIFICATIONS TO THE TEXT OF THE PROPOSED REGULATIONS AS ORIGINALLY NOTICED

The following modifications have been made to the originally noticed text of the proposed regulations in the final text submitted to the Office of Administrative law. These modifications were made available to the public for a 15-day comment period pursuant to Government Code section 11346.8, subdivision (c) between July 29 and August 12, 2016.

Format of Modifications to the Text

Text as Originally Noticed:

As originally noticed, text proposed to be added is indicated by single underlining, thus: added language. Text proposed to be deleted is indicated by strikeout, thus: ~~deleted language~~.

Text as Modified:

As modified, additional text proposed to be added is indicated by double underlining, thus: additional added language. Additional text proposed to be deleted is indicated by double strikeout, thus: ~~additional deleted language~~.

1. The proposed amendment of section 15201 has been modified from the originally noticed text as follows:

- Revise new definition of "Closed Claim" as follows:

Closed Claim. A work-injury claim in which future ~~payment of compensation~~ provision of benefits cannot be reasonably expected to be due.

- Clarify definition of "Group Self-Insurer" by revising the final sentence as follows:

~~A group self-insurer issued a Certificate of Consent to Self-Insure pursuant to Labor Code Section 3700(b) and~~ a group self-insurer issued a Certificate of Consent to Self-Insure pursuant to Labor Code Section 3700, subdivision (b) ~~and~~ These regulations are not intended to deem such a group self-insurer to be an insurance company subject to regulations governing insurers contained in Title 10, California Code of Regulations, except as otherwise provided by statute and by Title 8, California Code of Regulations.

- Insert "(3)" following "three" in the definition of "Industry."
- Insert a new definition of "Office of Self-Insurance Plans" as follows:

Office of Self-Insurance Plans. The Department of Industrial Relations, Office of Self-Insurance Plans, that is responsible for the oversight and regulation of Workers' Compensation self-insurance programs under these regulations.

2. The proposed amendment of section 15203 has been modified from the originally noticed text as follows:
 - Revise subdivision (b) as follows:

(b) A new application may be required when an existing, individual self-insurer reincorporates, merges, changes ownership, or adds a new or separate subsidiary or affiliate to its existing workers' compensation self-insurance program. In some cases, it may be possible to amend and transfer an existing certificate without a new application, which decision shall be made by the Chief.
 - Insert "(3)" following "three" in subdivision (c)(1).
 - Insert a comma and delete the extraneous word "or" in subdivision (c)(3).
 - Insert the words "self-insurer" following "group" in subdivision (f).
3. The proposed amendment of section 15203.2 has been modified from the originally noticed text as follows:
 - Update reference in subdivision (a) from old Form A 4-6 (Rev. 11/97) to new Form A-4 (1-2016).
 - Change "application to self-insurance" to "application to self-insure" in subdivision (d).
4. The proposed amendment of section 15203.7 has been modified from the originally noticed text as follows:
 - Change "Manager" to "Chief" in subdivision (c).
5. The proposed amendment of section 15204 has been modified from the originally noticed text as follows:
 - Insert a comma following "shall" in subdivision (a).
6. The proposed amendment of section 15205 has been modified from the originally noticed text as follows:
 - Replace commas with semicolons in subdivisions (b)(1) and (b)(2) and insert the word "and" at the end subdivision (b)(2).

7. The proposed amendment of section 15209 has been modified from the originally noticed text as follows:

- Punctuation corrections in subdivision (b).

8. The proposed amendment of section 15210 has been modified from the originally noticed text as follows:

- Insert the word “percent” in subdivision (d)(1).
- Update internal references to reflect renumbering of subdivisions due to deletion of former subdivision (e) in renumbered subdivision (g).

9. The proposed amendment of section 15210.1 has been modified from the originally noticed text as follows:

- Update reference to “Office of Benefits Audits and Enforcement in the Division of Workers' Compensation” to “Division of Workers' Compensation Audit Unit” in subdivision (d).

10. The proposed amendment of section 15211.2 has been modified from the originally noticed text as follows:

- Revise section title from “Agreement of Assumption and Guarantee of Liabilities” to “Guaranty of Workers’ Compensation Liabilities.”
- Update references from “Agreement of Assumption and Guarantee of Liabilities” (old Form A 4-6 (Rev. 11/97)) to “Guaranty of Workers’ Compensation Liabilities” (new Form A-4 (1-2016)) throughout.
- Revise the last sentence of subdivision (b) as follows:

The form is contained in Plate D of the Appendix following Section 15463 of these regulations and is available on the website of the Office of Self-Insurance Plans at <http://sip.dir.ca.gov/osip/>.

- Revise the last sentence of subdivision (d), Note 2 as follows:

The current model assumption resolutions are contained in Plate E of the Appendix following ~~the last Article~~ Section 15463 of these ~~Subchapter 2~~ regulations.

- Revise subdivision (h) to accord with new Form A-4 (1-2016) as follows:

~~(h) An Agreement of Assumption and~~ (h) An Agreement of Assumption and Guarantee of Workers’ Compensation Liabilities executed pursuant to this section may be terminated only upon the

express written consent of both the Director and the Security Fund. Termination shall be effective upon the Guarantor's receipt of such express written consent. Termination shall not extinguish the Guarantor's continuing liability for any default of the guaranteed self-insurer in fully discharging all existing and potential Workers' Compensation liability on account of any injury suffered by any of the guaranteed self-insurer's employees prior to the date of termination upon receipt of a written notice of such termination, but except as provided in subsection (i), the termination shall not take effect sooner than thirty (30) days after receipt of the written termination notice.

- Delete subdivision (i)
11. The proposed amendment of section 15216 has been modified from the originally noticed text as follows:
 - Change "Manager" to "Chief" in subdivision (c).
 - Insert the words "or entity" following "any person" in subdivision (g).
 12. The proposed amendment of section 15230 has been modified from the originally noticed text as follows:
 - Insert the word "thirty" prior to "30" in subdivision (c).
 13. The proposed amendment of section 15251 has been modified from the originally noticed text as follows:
 - Insert the word "sixty" prior to "60" in subdivision (a).
 - Insert "(3)" following "three" in subdivision (b)(1)(B).
 - Insert "(5)" following "five" in subdivisions (b)(2)(A) and (B).
 - Restore previously deleted subdivision (b)(5)(B).
 - Restore erroneously deleted period at the end of amended subdivision (b)(6).
 - Insert "(60)" following "sixty" in subdivision (e).
 14. The proposed amendment of section 15422 has been modified from the originally noticed text as follows:
 - Change "Manager" to "Chief" and delete unnecessary subheading (a).
 15. The proposed amendment of section 15431.1 has been modified from the originally noticed text as follows:

- Punctuation corrections for uniformity in subdivision (a) and insert the word “and” at the end of subdivision (a)(4).
16. The proposed amendment of section 15471 has been modified from the originally noticed text as follows:
- Insert “(5)” following “five” in subdivision (d).
17. The proposed amendment of section 15475.2 has been modified from the originally noticed text as follows:
- Insert “self-insurer” following “group” in subdivision (a).
 - Delete extraneous space before the comma following “15477(a)(1)” in subdivision (d).
18. The proposed amendment of section 15475.3 has been modified from the originally noticed text as follows:
- Revise subdivision (a)(3) as follows:

(3) Certificates of Deposit that are FDIC or NCUA insured or collateralized by the issuing institution. Investments in eligible certificates of deposit, that are brokered into various FDIC and/or NCUA insured institutions, shall have a maximum maturity of no more than fivetwe (5) years, and shall not exceed 45fifty percent (50%) of the total portfolio as measured at the date of purchase.
19. The proposed amendment of section 15481 has been modified from the originally noticed text as follows:
- Insert “group” before “administrator” in subdivision (a).
 - Revise the first sentence of subdivision (a)(1) as follows:

The analysis and results of the actuarial study shall be presented to the group self-insurer's Board of Trustees and made available, in a written or electronic form, to the Board of Trustees and to any present or former group member requesting a copy.
 - Insert the words “one million dollars” and change “\$1 million” to “\$1,000,000” in subdivision (4).
 - Insert the words “ten” before “10” and “one million dollars” before “\$1,000,000” in subdivision (5).
20. The proposed amendment of section 15482.1 has been modified from the originally noticed text as follows:

- Delete unnecessary parentheses in subdivision (a).
 - Punctuation corrections for uniformity in subdivisions (a)(1) and (3).
21. The proposed amendment of section 15482.2 has been modified from the originally noticed text as follows:
- Revise to delete unnecessary subheading (b)(1).
 - Replace the existing period with a semicolon and insert the word “and” at the end of subdivision (c)(4).
22. The proposed amendment of section 15483 has been modified from the originally noticed text as follows:
- Restore previously deleted language in subdivision (b).
23. The proposed amendment of section 15484 has been modified from the originally noticed text as follows:
- Correct “Generally Accepted Auditing Principles” to “Generally Accepted Accounting Principles” in subdivision (a).
24. The proposed amendment of section 15486.1 has been modified from the originally noticed text as follows:
- Insert hyphens in “Self-Insurer” in the section title and “Self-Insure” in subdivision (a).
25. The proposed amendment of section 15487 has been modified from the originally noticed text as follows:
- Insert “(6)” following “six” in subdivisions (a) and (c).
 - Insert “(3)” following “three” in subdivision (b).
26. The proposed amendment of section 15496 has been modified from the originally noticed text as follows:
- Insert “sixty percent” before “(60)” and “thirty” before “30” in subdivision (b)(1).
 - Revise subdivision (c)(5) as follows:
- (5) Any combination of one or more of the foregoing methods ~~described in subsections (g)(1) through (g)(4) of this section.~~

27. The proposed amendment of section 15497 has been modified from the originally noticed text as follows:

- Insert “thirty” before “30” in subdivision (a).

28. Existing Form A4-6 (Rev. 11/97) contained in Plate D of the Appendix following California Code of Regulations, title 8, section 15463 is repealed and replaced with new Form A-4 (1-2016).

The following modification has been made to the originally noticed text of the proposed regulations in the final text submitted to the Office of Administrative law. This modification consists of a single clerical correction to the modifications proposed and noticed in the modified text. The modification corrects a spelling error and is a non-substantial, solely grammatical change pursuant to Government Code section 11346.8, subdivision (c).

29. The proposed amendment to section 15483, subdivision(b) has been modified from the modified noticed text as follows:

- Delete the letter “e” in the word “the” to complete the proposed deletion of the preceding phrase in line 11 of subdivision (b).

SUMMARY OF AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD

The Department received sixteen letters and emails of written comments during the 45-day public comment period.

1. Mr. Daniel R. Sovocool, Counsel for the California Self-Insurer’s Security Fund (“SISF”), submitted a letter indicating that SISF fully supports the provisions contained in the proposed rulemaking. SISF is a non-profit mutual benefit member owned organization that represents all self-insured private companies and self-insured groups. This organization is responsible for guaranteeing all liabilities in the event of default of self-insurers and provides more than seven billion dollars in financial guarantees on behalf of self-insured employers in California.

RESPONSE: The Department thanks Mr. Sovocool for his comments.

2. Mr. Jeff Pettegrew, Chief Imagination Officer for Insurance Thought Leadership, an independent web-based think tank with over five hundred industry thought leaders and advisors, submitted a comment expressing “enthusiastic support” of the proposed rulemaking. Mr. Pettegrew writes:

“This package of proposed regulations is a much-needed updated, reform measure that opens the door for individual and groups of employers to utilize their workers compensation related expenses in a much more cost-effective manner. These changes help stimulate and provide a

competitive edge for businesses operating in California. We need this to keep our state economy strong.”

RESPONSE: The Department thanks Mr. Pettegrew for his comments.

3.&4. Mr. Stephen Brady, Managing Consultant for Work Comp Alternatives (“WCA”), a licensed insurance brokerage specializing in self-insurance and representing many major self-insured employers, submitted two letters. One was written on WCA letterhead, while the other was not, but the letters were identical in substance. Mr. Brady writes that WCA fully supports the proposed regulations, as written.

RESPONSE: The Department thanks Mr. Brady for his comments.

5. Mr. Norman G. Hainlen, Director of Alternative Risk Financing for Wood Gutman & Bogart, a licensed insurance broker in Southern California that represents major self-insured employers, submitted a comment indicating his strong support of the proposed rulemaking. Mr. Hainlen writes that he “...can’t stress enough the importance of approving these changes to further the self-insurance industry and help it realize its potential for all California employers.”

REPOSENSE: The Department thanks Mr. Hainlen for his comments.

6. Mr. G. Michael Lyon, Administrator for Finish Line Self Insurance Group, submitted a comment on behalf of SIG Solutions, Inc. fully supporting the proposed rulemaking. SIG Solutions, Inc. is a self-insured group administrator that represents Finish Line Self Insurance Group and its more than four hundred members. Mr. Lyon writes:

“It is our strong opinion that the proposed regulation changes open up the prospect of self-insurance for new groups of employers who are finding increasing difficulty in the general insurance market, while at the same time providing satisfactory financial requirements to protect the state and the self-insurance industry as a whole.”

RESPONSE: The Department thanks Mr. Lyon for his comment.

7. Mr. Robin Johnson, from the Law Office of Robin Johnson, submitted a comment via email in which he identified two instances where the term “Manager” was not changed to the new title “Chief.” The two instances are located in section 15203.7, subdivision (c), on the second line, and section 15216, subdivision (c), also on the second line.

RESPONSE: The Department thanks Mr. Johnson for his comment an incorporated the changes in the Notice of Modification to Text of Proposed Regulations that was circulated for 15-day public comment.

8. Mr. Robin Johnson, from the Law Office of Robin Johnson, submitted an email with three specific suggestions regarding the proposed rulemaking. The suggestions are as follows:

- a. Proposed regulation section 15426, subdivision (c) states that upon default the self-insurer shall forfeit any right to the security deposit. Mr. Johnson comments that former Chief Jon Wroten indicated at the public hearing that there is a future right to any security deposit not used to pay the existing liabilities of the group. Mr. Johnson suggests adding a subdivision (d) to read:

“(d) Notwithstanding (c) above, the self-insurer who has received an order of default, shall have rights to any of the security deposit remaining after all liabilities are paid.”

RESPONSE: Section 15426, subdivision (c) is clear and accurately states that “upon default the self-insurer shall forfeit any right to the security deposit.” Former Chief Jon Wroten corrected his statement at the public hearing once he clarified the regulation in question. Mr. Wroten confirmed that new regulation section 15426, subdivision (c) is correct as written. The Department added the language of subdivision (c) to conform with current law and intended for the subdivision to read that a self-insurer relinquishes all rights to its security deposit upon default. Therefore, no action will be taken regarding the proposed revisions at this time. The Department thanks Mr. Johnson for his comment.

- b. Proposed regulation section 15479, subdivision (a) states that each member of a group self-insurer shall execute an indemnity agreement and power of attorney Form S-4(1-2016). Mr. Johnson comments that it is burdensome to require existing members to execute the new form, especially if the current form is sufficient. He suggests the subdivision be modified so that the requirement will apply only to members joining a group after January 1, 2016.

RESPONSE: The Department disagrees with the comment. All self-insured group members should be covered by the same regulations and requirements and thus should execute the same indemnity agreement. This requirement is necessary for uniformity, clarity, and to avoid creating two different classes of members within the same self-insured group. Therefore, no action will be taken regarding the proposed revisions at this time. The Department thanks Mr. Johnson for his comment.

- c. Mr. Johnson comments that proposed regulation section 15479, subdivision (b) suggests that a self-insured group may create its own indemnity agreement and power of attorney form, since the subdivision describes what provisions are required in the form. Because section 15479, subdivision (a) requires group self-insurers to use Form S-4, Mr. Johnson believes that subdivision (b) is redundant and confusing and should be eliminated.

RESPONSE: The Department disagrees with the comment. Section 15479, subdivision (a) makes clear that each member of a group self-insurer shall execute an indemnity agreement and power of attorney Form S-4. Thus, the section is clear that no alternative forms other than the Department approved form is to be used. Section 15479, subdivision (b) details the contents of the Department Form S-4. Eliminating section 15479, subdivision (b) would result in the continued requirement to use the Department form but provide no regulatory guidance as to the contents of the form. Therefore, no action will be taken regarding the proposed revisions at this time. The Department thanks Mr. Johnson for the comment.

9. Ms. Caryn A. Riffel, Chief Operating Officer for Monument Insurance Services, submitted an email requesting that the Department address three specific areas of the regulations as follows:

- a. Ms. Riffel proposes the addition of specific language in section 15475 to define a level of coverage that is sufficient to protect the interests of group self-insurers and their members.

RESPONSE: Section 15475 was not addressed in the rulemaking proposal, so the comment is outside the scope of the proposed regulations. The comment will be retained and considered for future rulemaking. The Department thanks Ms. Riffel for the comment.

- b. Ms. Riffel proposes adding language to section 15475.3, subdivision (b)(5) regarding how to rate bond funds. The writer believes more clarity is needed in this section.

RESPONSE: The comment does not pertain to any changes being addressed in this rulemaking proposal. The proposed amendment to this section, as noticed in the original Text of Proposed Regulations, involved increasing the maximum maturity years for certificates of deposit in subdivision (a)(3). Thus, the comment relating to subdivision (b)(5) is not related to the amendment and is beyond the scope of the rulemaking proposal. The comment will be retained and considered for future rulemaking. The Department thanks Ms. Riffel for her comment.

- c. Ms. Riffel proposes a change to the language of section 15486.1, subdivision (b), allowing the Chief the ability to grant authority for ongoing risk control and safety support to someone other than a California Professional Engineer, a Certified Safety Professional and/or a Certified Industrial Hygienist.

RESPONSE: The comment does not pertain to any changes being addressed in this rulemaking proposal, as no substantive changes were made to this subdivision. The existing regulation specifies that on-going risk control services must be under the direction of a California Professional Engineer, a Certified Safety Professional or a Certified Industrial Hygienist. The Department does not seek to reduce or enlarge the professional standards required to oversee the provision of safety or risk services for group self-insurers. Therefore, the comment is beyond the scope of the rulemaking proposal and will be retained and considered for future rulemaking. The Department thanks Ms. Riffel for her comment.

10. Mr. Clay A. Jackson, President/Chief Legal Officer for Affinity Group Administrators, a self-insured group administrator, supports the implementation of all regulations, as proposed, with one exception. Mr. Jackson writes that the proposed amendments to section 15472 do not provide adequate review and adequate funding for self-insured groups during their formation. He requests a complete re-write of the section for that reason.

RESPONSE: The Department believes that section 15472 as proposed addresses the solvency of prospective self-insured groups in formation. The section specifically directs the reader to section 15484, subdivisions (a), (b) and (e), requiring group self-insurers to meet the funding and

solvency requirements contained in section 15484. Section 15484 addresses solvency of group self-insurers and was previously enacted in response to statutory changes made in SB863. The proposed revisions to section 15472 seek to align the regulations and eliminate unnecessary redundancy and conflicting capital and solvency requirements. Therefore, no action will be taken regarding the comment at this time. The Department thanks Mr. Jackson for his comments.

11-14. The Department received four letters from different entities with comments focusing on two main areas of the proposed regulations. Edward J. Klinenberg, President of California Industrial Hygiene Council, Teddi Penewell, Assistant Regional Vice President for American Society of Safety Engineers, Treasa M. Turnbeaugh, Chief Executive Officer for Board of Safety Professionals and Dave K. Smith, Managing Consultant of Dave Smith & Company, all submitted letters regarding the proposed amendments to section 15353 (Injury and Illness Prevention Program). The first three commenters are industry associations representing various safety professionals, while the last commenter is a safety practitioner.

All commenters disagree with the elimination of the requirement for an independent third party safety professional evaluation of a prospective individual self-insurance applicant's Injury and Illness Prevention Program. They also object to the elimination of the requirement that certified safety professionals perform the review of the Injury and Illness Prevention Program. The commenters argue that the elimination of these requirements will result in harm to the public and negatively impact worker safety.

RESPONSE: The proposed regulations do not modify safety professional certifications or safety standards affecting public or worker safety. None of these areas were addressed in the proposed rulemaking and are in fact preemptively regulated by the Division of Occupational Safety and Health, as established and defined by California Labor Code sections 50.7, 50.8, and 60.5. The proposed amendment to section 15353 maintains the requirement that an individual self-insurer applicant certify that they have implemented an effective Injury and Illness Prevention Program as required by Labor Code section 6401.7. The requirements of Labor Code section 6401.7 fall within the regulatory and enforcement purview of the Division of Occupational Safety and Health.

The Department's elimination of the requirement for an independently performed audit does not change, alter or minimize the individual self-insurer applicant's responsibility to have and maintain an effective Injury and Illness Prevention Program. As discussed in the Initial Statement of Reasons, this amendment will reduce the burden and costs to the individual self-insurer applicant associated with the prior requirement to contract an independent safety engineer for an evaluation report of the applicant's Injury and Illness Prevention Program. Requiring individual self-insurer applicants to certify what is already overseen and enforced by a different division of state government results in an unnecessary burden for the employer. Therefore, no action will be taken regarding the comments at this time.

The Department thanks the commenters for their suggestions.

15. Mr. Jerry Dunn, of Household Industries Self-Insured Group, submitted a comment recommending a reduction of the professional standard in section 15486.1, subdivision (b) by allowing additional people to provide on-going risk control to self-insured groups.

RESPONSE: The comment does not pertain to any changes being addressed in this rulemaking proposal, as no substantive changes were made to this subdivision. The existing regulation specifies that on-going risk control services must be under the direction of a California Professional Engineer, a Certified Safety Professional or a Certified Industrial Hygienist. The Department does not seek to reduce or enlarge the professional standards required to oversee the provision of safety or risk services for group self-insurers. Therefore, the comment is beyond the scope of the rulemaking proposal. The comment will be retained and considered for future rulemaking. The Department thanks Mr. Dunn for his comment.

16. Mr. Ross Hutchings, Executive Director of the California Alliance of Self-Insured Groups, Inc. ("CA-SIG"), commented as follows:

"Dear Mr. Wroten,

Please find attached the proposed regulatory comments and revisions of the California Alliance of Self-Insured Groups (CA-SIG), which have been reviewed and revised by the CA-SIG Board of Directors.

Each of the attached revisions and comments have the unanimous approval of the entire Board of Directors, comprised of almost all of the Self-Insured Group Administrators in California, *except for Regulation Section 15472 and 15496*, which, has been stricken completely (15472) or modified back to [almost] its original form (15496), so that any Member of CA-SIG can make their own revisions to this Regulation.

The balance of the document contains revisions that CA-SIG feels either strengthens the intent of Regulations, clarifies the Regulations and/or make the Regulations more consistent in format. Moreover, we have sought to strengthen the SIG industry by removing some of the streamlining that has been attempted, in the originally proposed revisions, since removing many of these items would make SIGs and/or our industry weaker and also make SIGs more likely to fail in the future.

We commend the Department in its attempt to streamline entry into our industry and make it easier and less costly to start a SIG, but we fear that doing so will only harm our industry, in the long run, which we cannot allow. For this reason, we ask that you (and/or your successor) meet with us, so that we can discuss our comments and proposed revisions, and move forward with the best regulations for our industry.

Thank you for your many years of service on our behalf. We wish you have a wonderful holiday season and a Happy New Year!"

Mr. Hutchings also submitted the following supplemental comment on March 3, 2016:

"Re: Updated comments on proposed regulations

Dear Ms. Asio-Booz,

Although our organization is aware that the public comment period has ended for the proposed changes to the governing regulations of self-insured plans, we believe that it is incumbent upon us to report, that via a majority vote, CA-SIG has decided to align itself more closely with the regulation changes as originally proposed by the Department in the following Sections.

Specifically, CA-SIG is no longer is requesting the following changes that were included in attachment to the initial CA-SIG comment letter dated December 21, 2015.

- The inclusion of paragraph (p) in Section 15471, as well as the statement of concern regarding the elimination of minimum financial requirements;
- The re-insertion of Section 15482 (b) (1); and
- The modification to Section 15482.1 (a) (1), as stated in the red strikeouts.

Please see the enclosed exhibit for any clarification that is needed of the above statements.”

- a. In his initial letter, Mr. Hutchings requested that Mr. Wroten or his successor as Chief of the Office of Self-Insurance Plans “meet with us, so that we can discuss our comments and proposed revisions, and move forward with the best regulations for our industry.”

RESPONSE: The Department generally welcomes input from the community regarding its regulations. However, this rulemaking is limited to specific regulations the Department has proposed to implement, modify or delete. The Department held a public hearing on December 21, 2015, and received comments during the hearing and initial 45-day comment period. Conducting what would effectively be a further public hearing to address CA-SIG’s proposed revisions to these regulations is beyond the scope of the instant rulemaking process.

As stated in CA-SIG’s initial comment letter, the letter was accompanied by a copy of the proposed regulation text with voluminous suggested revisions. A complete copy of CA-SIG’s submission will be included as part of the rulemaking file. The following summarizes CA-SIG’s suggested revisions by section number followed by the Department’s responses.

- b. Section 15201. Definitions: CA-SIG has suggested numerous non-substantive wording and punctuation changes to the definitions of Affiliate Certificate, Alternative Composite Deposit, Compensation, Group Administrator, Group Member, Industry, Joint Powers Authority, Medical-Only Claim, Public Self-Insurer or Public Self-Insured Employer, Security Fund and Self-Insurer, and the insertion of new definitions of Conflict of Interest and Office of Self-Insurance Plans.

RESPONSE: First with regard to the proposed new definitions, the Department notes that there is currently no definition of Office of Self-Insurance Plans in either statute or regulation. To cure that deficiency, the Department added CA-SIG’s proposed definition to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for this suggestion and the proposed language.

The Department does not address conflict of interest requirements or situations in this rulemaking, however. Therefore, the proposed new definition of Conflict of Interest is beyond the scope of this rulemaking proposal. No action will be taken regarding the proposal to add a definition for Conflict of Interest at this time. The comment will be retained and considered for future rulemaking.

CA-SIG suggests the addition of a numeric “(3)” following the text “three” in the definition of Industry. The Department believes that the proposed addition adds clarity to the definition and makes it consistent with the format of other regulations that are part of this rulemaking. The Department added the proposed additional text to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for this suggestion.

This rulemaking does not propose any amendments to the definitions Joint Powers Authority, Medical-Only Claim, or Self-Insurer and the only amendments to the definitions of Affiliate Certificate, Alternative Composite Deposit, Group Administrator, Group Member, Public Self-Insurer or Public Self-Insured Employer, and Security Fund in the proposed text are the addition of hyphens to the words “self-insurance” and variations thereof such as “self-insured” and “self-insurer” as part of a global update. Therefore, the proposed revisions to these definitions are beyond the scope of this rulemaking proposal. The Department does not believe that the proposed revisions, if adopted, would add any clarity to these definitions. No action will be taken regarding the comments at this time.

In the definition of Compensation, CA-SIG proposes the addition of a comma prior to the new text proposed by this rulemaking. The Department does not believe that the proposed revision, if adopted, would add any clarity to this definition. No action will be taken regarding the comment at this time.

- c. Section 15203. Applications and Required Forms: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG’s suggested revisions, the Department believes that the following proposed revisions add clarity to this regulation and were added to the modified regulation text that was circulated for 15-day public comment.

- Revise subdivision (b) as follows:

(b) A new application may be required when an existing, individual self-insurer reincorporates, merges, changes ownership, or adds a new or separate subsidiary or affiliate to its existing workers' compensation self-insurance program. In some cases, it may be possible to amend and transfer an existing certificate without a new application, which decision shall be made by the Chief.
- Insert “(3)” following “three” in subdivision (c)(1).
- Insert a comma and delete the extraneous word “or” in subdivision (c)(3).

- Insert the words “self-insurer” following “group” in subdivision (f).

The Department thanks CA-SIG for these suggestions.

The Department does not believe, however, that the balance of the proposed revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

- d. Section 15203.2 Continuing Financial Capacity for Individual Private Self-Insurers: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG’s suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- e. Section 15203.3. Resolution To Authorize Self-Insurance for an Individual Private Employer: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG’s suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- f. Section 15203.5. Agreement and Undertaking for Security Deposit: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG’s suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- g. Section 15203.6. Delayed Start-up of a Self-Insurance Program: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG’s suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- h. Section 15203.7. Documentation of Consent to Self-Insure and Notice to Employees of Self-Insured Status: CA-SIG has suggested the addition of a comma to subdivision (b) of this section.

RESPONSE: The Department does not believe that the proposed revision would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- i. Section 15203.10. Reinstatement of a Certificate of Consent to Self-Insure: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section as well as elimination of the substantive requirement under subdivision (b) that an employer's assumption of past liabilities be submitted under corporate seal. No justification for the elimination of this requirement was provided by CA-SIG.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation and that eliminating the corporate seal requirement would weaken the regulation. No action will be taken regarding the proposed revisions at this time.

- j. Section 15204. Application Filing Fee: CA-SIG has suggested the addition of a comma following the word "shall" in subdivision (a) and the addition of two commas following the words "application" and "reincorporation" in subdivision (b) of this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that the addition of the proposed comma in subdivision (a) adds clarity to this regulation and was added to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for this suggestion.

The Department does not believe, however, that the addition of the proposed commas to subdivision (b), if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

- k. Section 15205. Interim Certificates: CA-SIG has suggested the addition of a comma following the word "documents" in subdivision (a) and the replacement of commas with semicolons in subdivisions (b)(1) and (b)(2) and insertion of the word "and" at the end subdivision (b)(2).

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that the replacement of commas with semicolons in subdivisions (b)(1) and (b)(2) and insertion of the word "and" at the end subdivision (b)(2) adds clarity and consistency to this regulation and those revisions were made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for this suggestion.

The Department does not believe, however, that the addition of the proposed comma in subdivision (a), if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revision at this time.

- l. Section 15209. Actuarial Studies and Summaries: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that the proposed addition of a comma following the word "level" and the replacement of a semicolon with a colon following the word "components" in subdivision (b) adds clarity and consistency to this regulation and those revisions were made to the modified regulation text that

was circulated for 15-day public comment. The Department thanks CA-SIG for these suggestions.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

- m. Section 15210. Security Deposit: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that insertion of the word "percent" in subdivision (d)(1) and updating of internal references to reflect renumbering of subdivisions due to deletion of former subdivision (e) in renumbered subdivision (g) adds clarity and consistency to this regulation and those revisions were made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for these suggestions.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

- n. Section 15210.1. Adjustments in the Amount of Security Deposit: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- o. Section 15210.2. Deposit Adjustment Upon Revocation of Certificate to Self-Insure: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- p. Section 15211.1. Appeals to Increase in Security Deposit Due to Impaired Financial Condition of Self-Insurer: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- q. Section 15211.2. Agreement of Assumption and Guarantee of Liabilities: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

CA-SIG also inserted a note at the end of subdivision (e), which requires the execution of a new Agreement of Assumption and Guarantee of Liabilities when a self-insurer “reincorporates, merges, or changes its identity,” stating: “Note: this can create a problem if the new/successor company doesn’t continue to be self-insured. The prior liabilities need to be addressed.”

RESPONSE: After careful review of CA-SIG’s suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

With regard to CA-SIG’s note, the Department believes that CA-SIG’s concern is addressed by revisions to the “Guaranty of Workers’ Compensation Liabilities” (new Form A-4 (1-2016)) and a further amendment to subdivision (h) in accord with the contents of the new form as follows:

(h) An Agreement of Assumption and Guarantee of Workers’ Compensation Liabilities executed pursuant to this section may be terminated only upon the express written consent of both the Director and the Security Fund. Termination shall be effective upon the Guarantor’s receipt of such express written consent. Termination shall not extinguish the Guarantor’s continuing liability for any default of the guaranteed self-insurer in fully discharging all existing and potential Workers’ Compensation liability on account of any injury suffered by any of the guaranteed self-insurer’s employees prior to the date of termination upon receipt of a written notice of such termination, but except as provided in subsection (i), the termination shall not take effect sooner than thirty (30) days after receipt of the written termination notice.

Both the new form and the amendment to subdivision (h) were included in the modified regulation text that was circulated for 15-day public comment.

- r. Section 15214. Cash in Trust: CA-SIG has suggested substantive amendments to this section regarding types of financial institutions, issuance of receipts for cash deposits, and payment of interest on cash deposits.

RESPONSE: The Department has not proposed any rulemaking regarding section 15214. Thus, the comment is beyond the scope of this rulemaking proposal. The comment will be retained and considered for future rulemaking.

- s. Section 15216. Administration of Defaulted Self-Insurer's Claims: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG’s suggested revisions, the Department believes that replacement of the word “Manager” with “Chief” in subdivision (c) and insertion of the words “or entity” following “any person” in subdivision (g) add clarity and consistency to this regulation and those revisions were made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for these suggestions.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

- t. Section 15220. Participation in Alternative Composite Deposits: CA-SIG has suggested numerous punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- u. Section 15220.2. Listing of Security Deposit Amount Required: CA-SIG has suggested numerous punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- v. Section 15230. Private Sector License Fee Assessment: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that insertion of the word "thirty" prior to "30" in subdivision (c) adds clarity and consistency to this regulation and this revision was made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for this suggestion.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

- w. Section 15251. Self-Insurer's Annual Report: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that insertion of the word "sixty" prior to "60" in subdivision (a), insertion of numeric "(3)" following "three" in subdivision (b)(1)(B), insertion of numeric "(5)" following "five" in subdivisions (b)(2)(A) and (B), and insertion of numeric "(60)" following "sixty" in subdivision (e) add clarity and consistency to this regulation and these revisions were made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for these suggestions.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

- x. Section 15353. Injury and Illness Prevention Program: CA-SIG has suggested the addition of two commas to subdivision (a) of this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- y. Section 15405. Confidentiality: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- z. Section 15422. Voluntary Revocation: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that replacement of the word "Manager" with "Chief" in the first paragraph of this section adds clarity and consistency to this regulation and this revision was made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for this suggestion.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

- aa. Section 15426. Release of Security Deposit: CA-SIG has suggested the addition of three commas to subdivisions (a) and (c) of this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- bb. Section 15431.1. Appeals and/or Requests for Hearings: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that replacement of colons with semicolons at the end of subdivisions (a)(1) and (a)(3), deletion of an extraneous "s" after the word "establishes" in subdivision (a)(3), and insertion of the word "and" at the end of subdivision (a)(4) add clarity and consistency to this regulation and these revisions were made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for these suggestions.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

- cc. Section 15471. Initial Feasibility Study: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section. In addition, CA-SIG has requested the restoration of subdivision (d), which is deleted by this rulemaking, noting: "NOTE: The security deposit cannot be established without an initial actuarial study, so this subsection cannot be deleted to ensure compliance with SB 863."

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that the insertion of numeric "(5)" following "five" in subdivision (d) adds clarity and consistency to this regulation and this revision was made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for this suggestion.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

The Department disagrees with CA-SIG's assertion that deletion of the subdivision (d) actuarial projection requirement would result in noncompliance with Senate Bill 863, as Senate Bill 863 contains no requirement that an actuarial projection be obtained for group self-insurer feasibility studies. The Department's experience has shown that such projections are not necessary for the evaluation of potential group self-insurers and that elimination of this requirement will streamline and reduce the cost of the application process.

- dd. Section 15472. Minimum Financial Requirements for a Group Self-Insurer: CA-SIG has recommended deletion of this section, noting: "NOTE: This section is being deleted since the proposal guts all financial requirements beyond 15484 and thus is moot."

RESPONSE: The Department disagrees with the comment and CA-SIG's assertion that this rulemaking "guts" self-insured group financial requirements. This section specifically references the solvency requirements specified in section 15484(e) which the Department's experience has shown to be a more accurate indicator of self-insured group solvency than the arbitrary dollar amounts specified in the current version of subdivision (a) of this section. No action will be taken regarding the comment at this time.

- ee. Section 15473. Homogeneity of Group Members: CA-SIG has suggested both substantive and non-substantive amendments to this section.

RESPONSE: The Department has not proposed any rulemaking regarding section 15473. Thus, the comment is beyond the scope of this rulemaking proposal. The comment will be retained and considered for future rulemaking.

- ff. Section 15475.1 Separation Among Service Providers: CA-SIG has suggested both substantive and non-substantive amendments to this section.

RESPONSE: The Department has not proposed any rulemaking regarding section 15475.1. Thus, the comment is beyond the scope of this rulemaking proposal. The comment will be retained and considered for future rulemaking.

gg. Section 15475.2. Restriction on Use of Funds: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that insertion of the words "self-insurer" following "group" in subdivision (a) and deletion of an extraneous space before the comma following "15477(a)(1)" in subdivision (d) add clarity and consistency to this regulation and these revisions were made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for these suggestions.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

hh. Section 15475.3. Investment of Funds: CA-SIG has recommended amending subdivision (a)(3) as follows:

"(3) Certificates of Deposit that are FDIC or NCUA insured or collateralized by the issuing institution. Investments in eligible certificates of deposit, that are brokered into various FDIC and/or NCUA insured institutions, shall have a maximum maturity of no more than five (5) years, and shall not exceed ~~15~~ fifty percent (50%) of the total portfolio as measured at the date of purchase."

RESPONSE: After careful review of CA-SIG's suggested amendment, the Department agrees that increasing the allowable investment of funds in Certificates of Deposit would be a positive change that would allow more liquidity for group-self-insurers. This revision was made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for this suggestion.

ii. Section 15476. Advanced Premium Contribution Discounts: CA-SIG has recommended deletion of the word "Premium" from the section title and the addition of the following language: "Any discount and/or pricing mechanism[s] shall be provided to the Actuary for consideration in the annual actuarial study, required under Regulation Section 15481, prior to issuance of the study."

RESPONSE: The Department disagrees with the comment as the suggested language regarding "discount and/or pricing mechanism[s]" is directly contrary to the first sentence of this section which expressly prohibits discounts, stating: "The Board of Trustees of a group self-insurer using a contribution plan shall not authorize discounts to any member." No action will be taken regarding the comment at this time.

- jj. Section 15477. Surplus or Insufficient Funding: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: The Department has not proposed any rulemaking regarding section 15477. Thus, the comment is beyond the scope of this rulemaking proposal. The comment will be retained and considered for future rulemaking.

- kk. Section 15478. Excess Insurance: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: The Department has not proposed any rulemaking regarding section 15478. Thus, the comment is beyond the scope of this rulemaking proposal. The comment will be retained and considered for future rulemaking.

- ll. Section 15480. Termination of Membership in a Group Self-Insurer: CA-SIG has recommended numerous non-substantive wording and punctuation changes to this section as well as a substantive amendment to subdivision (g) which would deem failure to bring a revoked group member's contributions or assessments current to be a waiver of appeal rights and the addition of a new subdivision (h) providing that a revoked group member remains liable for any contributions or assessments owed by that group member.

RESPONSE: After careful review of CA-SIG's suggested non-substantive revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding those proposed revisions at this time.

The Department disagrees with the proposed substantive additions because the proposed waiver of appeal rights raises serious due process concerns and the concern which apparently underlies proposed new section (h) is already covered by the existing joint and several liability of group members. No action will be taken regarding these proposed additions at this time.

- mm. Section 15481. Actuarial Studies and Summaries: CA-SIG has recommended numerous non-substantive wording and punctuation changes to this section as well as the addition of a new subdivision (b)(5) as follows:

"(5) If factors reflecting loss histories, such as experience modifications, are utilized to modify group self-insurer or individual member contributions, the contributions for the funding of the group self-insurer's claims, for the program year, shall be calculated and contemplated by the actuary to ensure that full funding, of each program year, is consistent with the overall funding requirements under Section 15484(e)."

CA-SIG notes:

"This might not be the best place to put this revision, but it does put the actuarial review of these factors back into consideration, so as to avoid underfunding. Having the CPA check this, after the year has already elapsed, will likely cause too much of an ability to

underfund. We could also place this into Section 15484, directly, but it will be not be contemplated by the actuaries if it is not placed into the section providing them instructions what to do; hence, we believe that this is the best section to place this in.” CA-SIG also proposes the addition of the following language at the end of subdivision (f): “All information shall be maintained, as confidential, by each entity, and shall not be made available to the public and/or anyone beyond the entities and/or their retained consultants.”

RESPONSE: After careful review of CA-SIG’s suggested revisions, the Department believes that the insertion of the word “group” before “administrator” in subdivision (a), revision of the first sentence of subdivision (a)(1) to read: “The analysis and results of the actuarial study shall be presented to the group self-insurer’s Board of Trustees and made available, in a written or electronic form, to the Board of Trustees and to any present or former group member requesting a copy,” and insertion of the words “one million dollars” and change “\$1 million” to “\$1,000,000” in subdivision (a)(4) add clarity and consistency to this regulation and these revisions were made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for these suggestions.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed non-substantive revisions at this time.

The Department disagrees with CA-SIG’s proposal to add a new section (b)(5) as the Department does not believe that ensuring full funding is an actuarial responsibility. Self-insured groups may take such action on their own if they feel it is appropriate, but the Department does not believe it should be required. The Department also disagrees with the addition of proposed language regarding confidentiality in subdivision (f) as this is duplicative of existing protections contained in section 15405. No action will be taken regarding the proposed additions at this time.

- nn. Section 15482. Private Group Application: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG’s suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- oo. Section 15482.1. Private Group Member Application: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG’s suggested revisions, the Department believes that the deletion of unnecessary parentheses in subdivision (a) and punctuation corrections for uniformity at the end of subdivisions (a)(1) and (3) add clarity and consistency to this regulation and these revisions were made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for these suggestions.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

- pp. Section 15482.2. Interim Certificates to Group Members: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that the deletion of unnecessary subheading (b)(1), and replacement of the existing period with a semicolon and insertion of the word "and" at the end of subdivision (c)(4) add clarity and consistency to this regulation and these revisions were made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for these suggestions.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

- qq. Section 15483. Agreement of Assumption and Guarantee of Group Member's Liabilities: CA-SIG has recommended the restoration of language deleted from subdivision (b) in the originally proposed text.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that the language should not have been deleted and it has been restored to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for these suggestions.

- rr. Section 15484. Continuing Financial Capacity of Group Self-Insurers: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

- ss. Section 15486. Agreement and Undertaking for Director to Utilize Security Deposit to Pay Benefits Due: CA-SIG has suggested the removal of parentheses surrounding the words "(Form S-6 (1-2016))."

RESPONSE: After careful review of CA-SIG's suggested revision, the Department does not believe that the proposed revision would add any clarity to this regulation. No action will be taken regarding the proposed revision at this time.

- tt. Section 15486.1. Group Self-Insurer Injury and Illness Prevention Program: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section. CA-SIG has also recommended restoration of subdivisions (a)(1), (a)(2), (b) and (c) that were deleted in the originally noticed text.

RESPONSE: After careful review of CA-SIG's suggested non-substantive revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation.

The Department disagrees with CA-SIG's recommendation to restore the deleted language as the deleted requirements are duplicative of requirements under the jurisdiction of and enforced by the Division of Occupational Safety and Health and duplicating such requirements in this section places an undue burden on self-insured employers. No action will be taken regarding the proposed revisions at this time.

uu. Section 15487. Delayed Start-Up of a Group Self-Insurer or Group Member Participation in Group Self-Insurance: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that the insertion of numeric "(6)" following "six" in subdivisions (a) and (c) and insertion of numeric "(3)" following "three" in subdivision (b) add clarity and consistency to this regulation and these revisions were made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for these suggestions.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

vv. Section 15491. Group Self-Insurer and Group Member Application Filing Fees: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department does not believe that the proposed revisions would add any clarity to this regulation. No action will be taken regarding the proposed revisions at this time.

ww. Section 15496. Group Self-Insurer's Security Deposit: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section and has requested the restoration of language deleted from subdivisions (c) and (d). CA-SIG notes: "SB 863 mandates that the actuarially derived formula be used in determining a SIG's security deposit, unless revised by Regulation. For this reason, the requested revisions should not be made if the intent of SB 863 is severely weakened."

RESPONSE: After careful review of CA-SIG's suggested non-substantive revisions, the Department believes that the revision of subdivision (c)(5) to read "Any combination of one or more of the foregoing methods ~~described in subsections (g)(1) through (g)(4) of this section~~" adds clarity and consistency to this regulation and this revision was made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for this suggestion.

The Department does not believe, however, that the balance of the suggested non-substantive revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed non-substantive revisions at this time.

The Department disagrees that the deleted language weakens the standard for calculating the initial security deposit contrary to the intent of Senate Bill 863. The Department believes that the revised criteria added to subdivision (b)(1) by this rulemaking will continue to require robust security deposits from all self-insured employers.

- xx. Section 15497. Adjustments in the Amount of a Group Self-Insurer's Security Deposit: CA-SIG has suggested numerous non-substantive wording and punctuation changes to this section.

RESPONSE: After careful review of CA-SIG's suggested revisions, the Department believes that the insertion of the word "thirty" before "30" in subdivision (a) adds clarity and consistency to this regulation and this revision was made to the modified regulation text that was circulated for 15-day public comment. The Department thanks CA-SIG for this suggestion.

The Department does not believe, however, that the balance of the suggested revisions, if adopted, would add any clarity to this section. No action will be taken regarding the remaining proposed revisions at this time.

SUMMARY OF AND RESPONSE TO ORAL COMMENTS RECEIVED AT THE PUBLIC HEARING

The Department received five oral comments at the public hearing on December 21, 2015, in Rancho Cordova, California.

1. Mr. Robin Johnson requested clarification regarding whether section 15426 is intended to mean that a defaulting self-insurer loses all rights to the security deposit, even after all claims are paid. If excess funds may in fact go back to the group members, Mr. Johnson suggested an amendment to section 15426 stating this.

RESPONSE: Section 15426, subdivision (c) is clear and accurately states that "upon default the self-insurer shall forfeit any right to the security deposit." Former Chief Jon Wroten corrected his statement at the public hearing once he clarified the regulation in question. Mr. Wroten confirmed that new regulation section 15426, subdivision (c) is correct as written. The Department added the language of subdivision (c) to conform with current law and intended for the subdivision to read that a self-insurer relinquishes all rights to its security deposit upon default. Therefore, no action will be taken regarding the suggestion at this time. The Department thanks Mr. Johnson for his comment.

2. Mr. Ross Hutchings, Executive Director for California Alliance of Self Insured Groups ("CA-SIG"), commented that his organization commends the Department for its efforts in streamlining the regulations via the proposed regulations. Mr. Hutchings indicated that CA-SIG is unanimous in the suggestions they are submitting. However, there are two sections of the

proposed regulations on which CA-SIG was divided. Hence, individual members will submit their own letters of comment as to those sections.

RESPONSE: The Department thanks Mr. Hutchings for his comments. The suggestions submitted by CA-SIG are responded to above. All individual letters received by the Department within the comment period are also responded to above.

3. Mr. Jackson Finnegan, President of CA-SIG, commented that the package submitted by CA-SIG contains suggestions on the entire regulation packet, and that he will forward a Word copy to Jon Wroten. Mr. Finnegan reiterated CA-SIG's concern that the application and approval process for self-insureds is too streamlined, especially the deletion in section 15472 of various financial benchmarks that self-insured group members have to meet. Mr. Finnegan stated that these concerns are outlined in the CA-SIG letter, as well as in the suggestion packet.

RESPONSE: The Department thanks Mr. Finnegan for his comments. All comments submitted by CA-SIG are responded to above.

4. Mr. Steve Brady, of Work Comp Alternatives, stated that he also submitted a letter by mail. Mr. Brady commented that he and his colleagues agree that the changes proposed by the Department are relatively good changes considering the history of self-insurance groups and the difficult situations they have gone through. The proposed rulemaking will allow more qualified organizations to be able to do what they have not been able to do before.

RESPONSE: The Department thanks Mr. Brady for his comments. Mr. Brady's letter is responded to above.

5. Mr. Jerry Dunn, of Household Industries Self-Insured Group, made a recommendation regarding section 15486, though it appears that he was referring to section 15486.1, subdivision (b). Mr. Dunn suggested expanding the category of persons who oversee ongoing risk control and safety support for group self-insurers, since other persons within the industry may be more knowledgeable to oversee risk and safety programs.

RESPONSE: The comment does not pertain to any changes being addressed in the rulemaking proposal, as no substantive changes were made to this subdivision. The existing regulation specifies that on-going risk control services must be under the direction of a California Professional Engineer, a Certified Safety Professional or a Certified Industrial Hygienist. The Department does not seek to reduce or enlarge the professional standards required to oversee the provision of safety or risk services. Therefore, the comment is beyond the scope of the rulemaking proposal. The comment will be retained and considered for future rulemaking. The Department thanks Mr. Dunn for his comment.

SUMMARY OF AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD

The Department received six letters and emails of written comments during the 15-day public comment period.

1. Mr. Michael Lyon, Administrator for Finish Line Self Insurance Group, Inc., submitted a comment proposing the addition of language to section 15482.2, subdivision (c)(3). This subdivision addresses the requirement that a new group member requesting an interim certificate to self-insure submit annual payroll for the previous twelve months.

Mr. Lyon proposes adding an exception for WCIRB class codes 8631 (groom) and 8278 (jockey) so that stall days and starts are submitted for these class codes in lieu of payroll. The writer states that stall days and starts constitute a more reliable measure of risk.

RESPONSE: The Department did not address the requirement of annual payroll in section 15482.2, subdivision (c)(3) during this rulemaking. The proposed modification to this section involves deleting 15482.2, subdivision (b)(1) and replacing an existing period with a semicolon and inserting the word "and" at the end of subdivision (c)(4). Therefore, the comment is beyond the scope of the rulemaking proposal. The comment will be retained and considered for future rulemaking. The Department thanks Mr. Lyon for his comment.

2. Ms. Megan Canright, Secretary for the California Industrial Hygiene Council, submitted an email with an attached letter. The letter, written by Mr. Ed Klinenberg, President of California Industrial Hygiene Council, requests an addition to the definitions in section 15201, and corresponding changes to additional sections.

Mr. Klinenberg proposes adding a definition for "Competent Person" in section 15201 and adding the word "competent" before "person" in sections 15353, subdivision (a) and 15486.1, subdivision (a). The writer believes that self-certification of the Injury and Illness Prevention Program is best evaluated by a designated and competent person as defined by Cal/OSHA.

RESPONSE: In this rulemaking proposal, the Department did not address whether to impose additional requirements for the "person" within the organization responsible for workplace safety. The proposed amendments to section 15201 affect the definitions of "Closed Claim," "Group Self-Insurer," "Industry" and "Office of Self-Insurance Plans." Adding a new definition under section 15201 is beyond the scope of the rulemaking proposal. The comment will be retained and considered for future rulemaking.

The Department did not address section 15353 in the Notice of Modifications to Text of Proposed Regulations, so the writer's comment regarding this section is beyond the scope of the rulemaking proposal. Regarding section 15486.1, subdivision (a), the Department had proposed only a grammatical change by inserting a hyphen in "Self-Insurer" and "Self-Insure." The addition of a new defining word ("competent" before "person") is beyond the scope of the proposed modifications to section 15486.1, subdivision (a). The comment will be retained and considered for future rulemaking.

The Department thanks Mr. Klinenberg for his comment.

3. Mr. Scotty Benton, Vice President of Quality Performance for Sedgwick Claims Management Services, Inc. submitted an email with an attached letter commenting on the

definition of "Closed Claim" in section 15201 and objecting to the reinstatement of section 15251, subdivision (b)(5)(B).

- a. Mr. Benton believes that the proposed modification to the definition of "Closed Claim" in section 15201 would expand the definition of "Closed Claim," causing claims to stay open for a longer period of time.

RESPONSE: The Department disagrees with the comment. In the original Text of Proposed Regulations, the Department had proposed adding the definition of "Closed Claim" as follows: "A work injury claim in which future payment of compensation cannot be reasonable expected to be due." In the Notice of Modification to Text of Proposed Regulations, the Department struck the words "payment of compensation" and added instead "provision of benefits." Additionally, the Department changed "reasonable" to "reasonably" to correct a grammatical error.

The Department does not believe the proposed change in terms expands the definition of a "Closed Claim" or will cause claims to remain open longer. The Department opted for the words "future provision of benefits" over "future payment of compensation" because workers' compensation claims involve specific benefits (indemnity, medical, supplemental job displacement benefits, among others), the provision of which necessitates further costs in the claim. Thus, if the future provision of benefits is reasonably expected to be due, then the claim should not be "closed."

The term "benefits" is more accurate than the term "compensation" in the context of work-injury claims and the proposed definition. The term "provision" focuses on whether a future duty to provide benefits is reasonable, instead of requiring that future payment on the claim be reasonably expected. The term "provision of benefits" more accurately describes the obligations of an insurer that necessitate future payments and/or costs on the claim. Because both "provision of benefits" and "payment of compensation" ultimately result in future costs, the Department does not believe the proposed amendment substantively changes the regulation. Rather, the proposed modification promotes clarity and uniformity in the regulation. No action will be taken regarding the proposed revisions at this time.

The Department thanks Mr. Benton for his comment.

- b. Mr. Benton urges the Department to proceed with the intended deletion of section 15251, subdivision (b)(5)(B) because he believes the subdivision creates an overly burdensome reporting requirement and is duplicative of requirements contained in section 15251, subdivision (b)(4).

RESPONSE: Section 15251, subdivision (b)(5)(B) is necessary to ensure that security deposits are accurate. In its original Text of Proposed Regulations, the Department proposed eliminating the subdivision on the belief that section 15251, subdivision (b)(5)(B) is not necessary when the calculation of security deposit is actuarial based. Section 15251 addresses the requirements for a self-insurer's annual report. Section 15251, subdivision (b)(5)(B) requires the self-insurer to maintain an open claims list for claims reported to the carrier of an excess insurance policy and to indicate whether the claim has been accepted or denied by the carrier.

The Department subsequently realized that the actuarial does not verify if the credit sought by the employer is appropriate. There is no accounting for claims that are denied by the carrier. Only the excess credit that was fully accepted or partially accepted by the excess carrier on the claim level may be reimbursed by the excess carrier. This would result in a reduction of the security deposit for the self-insurer. However, if a claim is rejected or denied, the security deposit should not be reduced. The Department determined that in order for the security deposit to be accurate, the information required by section 15251, subdivision (b)(5)(B) is still needed.

Section 15251, subdivision (b)(5)(B) does not contain duplicative requirements found in section 15251, subdivision (b)(4). The latter subdivision involves information at the claim level. In other words, the claims administrator provides the Department with information on the individual claim. Section 15251, subdivision (b)(4) only requires that the administrator provide the policy information in effect during the period of self-insurance along with policy retention levels. The subdivision does not require additional information that would affect the security deposit. Section 15251, subdivision (b)(5)(B) enumerates additional specific requirements related to the determination of an accurate security deposit, including information on denied claims and liabilities above the retention level of the policy. Thus, section 15251, subdivision (b)(5)(B) should remain effective as the subdivision serves a necessary function in maintaining the accuracy of security deposits and does not impose duplicative requirements from another section of the regulations. No action will be taken regarding the comment at this time.

The Department thanks Mr. Benton for his comment.

4. Ms. Cari Miller, Associate Counsel, Governmental Affairs at Gallagher Bassett Services, Inc. submitted an email with an attached letter also opposing the reinstatement of section 15251, subdivision (b)(5)(B).
 - a. Ms. Miller submitted a comment similar to that submitted by Sedgwick Claims Management Services, addressed above, arguing that the subdivision contains requirements that are burdensome and redundant. The writer indicates that since another subdivision, section 15251, subdivision (b)(6), requires a calculation of total unpaid carrier liability for specific excess coverage, this necessitates that self-insureds and their administrators consult with specific policy information on reportable claims. Therefore, Ms. Miller believes section 15251, subdivision (b)(5)(B) requires redundant information. Should the Department reinstate section 15251, subdivision (b)(5)(B), the writer recommends the Department establish an electronic portal to upload the specific data elements (like the portal established for the Annual Report of Inventory).

RESPONSE: The Department disagrees with the comment for the same reasons listed above in the response to the comment submitted by Sedgwick Claims Management Services. The requirement for a calculation of total unpaid carrier liability in section 15251, subdivision (b)(6) differs from the requirement for specific information in section 15251, subdivision (b)(5)(B). The former subdivision does not require that detailed information on individual claims be submitted to the Department, especially regarding claims denied by the carrier. Thus, section

15251, subdivision (b)(5)(B) is not duplicative of section 15251, subdivision (b)(6) since it requires more specific information.

Section 15251, subdivision (b)(6) requires only a calculation of total unpaid carrier liability. As the writer points out, self-insureds must examine individual claims in order to supply the calculation requested by section 15251, subdivision (b)(6). Section 15251, subdivision (b)(5)(B) requires that the specific information on individual claims be supplied to the Department, including for claims that are denied. Thus, the burden imposed on self-insureds to provide information they already consult to comply with section 15251, subdivision (b)(6) should not be undue. Because the information required by section 15251, subdivision (b)(5)(B) is needed to assess accurate security deposits, the Department deems it necessary to reinstate the subdivision.

The Department did not propose any changes to the method of submission of information under section 15251, subdivision (b)(5)(B) in the rulemaking proposal. Thus, the comment regarding establishing an electronic portal to upload specific data is beyond the scope of this rulemaking. The comment will be retained and considered for future rulemaking. The Department thanks Ms. Miller for her comment.

5/6. Ms. Karen Zdrowski, Executive Director of California Alliance of Self-Insured Groups, Inc. ("CA-SIG") submitted two emails with a letter response to the modified proposed regulations and several copies of the CA-SIG Annotated-Revised version of the OSIP Modified Text of Proposed Regulations, containing CA-SIG's proposed revisions.

- a. During the 15-day public comment period, CA-SIG submitted both Word and PDF versions of proposed revisions to the regulations. Some of the proposed revisions had previously been submitted by CA-SIG during the 45-day comment period.

RESPONSE: The Department addressed CA-SIG's revisions previously during the 45-day comment period. Specifically, CA-SIG resubmitted comments to sections 15251, subdivision (b)(7), 15481, subdivision (b)(5), and 15482.2, subdivision (c)(4). The Department's responses to the previously submitted comments are listed above. Only those comments related to the proposed modifications contained in the Notice of Modification to Text of Proposed Regulations will be addressed in this section.

- b. In its proposed revisions to the regulations, CA-SIG incorporates the exception language for WCIRB class codes 8631 and 8278 to section 15482.2, subdivision (c)(3), also proposed by Finish Line Self Insurance Group, Inc.

RESPONSE: The Department did not address the requirement of annual payroll in section 15482.2, subdivision (c)(3) during this rulemaking. The proposed modification to this section involves deleting section 15482.2, subdivision (b)(1) and replacing an existing period with a semicolon and inserting the word "and" at the end of subdivision (c)(4). Therefore, the comment is beyond the scope of the rulemaking proposal. The comment will be retained and considered for future rulemaking.

The Department thanks CA-SIG for the comment.

- c. In its proposed revisions to the regulations, CA-SIG comments that section 15481, subdivision (c) was inadvertently deleted from the section.

RESPONSE: The Department thanks CA-SIG for the comment. Indeed, section 15481, subdivision (c) pre-existed the instant rulemaking. The Department had only proposed adding a hyphen in two areas in subdivision (c), between the words “self” and “insurer.” This proposal was indicated in the original Text of Proposed Regulations. CA-SIG is correct that subdivision (c) is inexplicably absent from section 15481 in the Amended Text of Proposed Regulations. This appears to have been an inadvertent error. The Department did not intend to delete this subdivision, and in fact did not list such intent in the Notice of Modification to Text of Proposed Regulations. Because no substantive change was proposed to existing subdivision (c) and the grammatical change to the subdivision was previously noticed, the Department will reinstate subdivision (c) as it appeared in the original Text of Proposed Regulations.

- d. In its proposed revisions to the regulations, CA-SIG suggests adding the words “private or group” before “self-insurer” in section 15405, subdivision (a)(2), and adding “or group” before “self-insurer” in subdivision (b)(1).

RESPONSE: The Department did not propose any changes to section 15405 in the Notice of Modification to Text of Proposed Regulations. Therefore, the comment is beyond the scope of the rulemaking proposal. The comment will be retained and considered for future rulemaking. The Department thanks CA-SIG for the suggestion.

- e. In the letter recommending revisions to modified proposed regulations, Ms. Zdrowski references section 15214 for revisions regarding “brokered CDs” and the need for additional language in this section.

RESPONSE: The Department did not propose any rulemaking regarding section 15214 in the original Notice of Proposed Rulemaking nor in the Notice of Modification to Text of Proposed Regulations. Thus, the comment is beyond the scope of this rulemaking proposal. The comment will be retained and considered for future rulemaking. The Department thanks Ms. Zdrowski for her comment.

- f. In the letter recommending revisions to modified proposed regulations, Ms. Zdrowski requests a public hearing to address CA-SIG’s proposed revisions to the regulations.

RESPONSE: The Department generally welcomes input from the community regarding its regulations. However, this rulemaking is limited to specific regulations the Department has proposed to implement, modify or delete. The Department held a public hearing on December 21, 2015, received comments during the hearing and initial 45-day comment period, issued a Notice of Modifications to Text of Proposed Regulations and received comments during a 15-day comment period. A further public hearing at this time to address CA-SIG’s proposed revisions to regulations is beyond the scope of the instant rulemaking process.

The Department thanks Ms. Zdrowski and CA-SIG for their comments.

