STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS,
OFFICE OF SELF INSURANCE PLANS
2265 WATT AVENUE, SUITE 1
SACRAMENTO, CA 95825

AMENDMENT TO TITLE 8, SUBCHAPTER 2, CALIFORNIA CODE OF REGULATIONS REGARDING ENFORCEMENT OF SECTION 3700 OF THE LABOR CODE

INITIAL STATEMENT OF REASONS

INTRODUCTION

California Labor Code Section 3700 requires every employer except the state to secure the payment of compensation by either being insured against liability to pay compensation by one or more insurers duly authorized to write workers' compensation insurance in this state, or by securing from the Department of Industrial Relations a certificate of consent to self insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

Although private individual employers have been allowed to secure certificates of consent to self insure by giving proof satisfactory to the Director of Industrial Relations of the ability to self-insure and pay compensation since 1918, it was not until Labor Code Section 3700 was amended in December of 1993 that employers were permitted to qualify to self-insure as members of groups of employers - that is, beginning in 1993, employers that could not meet financial requirements to self-insure individually could form groups to meet the financial and other requirements to self insure in aggregate. Allowing private group self insurance was intended as an alternative to the high cost of workers' compensation insurance so that employers that were not large enough to self-insure could gain the benefits of self insurance and reduce their costs.

In June of 1994, amendments to Title 8, California Code of Regulations were promulgated to implement the amendment to Labor Code Section 3700. Various sections of Articles 1, 2, 3, 5, 8, and 9 were amended to add new definitions, provide new application forms, and specify group self insurers to be subject to the same requirements as individual self insurers. In addition, a new Article 13 was promulgated to address requirements specific to group self-insurance only.

Soon after regulations were amended to address private group self-insurance in 1994, changes in law de-regulated insurance rates, resulting in substantial decreases in the cost of workers' compensation insurance. Requirements to self-insure as members of groups were somewhat burdensome, including requirements for groups to obtain excess insurance policies with low retention levels that were costlier than higher retention level policies, and requiring even the smallest employers applying to self insure to obtain costly reviewed financial statements to qualify as members. At the same time, the cost of insurance was decreasing substantially because of deregulation, and so even though group self insurance was allowed in 1993, no private groups applied to become self insured until 2002. At that time, the cost of insurance again had begun to rise following several statutory increases in benefit levels, the failure of a number of insurers because of under-pricing, and the departure from California of many other insurers.

Because rates for workers' compensation were increasing substantially for a number of years, group self insurance became the best alternative for small to medium sized employers in certain industries. At the beginning of 2003 there was one approved private group self insurer - by the end of 2006, thirty groups with over 2,000 employer-members had been granted certificates of consent to self-insure.

In 2004, the enactment of SB 899 ushered in substantial workers' compensation reform, which is now resulting in reduced workers' compensation insurance costs. As could be expected, the reduction in insurance costs together with the burdensome requirements to qualify as members of self-insured groups have resulted in a dramatic slow down in the rush to self insure in groups, and existing groups are losing some members, as employers return to insurance. Because of these factors, there is the potential for the financial strength of group self insurers to weaken, not because of weakened financial stability of specific group members, but because of a reduced ability to spread the risk as members return to insurance and the groups decrease in size.

Because California had no experience with group self-insurance in 1993, many of the initial regulatory requirements to self insure were modeled after regulatory requirements for self-insurance for subsidiaries and affiliates of individual private self insured employers, requirements that existed long before group self insurance was permitted. However, there are basic differences between the principles of individual self insurance and group self insurance, and many of those requirements for individual self-insurers do not logically apply to group self insurance. For instance, with individual private self insurance, the financial strength of the parent company, as evidenced by the parent's certified, independently audited financial statement, documents the company's fiscal ability to self insure. The parent company's balance sheet does not consist of restricted funds that can be used only for workers' compensation expenses, and the financial strength of the company is best ascertained by evaluating the company's overall financial strength. In private group self insurance, however, the initial members of the group document financial eligibility in aggregate, as shown by their combined financial statements, but once a group has been established, the group's balance sheet (as opposed to combined members' balance sheets) consists of assets and liabilities that belong to the group as a whole (the group is a private, not-for-profit, mutual benefit corporation that

exists solely to cover the workers' compensation requirements of its member). The assets consist of contributions paid by group members to operate the group and are *restricted* – that is, they may only be used to pay workers' compensation benefits and expenses associated with maintaining the group self insurance program. Thus the group's financial strength is documented by the group's financial statement, not by financial statements for its members.

Before private group self insurance regulations were introduced in 1994, self insurance regulations consisted of 12 articles in Chapter 8, Subchapter 2 of Title 8, California Code of Regulations. These articles addressed specific subcategories of subject matters, such as certificates of consent to self-insure, application, security deposits, audits, and others. Amendments dealing specifically with private group self insurance (but not individual self insurance) were introduced in a new Article 13, but amendments related to group self insurance in some of the other subcategories of subjects were also made in the pre-existing articles. The scattering of many group self insurance requirements throughout the other articles, while most requirements that are specific to only group self insurance are in Article 13, makes it difficult for persons reading Article 13 to determine all the requirements necessary to apply for and maintain approval for group self insurance. To make it easier for the public to understand and comply with requirements, the proposal relocates various requirements from Articles 1, 2, 3, 4, and 5 into Article 13 for greater clarity and utility.

In addition to the necessity for the amendment of regulations related to group self insurance, other areas related to self insurance in general need to be addressed, such as the need to establish financial standards for special excess carriers that write policies to transfer self insured liabilities to an insurance carrier, as required by Labor Code Section 3702.8, as well as the need for financial standards for carriers that write specific excess policies for self insured employers, as necessitated by changes to Insurance Code Section 1063.1 in 2005. "Clean up" amendments to regulations to reflect changes in the evaluation and processing of applications to self insure and improvements in the availability of forms electronically are also included in this rulemaking.

Article 1. Definitions.

Section 15201 contains definitions of terms contained in Articles 2 through 13, dealing with self insurance of workers' compensation liabilities. The proposed amendments will add a needed definition and clarify existing regulations. Beginning with subsection (p), subjections are re-ordered to maintain alphabetical order of definitions and allow for a new definition necessary to define the initial members of a group self insurer that must qualify the group financially.

Section 15201(p) is amended to add a definition for a "core group member." In order to form a group self insurer, a number of homogenous employers must meet financial requirements in aggregate, and after financial requirements of these members have been

met, additional group members may be added. The definition is needed to distinguish these qualifying group members from non-qualifying group members.

Section 15201(t) The definition of "group self insurer", formerly subsection (s), is amended as subsection (t) and expands the definition of group self insurer to permit non-profit charitable corporations and non-profit religious corporations to form self insured groups. The amendment is necessary to specify other types of non-profit corporations that may qualify for group self-insurance, and to be consistent with amended Section 15470.

Section 15201(v), formerly subsection (u), is amended to define a group administrator as a business entity as well as an individual. The amendment is necessary so that companies utilizing different individuals with distinct functions in the administration of groups are clearly authorized to function as group administrators, and for grammatical clarity.

Article 2. Certificate to Self Insure.

Section 15203 of Article 2 as it exists designates the types of application forms used by the Office of Self Insurance Plans to process employer applications to become self insured for their workers' compensation liabilities. The section lists required documents and information needed to constitute a complete application in order to ensure that each employer approved to self insure is financially able to pay its own workers' compensation claims in lieu of insuring its workers' compensation liabilities through an insurance carrier, to ensure that a history of past workers' compensation experience is provided to the Office of Self Insurance Plans so that an adequate security deposit may be posted with the Department of Industrial Relations to secure the payment of compensation, and to ensure that proper agreements and guarantees are established so that each approved employer is legally obligated to provide adequate benefits to its injured workers. This section designates application forms for private individual applicant employers and subsidiaries and affiliated companies, public employers, private group applicant, private group member applicants, and public joint powers authority applicants established to self insure public employers that pool their liabilities, and establishes time frames in which additional information must be requested if needed and time frames for denial or approval of the applications.

This section is amended grammatically for clarity and to delete the group application and group member application requirements from subsections (d), (e), and (j) and reorder the subsections so that group application requirements can be included in new sections 15482 and 15482.1, respectively. The changes are necessary so that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations. The section is also amended to remove reference to the application forms' availability in certain plates of the Index to the regulations and to add reference to the forms' availability on the website of the Office of Self Insurance Plans. The change is necessary because Indexes to the regulations are not published, making them almost unobtainable

by the public, while the website of the Office of Self Insurance Plans is readily available to the public.

Section 15203.1 provides that the parent company of each private subsidiary or affiliate applicant for a private Certificate of Consent to Self Insure shall guarantee the liabilities of the applicant, and provides that each private group self insurer provide a guarantee agreement for each group member, The section provides that the Director may increase the security deposit requirement or deny the application if the parent company declines to execute such an agreement for the applicant or subsidiary applicant or if the group self insurer declines to execute an agreement.

This section is amended grammatically for clarity and to delete the requirements for group self insurer guarantee agreements in this section and reorder the subsections so that group application requirements can be included in new Section 154823. The changes are necessary so that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations. The section is also amended to specify that if an individual private self insurer's ultimate parent company or controlling entity, as opposed to immediate parent company, declines to execute an agreement to guarantee the liabilities of the self insured employer, the Director may increase the self insurer's security deposit or deny the application to self insure. This amendment is necessary to ensure that a parent company that has the ability to draw the assets out of a self insured employer will execute a guarantee agreement.

Section 15203.2 provides in subsection (a) that all private self insured employers (both private individual self insurers and private group self insurers) shall annually submit to the Manager current certified, independently audited financial statements, and, if one has not been prepared, advise the Manager in writing and submit a consolidated financial statement prepared by a certified public accountant. The section provides in subsection (b) that any public Joint Powers Authority solely responsible for the claims of its members shall annually submit to the Manager a report of its financial condition, or if available, a certified, independently audited financial statement. Subsection (c) provides that all private group members of a private group self insurer shall annually submit to the group's Board of Trustees a current certified, independently audited financial statement, and that the group administrator shall make certified independently audited financial statements of any of its members available to the Manager on request and advise the Manager if any members have not submitted financial statements to the group. Subsection (d) provides that the impairment of solvency of any private self insurer is cause for an increased security deposit requirement or involuntary revocation of consent to self insure. Subsection (e) provides that any private self insurer applicant for a master certificate of consent to self insure after July 1, 1994 demonstrate and maintain a net worth of at least $5,000,000 and average net income for the five past years of at least $500,000, and provides that any existing private self insured employer granted a Certificate of Consent to Self Insure before July 1, 1994 that has continued as a self insurer maintain a net worth of at least $2,200,000 and an average net income for the five

past years of at least $300,000 Subsection (f) provides that each private group self insurer demonstrate and maintain a consolidated net worth of at least $5,000,000 and a consolidated annual net income of the group members of $500,000, and sufficient income to fund projected claim liabilities at the 80% actuarial confidence level, pay all administrative operating costs, and post the required security deposit. A note at the end of subsection (e_ provides that consolidated net worth and net income shall be determined only from members with current certified, independently audited financial statements.

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

The change is necessary so that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations. The section is also amended to specify that failure of a self insured private individual self insured employer or its parent company to submit a certified, independently audited financial statement may in an increased security deposit or revocation of consent to self insure. This amendment is necessary to ensure that each private individual self insured continues to provide documentation of its financial ability to self insure.

Section 15203.3 of Article 2 provides that a resolution to authorize self insurance of workers' compensation as part of the application to self insure shall be adopted by the private employer's Board of Directors, general partners or owner, as appropriate, and shall identify the employer by legal name, state of registration, and the date the resolution was adopted. The resolution shall also identify by title the appointed officers or employees authorized to sign the application, execute any and all documents, and do subsequent acts as required to maintain self insurance approval. This section also requires any self insured employer that reincorporates, merges, or changes its identity to submit a new resolution authorizing the maintenance of self insurance within 30 days, but allows the Manager to extend the time period for good cause. The section states that the Manager shall provide a model corporate resolution as part of the application form and shall provide a model partnership or other non-corporate model resolution upon request. The section indicates that a group self insurer resolution shall be attached as part of the group employer application and executed by the group applicant Board of Directors, and

that the current group self insurer resolution is contained in the Index of these regulations.

This section is amended grammatically for clarity and to delete subsection (d) which provides the requirements for group self insurer resolutions and group member application requirements. The change is necessary in order to relocate group self insurance resolution requirements to a new Section 15485 so that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations.

Section 15203.4 This section specifies requirements for board resolutions for public entities, including joint powers authorities. The section is amended grammatically for clarity.

Section 15203.5 This section specifies that all private self insurers, including group self insurers, shall execute an Agreement and Undertaking for Security, specifies the form numbers for private individual self insurers and for private group self insurers, and provides that all security deposits shall be posted pursuant to the agreement. The section also specifies that the forms are available in plate H of the Appendix of the regulations.

The section is amended to remove the group self insurer Agreement of Undertaking for Security requirements in order to include those requirements in a new Section 15486. The change is necessary so that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations. The section is also amended to remove reference to the forms' availability in plate H of the Index to the regulations. Indexes to the regulations are not published, making them almost unobtainable by the public. Since the forms are part of the application forms, and Section 15203(a) indicates that the application forms are available on the website of the Office of Self Insurance Plans and specifies the address of the website, the reference to availability in Plate H of the Index is neither accurate nor necessary.

Section 15203.6. Section 15203.6 specifies that if any private or public employer applicant approved to self insure has not started its self insurance program within six months of approval, the approval is void and the applicant must reapply for consent to self insure. The section also indicates that once self insurance begins within the six months after approval, the Certificate of Consent to Self Insure is valid until revoked by order of the Director. The section also specifies that an employer that has been approved to self insure but has not started its self insured program may be required to provide updated status with the California Secretary of State and current financial information.

The section is amended to remove the language indicating that a Certificate Insure is valid until revoked by order of the Director. The deletion is made in order that interim

certificates, which expire without an Order issued by the Director not be included and to relocate that reference to the appropriate Section 15203.9, and is necessary in order for the provision to be under the proper heading dealing with the validity of a Certificate of Consent to Self Insure. The section is also amended for grammatical clarity and to limit its application to public and private individual employers, because the issue of delayed start-up of a group self insurance will be addressed in a new Section 15487. The change is necessary so that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations.

Section 15203.7, Subsection (a) requires the employer to receive confirmation (misspelled as "conformation") of its self insured status within seven days after posting the required security deposit, and, if required, assumption agreement. Subsection (b) requires that an employer display prominently in its principal place of business in California the Certificate of Consent to Self Insure and subsection (c) provides that the notice advising employees of the claims agency or person to contact in the event of a claim for injury also be displayed. Subsection (d) specifies that any evidence of self insurance to show that the employer is complying with Labor Code Section 3700 shall be provided by the Manager. A note following subsection (d) indicates that a sample of a Certificate of Self Insurance is in Plate C of the Index to the regulations.

The section is amended to limit the requirements to private individual and public self insured employers. The amendment is necessary because requirements relating to private group self insurers are being relocated and amended to new Section 15488 in Article 13, which will address the same subjects for private group self insurers and group members.

Non-substantive, editorial revisions are made to changes the applicability of this regulation.

Subsection (c) is amended to add that one can determine whether an employer is self insured or not electronically at the website of the Office of Self Insurance Plans at http://sip.dir.ca.gov/, and that there will be a ten dollar ($10) fee for signed certification of self insured status requested by the public beginning July 1, 2008. The Office of Self Insurance Plans receives approximately a thousand requests to determine whether or not an employer is self insured on any given date per year. Requests are made by telephone, by mail, be fax, and by e-mail. All office employees respond to these requests, with an average of ten to fifteen minutes utilized per request. In 2007 the database of the Office of Self Insurance Plans was re-designed, and a search engine is now available where the public, at no cost, can determine whether or not an employer is self insured, what dates self insurance was effective, and where claims are handled. The amendment is necessary to inform the public that one can determine whether an employer is self insured or not easily and quickly b utilizing the website of the Office of Self Insurance Plans. The $10 fee for signed certification, the same fee that the Secretary of State's office charges for certification of corporate status, is necessary to encourage the public to utilize the website of the Office of Self Insurance Plans to obtain information. The fee for certification will

become effective July 1, 2008 so that those parties that routinely request signed certifications will have ample notification of the imposition of the fee so that they may avoid the expense by utilizing the website to verify self insured status.

Section 15203.8. This section requires all self insured employers, private and public, to notify the Manager of any material change to its legal status or business structure, such as re-incorporation or change of members in a partnership, within 30 days of the change. The section also requires any self insured employer that proposes to cease doing business, either in California or entirely, or proposes to dispose of, by sale or otherwise, the controlling interest of the self insured business, to notify the Manager. The section requires a self insurer that changes its status materially and desires to maintain its self insurance authority to provide to the Manager a written description of the change, copies of appropriate documentation related to the change, a new resolution authorizing application for self insurance in cases where the legal entity changes its identity, and a written notice indicating that the self insured entity will continue to submits financial statements annually.

The section is amended to limit its applicability to private individual and public self insured employers. The change is necessary so that the requirements related to changes in status for group self insurers and self insured group members will be included in a new Section 15489.1 so that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations.

154203.9. Section 15203.9 specifies that each Certificate of Consent to Self Insure is valid only to the specific entity to which it was issued, therefore including all private individual and group self insurers and all public self insurers. The section does not distinguish between the types of certificates. The section also prohibits an effective date on any certificate that is before the date the application and required documentation was submitted to the Office of Self Insurance Plans, except for as provided Labor Code Section 3701.7.

The section is amended to limit its applicability to private individual and public self insured employers. The change is necessary so that the requirements related to the validity of certificates issued to group self insurers and self insured group members will be included in a new Section 15490 so that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations. In addition, the section is amended to include a new subsection (c) providing that any Certificate of Consent to Self Insure other than an Interim Certificate issued pursuant to Section 15205 is valid until revoked by order of the Director. The amendment is necessary to relocate the same principle deleted from Section 15203.6, and is necessary in order for the provision to be under the proper heading dealing with the validity of a Certificate of Consent to Self Insure.

15203.10 provides that a self insurer's consent to self insure may be reinstated without lapse if the consent was terminated because of a legal change in business or corporate structure, providing that the employer can re-qualify for self insurance. The section requires the employer to submit a new application and a statement that the applicant assumes and guarantees all liabilities incurred during its prior period of self insurance and will be responsible for any additional liabilities incurred after termination of consent to self insure. The section provides that the Manager shall accept such a statement if signed by a corporate officer, attested by the corporate secretary and sealed with the corporate seal, and confirmed within 90 days by the execution of an Agreement of Assumption and Guarantee pursuant to Section 15211.2.

The section is amended to for grammatical clarity and to limit its applicability to private individual and public self insured employers. The change is necessary so that the requirements related to the reinstatement of certificates issued to group self insurers and self insured group members will be included in a new Section 15490.1 so that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations. In addition, the section is amended to provide that the assumption agreement must be submitted before the certificate can be reinstated. This amendment is necessary to ensure that the certificate will not be reinstated unless liabilities during the period of time for which liabilities are being assumed are guaranteed by the previously self insured employer.

The section is also amended to for grammatical clarity and to limit its applicability to private individual and public self insured employers. The change is necessary so that the requirements related to the reinstatement of certificates issued to group self insurers and self insured group members will be included in a new Section 15490.1 so that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations.

Section 15204 specifies in subsection (a) that application fees for all private employers applying to become self insured shall be $500 each, including subsequent applications that were not submitted with the original applications but are determined by the Manager to be necessary, except that the filing fee shall be $100 each for each additional application filed with the first application. Subsection (b) indicates that any subsequent filing to add a subsidiary or affiliate, or required because of a merger, reincorporation, or acquisition, shall be considered a new application and is required to pay the $500 application fee. Subsection (c) specifies that no filing fees are required for public entities filing applications to become self insured. Subsection (d) specifies that all group self insurance applications shall be required to pay filing fees pursuant to subsections (a) and (b).

The section is amended to require a $100 filing fee for each Request for an Interim Certificate of Consent to Self Insure, a certificate that is issued to subsidiaries and affiliates of existing self insured employers pursuant to Section 15205 and is valid for no

more than 180 days, which allows the subsidiary or affiliate to immediately become self insured under the parent's self insurance program, but also allows the employer and parent up to 180 days to follow up with the necessary application, Board Resolution(s) and Agreement(s) of Assumption. The section is also amended to reduce the application fee from $500 to $400 for each application that is submitted to replace an Interim Certificate of Consent to Self Insure, and to eliminate the provision that the filing fee be $100 for each application that is submitted together with the first application. Labor Code Section 3702.5 requires the cost of private sector self insurance to be borne by certificate fees and other fees as necessary to cover the costs of the program. Processing of the initial private group applications and individual group member applications is a significant workload on the staff of the Office of Self Insurance Plans that reviews and processes these applications. The amendments are necessary to simplify the process of determining application fees and to recognize that evaluating and processing multiple applications submitted together requires no less time and expense for staff of the Office of Self Insurance Plans than doing so if the applications are submitted separately.

The section is also amended to eliminate subsection (d) dealing with application fees for group self insurers and group members. The change is necessary to limit the section's applicability to private individual and public self insured employers so that the requirements related to application fees for group self insurers and group member applicants may be included in a new Section 15491 in order that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations.

Section 15205 sets forth requirements for the granting of Interim Certificates of Consent to Self Insure, a certificate that is issued to subsidiaries and affiliates of existing self insured and is valid for no more than 180 days, which permits the subsidiary or affiliate to immediately become self insured under the parent's self insurance program, and also allows the employer and parent up to 180 days to follow up with the necessary application, Board Resolution(s) and Agreement(s) of Assumption, at which time a "permanent" certificate that is valid until revoked by the Director is issued. The section specifies that existing qualified self insurers must be of a certain financial size measured in terms of net worth in order to qualify for self insurance to be granted on an interim basis before submission of necessary documents. The existing section applies to all applicants for self insurance on an interim basis: subsidiaries and affiliates of private individual self insurers, affiliate members of private group self insurers, and public self insurers.

Subsection (a) is amended to allow the Manager to extend an Interim Certificate of Consent to Self Insure for an additional 90 days upon a showing of cause by the Interim Certificate holder. The amendment is necessary to allow additional time for completion of certain documents needed to complete the application process, such as a Board Resolution that may only be obtained at a scheduled Board Meeting. The section is also amended to specify that a Certificate of Consent to Self Insure (with no expiration date - that is, valid until revoked by the Director) to replace the Interim Certificate shall not be

issued until the application process has been completed pursuant to Section 15203 and the fees have been paid pursuant to Section 15204. The change is necessary to ensure that all documents necessary to obligate the parent company's assumption and guarantee of liabilities have been received, and that continuing self insured exposure will not be granted until those requirements have been met. The section is also amended to delete certain specified requirements that are redundant because those requirements are contained in Section15203. In addition, the section is amended to delete requirements for Interim Certificates for group self insurers and group members. The change is necessary to limit the section's applicability to private individual and public self insured employers so that the requirements related to Interim Certificates for group self insurers and group member applicants may be included in a new Section 15482.2 in order that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations.

Article 3. Security Deposit Requirements

Section 15210 as it exists indicates that public self insured employers are not required to post security deposits and specifies the manner in which security deposits are calculated for all private self insurers, including adding an amount posted in advance for liabilities in the current year and allowing credit for specific excess coverage. Section 15210 also specifies what types of security deposit are acceptable, and what consequences will result from a failure to post the amount of security deposit required. The section makes no distinction between private individual self insurers and private group self insurers, and applies to both.

The section is amended to limit its application to private individual self insurers. The change is necessary so that the requirements related to security deposits for group self insurers and group member applicants may be included in a new Section 15491 in order that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations. Section 15210 is also amended in subsection (c) for grammatical clarity and to eliminate redundancy.

Section 15210.1 specifies that each private self insurer's security deposit amount posted is reviewed and adjusted annually by the Manager after receipt of the private employer's Self Insurers' Annual Report. The section specifies that each private self insurer must post any increase due or, if a decrease is indicated, wait for authorization in writing from the Manager before taking the decrease, and states that for good cause, the Manager may require any private self insurer to increase the calculation adjustment rate or deposit amount. Increases required by the Manager must be in writing, and notice to the self insurer of the required increase creates a perfected security interest for the Self Insurers' Security Fund. The Manager is required to report understated liabilities to the Security Fund if the employer is participating in the Alternative Security Program pursuant to

Labor Code Section 3701.8. The section applies, as written, to all private self insurers, including group self insurers.

The section is amended for grammatical clarity and to limit its application to private individual self insurers. The change is necessary so that the requirements related to adjustments in the amounts of security deposits for group self insurers and group member applicants may be included in a new Section 15497 in order that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations.

Section 15210.2 requires the Manager to determine the need for a special revocation audit of claims of any private self insurer and permits the Manager to require a higher amount or rate of deposit than the statutory minimums. The Manager has discretion in adjusting both the rate and the amount of deposit required after revocation. The section also provides that the deposit may be reduced to the statutory minimum amount as claims are paid and estimated future liabilities decrease. The section applies, as written, to all private self insurers.

The section is amended for grammatical clarity and to limit its application to private individual self insurers. The change is necessary so that the requirements related to an adjustment in the amount of security deposit of a group self insurer following revocation of the group self insurers certificate may be included in a new Section 15497.1 in order that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations.

Section 15210.3 provides that any self insurer may insure all or any part of its workers' compensation liabilities under a standard workers' compensation insurance policy, a specific excess insurance policy or an aggregate excess (stop loss) policy, but that full coverage of the self insurer's workers' compensation liabilities shall be good cause for revocation of the self insurer's Certificate of Consent to Self Insure. The section also requires all self insurers to provide the Manager with information regarding any insurance coverage maintained and indicates the manner that documentation of coverage must be provided to the Manager, and also provides that no credit in the security deposit may be allowed for aggregate excess insurance. The section provides that specific excess insurance is not required to be maintained by public self insurers or private individual self insured employers, but that private group self insured employers are required to maintain specific excess insurance pursuant to Section 15478.

The section is amended for grammatical clarity and to limit its application to public self insurers and private individual self insurers. The change is necessary so that the requirements related to insurance coverage for group self insurer may be included in a new Section 15498 in order that all private group regulations will be in Article 13, which

deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations.

Section 15211 permits security deposits of subsidiaries and affiliates of private self insurers to be posted separately under the Master Certificate of Consent to Self Insure with the permission of the Manager so that the separately posted deposits apply to the specifically named affiliate s or subsidiaries rather than the Master Certificate holder and all subsidiaries and affiliates as is usually the case. As written, the section applies to all private self insurers, including group self insurers.

The section is amended to prohibit the practice of posting separate deposits for subsidiaries and or affiliates of any Master Certificate holder. In most cases, subsidiaries and affiliates of parent companies have qualified for self insurance based on the parent company's financial statement and the parent company has executed agreements to guarantee and assume the liabilities of the subsidiaries and/or affiliates. To limit a portion of the overall security deposit of the Master Certificate holder's self insurance plan to an affiliate or subsidiary could result in a shortfall in the deposit that otherwise could be utilized to provide workers' compensation benefits in the event of a default of the subsidiary or affiliate in its workers' compensation obligations. For private group self insurers, the change is necessary because allowing group members to post separate security deposits that apply only to specific named group members conflicts with the joint and several liability requirements for all group members as provided by sections 15479 and 15482. One of the major principles of group self insurance is that the group members qualify in aggregate for self insurance and the liabilities of the members are joint and several liabilities. Accordingly, a new Section 15499 is also being added to Article 13 to provide that security deposits may not be separately apportioned to specific group members of private group self insurers, but instead the group self insurer's security deposit must apply to all group members.

Section 15211.1 establishes the appeals process in instances where the Manager requires an increase in security deposit or an increase in the rate of deposit because of the impaired financial condition of the self insurer and the self insurer wishes to appeal the increase. The section requires the Manager to obtain an outside third party financial evaluation, such as a Dun & Bradstreet Risk Assessment Report, on the financial condition of the employer. The cost of the evaluation report is paid by the employer filing the appeal. Upon receipt of the report, the Manager considers the appeal filed by the self insured employer. The section as written applies to all self insurers.

The section is amended to limit its application to public self insurers and private individual self insurers. The change is necessary so that the requirements related to an appeal of an increase in the security deposit of a group self insurer based on financial impairment of the group self may be included in a new Section 15499.5, in order that all private group regulations will be in Article 13, which deals specifically with private group self insurance, therefore providing continuity, utility, and clarity to the regulations.

The section is also amended to provide that in the event the appeal of the increase cannot be resolved between the Manager and the group self insurer following receipt of the independent financial evaluation, the appeal shall be addressed pursuant to Article 11 of these regulations and Labor Code Section 3701.5(g). The change is necessary in order to comply with Labor Code Section 3701.5(g) and Article 11 of these regulations, which sets forth hearing and appeal procedures.

Section 15211.2 permits the workers' compensation liabilities of any self insurer to be assumed and guaranteed by in whole or part by any other legal entity or person and requires such agreement to be written on a form supplied by the Manager (Form A4-6 Rev 11/97). A Note to subsection (b) indicates where the form may be obtained. Subsidiaries and affiliates are required to submit agreements from their parent entity executed by an appropriate owner, officer or partner. For corporate parents, a Board Resolution is also required to authorize the agreement to be executed and to indicate by title or person the party authorized to sign the agreement on behalf of specifically named entities or all subsidiaries and/or affiliated entities. The section also specifies that a new agreement and resolution may be required when there is a change in status, and indicates the manner in which foreign parental entities (outside the United States) can execute Assumption Agreements and resolutions.

The section is also amended to remove reference to the application forms' availability in certain plates of the Index to the regulations, and to add reference to the forms' availability on the website of the Office of Self Insurance Plans. The change is necessary because Indexes to the regulations are not published, making them almost unobtainable by the public unless obtained from the Office of Self Insurance Plans, and forms are readily available to the public on the website of the Office of Self Insurance Plans. The section is also amended to limit the Manager's discretion on accepting guarantee agreements, so that the discretion does not apply to private group self insurers. The change is necessary because requirements for group self insurer members, who share joint and several liability for claims of the group self insurer, are different from those of private individual self insurers, and so will be specified in a new Section 15483 in Article 13 that deals specifically with group self insurance. The section is also amended to indicate that the ultimate parent company, as opposed to the direct parent company, of a private individual self insurer is required to execute the guarantee agreement. The change is necessary in order to ensure that the company with the ability to draw all the assets out of a self insured entity can be held liable for the self insurer's workers' compensation obligations in the event of a default.

Section 15215 specifies financial requirements and the manner in which those requirements may be measured for banks and saving institutions that post irrevocable letters of credit with the Department of Industrial Relations as all or portions of security deposits for private self insurers, and also specifies requirements regarding the format, language, and expressed legal obligations of acceptable letters of credit..

Subsections (b) through (g) are amended to indicate that letters of credit are acceptable from credit unions as well as banks, to add credit standards for acceptable credit unions, and to change references to savings institutions to financial institutions so that the language conforms with references to credit unions. The change is necessary so as not to discriminate against credit unions as financial institutions that issue irrevocable letters of credit, as long as the credit union can be rated for financial stability in the same manner as banks and savings institutions.

Subsection (c)(6) is amended to change the requirement that letters of credit be subject to the Uniform Customs and Practices for Documentary Credits, 1993 Revision, ICC Publication No. 500, to a requirement that letters of credit be subject to the current revision of the Uniform Customs and Practices for Documentary Credits, as most recently published by the ICC. The ICC (International Chamber of Commerce) first published standardized practices for handling letters of credit in 1933 after working with bankers from more than 175 countries. The ICC has developed and published revisions to the Uniform Customs and Practices for Documentary Credits from time to time over the years. The latest revision was approved by the Banking Commission of the ICC at its meeting in Paris in 2006, resulting in the 2007 Revision, ICC Publication No. 600 (UCP600), effective July 1, 2007. The regulatory amendment is necessary because it is impractical to amend self insurance regulations each time internationally recognized letter of credit standards are revised.

Subsection (e)(4) is amended for grammatical clarity in order to indicate that standards for farm banks apply only to those types of banks, and to add standards for credit unions that are applicable only to credit unions.

Article 4. Assessments

Section 15230 addresses private sector license fee assessments, establishing annual license fees, as well as first year pro-rata fees, to be paid by private self insured employers to help fund the Office of Self Insurance Plans pursuant to Labor Code Section 3702.5. Subsection (d) is deleted and subsection (e) is re-ordered as subsection (e). The amendment is necessary in order to eliminate the pro-rata first year assessment made against new private self insured employers. The pro-rata assessments result in minimal amounts being collected, often, especially in the case of small group self insurers, amounting to less than a dollar or two. The basis for the calculation often is applied toward two separate fiscal years and is subject to numerous erroneous calculations, while the application fees themselves more than cover any basis for the time spent in dealing with the calculations, assessments, and collection of the small amounts derived from them. Section 15230 is also amended for grammatical clarity.

Article 5. Self Insurer's Annual Report

Section 15251 specifies the forms and the contents of the Self Insurer's Annual Report, which all self insured employed employers are required to file with the Director each year to report workers' compensation claims data pursuant to Labor Code Section 3702.2. Section 15251 specifies separate forms for private employers and for public employers, specifies line by line the data to be included in the annual report for each type of employer, and specifies that additional descriptions of how claims are funded to be included by public individual self insured employers and by public self insured employers that self insure their liabilities as members of Joint Powers Authorities.

Subsection (a) is amended to indicate each self insured employer must continue filing an annual report each year after the employer ceases to be self insured until all claims are closed and a report has been submitted showing there are no longer any known liabilities. The amendment is necessary so that it is clear to the self insured employer that it must continue reporting its liabilities so that an adequate security deposit based on known liabilities can be maintained. Subsection (a) is also amended to indicate that the Manager of the Office of Self Insurance Plans shall post the annual report forms on the website of Self Insurance Plans at least 60 days before the report must be filed along with instructions for completing the forms. The amendment is necessary in order to make clear the manner in which forms shall be provided to the self insured employers that must file them.

Subsection (a)(1) is amended to indicate that private group self insurers shall utilize the same form as do private individual self insured employers, and subsection (a)(4), requiring a private group self insurer to use a different form, is deleted. The change is necessary to simplify the reporting process and eliminate unnecessary regulation. The elimination of subsection (a)(4) is also necessary in order to remove unnecessary repetition of the requirement that group self insurers continue filing annual reports until all claims are closed, since that requirement is now correctly required of all self insurers by subsection (a) proper, not just of private group self insurers.

Subsection (a)(2) is amended to indicate that public self insured employers that are members of Joint Powers Authorities shall report on the same form as public self insurers that are not JPA member, and subsection (a)(3), specifying that JPA members report on a different form is deleted. The change is necessary to simplify the reporting process and eliminate unnecessary regulation.

Subsection (b) is amended to eliminate a subset and re-order another subset under the subsection. The amendment is necessary to improve clarity. Subsection (b)(2)(B) is eliminated. The elimination of item 1 under subsection (b)(2)(B) is necessary to conform with amended Section 15211, which, as amended, prohibits self insured employers from limiting security deposits under Certificates of Consent to Self Insure to specific affiliated or subsidiary certificate holders. The elimination of item 2 under subsection (b)(2)(B) is necessary because there is no reason for a requirement to report claims formerly reported

under a former Certificate to Self Insure when the claims are amended and transferred to another Certificate of Consent to Self Insure and the security deposit covering the transferred claims is posted under the Certificate under which the claims are transferred.

Subsection (b)(5)(B)(1.) is amended as Subsection (b)(7) to limit the amount of the reduction in a security deposit to $500,000 per claim that is reimbursable under a specific excess insurance policy if the specific excess carrier does not meet specified financial standards. The amendment is necessary following the enactment of AB817 in 2005, amending Insurance Code Section 1063.1, which limits the amount of reimbursement per covered claim by the California Insurer Guarantee Association (CIGA) to a self insured employer in instances where the carrier has liquidated or otherwise defaulted on its obligations under the policy. The change is also necessary to establish a level of financial stability of an excess insurance carrier for which a full reduction in the security deposit should be allowed. The credit rating levels required are the same as required of acceptable surety companies that post surety bonds as security deposits for self insured employers pursuant to Section 15212(g) of these regulations.

Subsection (c)(3) is amended for clarity and to eliminate unnecessary annual reporting of information that does not affect the status of public self insured employers and that is provided to the Office of Self Insurance Plans through the application process and submission of bylaws and board resolutions with those applications.

Section 15251 is amended throughout for grammatical clarity and to establish logical ordering of its provisions.

Article 7. Injury and Illness Prevention Program

Section 15353 addresses requirements for all private sector applicants for Certificates of Consent to Self Insure to obtain evaluations of their injury and illness programs as part of the application process. This section is amended to limit its application to individual private self insurance applicants. The amendment is necessary so that private group applicant requirements for injury and illness prevention programs can be addressed in a new proposed Section 15486.1 in Article 13. In add, subsection (a)(1) is amended to clarify that a Certified Safety Professional is certified by the Board of Certified Safety Professionals. The amendment is necessary for clarification and to address concerns that the term Certified Safety Professional without an indication of the source of the certification could lead to unqualified persons conducting the required evaluations.

Article 8. Transfer of Liabilities

Section 15360. Section 15360 addresses the requirements for self insurers to transfer claims liabilities to other entities, including individual public self insured employers and public sector employers self insured as members of joint powers authorities, individual private self insured employers, and private group self insurers and their members.

Subsection (a)(1) provides that when a private self insured employer transfers its liabilities to another self insured employer, the that the liabilities are transferred to must post a security deposit pursuant to Article 3 of these regulations. Subsection (a)(1) is amended to specify that the deposit must be posted pursuant to Article 3 or Article 13, whichever is applicable. The amendment is necessary to ensure that the section refers to both private individual and private group self insurers, and is necessary because security deposit requirements for private group self insurers are being relocated to Article 13.

Subsection (c) provides that when a private self insured employer transfers its liabilities to an insurance carrier pursuant to Labor Code Section 3702.8(c) but no performance bond is posted, the self insured employer's security deposit shall be held by the Department of Industrial Relations for three years before release. Subsection (c) is amended to add that the director shall not accept the excess policy as meeting the requirements of Labor Code Section 3702.8(c)(3) unless the excess carrier or its parent company has an acceptable credit rating as established through a Standard and Poors Insurer Financial Strength Rating of A or better rating, or an A.M. Best Company, Financial Strength Rating of B+ or better rating.

When an excess carrier assumes liabilities of a self insured employer under a special excess policy, the insurance carrier is retroactively insuring the employer's claims for the period that the employer was self insured, and the employer's security deposit posted with the Department of Industrial Relations is released, either immediately if the carrier posts a performance bond, or after three years if no bond is posted. This amendment is necessary to ensure that the workers' compensation liabilities are not being transferred to an insurer that may be financially impaired and likely to become insolvent and unable to pay all benefits due over the life of the claims. The amendment is also necessary to comply with Labor Code Section 3702.8(c)(3), which requires the Director to "… adopt and publish minimum insurer financial rating standards for companies issuing special excess workers' compensation policies." The financial rating standards proposed are the same as already established in Section 15212(h) for surety companies or their parent companies that issue security deposits for self insured employers and in amended Section 15251 for specific excess insurance carriers or their parent companies.

Article 9. Recordkeeping and Audits

Section 15405 addresses the confidentiality of self insurance records. Subsection (a) is amended to clarify that some records may be provided as otherwise required by law such as by an appropriate court or administrative subpoena. The amendment is necessary to clarify existing law. The section is also amended in order that exceptions related to financial records be listed under the same subsection, such as the records of previously self insured employers whose claims have been turned over to the Self Insurers' Security Fund. This exception is indicated in existing subsection (d), now being listed under a new subsection (a)(1). In addition, a new exception is added under subsection (a)(2) to add the financial records of participants in the Alternative Security Fund as being available to the Security Fund. This amendment is necessary to comply with Labor Code

Section 3701.8(b). In addition, a new subsection (a)(3) is added in order to indicate that group self insurers must make group financial statements available to group members upon written request. This amendment is necessary in order to ensure that private self insurance group members can make informed decisions regarding their membership in a group self insurer that requires them to be joint and severally liable for group claims.

A new subsection (b) is added to indicate the confidentiality exceptions for Self Insurer's Annual Reports and their contents. A new subsection (b)(1) is added to indicate that the Manager shall provide the Self Insurers' Security Fund with copies of Self Insurers' Annual Reports of employers whose liabilities have been turned over to the Security Fund This amendment is necessary to ensure that the Security Fund is able to adequately assume responsibility for those claims. A new subsection (b)(2) is added to allow the Manager to provide the Self Insurers' Security Fund with copies of Self Insurers' Annual Reports needed to determine and set deposit assessments of employers participating in the Alternative Security Fund. This amendment is necessary to comply with Labor Code Section 3701.8(b)(5). A new subsection (b)(3) is added to make Self Insurers' Annual Reports of public employers, except for the portions identifying individual injured workers' claims,

A new subsection (c) is added to indicate the confidentiality exceptions for information obtained from claims audit reports. A new subsection (c)(1) is added to allow the Manager to provide the Self Insurers' Security Fund with copies of audit reports of employers whose liabilities have been turned over to the Security Fund This amendment is necessary to ensure that the Security Fund is able to adequately assume responsibility for those claims. A new subsection (c)(2) is added to allow the Manager to provide copies of audit reports to the Division of Workers' Compensation. This amendment is necessary to enable the Division of Workers' Compensation Audit Unit to adequately investigate or audit any self insured employer pursuant to Labor Code Section 129 and 129.5.

Article 13. Group Self Insurance

Regulations addressing private group self insurance specifically were written in 1993 and are currently contained in Article 13, sections 15470 through 15481. These sections were written and promulgated before the State of California had any experience with private group self insurance. For various reasons related mainly to the relatively inexpensive cost of workers' compensation insurance in California at that time and lasting until the beginning of this decade, the first private self insured group was not formed until 2002. At the beginning of 2003 there was one approved private group self insurer - by the end of 2006, thirty groups with over 2,000 employer-members had been granted certificates of consent to self-insure. The growth of group self insurance and experience of regulating group self insurance has revealed many unaddressed areas of regulation as well as many areas that are unnecessarily burdensome to group self insurers. Accordingly, many of these regulations dealing with group self insurance require

extensive amendments, both to existing sections and through the addition of new sections in Article 13.

Section 15470. Existing Section 15470(a) requires any entity group established in order to become a group self be formed as a California non-profit mutual benefit corporation. This corporation is to be incorporated as a non-profit mutual benefit corporation pursuant to Part 3 of Division 2 of Title 1 of the California Corporations Code. Subsection (a) is amended to limit it's the establishment of a California non-profit mutual benefit corporation to be applicable only for private group self insurers that are composed of two or more for profit private employers. As currently written, the incorporation requirement applies to all private groups regardless of whether the membership is established for profit or non-profit entities. As proposed the requirement of existing subsection 15470 (a) would remain unchanged for private groups that have for-profit membership.

New subsection (b) expands the types of private group self insurer incorporations acceptable to address instances where groups have non-profit companies as members to include not only mutual benefit corporations, as previously required, but also to permit incorporation as a non-profit charitable corporation, as a non-profit public benefit corporation, or as a non-profit religious or apostolic corporation. All these types of entities are covered under Division 2, of Title 1 of the California Corporations Code. Whichever type of group self insurer is incorporated must match the non-profit membership of the group and will be the "group self insurer".

This change is necessary because private non-profit corporations engage in a wide variety of activities in California. Many of these also are tax-exempt entities. Incorporating the private group self insurer as a mutual benefit corporation makes the process of qualifying for tax exempt status more difficult than if the private group self insurer were incorporated as a charitable corporation, public benefit corporation or a religious corporation. Private groups composed of strictly tax exempt non-profits entities, such as a group of churches, can more easily qualify for tax exempt status if the private group self insurer was incorporated as a religious corporation than as a mutual benefit corporation. Non-profit private employers that form group self insurers would experience significantly higher cost structures in a group that was taxed rather than one that was tax exempt. The members' income is tax exempt yet their contributions and assessments to cover group workers' compensation for the private group self insurer incorporated as a mutual benefit corporation becomes taxable against the private group self insurer. While it is not impossible to gain tax exempt status as a mutual benefit corporation, it is much more difficult under the State and Federal Tax Code than if the private group self insurer was simply incorporated in one of the other possible types of corporations that are more routinely granted tax exempt status. A new subsection (b) permits private group self insurers to incorporate as non-profit corporations that match the underlying private non-profit group membership rather than just as a mutual benefit corporation.

The remaining subsections of Section 15470 adopt by reference the existing regulatory requirements contained in the subject matter Articles 1 -12 that proceeds Article 13 on

private group self insurers. These subsections have been re-lettered due to the addition of new proposed subsection (b). In addition, subsection (g), now being to amended as subsection (f), is amended to specify that if a group self insurer transfers liabilities to an insurance carrier under a special excess policy, that carrier must meet the requirements of Section 15360(c)(1) as provided by Labor Code Section 3702.8(c). This amendment is necessary to incorporate into his section the financial requirements for insurance carriers issuing special excess insurance policies to group self insurers transferring their liabilities. Newly created financial standards for carriers issuing special excess policies have been added to Section 15360, an amendment that is necessary to comply with Labor Code Section 3702.8(c)(3), which requires the Director to "… adopt and publish minimum insurer financial rating standards for companies issuing special excess workers' compensation policies."

The private group regulatory requirements that were formerly in Article 2, Applications, and some of the private group regulations contained in Article 3, Security Deposits, have been relocated to Article 13. The existing cross references have been revised to reflect these changes. For example, in existing subsection (b) - now (c) - the text is editorially revised to reflect that regulations related to private group applications now are found in Section 15482 rather than in Article 2, and existing subsection (c) - now (d) - is revised to reflect that initial "core" group member application requirements are found in Section 15482.1, and subsequent group member application requirements are found in Section 15482.2. Article 2 regulations have been amended so that group and group member applications are no longer addressed in that Article. Other non-substantive, editorial revisions for greater clarity are also included in amendments in this subsection.

The remaining existing subsections of Section 15470 are re-lettered, as previously stated because of the addition of new subsection (b). These subsections still reference the subject matters contained in Articles 5 to 12 that still apply to private groups. In addition, a new subsection (k) is specify that private group self insurers are subject to assessments contained in Article 4 of these regulations. Article 4 contains the license fee assessment that all private self insurers, including private groups, pay to support the operations of Self Insurance Plans pursuant to Labor Code Section 3702.5(a). The addition of subsection (k) is necessary so that requirements regarding assessments for group self insurers will be included in regulations that apply specifically to group self insurance.

All employers pay the User Funding Assessment and Fraud Investigation and Prosecution Assessment. Some private self insurers are identified each year to pay the Cal/OSHA Targeted Inspection and Consultation Assessment. Each of these assessments are identified and referenced in Article 4 in Sections 15230, 15231, 15232, and 15234 respectively. However, while these assessments clearly apply to a private group self insurer, no cross reference to Article 4 is contained in existing Section 15470 in Article 13. This apparent oversight is being corrected for private group self insurers by adding a cross reference to Article 4 for consistency.

In addition, a new subsection (l) is added to specify that group self insurers shall not be deemed as insurers or subject to regulations governing insurers unless otherwise stated by

statute or regulation. This amendment is necessary to clarify the status of group self insurers and to make the distinction specific.

Section 15471. Existing Section 15471 requires that a feasibility study accompany each initial application for a private group self insurer. This initial feasibility study is required to be prepared by an independent risk management firm or person and must address fifteen specified subject matters. The proposed amendment to this section includes editorial revisions and others amendments for grammatical correctness and to clarify necessary requirements.

The cross reference in subsection (a) to Section 15203 is editorially revised to reflect that group applications are now addressed in Section 15482 in Article 13 rather than in Section 15203 in Article 2, and to specify that the feasibility study report may be prepared by the prospective Group Administrator as well as by an individual risk management firm or individual. The changes are necessary in order for the cross reference to conform with other amendments to these regulations, and to allow more flexibility in choosing the firm or party to complete the feasibility study. In practice it is often the prospective group administrator that commissions the feasibility study, and there is no reason to prohibit the prospective administrator from completing the report as long as the report meets the requirements for the study.

Existing subsection (a)(2) requires the identification of all proposed group members and the combined payroll of the initially proposed group members. This subsection in practice is unclear as to its meaning. Additional members may be proposed after the feasibility study has been completed, and the section should clarify that only the prospective members identified at the time of the study be identified in the report. The change is necessary so that it is clear that other subsequent members that will join once approval of the group is obtained from the Department of Industrial Relations need not be identified in the report. The application process is costly and paper intensive and there is no need to identify all prospective members once the group meets financial and other requirements. By the time the application is submitted to the Department, some prospective members may have decided not to be a member of the group, and other may have been added, but it is only necessary to identify the initial actual members through their separate applications, as long as the members meet other qualifying requirements in aggregate.

Existing subsection (a)(3) requires a consolidated summary of historical workers' compensation loss experience and allocated loss expenses of the proposed group members for the three most recent, completed, full policy years as well as the same information for the current policy year to the most current quarter of the current policy. The subsection is further clarified to limit the requirement to loss experience submitted prior to the receipt of the application by the Manager. The Initial Feasibility Study Report is a document that is prepared for submission to accompany an application for approval of a group self insurer. On some date the application and the accompanying Feasibility Study Report is submitted to the Manager for review and approval. This

review and approval process can take some time to complete. As written, the longer the Manager takes to review the application, the more group members' current loss information may be required from the applicants' current carriers and submitted as an update on current policy losses. Because loss information will be obtained primarily to determine the amount of the initial security deposit posting requirement pursuant to proposed Section 15496 of these regulations, as to be amended in conjunction with the proposed amendment of existing Section 15210, three full years of loss history is all that is necessary, as long as all other data related to anticipated losses are submitted pursuant to this section.

Existing subsection (a) (4) requires an evaluation of historical claims costs for the group members and an actuarial projection of the expected losses for the applicant private group for the first five years of group operation prepared by an independent person with a designation as either a Fellow of the Casualty Actuarial Society or by a Member of the American Academy of Actuaries with current experience in making California workers' compensation actuarial projections. The section as written does not specify that the first of the two, the Fellow of the Casualty Actuarial Society have actuarial projection experience in California, nor does the section require that the experience of a member of the American Academy of Actuaries be in making projections for self insurance or group insurance. The section is inconsistent in that it does not require the same type of experience for both the first and the second acceptable preparer of the actuarial projections. In fact, it is crucial that the person making projections of workers' compensation claims cost for a self insured group have experience in projecting California workers' compensation losses for self insurers or for group insurance. No two states in the United States have identical workers' compensation laws and rates of losses, and group insurance and self insurance in California have unique characteristics that are not the same as those of insured individual employers, mainly because self insurance data for group self insurers are based on employers in the same industry, as is the case in group insurance, and because self insurers' losses are not subject to exclusions from losses tied to premium, such as loss expense or certain penalties excluded by workers' compensation policies. The proposed amendment requires both acceptable designated titles to have relevant experience.

Subsection (a) (5) requires that the report include a 5 year pro-forma financial statement including various enumerated items, one of which is "dividends." This subsection is editorially revised to replace the word "dividends" with "distributions of excess contributions". While the term "dividend" in insurance has the same essential meaning as in existing subsection (a)(5), the term is not correctly applied to self insurance. A dividend is a return of premium based on low losses, while self insurance does not involve a collection of premium (payments made to an insurance carrier which assumes liability for claims), but instead collects contributions from group members to fund the payment of claims for which the members are themselves jointly and severally liable. When contributions collected are more than needed to pay claims and associated expenses, the more correct term is Private groups collect funds in the form of contributions just as insurance carriers collect funds in the form of premiums. However, since group self insurers do not pay "dividends", a more appropriate term should be used.

This subsection is revised to use the term “distribution of excess contributions” instead of “dividends” and for clarity.

Existing subsection (a)(6) requires the report to include details describing the group’s operating plan or a copy of the plan itself, including legal and organizational structure, method of governance, and methods to generate premiums or other funding for the first five years of operation such as rating plans. The subsection is amended for grammatical clarity and subsection (a)(6)(C) is amended to include a description of commissions and other expenses among the details needed as part of the feasibility study. The amendment is necessary in order to evaluate fully the costs of the proposed group self insurance plan. Subsection (a)(6)(D) is amended to replace the inappropriate insurance term “premium” with the self insurance term “contributions”, as also addressed in the amendment to subsection (a)(5).

Subsection (a)(8) requires that a description of excess insurance coverage be included, including estimated costs and policy limits. The subsection is amended for grammatical clarity.

Existing subsection (a)(9) requires that the name of the third party administrator chosen to handle claims for the group be identified in the report. The subsection is amended to require that both the group administrator and third party claims administrator be identified, and to specify that the group administrator is chosen by the Board of Trustees of the group. The change is necessary to make clear that the group itself, not the group administrator, selects the claims administrator, therefore clarifying in the Feasibility Report that a potential conflict of interest prohibited by existing Section 15475 extends to the selection of the third party claims administrator.

Subsection (a)(10) is amended for grammatical clarity.

Existing subsection (a) (11) requires that the feasibility study include any underwriting requirements for initial and subsequent member selection into the group self insurer and a description of whether any underwriting requirements or restrictions upon group membership are imposed by the specific or aggregate excess insurance carrier. Certain types of exposure, such as aircraft operations, are often deemed as high risk and excluded from excess insurance coverage. Such potential exclusions should be taken into account to determine the feasibility of a successful group self insurance plan. The subsection is amended for grammatical clarity.

Existing subsection (a) (14) requires that the report include identification of the means by which the private group self insurer will post the required security deposit and how the cost or deposit will be allocated to group members. The subsection is amended for grammatical clarity and to eliminate the requirement for a description of how the cost or deposit will be allocated to the members. The change is necessary to avoid any implication that portions of a security deposit for a group self insurer may be allocated or limited to certain affiliate certificate holders instead of allocated to all group self insurer

members, therefore conforming with the proposed amendment to Section 15211 and the new proposed Section 15499

Existing subsection (a) (15) requires the feasibility report to identify any fidelity coverage and errors and omissions coverages to be maintained by the group. Existing Section 15475(d)(2) and (d)(3) require that the Board of Trustees of a self insured group obtain fidelity coverage and to require its third-party claims administrator to carry fidelity insurance coverage as well as errors and omissions insurance coverage. This language is editorially revised for clarification.

Section 15472. Existing Section 15472(a) requires each private group self insurer applicant and each private group self insurer to have and maintain a minimum net worth as required by Section 15203.2(f) in Article 2. Section 15203(f) is repealed under these proposals and the amended financial requirements are amended and relocated to this section and proposed new Section 15484(e). This section is re-titled to reflect its expanded scope, specifying financial requirements of a group self insurer rather than reflecting that the section is to limited to establishing initial net worth requirements only.

Net worth and average net income requirements for group self insurer and the manner in which those requirements were documented were previously specified in Sections 15203 a section dealing with application forms, while this section referenced that section. Financial requirements for a group self insurer were designated by describing the documentation that must be submitted with the application, including, “as applicable”, pro-forma financial statements required by Section 15203(d)(1), current certified, independently audited financial statements for each proposed member covering the past two years by Section 15203(d)2), and an un-audited financial statement or quarterly report or consolidated financial statement for the current year by Section 15203(d)(3). In addition, Section 15203(e) required, “as applicable”, the application of each proposed group member to include a current copy of the applicant’s certified, independently audited financial statements pursuant to Section 15203(e)(1), or a current copy of the applicant’s reviewed financial statements provided the group self insurer can demonstrate twice the net worth required by Section 15203.2(f), pursuant to existing Section 15203(e)(2).

Existing Section 15203.2(f) requires the private group self insurer to demonstrate and maintain consolidated net worth of at least $5 million and consolidated net income of the group members of $500,000. In addition, existing Section 15203.2(f)(1) requires that the group self insurer demonstrate sufficient income to fund the group self insurer’s actuarially projected claim liabilities at the 80% confidence factor and expected administrative expenses. An existing note to the section requires consolidated net worth and consolidated net income to be determined only from certified, independently audited financial statements.

In the proposed amendments, existing sections 15203 (d) and (e), dealing with group and group member applications, and Section 15203.2(f), dealing with group financial

requirements, are repealed, and group application requirements are amended and relocated to Sections 15482 and 15482.1 of Article 13, while initial financial requirements are amended and relocated to this section 15472 and continuing financial requirements are established in new proposed Section 15484.

Section 15472 is amended to place all of the financial requirements for a group self insurer in this section instead of by reference in a number of other sections in Article 2. The change is necessary so that all the private group self insurer financial requirements for eligibility for approval for a Certificate of Consent to Self Insure as a group self insurer will be in Article 13, the article that deals specifically with private group self insurance, therefore allowing the public to locate relevant regulations in one place.

This section is also amended so that the requirement that private group self insurers submit certified, independently audited financial statements of the group self insurer annually that is being deleted of existing Section 15203.2(c) be relocated to this section. The change is necessary in order to relocate group self insurance requirements to Article 13.

In addition, this section is amended so that the financial requirements and the manner in which those requirements may be demonstrated are made more flexible than under existing regulations. In the existing Section 15203 and 15203.2, the only way that a group self insurer can demonstrate financial ability to become self insured is by submitting two years' certified, independently audited financial statements for each proposed group member showing a minimum consolidated net worth of $5 million and consolidated net earnings of $500,000 over the past two years.

Section 15472 is also amended to allow group self insurers to qualify by demonstrating their financial qualifications by different methods. Generally, there are three basic types of financial statements. The least costly type of report to obtain, and the least reliable as far as demonstrating the company's financial strength, is a *compiled* financial statement. For a compiled financial statement, the employer lists its assets, liabilities, income, and other financial data and submits the report. There is no assurance from an accountant that the balance sheet items have been categorized and stated according to GAAP. Next is a *reviewed* financial statement, in which a certified public accountant reviews the books of the employer and the data submitted to verify that the balance sheet meets generally accepted accounting principles. Finally, for a *certified, independently audited financial statement*, the CPA not only verifies that the report is prepared according to GAAP, but also performs tests to ensure the accuracy of the data. A common example used to describe an audit to prepare a certified, independently audited financial statement is that the accountant will actually count the inventory. While a certified, independently audited financial statement is the most reliable way to ensure that a company is financially strong, it is also the most expensive method of preparing a financial statement. A certified, independently audited financial statement for a large employer can cost hundreds of thousands of dollars to obtain. .

Amended Section 15472 will allow a group self insurance applicant to demonstrate its financial strength in three ways, as delineated in subsection (a)(1), (a)(2), and (a)(3):

1. By submitting certified, independently audited financial statements to demonstrate that the qualifying members have a minimum consolidated net worth of $5 million and consolidated net earnings of at least $500,000. There is no change to this requirement other than re-locating it to this section.
2. By submitting certified, independently audited financial statements to demonstrate that the qualifying members have a minimum consolidated net worth of $10 million (twice the net worth of the first method of qualification) if the members' do not demonstrate consolidated net income of at least $500,000. This change allows companies with higher net worth to become eligible to form self insured groups, even if they do not meet inflexible net earnings standards, and is necessary in order that financially strong companies with business models that operate differently from publicly traded businesses not be discriminated against through narrow, inflexible "one size fits all" standards. Many employers in good financial condition have substantial net worth but, for various acceptable reasons, do not demonstrate substantial net income. Companies with large real estate holdings such as commercial buildings, hospitals, apartments, and shopping centers may have substantial cash flow but show little net earnings because of depreciation of assets, while in fact, because property is valued at purchase cost according to GAAP standards, the assets are worth much if market value were reflected in financial statements. Similarly, not-for-profit companies often do not show high, or increases in assets from year to year, because of charters that require that annual increases in assets be utilized rather than being retained.
3. By submitting reviewed financial statements, rather than the more costly certified, independently audited financial statements, if the companies are able to demonstrate at least $15 million in consolidated net worth (three times the net worth of the first method), or if the qualifying core members are composed in whole or part of IRS Subchapter S corporations. This change is necessary to allow financially strong pools of small employers to become self insured without incurring the cost of certified, independently audited financial statements. Large pools of small employers can generate as much cash flow, have similar loss patterns, and can form groups covering similar amounts and costs of claims as smaller pools of larger employers do under existing regulations. However, it is difficult for such groups to form because of the high relative cost of certified, independently audited financial statements for smaller sized founding members. Allowing groups of smaller employers but more members allows the benefits of group self insurance for strong groups that might not otherwise be formed. The net worth and net income of companies formed as IRS Subchapter S corporations are typically smaller than other businesses because of various tax benefits to small companies, such as much of earned income that would otherwise add to the companies' worth and net income being categorized as salary of the owners. This change is necessary to require that groups consisting of companies whose assets are evaluated in this manner are of sufficient size to and "spread risk" and generate sufficient cash flow to pay exist as healthy, well-funded groups.

The rescission of existing Section 15203(e)(2) removes the requirement that a group self insurer must demonstrate $10 million in net worth (twice the net worth required by Section 15203.2(f)) as demonstrated by certified, independently audited financial statements from its core members before allowing new members in the group submitting reviewed financial statements in lieu of certified, independently audited financial statements. This requirement is *not* being added to the requirements to be indicated in amended Section 15472. This requirement was initially established in order to ensure that group self insurers reach a higher standard of net worth before new members can be added that are not considered as "core" qualifying members. The omission of this requirement is necessary in order to reflect a group self insurer's financial ability to self insure as indicated in amended subsections (a)(1), (a)(2), and (a)(3 of this section. Individual private self insurers are permitted to add subsidiaries under their self insurance plans by maintaining $5 million in net worth as demonstrated by certified, independently audited financial statements. Since group self insurers must require members to pay contributions, the equivalent of premium, and the use of these funds are restricted to funding the group self insurer's self insurance plan, there is no need to require that a group self insurer have twice the net worth as an individual self insurer. In fact, requiring the submission of reviewed financial statement of new members added to a group self insurer that has already qualified financially to self insure is unnecessary, since the reviewed financial statements are not used to evaluate eligibility. To require twice the net worth for group self insurers discriminates against group self insurers by requiring costly and unnecessary documentation that is not required of private individual self insurers.

Subsection (b) is amended to rescind the requirement that the Group Administrator retain a copy of the past year's and current year's independently audited financial statement of each member. The change is necessary to conform to proposed new Section 15482.1, which will specify that non-core members of a self insured group are not required to submit certified financial statements to the Group Administrator annually. Subsection (b) is also amended to require the Group Administrator to submit to the Manager within 30 days of request documentation showing that the core members continue to meet the requirements of subsection (a), and to indicate that the Group self insurer's qualifying core members need not be the same employers from year to year. The amendment is necessary to ensure that the Manager is able to evaluate the financial status of the group self insurer to ensure that it continues to maintain eligibility to self insure, and to provide a deadline for the group administrator to enable the Manager to enforce compliance. These changes, in aggregate, are necessary to enable the Manager to properly evaluate the group self insurer's financial ability to continue as a self insurer.

A new subsection (d) is added to designate standards for financial statements submitted to qualify group self insurers and their members to self insure. Subsection (d)(1) requires that financial statements be prepared according to Generally Accepted Accounting Principles (GAAP), and allows the Manager to accept as the value of real property up to 75% of the fair market value as a part of the subject's net worth. This change is necessary so as to properly evaluate assets, for instance in cases where property that has appreciated greatly over the years would be reduced in valuation by GAAP standards if

the original cost of the property were used when fair market value is extremely higher than cost. Subsection (d)(2) allows the Manager to accept up to 50% of a corporate owner's salary as net earnings. This amendment is necessary to allow the Manager to take into account instances where corporate owners serve as corporate officers and employees, and large portions of the company's' earnings are allocated as expenses, thus reducing the company's net earnings by GAAP standards.

Section 15473. Existing Section 15473 requires that each private group self insurer maintain homogeneity of its members either by requiring each member to be in the same two - digit Standard Industrial Classification (SIC) code, or by requiring through its bylaws that all group members and group applicants be members in good standing in an industry - specific trade association limited to one three-digit SIC code. Homogeneity requirements are necessary for group self insurers in order to ensure that groups involve employers with relatively predictable losses so that contribution rates developed will be appropriate for the risk. In addition, it is helpful for group administrators to deal with employers in the same industry with common business factors and safety needs.

The proposed amendments to Section 15473 will change the two existing means by which a private group self insurer can demonstrate membership homogeneity, and will add two addition means to demonstrate homogeneity.

Section 15473(a)(1) is amended to replace the existing alternative of demonstrating homogeneity by sharing the same two digit SIC Code with the alternative of demonstrating homogeneity by sharing the same three-digit North American Industry Classification System (NAICS) code. This amendment is necessary because the Standard Industrial Classification method of classifying industry followed by the U.S. Department of Labor was replaced in 1997 with the North American Industry Classification System method. The Standard Industrial Classification system, initially developed in the 1930's, classified the country's industrial composition based on economic factors. Over time, the shift of the country's economy from a manufacturing base to one infused with industries related to information services, new forms of health care provision, expansion of services, and high tech manufacturing made the Standard Industrial Classification system obsolete. The change over to the digit North American Industry Classification System utilizes a production oriented framework, classifying industries based on the activity in which they are primarily engaged. The classifications used are more specific than under the SIC code method and cover many more activities, so that a specific industry that was once represented by a two-digit SIC code is now represented by a three-digit NAICS code.

Section 15473(a)(2) is amended to replace the alternative of demonstrating homogeneity by requiring a group's bylaws to require group members to be members in good standing in an industry-specific trade association limited to a three-digit SIC Code. This method of demonstrating homogeneity is actually more rigid than the method described in subsection (a)(1), since a three-digit SIC code is narrower than a two-digit code. Accordingly, *any* group of employers that is homogenous pursuant to existing Section 15473(a)(1) is homogenous pursuant to existing Section 15473(a)(2). Section

15473(a)(2) is amended to replace the existing alternative method of demonstrating homogeneity with demonstrating homogeneity by sharing the same governing class code as established by the Workers' Compensation Insurance Rating Bureau (WCIRB). The WCIRB has established class codes in that reflect insurance rates for specific occupations for insured employers. Sharing the same governing class code (more than 50% of employees are assigned to the classification) is actually the best method of demonstrating homogeneity, since the class codes reflect the employees' job duties and level of risk, and therefore are best used in projecting future losses. Existing subsection (a)(2) also enters trade association membership into the method of demonstrating homogeneity, when in fact; trade associations notoriously allow many non-homogenous industries as members in the associations. For instance, attorneys, retailers, suppliers, and other employers that do business with housing contractors are often allowed into construction trade associations, yet their exposure and risk factors related to workers' compensation are in no way similar to those of the construction contractors. Amendment of subsection (a)(2) is necessary to establish an appropriate and effective method to demonstrate homogeneity.

Existing subsection (b) requires the Manager to consider any other information available on group members, applicants, or the group self insurer that may be presented to verify that all members meet the requirements of existing subsection (a). This subsection is amended to clarify what additional documentation may demonstrate homogeneity.

Proposed new subsection (b)(1) allows the group self insurer to demonstrate to the Manager's satisfaction that the risk exposures of the group member or applicant were contemplated in the feasibility study prepared when the group was formed. A group may be formed to pool together business operating as church affiliated private schools, for instance, with exposure for the employers consisting of employers that would be classified as churches with some school related exposure, and other employers that would be classified as private schools with some church related exposure. In such a group, the feasibility study would address the basis for the group. This amendment is necessary to clarify this method of determining homogeneity.

Proposed new subsections (b)(2) and (b)(3) more specifically address instances where mixed employment exposure is spread among employers with common ownership. Subsection (b)(2) allows the Manager to accept documentation that no less than 75% of payroll for a member or applicant is distributed among two WCIRB classifications that are industry-specific and for which the rates are within 10% of each other. The amendment is necessary to adequately describe and clarify reasonable alternatives for demonstrating homogeneity as addressed in the example described regarding subsection (b)(1).

Subsection ((b)(3) specifies that a group member shall be deemed as meeting homogeneity requirements if it is a wholly owned or majority owned subsidiary of a current group member that meets homogeneity requirements, its total payroll does not exceed the total payroll of that current member, and no more than 25% of the combined payroll of the existing member and proposed group members' payroll fails to meet

homogeneity requirements as set forth in Section this section. In some instances, group self insurers want to add commonly owned businesses as group members. The businesses with common ownership may meet homogeneity requirements in instances when the commonly owned businesses exist as operating divisions of one legal entity. However, when the same exposure was spread among several separate legal entities, the businesses would perhaps meet homogeneity requirements for one of the commonly owned businesses, but not another with a small amount of exposure in an unrelated enterprise. This amendment is necessary to allow businesses that would be eligible if combined as one legal entity to be recognized as meeting homogeneity requirements if the same exposure were spread among several commonly owned businesses. Such businesses share the same experience modification assigned by the Workers' Compensation Rating Bureau based on their combined experience, and it is only logical that they would be considered as meeting homogeneity requirements for group self insurance.

A new subsection (c) is added to allow the Manager to require a group applicant or the group self insurer to present additional information or documentation to demonstrate homogeneity. The amendment is necessary to clarify that additional information or documentation may be needed in order for an applicant to demonstrate homogeneity.

Section 15474 Existing Section 15474 requires all private group self insurer to administer group programs on a calendar year basis. The language of this section is amended to clarify that the calendar year basis of administration pertains to the claims reporting requirements of the Self Insurer's Annual Report as required by Section 15251, in which claims reported in the preceding calendar year must be reported by March 1 each year, and to clarify that the first year that a group is established may be shorter than a year for purposes related to the group's program year, and may be shorter than twelve months as related to the filing of the Self Insurer's Annual Report. The amendment is necessary to allow the a private group self insurer to begin self insurance at any point besides January 1 in the calendar year without being required to produce an actuarial report or financial statement for the group self insurer that does not correspond to future calendar years.

The amendment is also necessary to clarify that regardless of the initial start up date or fiscal year of a private group self insurer, the private group self insurer shall file the Self Insurer's Annual Report as required by Section 15251 for the months of operation in the initial calendar year of the group self insurer.

Existing Section 15474's language is poorly worded and does not clearly state the initial intent of the regulation. The Self Insurer's Annual Report for private employers, including private group self insurer's, is based on a calendar year due to the Manager is done on a calendar year basis. If a group self insurer begins self insurance on any other date than January 1, the initial Self Insurer's Annual Report will cover less than a full year – that is, from the date self insurance began through December 31. It was not the intent of this section to require the initial *program* year (as opposed to claims reporting

year) to be one month long, or six months long, or 11 months long. The intent was to clarify that the reporting period for the Self Insurer's Annual Report is on a calendar year basis regardless of the inception date of self insurance.

Section 15475 specifies duties of the Board of Trustees of a group self insurer. Subsection (a) is editorially revised to specify that the requirements of the section are for *private* group self insurers, therefore making the distinction between private group self insurers and joint powers authorities (JPAs) clear. The change is necessary because pools, or groups, of *public* employers, as opposed to private sector employers, have different requirements than private group self insurers, and so the section should clearly indicate that it does not apply to public self insured pools.

Subsection (c) is amended to clarify that denying an applicant membership in a group is an alternative to allowing membership. The change is necessary for clarity.

Subsection (d) is amended for grammatical clarity. Subsets of existing subsection (d), ranging from (d)(1) through (d)(9), list the duties of the Board of Trustees of a private group self insurer that are required in order to protect the assets of the group. These numerated subsections are amended as follows:

Subsection (d)(1) is amended to indicate that a group administrator must be an independent group administrator, and to indicate that one of the duties is to ensure that there are no conflicts of interest among the Board of Trustees, the Group Administrator, or any service providers of the group self insurer. The subsection is also amended to refer to a new proposed subsection 15475.1, which will clarify relationships between these parties that will be specified as being prohibited, and to delete from Section (d)(1) the potential conflict of interest relationship named as prohibited in existing subsection (d)(1).

These changes are necessary so that that pose potential conflict of interest problems are can be clearly listed in a separate section. Therefore providing a complete and easy to find listing of prohibited relationships with the group self insurance regulations, rather than listing only one or two potential conflicts of interest among a listing of duties of the Board of Trustees.

Subsection (d)(2) is amended for word choice clarity to reflect that insurance coverage to guard assets that could be lost through theft and/or mismanagement of funds are commonly referred to as fidelity insurance coverage rather than fidelity bonds. The term fidelity coverage includes errors and omissions liability coverage related to potential mistakes of a service provider, thereby protecting the assets of the group self insurer. The change is necessary to clarify the types of coverage that must be maintained in order to protect the group's assets.

Subsection(d)(3) is amended to indicate that it is the Board of Trustees' responsibility to contract with the third party administrator A sentence is also added to clarify that it is the

Board of Trustees of the group self insurer that employs the third party administrator. The change is necessary for clarity because in practice the group administrator handles the day to day affairs of the group self insurer, including day to day communications with the third party claims administrator. There is a need to make it clear in regulation that in spite of the group administrator's activities, the ultimate responsibility in selecting the third party administrator for claims handling lies with the group itself, not the group administrator. The subsection is also amended to refer to fidelity bonds as fidelity insurance as in amended subsection (d) (2).

Subsection (d)(4) is amended for grammatical clarity.

Subsection (d)(5) is amended for grammatical clarity and to specify that it is the Board of Trustees' responsibility to appoint a financial institution as well (as to establish necessary bank accounts as specified by the existing subsection). The change is necessary to make clear that it is the Board of Trustees and not the group administrator that is ultimately responsible for selecting a financial institution. The term "financial institution" replaces the term "bank" in order to encompass the broadening of the requirement in amended Section 15215. The requirement that any accounts established are for the purpose of handling the fiscal needs of the group self insurer is also added to this section, as well as to require that the accounts be in California. This change is necessary to specify the purpose of the accounts and to avoid potential legal problems in dealing with banks or other financial institutions, by ensuring that any disputes not be subject to laws of other states. In addition, language is added to this section to require the Board of Trustees to adopt a Board Resolution to grant signature authority for the opening of accounts. This change is necessary so that it will be clear and well documented whenever the Board delegates authority t for the opening of accounts o the group administrator pursuant to the proposed amendment added to subsection (e)(5).

Subsection (d)(6) is editorially revised for clarity and consistency to require the Board of Trustees to arrange for an annual audit. The change is necessary to clarify that it is the Board's responsibility to arrange for the audit, not to conduct the audit itself, as could be inferred by existing language of the subsection. The change is necessary for clarity.

Subsection (d)(7) is editorially revised for consistency and clarity and to specify that the actuary conducting the annual actuarial review meets the same requirements as required of an actuary by Section 15471. This is consistent with the actuarial requirements of Section 15481 and the initial feasibility study requirements in Section 15471. The existing language indicates the purpose is to establish the amount of cash to fund anticipated claims, which is technically correct, but poorly stated, since the confidence factors needed are not specified. In practice, the actuary first projects the group self insurer's ultimate future claim liabilities and then develops rates of contribution sufficient to generate the cash needed to pay the claims as payments become due. This subsection is amended to specify that the rates must be projected at the 80% confidence level and at the 70% confidence level. The change is necessary for clarity and to provide sufficient information to set contribution rates adequate to ensure that enough funds are collected to pay all aspects of the claims that would be expected to be payable, and to include claims

statistically likely to be incurred, not just known claims. Generally stated, an 80% confidence factor would generate adequate funds to pay anticipated claims in 8 of 10 years. It is common in the industry for insurers and individual self insured employers to utilize 50% confidence factors in projecting losses. Maintaining the 80% confidence factor in projecting losses is more likely to ensure that adequate funds will be generated to pay all claims than would a 50% factor. By requiring that losses be projected at a 70% confidence factor as well as an 80% factor, the Manager is able to better determine if claims have developed for a specific program year at a lesser rate than initially projected, thus to help determine whether surplus funding may be returned to group members.

When the annual 80% confidence level requirement for funding of claims was adopted in 1994, no thought was given to the tax consequences of this requirement. Rather, the thought was that the requirement would build net worth in the private group self insurer and, since the group self insurer was required to be incorporated as non-profit mutual benefit corporations, the group self insurer would be income tax exempt. However, these assumptions only hold true for those private group self insurers that are composed wholly of tax exempt non-profit members, and who can therefore qualify the private group self insurer for tax exempt status.. As proposed amendments to Section 15470 will permit group self insurers to incorporate as a charitable corporation, a public benefit corporation, or a religious corporation, as well as, a mutual benefit corporation, thereby appropriately matching the group status with the type of group membership. Such incorporation alternatives will make qualifying for tax exempt status for private group self insurers with membership composed of private, non-profit, tax exempt entities easier than as a mutual benefit corporation.

The requirement that funds be developed at the 80% confidence factor increases the net with of each group at a substantial rate and ironically creates a tax burden on payments made by group members for projected future losses, even though such workers' compensation losses are not taxable when paid as incurred. Allowing the retained funds after the end of a program year to be evaluated at the 70% confidence factor enables the group self insurer to take a second look at its losses after the year has concluded and reduce its tax burden by reducing its net worth if costs were project at too high a rate. At 80% confidence level actuarial funding, each program year will develop a surplus. But rather than having this surplus all available to pay claims or be refunded as over collected contributions, the funds accumulated will be reduced substantially by income taxes. Private individual self insurers pay claim liabilities out of current cash flow revenue as the liabilities come due over the years. Private group self insurers must collect the contributions from members in advance on a program year basis and maintain funding for payment of claims at a rate (80% confidence level) that is far greater than the actuarially expected payout on these claim liabilities if all years were combined instead of being treated individually. The result is that the surplus funds collected at 80% confidence level are viewed as taxable income and subject to taxation. Taxes paid are taken from the same funds that were set aside to pay the claim liabilities, thus reducing the assets available to pay the claims. By allowing a second look at a program year at a lesser confidence factor, it is impossible to ensure that enough funds are generated to pay all

claims costs without taxing funds held to pay workers' compensation losses as required by the state

Subsection (d) (8) requires all group members to pay their share of group expenses, and apparently requires the Board to collect delinquent accounts, and prohibits funds collected to be extended as credit to any member. As written, it is actually unclear as to whether the Board is required to collect delinquent accounts or is prohibited from applying finds taken from one member towards the delinquent account of another. This subsection is amended to clarify that the Board is prohibited from extending credit to any member for contributions due to the group self insurer or applying funds collected from one member to delinquent amounts due for another member. The change is necessary for clarification and to prevent unfair treatment of one member over another. Additional language is added to require the Board to require that all funds be restricted to use pursuant to a new proposed Section 15475.2 and to require that invested funds be invested pursuant to a new proposed Section 15475.3. The change is necessary to include the restriction of funds and investment of funds requirements as the ultimate responsibility of the Board of Trustees of the group self insurer.

Subsection (d)(9) requires the Board to ensure that group funds not be utilized for any purpose not related to the payment of compensation, posting of security deposit, payment of assessments and penalties or the payment of reasonable expenses of the group self insurer. The subsection also sets forth parameters for the investment of funds. The section is amended for grammatical clarity and to remove the regulatory requirements for the investment of funds, so that those requirements can be expanded and relocated to a new proposed Section15475.3 dealing with the investment of funds in entirety.

A new subsection (d)(10) is proposed to require at least an annual meeting of the Board of Directors to adopt a budget for the upcoming year, to approve contribution rates, and to review the investment portfolio for compliance with these regulations. The existing regulations do not specify that the Board of Trustees hold meetings.

In some states the group administrator essentially operates the group self insurer and performs all the functions of the Board of Trustees without involvement from the group itself. Group administrators may set rates and approve members with almost no oversight from the group members themselves, who ultimately share joint and several liability for the group's workers' compensation liabilities. In these instances in other states, groups may be operating as if they were mutual insurance companies but without the security that state laws may require of insurance carriers.

The intent in California is to require that employers that band together to form private groups with joint and several liabilities be required to participate in decisions that affect the administration of their self insurance operations. This amendment is necessary to ensure that private employers that share joint and several liabilities through group self insurance be represented in the operation of their self insurance programs.

A new subsection 15475(d) (11) is proposed to require the Board of Trustees to ensure the group administrator immediately report to the Manager in writing any information that indicates that the group self insurer is no longer in compliance with statutory or regulatory requirements of the private group self insurance program, or that the group self insurer is terminating an affiliate group self insurer's group membership for cause. This subsection is necessary to make clear that the Board of Trustees require the group administrator, which deals with the group's day to day operation, inform the Manager of noncompliance with state laws pertaining to the group or of termination of group membership for cause. Non compliance with some regulatory requirements is likely to affect the overall stability of a group self insurer. For instance, if an actuary projection or audit indicates that a group is severely under-funded, it is imperative that the Manager be notified immediately so that remedial action can be addressed as soon as possible. While noncompliance with other regulatory requirements may not be as crucial as that affecting the group's financial condition, it is still important to require that the Manager be informed of *any* noncompliance noted by the group administrator that is not immediately corrected. In many cases, or in instances where an affiliate group self insurer's group membership for cause, for instance for failure to comply with group bylaws related to safety or payment of contributions, the solution may be as simple as revoking the consent to self insure of one noncompliant member of a group only, but because involuntary revocation of consent to self insure requires notice by the Manager, the remedy cannot be attained without action by the state.

Subsection 15475(e) permits the Board of Trustees to delegate specific functions to the group administrator of the private self insurer. This section is amended for grammatical clarity and to add the requirement that any duty of the Board of Trustees that the Board wishes to delegate to the group administrator must be specifically authorized in the Group Bylaws. This amendment is necessary to ensure that the Board of Trustees is knowledgeable about the duties that it retains and those it delegates to the group administrator, such as reviewing and accepting or denying applications for membership This amendment is necessary so that it is clear which duties are delegated to the group administrator in order to limit instances wherein a group self insurer is not addressing requirements because either the Board or the group administrator believes the other is addressing the requirements. These duties include contract negotiations with the claims administrator, determining annual premium or other cost sharing, investing surplus funds as set forth in these regulations, reviewing and accepting applications from prospective members, and executing the Assumption and Guarantee Agreement and the Indemnity Agreement on behalf of the group members. In some instances, for instance in groups with limited numbers of members, it may be that the Board of Trustees wishes to address certain duties itself. In other instances the Board may wish the group administrator, with its experienced staff dedicated to the business of group self insurance, may be better equipped to address certain tasks. This amendment is necessary to ensure that both the Board and group administrator know what details they need to address themselves. Each of the five functions of group self insurance listed in existing subsection (e)(1) through (e)(5) usually are best handled by a group administrator that has experience and expertise

with those functions than by representatives of employers that are members of the group self insurer.

Subsections (e)(1) through (e)(2) are amended for grammatical clarity and proper word choice. Subsection (e)(3) is amended to add a reference to the investment of funds requirements in the proposed new Section 15475.3. Subsection (e)(4) is amended to clarify that reviewing and accepting applications for new group members includes notification of the Board of whether or not the applicants meet requirements or are accepted based on other standards delegated to the group administrator, such as an evaluation of an applicant's loss history. Subsection (e)(5) is amended for consistency of language. A new subsection (e)(6) is proposed to allow the Board to delegate establishing accounts with financial institutions and accounting procedures for controlling and recording financial transactions to the group administrator.

Section 15475.1. A new Section 15475.1 is proposed to specify duties that should not be carried out by service providers for the group self insurer that would result in conflicts of interest. Existing Section 15475(d)(1) prohibits the group administrator from being an owner, operator or employee of the group self insurer's third party claims administrator, thereby requiring the claims administrator, which may be required by workers' compensation law to accept and/or pay claims that the group administrator may not want to pay, to operate independently of the group administrator. While that separation is required in existing regulations, other areas of potential conflict of interest have not been addressed. The new Section 15475.1 is proposed to prohibit other relationships that may result in conflicts of interest.

The prohibited relationship between the group administrator and the third party administrator is relocated to the new proposed Section 15475.1(a), and the prohibition is expanded to include the claims bill reviewer and individual group members from the prohibition. In addition, the prohibition is clarified to specify that the reverse relationship is also prohibited - for example, an employee of the claims administrator is prohibited from being the group administrator, and an employee of the group administrator will now be specified as being prohibited from being the claims administrator. Because claims bill review is an integral part of claims administration that is often contracted to a company that specializes in bill review, that activity is added to the prohibition.

While existing Section 15475(d)(1) prohibits the group administrator from acting as the claims administrator, it has not been specified that an individual group member was prohibited from doing so. Therefore, proposed Section 15475.1(a) will now preclude a group member from acting as the claims administrator as well. The chief service provider for every group self insurer is the Group Administrator, which carries out the day to day operations of the group self insurer. The group administrator administers the program for *all* the group members, and for one member of a group to profit from administration of the group's claims would constitute a conflict of interest by favoring one group member over another.

One of the duties of the Board of Trustees specified in Section 15475(d)(6) is to obtain an annual audit of the group self insurer's financial records by an independent, certified public accountant. The purpose of the audit is to provide the Manager with an annual review of the group self insurer's financial condition, so the Manager will know whether steps must be taken to ensure that the group has funds necessary to pay its workers' compensation claims. Subsection (b) is proposed to ensure that there is no financial relationship between the auditor performing the group's annual audit and the group or other service providers. Proposed subsection (b) is necessary in order to ensure that the certified public accountant contracted to conduct the annual audit has no relationship with the group self insurer that would constitute a conflict of interest.

Group self insurers are required by Section 15475 to obtain and maintain fidelity and errors and omissions insurance coverage, and by Section 15478 to obtain and maintain specific excess insurance. Brokers are utilized to obtain this coverage. Some stakeholders maintain that a group administrator should be prohibited from acting as the broker for the group self insurer because the group administrator would be able to obtain coverage from an insurer that offered the most lucrative commission, therefore constituting a conflict of interest. Other stakeholders argue that the group administrator is in the position to obtain the best rates for the group self insurer because it handles other financial dealings for the group, such as obtaining other coverage, security deposits such as surety bonds, and/or other investments pursuant to proposed Section 15475.3. Subsection (c) is proposed to require the group administrator to disclose in writing whether it is acting as or has any relationship to the broker utilized by the group self insurer and to prohibit the group administrator from requiring the group self insurer to act as its sole broker. The amendment is necessary to ensure that any potential conflict of interest is disclosed and may not be required as a condition of self insurance administration.

Existing Section 15481 requires each group self insurer to obtain actuarial reports for each program year to project losses and to develop contribution rates to generate funds adequate to pay all claims and expenses. Some stakeholders argue that actuarial studies and reports should be conducted by independent actuaries with no relationship to the group administrator, contending that actuaries employed by the group administrator may indicate less than adequate rates so that the group administrator may have a competitive advantage over other group self insurers competing for potential group members. Other stakeholder argue that most group administrators employ actuaries with the experience and qualifications necessary to project adequate rates, that these actuaries dealing with the specific experience of employers administered by the group administrator have the data needed to accurately project losses, and in fact "would only be hurting themselves" if inadequate rates were established. Subsection (d) is proposed to require the group administrator to notify the group self insurer and the Manager of its relationship to the actuary conducting the study and preparing the report, and to specify that the Manager, at his or her discretion, may require a written actuarial study and report to be prepared by an independent actuary. Proposed subsection (d) is necessary to allow the group administrator to select a qualified actuary with the most relevant experience, while ensuring an adequate study and report will be completed if there is any reason for the Manager to suspect that projected rates are inadequate.

Section 15475.2. Existing Section 15475(d)(9) addresses restrictions on the use of funds under the duties of the Board of Trustees, essentially restricting the Board of Trustees, the group administrator or "the fiscal agent" for uses not related to the payment of compensation liabilities, posting of security deposit, payment of assessments and penalties, and "the reasonable costs of operation of the group self insurer." Specified restrictions of funds are relocated to this new proposed Section 15475.2, which specifies restrictions in greater detail than stated under Section 15475(d)(9).

Proposed new Section 115475.2(a) requires the Board of Trustees to ensure that, for each program year, all funds collected and earned by the group self insurer and all expenses and costs paid out by the group self insurer are fully disclosed and made available to all group members of the group self insurers and to the Manager pursuant to proposed Section 15484, and requires that contributions for claims costs be adequate to fund amounts for incurred but not reported (IBNR) and unallocated loss adjustment expense (ULAE) at the 80% actuarial confidence level. The amendment is necessary to fully describe the amount of funds required to be collected to ensure that adequate funds are collected to pay all projected costs and to ensure that group members are fully informed as to the purposes of the funds. In order for an employer to decide whether to enter into group self insurance, with joint and several liabilities, as opposed to insurance coverage, wherein the insurance carrier assumes all liabilities, it is crucial for the employer to be filly informed regarding the benefits of self insurance.

Proposed subsection 15475.2(b) expands the description of group self insurer funds from "funds collected from group members" to all funds collected by the group self insurer, including investment income. Proposed subsection (b) also specifies other purposes for which these funds may be utilized including excess insurance premiums and the refunding of surplus funds authorized pursuant to Section 15477. The amendment is necessary to accurately include all sources of funds, including investment income addressed in Section 15475.2(b) and in proposed Section15475.3, as well as the authorized release of excess funds pursuant to Section 15477 not previously indicated in Section 154759(d)(9). Proposed subsection (b) also restricts other parties that may have access to group funds to the same uses by adding "other vendors or agents" to the parties to which the restrictions apply. The amendment is necessary in order to clearly restrict all parties from misuse of group funds.

Subsection (c) is proposed to restrict the group self insurer from lending or otherwise encumbering any funds or assets of the group. While existing Section 15475(d)(9) prohibits the group self insurer from utilizing group funds collected from group members for any other purpose related to the operation of the group, the section did not address the lending of funds. Subsection (c) is necessary because the lending of any group funds to any party would be a detriment to the purpose of accumulating funds – ensuring that the group self insurer is adequately funded and able to pay any workers' compensation costs that may be due. Specifying a restriction of lending funds will circumvent any possible argument that lending funds to a group member or service provider is a reasonable activity of the group self insurer that is related to operation of the group. Subsections (c)(1) and (c)(2) are proposed to specify that the group self insurer may permit group members to pay any contribution in installments not to exceed 10 months in duration.

This exception is necessary in order to allow a group self insurer to collect contributions over the course of the year rather than all at once. Insured employers pay premium for their coverage in monthly, quarterly, or annual payments, depending on their size. The larger the employer, the less likely the employer is able to make a substantial payment once a year. While it may be viable for a relatively small group member that pays $2,000 per year in contributions to make that payment for the entire year in advance, it may be an unnecessary hardship for an employer with $200,000 in annual contributions to pay the entire $200,000 in advance rather than monthly installments of $20,000. Specifying that annual contributions and special assessments may both be paid in installments is necessary so that all group contributions may be paid installments if necessary, thus allowing flexibility in the collection of contributions to address reasonable payment structures for large employers required with substantial annual contributions.

Subsection (d) is proposed to prohibit the commingling of private group self insurer funds with the funds of any group member or of another group self insurer. Existing Section 15475(d) (5) requires the Board of Trustees to establish necessary accounts and accounting procedures. Many group administrators manage more than one private group self insurer, with accounts established for each as well as for the group administrator itself. Proposed subsection (a) of this section and proposed Section 15484 require strict accounting of each group self insurer's funds. While existing Section 15475, as written, does not explicitly prohibit commingling of funds, subsection (d)(9) does restrict the usage of funds to purposes related to necessary operation of the group self insurer. It is logical and necessary to prohibit the commingling of funds as proposed in this subsection in order to facilitate those requirements. This subsection is necessary for thoroughness and clarity.

Subsection (e) is proposed to prohibit the commingling of funds of a group self insurer that have been declared as surplus funds with those established for the payment of current liabilities. While existing Section 15457(d) minimally addresses the use of excess funds by requiring such funds to be invested, the matter of the separation of excess funds from those needed to fund current group operations is not addressed. This proposed subsection is necessary to assure accurate record keeping and accounting excess funds to be refunded to group members pursuant to Section 15477.

Section 15475.3. Existing Subsection 15475(d) (9) generally limits investment of excess funds to government notes and bonds or federally insured accounts at banks, savings and loans, and credit unions. Investment opportunities specified in existing Section 15475(d)(9) are much more limited than those established in California Government Code sections 53600 through 53609 for public agencies, including joint powers authorities acting as groups of public entities pooling their liabilities similarly to private group self insurers.

A new Section 15475.3 is proposed to relocate all investment related regulation opportunities and restrictions to Article 13, and to allow additional investment options, including conservative, high liquidity alternatives, in addition to savings accounts or

government notes and bonds. Proposed subsections (a)(1) through (a)(4) list investment opportunities previously permitted by existing Section 15475(d)(9). Proposed subsection (a)(5) permits the same instruments the Department allows as security deposits be allowed as investments. These changes are necessary to allow the same conservative investments to continue as permissible investments.

Proposed subsection (b) will allow additional conservative investment opportunities not previously specified as permissible, as long as the investments are not high risk, are diversified, and are handled by qualified investment advisors. The list of permissible investments listed under subsection (b) are allowed as investments for private group self insurers by the State of New York and were recommended by financial consultants participating as members of the advisory committee for the current rulemaking. The change is necessary to allow the group self insurer to earn as much as possible, while at the same time safeguarding the group self insurer's assets by requiring that investments be rated highly in order to reduce risk, and require that investments be diversified in order the protect the group self insurer's assets from sudden devaluation of investments related to a concentration of assets in specific economic sectors. The section also provides that any of the investment opportunities listed in subsections (b)(1) through (b)(6) be permitted only if invested through the services of a registered investment advisor. This provision is necessary to ensure that the group self insurer does not make investments permitted under this subsection without expert advice from professional that have proven themselves knowledgeable in terms and functions of investment vehicles. Registered investment advisors have demonstrated proficiency through training and examinations and are registered with the U.S. Securities and Exchange Commission (SEC).

Proposed subsections (c) and (d) prohibit investment practices and vehicles that may be appealing because of the potential for higher profit than conservative investments, but that involve a higher risk and chance of the group self insurer's financial position. The restriction is necessary to ensure that group self insurers' investment practices are sound and do not have a high degree of risk, thus ensuring that the group self insurers maintain adequate funds to pay all claims.

Proposed subsection (e) requires that any investment in mortgage related non-government investments be limited to no more than 5% of the group self insurer's portfolio. This restriction is necessary to ensure diversity of investments, therefore decreasing the risk of heavy losses because of investments concentrated in the same economic sector.

Proposed subsection (f) restricts the weighted average portfolio maturity to five years. This amendment is necessary to ensure liquidity of the group self insurer's assets, thus enabling the group to draw on investment income in case of sudden escalated self insurance expenses such as claims that are more frequent and/or costly than projected.

Section 15476. Section 15476 is amended for word choice, replacing the term "premium"with the term "contribution." The amendment is necessary for clarity, replacing an insurance term with the proper term related to self insurance.

Section 15477. Existing Section 15477 addresses the release of surplus funds (contributions and investment income accumulated by a group self insurer in excess of funds needed to pay claims and operate the group), the collection of additional contributions in the event that not enough funds are available to pay claims and operate the group for a given program year, and the manner in which the Manager may address a group self insurer's failure to attain full funding for the group self insurer.

Existing subsection (a) addresses surplus funds and states that the Board of Trustees of a group self insurer may declare a surplus (excess moneys over the amount needed to fulfill all compensation obligations, including a provision for incurred but not reported claims) for that calendar year to be declared refundable at any time. Existing subsection (a)(1) states that the amount "must be a fixed liability of the group self insurer at the time of the declaration" and shall be held a minimum of 12 months from the date of the declaration. Existing subsection (a)(2) states that the date of payment shall be as agreed by the Board of Trustees, except that moneys not needed to satisfy "the aggregate loss contract" may be refunded immediately after the end of the calendar year. A note following subsection (a) indicates that it is the intent of the regulation to ensure that the assets of a group self insurer are greater than its total liabilities in each calendar year.

While subsection (a) indicates that a surplus may be declared at any time and addresses some restrictions on when surplus funds may be released, it does not indicate how the Board of Trustees is to determine whether a surplus exists. Subsection (a)(1) is amended to specify that the amount of a refund need not be known at the time of the declaration, a change that is necessary to allow the refund to be re-calculated in the event that surplus funds are more or less than determined at the time of the transfer to the escrow account. Subsection (a)(2) is added to require that the determination that a surplus exists requires the e group self insurer's current financial statement to indicate that the group's assets exceeds its liabilities, and for the group's most recent actuarial report conducted at the 80% confidence factor indicates that any remaining funds will be adequate for operation of the group for the program year. The amended section will allow the group self insurer to transfer surplus funds to an escrow account at any time, but prohibits the release of surplus funds sooner than 23 months after the end of the program year, and also prohibits the amount of surplus funds from being calculated at less than the 80% actuarial confidence factor without express written consent of the Manager. Subsection (a) is also amended in subsection (2) to allow the Manager to release surplus funds sooner than 23 months after the end of the program year or based on calculations determined at less than the 80% actuarial confidence factor on a showing of cause, and indicates that the Manager may require the special audit of a group self insurer, or that the group self insurer obtain an independent actuarial report at its own expense, or submit other documentation to show cause.

The actuarial confidence factor of 80% generally means that statistically, projected losses ultimately will be no more than projected in eight out of ten years, and rates of contributions needed to generate adequate funds to pay those losses will be adequate in eight out of ten years. While virtually all states that allow group self insurance of

workers' compensation liabilities require that contribution rates be based on actuarial projections, most states do not require that the actuarial studies project losses and rates at a minimum confidence level. Most group self insurers in other states use confidence levels of around 50%, meaning that rates will generate adequate funds in approximately half of a groups program years. As a result, many states have reported under-funded groups and have had to take remedial steps to require additional assessments against group members. Since group self insurance actually began in California in 2002, no groups have been ordered to stop taking in new members, nor have any groups defaulted on their liabilities. It is the intent of these regulations to avoid the failure of self insured groups by continuing with the present required minimum confidence level of 80%. Claims costs develop slowly, and it is difficult to accurately project the ultimate costs of individual claims that involve extensive temporary disability and/or partial permanent disability for injured workers in the first two years after the injuries occur. Accordingly, it usually takes approximately two years to pass after a calendar year (or program year) before claims administrators can accurately estimate total costs on individual claims. While the 80% actuarial projections statistically generate enough funds to pay claims the majority of the time, ultimate costs in a given year depend largely on the frequency of claims as well as the severity of the injuries. It is not prudent to allow the release of excess funds until enough time has passed after a year of exposure to adequately predict the ultimate costs. The amendments to subsection (a) are necessary to limit the likelihood that funds needed to pay claims and related expenses are released to group members prematurely. Since California does not allow aggregate excess insurance to be utilized in determining ultimate liabilities, reference to early release of funds "as established by the aggregate excess contract" is rescinded.

The combination of the requirement that a group's assets exceed its liabilities, as documented through the submission of an annual certified, independently audited financial statement, together with the minimum 80% confidence factor to generate adequate funds to pay claims and associated expenses the vast majority of program years will result in many program years being substantially over-funded. In the event that a group self insurer can support early release of funds based on losses in a given year that are clearly less than projected, subsection (a)(2) is amended to allow for surplus funds to be calculated and released on a showing of cause, and to allow the Manager to require the group self insurer to support an early release of surplus funds. Consistent years of over-collection of contributions will lead to group members leaving the group for less expensive alternatives. This amendment is necessary so that groups are not required to over collect funds year after year, resulting in the loss of members and the weakening of the group, when the timely release of surplus funds can be supported.

A new subsection (a)(3) is proposed to specify that contribution rates for group members may not be reduced unless supported by an actuarial study conducted pursuant to Section 15481. Though not expressly related to a surplus of funds, this subsection is necessary to prevent an instance of a rate reduction that may be related to a surplus of funds from leading to insufficient funds.

Existing subsection 15477(b) addresses instances wherein a group self insurer has not collected adequate funds for the payment of the group's claims and associated expenses,

and established procedures the Manager make take to remedy instances where a group is under-funded. The subsection is amended for word choice, for grammatical clarity, and to more thoroughly address possible remedies.

Subsection (b) is amended to adequately describe what constitutes under-funding by adding reference the 80% confidence factor described throughout the regulations. The term "estimated future liabilities" is substituted for ""reported claims" since actuarial studies are required to project estimated liabilities including incurred but not reported claims, not just reported claims. The term "program year" is substituted for "calendar year" to be consistent references throughout the regulations, and the term "correction of the deficiency" is substituted for "full funding," since the term "full funding" suggests eliminating lifetime funding shortfall in every claim rather than actuarially as required. These amendments are necessary for consistency and grammatical clarity.

Subsections (b)(1) through (b)(3) are amended for grammatical clarity.

New subsections (b)(4) through (b)(6) are proposed to allow the Manager to more thoroughly address possible remedies for under-funding of a group self insurer. A new subsection (b)(4) will allow the Manager to increase contribution rates that have already been assessed and/or approved against group members. Subsection (b)(5) will provide that the Manager may prohibit new members for the group and prohibit the release of over-collected funds from other program years or of investment earnings to group members. Subsection (b)(6) will provide that the Manager may require the group self insurer to restructure service provider contracts through an independent qualified professional acceptable to the Manager. These amendments are necessary to allow the Manager to address all possible remedies and potential causes for under-funding not otherwise specified by regulation. One remedy not specified by existing subsection (b) is to reassess or recalculate contribution rates already assessed or approved. In addition, there are possible factors that may lead to under-funding for which the possible remedies have not been provided in the regulations: a group self insurer may be adding group members that do not meet underwriting criteria of the group, thus adding employers with higher losses not anticipated by actuarial projections, or, a group may be over-charged for services by a group administrator or another service provider. These proposed amendments are necessary to allow problems that lead to under-funding to be appropriately addressed.

Existing subsection (d) is renumbered as subsection (c) to correct an error in the sequencing of subsections. Existing subsection (d) provides that if a group self insurer's plan to achieve "full funding" is not approved by the Manager, the Manager may order the Board of Trustees to immediately assess group members for the full amount of a deficiency or order group members to return any surplus funds that had been released. This subsection is amended to provide that the Manager may order the Board of Trustees to show cause why members should not be immediately assessed for the full amount of the deficiency, to return any surplus funds returned to them over the past 12 months, or order the appointment of a conservator or liquidator by the Director. The Manager would more likely correspond or meet with the group to arrive at a mutually agreeable plan to correct the funding deficiency than simply order draconian measures. If there was no

agreement on remedies, it would be likely that a dispute exists. Since a group self insurer would have appeal rights under Article 11 for the possible liquidation of a group self insurer pursuant to existing subsection (d), due process should be addressed as soon as possible so that the appropriate remedies can be initiated as soon as possible. Severe under-funding of a group self insurer is more likely to be addressed gradually by several assessments over a period of time than by immediate assessments to obtain "full funding." Workers' compensation claims are paid out over a period of time usually years, and under funding may not result in the immediate inability to pay claims. Rather than cause immediate hardship that weakens a group by loss of membership, it is better to address under-funding in a practical manner likely to achieve success through correction of a deficiency.

Existing subsection (e) is renumbered as (subsection (d), and is amended to indicate that it is the Director, not the Manager, that may order a conservator to take over the operations of a group, and to include the liquidation of a group in addition to the appointment of a conservator, as the possible result of the failure of the group to be adequately funded. The subsection is also amended to include the Self Insurers' Security Fund as the possible liquidator of a group self insurer.

These amendments are necessary in order to effectively provide for whatever solution may be needed to ensure that a group self insurer's claims are adequately funded and injured workers' are deprived of compensation due because of work injuries obtained while in the employment of an employer that is self insured as part of a group self insurer. In instances where a self insured employer, including a group self insurer, defaults on its workers' compensation obligations, the Director orders the Self Insurers' Security Fund, pursuant to Labor Code Section 3743, to take over the claims and provide benefits. This amendment is necessary to establish a procedure in which a group self insurer's failure and/or default may be addressed.

Section 15478. Existing subsection 15478 addresses the requirements for excess insurance for group self insurers. Existing subsection (a) requires all group self insurers to have and maintain a specific excess workers' compensation insurance policy from a California admitted carrier admitted to transact business in California by the Department of Insurance, and requires that the excess policy not have a minimum retention level above $500,000. Existing subsection (a) also provides that the policy may not be cancelled or "non renewed" without prior written notice to the Manager and to the group self insurer at least 30 days in advance.

Subsection (a) is amended to indicate that the regulation applies to private group self insurers, not all group self insurers. The change is necessary for clarity, since pools of public self insurers are not required to maintain specific excess coverage. Subsection (a) is also amended to specify that private group self insurers may maintain more than specific excess policy and to correct the reference to minimum retention level. These changes are necessary to recognize that a group self insurer may establish specific excess coverage through a series of policies with layers of retention and/or change specific

excess carriers from year to year, as well as to correctly state the intention of the Self Insurer's Retention requirement – that is, that the group self insurer must limit its own liabilities through specific excess coverage. To state that the policy shall not have a minimum retention level above a certain amount is poorly stated and confusing.

Subsection (a) is also amended for grammatical clarity by substituting the terms "lapse" and "terminated" for "not renewed, a non-substantive change, and to provide that a specific excess policy may have a self insurer's retention above $500,000 per occurrence, adding the phrase "per occurrence" to clearly specify self insurer retention levels as they are stated in specific excess policies, and to indicate that a higher retention may be permitted with written consent from the Manager pursuant to subsection (b). In addition, the subsection is amended to require the specific excess policy to have an upper limit of no less than $25 million. Existing Section 15475 does not specify an upper limit for acceptable specific excess coverage, leaving open a potential problem wherein a specific excess carrier may be required to reimburse the group self insurer for costs above $500,000, but allow the policy to be capped at a level that could be catastrophic to the group self insurer. For instance, a severe burn injury or injury involving a prolonged coma or paralysis could easily reach $10 or $20 million in costs over the life of the claim. If the specific excess carrier were capped at a relatively low amount, such as $2 million, $5 million, $10 million, or even $20 million, the costs to the group self insurer might well lead to the group's failure. This amendment is necessary to protect the group self insurer against catastrophic losses that may lead to a group's failure, while providing coverage at an acceptable cap.

Subsection (a) is also amended to require that specific excess coverage be obtained from a carrier that meets specified credit rating standards. The proposed amendment requires specific excess carriers or their parent companies to meet the same credit rating standards that are required of surety companies in existing Section 15212 and in proposed amendments to existing Section 15251, and requires the group self insurer to obtain coverage through a carrier that meets the credit standards if the carrier's credit rating falls below the specified standards. The amendments are necessary to ensure that the group self insurer obtains specific excess coverage from a carrier or carriers that are not financially strong and are more likely to fail that carriers with acceptable ratings.

Subsection (b) is amended to allow the Manager to permit a group self insurer to maintain specific excess coverage with a Self Insurer's Retention as high as $1,000,000 if the group self insurer can support doing so. There is no requirement for individual self insured employers to maintain specific excess coverage, and many do not maintain specific excess coverage or maintain coverage with retention at much higher levels. One very large California employer has specific excess coverage with a Self Insurer's Retention of $100 million, meaning that the specific excess carrier will not become liable to reimburse the employer for any costs until the employer has paid out over $100 million on a claim. $500,000 retention level is proposed to be raised to $1,000,000. Self insured groups may also reach a size where they are adequately funded to easily pay claims that exceed $500,000 in lifetime costs without reimbursement. The amendment is necessary to help these large group self insurer's reduce costs by paying less for excess coverage than they would for a policy with a lower retention when the group is able to pay claims

up to $1,000.000 in cost with leading to financial weakening of the group that would affect its ability to continue as a group self insurer. The amendment is also necessary to allow the Manager to take market conditions into account when and if policies with $500,000 retention become unavailable or too costly for the level of protection provided.

Existing subsection 15478 (c) is renumbered from subsection (b) to permit inclusion of a new subsection (b) in the logical progression of the contents of Section 15478. In addition, the requirement that an aggregate excess insurance carrier meet certain standards is rescinded. Since there is no requirement for a group self insurer to maintain aggregate excess coverage, and since no credit is allowed against a group self insurer's security deposit based on aggregate excess coverage, it is not necessary or logical for there to be requirements for aggregate excess policies issued to group self insurers.

Existing subsection 15478 (d), renumbered from (c), is editorially revised to delete the condition of a group self insurer for any reason being unable to pay compensation due or to post security deposit required or both, from the requirement that an excess carrier make reimbursement payments directly to the Self Insurers' Security Fund. The change is necessary for clarity, since payments would not be due to the Security Fund unless the Fund had taken over liabilities for claims at the Director's order pursuant to Labor Code Section 3743

Existing subsection (d), to be renumbered as subsection (e), currently prohibits a group self insurer from owning the specific excess or aggregate excess insurance carrier that issues these policies to the group self insurer. The subsection is amended to include the phrase "or have controlling ownership" to the prohibition, and to prohibit any group affiliate member from having ownership. The change is necessary to encompass any instance of partial ownership of the excess carrier by the group self insurer or an affiliate member of the group self insurer. To allow ownership of the group or a member of the excess carrier would in effect fail to transfer liabilities for excess costs out of the group.

The subsection is also amended to prohibit the group self insurer or a member of a group self insurer from acting as a reinsurer for the excess carrier, and to require any ownership interest in an excess carrier by any service provider for the group self insurer, including the group administrator, to be disclosed in writing to the group self insurer, and to require disclosure of the price for any such coverage to be disclosed in writing to the group self insurer. The prohibition of ownership in a reinsurer for the excess carrier extends the prohibition of the group self insurer's ownership interest to a reinsurer that may be required to reimburse an excess carrier for some portion of the group self insurer's losses. The amendment is necessary to ensure that any transfer of liabilities for excess costs are complete. ensure that service providers The disclosure requirement for any service provider's interest in an excess carrier is necessary to ensure that a group self insurer is informed of a potential conflict of interest and can shop knowledgeably for coverage from another carrier if the group self insurer wishes, whether to obtain a better price or to avoid any potential conflict of interest.

Section 15479. Existing Section 15479 specifies the minimum provisions that are to be contained in the Indemnity Agreement and Power of Attorney form that is executed by each group member that joins a private group self insurer. Section 15479 is amended to include the word "private" in reference to group self insurers. The change is necessary because Article 13 applies to private group self insurers only, not public group self insurers. The section is also amended for non-substantive grammatical changes to be consistent with language throughout Article 13. In addition, a reference to the availability of the Indemnity Agreement and Power of Attorney form on the web site of the Office of Self Insurance Plans. The change is necessary in order to instruct the public regarding the form's availability, thus providing easy access.

Section 15480. Existing Section 15480 addresses termination of membership in a group self insurer but does not distinguish well between involuntary or voluntary termination and does not clearly lay out the responsibilities of both parties - the group and the member - when a member is terminated. Essentially the requirements of the existing section) are retained in the amendments to Section 15480, but arranged in a logical order with additional clarification to address areas related to termination of membership in a group not currently addressed.

Subsection (a) is editorially amended for greater clarity, better word choice, and to apply only to involuntary cancellation or termination of the member by the private group self insurer. A provision is added to specify that notice of termination of membership to a broker or other third party shall not be deemed as notice to the group member. The amendment is necessary to ensure that a group member that is being involuntarily terminated has adequate notice so that workers' compensation insurance coverage can be obtained. It is not unusual for a broker or third party to fail to notify an employer of an action under the assumption that the employer has already been notified. The 60 day notice requirement for termination of group membership is retained in order to allow the employer time to find coverage in the event of involuntary termination. Because group members usually pay contributions 60 to 90 days in advance in addition to an initial contribution to begin membership, the group self insurer should not incur additional liabilities for which contributions have not been paid.

Existing subsection (b) provides that the group self insurer remains liable for liabilities of a group member related to claims with dates of injury during the self insurance period of the member, including the 60 day period required for termination, and includes two notes specifying exceptions in the event of issuance of a standard workers' compensation policy to the terminated member or in the event claims are transferred retroactively under a special excess policy pursuant to Labor Code Section 3702.8(c).

Subsection (b) is amended for grammatical clarity, to specify that it applies to involuntary or voluntary termination, and to remove the notes related to exceptions for the group self insurer's retention of the liabilities, which are relocated to subsection (c).. The change is necessary for clarity. In addition, subsection (b) is amended to specify that the group member shall remain responsible for all contributions and assessments for the period of

membership in the group self insurer. The amendment is necessary to clarify the group member's liability for its coverage when self insured as a member of the group. Contributions, similar to premium for insurance coverage, are due for the period of risk involved to the group self insurer.

Existing subsection (c) specifies that Notice to the Manager of termination of a group member's membership in the group is good cause for revocation of the Certificate of Consent to Self Insure of the affiliate member, a provision that is being relocated to a new subsection (d). Subsection (c) is amended to address exceptions to a group self insurer retaining liability for a group member's claims and to relocate the current provision of Notice equating to cause for revocation to a new proposed subsection (d). The exceptions for a group self insurer's retention of liabilities of a former group member's claims formerly specified as Notes 1 and 2 following subsection (b) are relocated as subsections (c)(1) and (c)(2). Subsection (c)(2) adds a provision to specify that if a group self insurer transfers liabilities to an insurance carrier under a special excess policy, that carrier must meet the requirements of Section 15360(c)(1) as provided by Labor Code Section 3702.8(c). This amendment is necessary to incorporate into his section the financial requirements for insurance carriers issuing special excess insurance policies to group self insurers transferring their liabilities. Newly created financial standards for carriers issuing special excess policies have been added to Section 15360, an amendment that is necessary to comply with Labor Code Section 3702.8(c)(3), which requires the Director to "… adopt and publish minimum insurer financial rating standards for companies issuing special excess workers' compensation policies."

In addition, an exception is specified in subsections (c)(3)allowing a group member's liabilities to be transferred to another group if the group self insurer's bylaws allow for such a transfer and if approved by the Manager ,and, in subsection (c)(4), to transfer the liabilities entirely to the individual member if the group member qualifies as an individual self insurer and if approved by the Manager. The amendments are necessary to accommodate reasonable alternatives to a group self insurer being required to retain liabilities in instances where the claims can remain as the liability of the employer itself.

A new subsection (d) is proposed to relocate from subsection (c) the provision that Notice to the Manager of termination of a group member's membership in the group is good cause for revocation of the Certificate of Consent to Self Insure of the affiliate member. In addition, the provision that no further notice of termination from the Manager is required too effect revocation on the cancellation or termination date indicated by the group self insurer. The amendment is necessary to avoid prolonging the amount of time required to end self insurance for a group member that is being removed from a group. . An insurance carrier can cancel a policy with adequate notice for reasons such as failure to report payroll, failure to pay premium, or failure to follow safety requirements. A group self insurer must be able to rid itself of employers that do not comply with group requirements. The amendment is necessary to protect the group from the accumulation of liabilities of the group member whose membership has been terminated.

A new subsection (e) is proposed to specify that a group member that is leaving a group provide the Manager with proof of insurance or indicate that it no longer has California employees within 45 days of cancellation or termination, and to specify that the manager shall notify the Labor Commissioner if the employer has not indicated that it no longer has employees or provided proof of insurance. The amendment is necessary so that the Office of Self Insurance Plans can notify the Division of Labor Standards Enforcement, the division within the Department of Industrial Relations that enforces the requirement that all employers have workers' compensation, if it appears that the terminated group member no longer has coverage.

A new subsection (f) is proposed to specify that any group member may voluntarily withdraw from a group at the end of a program year after obtaining alternative coverage and to acknowledge that the group self insurer may require certain periods of membership for group members and may specify penalties or loss of the return of surplus funds to that member that may otherwise be due in case of early withdrawal from the group. The amendment is necessary to inform group members by regulation of the consequences of early withdrawal from a group. Some groups require a certain committal from members in order to establish a strong group with adequate members to spread risk and maintain growth. In those cases, the group bylaws will state those requirements, and it is necessary for clarification to address the ability of the group self insurer to enforce its bylaws.

Section 15481. Existing Section 15481(a) requires each private group self insurer "… (a)t least every other year…" to "… have an actuarial analysis done of its historical loss development and a projection of anticipated loss development…." The section specifies requirements for the actuary performing the study. Subsection (a) is amended to add the adjective "private" before the phrase "group self insurer" to accurately reflect that the section applies to private, and not public, group self insurers. More significantly, the requirement that the actuarial study be conducted "at least every other year" is amended to require that the actuarial study be conducted annually, and that the report be by program year. In practice, group self insurers obtain actuarial studies no less frequently than annually, and often as frequently as semi-annually or quarterly. As well as projecting losses for the current year, the actuarial reports include projected ultimate costs for years past, thus projecting loss development from year to year. Most group self insurers add and lose members every year, and loss experience changes with the numbers of employers and employees covered, the frequency and severity of injuries, and changes to compensation rates required by law. Projected losses, and the contribution rates necessary to generate funds to pay for those losses, are more likely to be inaccurate the less frequently actuarial studies are conducted. For past years, costs on individual claims may change substantially as injured workers' injuries require more or less treatment or other costs than initially estimated. This amendment is necessary to ensure that group self insurers collect enough funds to pay their workers' compensation obligations and associated expenses. Subsection (a) is also amended to require that the study be conducted at the 70% as well as at the 80% confidence level and to specify that the projected loss development include projected incurred but not reported and unallocated

expenses. The amendment is necessary to ensure that group self insurers collect enough funds to pay their workers' compensation obligations and associated expenses, and to ensure that the actuarial report addresses requirements by the proposed amendments to Section s15475(d)(7) and 15477(a).

Existing subsection (b) requires the analysis and results of the study to be presented to the group self insurer's Board of Trustees and to any group member requesting a copy, and requires the study to "… be commenced immediately following the close of the ninth month of each calendar year…" with "… the written report presented to the Board of Trustees by January 1 of the new calendar year." Subsection (b) is amended to eliminate the required deadline for the commencement of the study. The change is necessary because at the close of the ninth month the program year is incomplete, and a required commencement date for the study is not relevant as long as the study is conducted no less frequently than annually and the report is submitted timely. The requirement that the study be provided to the Board of Trustees by January 1 is amended to specify that the report be submitted to the Board of Trustees within 90 days after the end of the group self insurer's program year. This change is necessary in order to allow sufficient time after the end of the program year to complete the study.

Existing subsection (c) requires the written report to be presented to the Manager by March 1 of each year that it is required. This subsection is amended to require the written report to be submitted to the Manager no later than 120 days after end of the group self insurer's program year. This change is necessary in order to allow sufficient time after report has been completed for the Board of Trustees to review the report before submission to the Manager.

Existing subsection (d) requires the Board of Trustees to ensure that the funding of claims losses for the group to "… be based on the actuarial projection at the 80% confidence level." A note following subsection (d) indicates that a sample of bylaws for a group self insurer to assist groups in developing a set of bylaws is in the appendix following the regulations. Subsection (d) is rescinded, a change that is necessary because the confidence level requirements have been relocated to subsection (a), which addresses other actuarial study requirements, and because proposed Section 15475.2(a) requires that claims be funded at the 80% confidence level. The note following subsection (d) is also rescinded, an amendment that is necessary because the model bylaws have no regulatory effect, and because sample bylaws are included with required forms on the website of the Office of Self Insurance Plans, as indicated in proposed new Section 15482.

Additions to Article 13

Many regulatory requirements related to private group self insurance have been relocated from various articles within Chapter 8, Subchapter 2 of Title 8, California Code of

Regulations to Article 13. Following are new sections in Article 13 that contain requirements scattered throughout existing Articles 2 and 3, including some substantive changes:

Section 15482. Proposed new Section 15482 addresses application requirements for private group self insurers relocated from existing Section 15203 (a)(3), (a)(4), (d), and (e). Proposed Section 15482(a) specifies that each private group of employers desiring to procure a private group Certificate of Consent to Self Insure shall submit a complete application for the group and complete applications for each of the initial core members of the group no less than 60 days before the requested date of self insurance, and specifies that the private group application shall be made on Form A4-3 (Rev.1/94), and the core member application shall be made on Form A4-3M (Rev. 1/94). There are no changes to the forms established in existing Section 15203(a)(3) and (d) for the group applicant or in existing Section 15203(a)(4) and (e) for each group member.

The change is necessary to clearly state that applications for both the group and for the qualifying members of the group must be submitted before the group can be considered for eligibility for self insurance. This change also eliminates the need to repeat that application forms for proposed members must be included among the numbered items following proposed Sections (b)(1) through (b)(10). In addition, proposed subsection (a) specifies that the applications must be submitted at least 60 days before the requested effective date of self insurance. The change is necessary to allow the Office of Self Insurance Plans enough time to evaluate applications and obtain additional documentation from applicants needed to determine eligibility to self insure. The 60 day lead time is indicated as the median time for processing group applications in existing Section 15203(j), which is rescinded.

Proposed Section 15482(b) requires that complete applications for the group applicant and qualifying core members include required documentation and following numbered enclosures as applicable. This requirement is relocated from existing Section 15203 (d) and (e) and is necessary because those subsections of Section 15203 are rescinded.

Section 15482(b)(1) requiring a financial statement from each qualifying core member is relocated from existing Section 15203(d)2) and the note following Section 15203(d)(2), which specifies that the application of an affiliate or subsidiary may include the consolidated financial statement of its parent in lieu of its own financial statement. Proposed Section 15482(b)(1) adds the provision that a subsidiary or affiliate of a parent company may qualify based on the parent's financial statement only if the parent company has executed a guarantee agreement pursuant to Section 15482.1. The amendment is necessary to ensure that eligibility for group self insurance is based only on companies that will assume liabilities for group claims. The requirement that qualifying financial statements be certified, independently audit financial statements in existing Section 15203(d)(2) is excluded from proposed Section 15482(b)(1). The change is necessary to be consistent with proposed Section 15472, which permits some group self insurers to establish eligibility based on reviewed financial statements.

Proposed Section 15482(b)(2), requiring that the group application include a Resolution by the group Board of Trustees to apply for self insurance and to authorize signature authority is relocated from existing Section 15203(d)(5) with no substantive changes.

Proposed Section 15482(b)(3), requiring that the group application include a Resolution by the group Board of Trustees authorizing the execution of an Agreement of Assumption and Guarantee of Workers' Compensation of Group Members and any future members is relocated from existing Section 15203(d)(6) with no substantive changes.

Proposed Section 15482(b)(4), requiring that the group application include an Agreement of Assumption and Guarantee of Workers' Compensation executed by the applicant group self insurer and listing each initial proposed member is relocated from existing Section 15203(d)(4) with no substantive changes.

Proposed Section 15482(b)(5), requiring that the group application include an original Certificate of Status from the Secretary of State or other appropriate documentation showing that the group applicant is appropriately licensed or registered to do business in California, is relocated from existing Section 15203(d)(7) with only one change – requiring the documentation to be dated within 90 days of receipt by the Manager. The change is necessary to verify that the company can do business in California and to verify the correct legal name of the applicant.

Proposed Section 15482(b)(6), requiring that the group application include a written evaluation of the proposed core members' illness and injury program or a copy of a DOSH evaluation report as specified in Section 15486.1, is relocated from existing Section 15203(d)(8) with only one change. The reference is changed to proposed Section 15486.1 instead of Section 15353 so that the requirement will correspond with the proposed section in Article 13 addressing the safety evaluation requirements for self insured private groups.

Proposed Section 15482(b)(7), requiring that the group application include a duly executed Indemnity Agreement and Power of Attorney of Joint and Several Liability, is relocated from existing Section 15203(d)(9) with no substantive changes.

Proposed Section 15482(b)(8), requiring that the payment of the group application fee(s) be included with the application, is relocated from existing Section 15203(d)(10), with the only change being the reference to proposed Section 15491 addressing group application fees, rather than to Section 15204, which is amended to address only individual private self insurance application fees.

Section 15203(d)(9), .requiring that a copy of the Feasibility Study Report required by Section 15471 be included with the application, is relocated from existing Section 15203(d)(11) with no substantive changes.

Section 15482(b)(10), requiring that a duly executed Agreement and Undertaking for Security Deposit as required by Section 15486, is relocated from existing Section

15203(d)(12), with the only change being the reference to proposed Section 15486, addressing the Agreement and Undertaking for Security Deposit for group self insurers.

Section 15482.1. Proposed new Section 15482.1 specifies the application form and documents to be submitted for affiliate group members. Existing subsection 15203(e), including (e)(1) through (e)(4), lists the application form and documents to be submitted for group members, except that by indicating that group member applicants are required to apply on Form A4-4 (Re, 1/94), existing Section 15203(e) does not coincide with existing Section 15203(a)(4), which requires that group member applicants must apply on Form A4-3M (Re, 1/94).

Proposed Section 15482.1(a) requires that group member applicants must apply on Form A4-3M (Re, 1/94), thereby corresponding with proposed Section 15482(a)(2). Otherwise, proposed Section 15482.1 indicates that documents listed in proposed subsections (a)(1) through (a)(4) must be included with the applications as applicable, thereby relocating the language of existing Section 15203(e)(1) through (e)(4)..

Existing Sections15203(e)(1) and (e)(2) require that Affiliated Group member applicants submit either a certified, independently audited financial statement, or, if the group self insurer had twice the net worth by Section 15203.2(f), a current copy of the applicant's reviewed financial statement. Since Section 15203.2(f) requires all private group self insurers to maintain a consolidated net worth of $5 million, existing Section permits an affiliate group applicant to submit a reviewed financial statement rather than a certified, independently audited financial statement if the group self insurer demonstrates $10 million in net worth as documented by certified, independently audited financial statements. A note following existing subsections (e)(1) and (e)(2) specifies that "If the report of the financial condition is dated more than 12 months prior to the date of this application, the Director may require interim financial statement certified by the appropriate financial officer and dated not less than 3 months from the date of this application."

Proposed Section 15482(b)(1), dealing with group applications, specifies that a group application must include current financial statement together with schedules and notes for each applicant group member that will be a qualifying core member of the group as defined in proposed new Section 15201(p).. Proposed Section 15482.1(a)(1), dealing with group member applications, specifies that no financial statements need be submitted for non-core members, except that the Board of Trustees or Group Administrator must evaluate new members by reviewing their financial statements, tax returns, credit reports, or other appropriate documentation as specified in the group self insurer's bylaws. This change, requiring a financial statement only if the group member is a proposed core member and thereby serving as one of the financial qualifying group members, is necessary to be consistent with amended Section 15472, which will no longer require financial statements from group members once the group self insurer has met financial qualifications. The change is necessary to eliminate the unnecessary expense of

obtaining financial statements that have no bearing on the group self insurer's financial eligibility to self insure.

Proposed Section 15482.1(a)(2), requiring that the application include a duly executed resolution authorizing completion of the application to self insure, is relocated from existing Section 15203(e)(3) with no substantive changes.

Proposed Section 15482.1(a)(3), requiring that the application include a duly executed Indemnity Agreement and Power of Attorney of Joint and Several Liability as required by Section 15479, is relocated from existing Section 15203(e)(4) with no substantive changes.

Proposed Section 15482.1(b) specifies that at the discretion of the Manager, an employer with projected contributions of 25% or more of the group's projected total contributions for the coming program year shall be required to submit a financial statement to the Manager. The amendment is necessary to ensure that a group members that make up a large portion of a group self insurer's exposure to risk is financially sound.

Proposed Section 15482.1(c) specifies that a new application shall be submitted whenever an existing affiliate group self insurer adds a new or separate subsidiary that it wishes to add to the group self insurer. The amendment is necessary to clarify that no employer that is a different legal entity from its parent of affiliated employer shall be self insured as a member of a group self insurer without first applying and obtaining consent to self insure.

Proposed Section 15482.1(d) specifies that a new application may be required when a member of an existing affiliate group self insurer reincorporates, merges, or otherwise changes ownership. This amendment is necessary to clarify that consent to self insure does not automatically extend to a new entity upon a change in the status of the employer as a legal entity.

Section 15482.2. A new Section Subsection 15482.2 is proposed to address the process of the granting of Interim Certificates of Consent to Self Insure for new members of qualified group self insurers. Existing Section 15205 sets forth requirements for the granting of Interim Certificates of Consent to Self Insure, that is, certificates that are issued to subsidiaries and affiliates of existing self insured employers and are valid for no more than 180 days. An Interim Certificate permits the subsidiary or affiliate to immediately become self insured under the parent's or group self insurer's self insurance program, and also allows Interim Certificate holder up to 180 days to follow up with the necessary application, Board Resolution(s) and Agreement(s) of Assumption, at which time a "permanent" certificate that is valid until revoked by the Director is issued. Section 15205 is amended to apply only to individual private self insurers, subsidiaries, and affiliates, and this new proposed Section 15482.2 addresses the Interim Certificate process for new members of group self insurers.

Proposed subsection (a) specifies that the Manager may issue an Interim Certificate of Consent to Self Insure to a new member of an existing private group self insurer upon receipt of a qualifying Request for an Interim Certificate and the filing fee specified in proposed Section 15491(a)(3). An Interim Certificate process is necessary for qualified group self insurers in order to allow new group members into the group self insurance plan within a relatively short time period and follow up on paperwork that may take much longer to obtain over the next six months. Employers often decide to enter into group self insurance at about the time that their current insurance policies expire. If it takes a new applicant several months to follow up with necessary board resolutions or other documentation needed for self insurance approval and the employer's policy is renewed, that employer usually will be penalized by the insurance carrier if it then cancels the policy a few months into the next policy period. The amendment is necessary for employers to avoid penalties that are assessed by the carriers that would not be otherwise assessed if the approval process for group self insurance were not overly long. There is no reason to delay the approval of new members into qualified group self insurers' programs.

Proposed subsection (a) also specifies that a Certificate of Consent to Self Insure to replace the Interim Certificate shall not be issued unless a completed application and accompanying documents required by Section 15482.1 and the application fee required by Section 15491 are submitted to the Manager within 180 days of the effective date of the Interim Certificate. However, the Manager may extend the Interim Certificate for an additional period of up to 90 days upon a showing of cause. The amendment is necessary to ensure that all documents necessary to obligate the new group member's joint and several liability have been received, and that continuing exposure to the group self insurer will not be incurred until those requirements have been met. However, the amendment to allow the Manager to extend the interim period is necessary to allow additional time for completion of certain documents needed to complete the application process, such as a Board Resolution that may only be obtained at a scheduled Board Meeting, in certain circumstances where delays are reasonable and the applicant is not able to complete the process in the allotted time.

Proposed subsection (b) specifies that in order to qualify for the issuance of Interim Certificates for new group members, the group self insurer must document that its core members meet the financial requirements established in amended Section 15472(a), and that the group self insurer not be prohibited from adding new members pursuant to amended Section 15477(b)(5). The amendment is necessary to clarify that a group self insurer that no longer meet the financial standards required to self insure shall not be allowed to add new members. If a group self insurer cannot document that it is financially strong and able to meet its workers' compensation obligations, the group should not be able to add additional exposure to new liabilities.

Proposed subsection (c) specifies what information must be provided to the Manager regarding an employer to be added to the group under an Interim Certificate, and requires the Group Administrator to certify that the new member meets the homogeneity requirements as specified by Section 15473 and underwriting requirements of the group self insurer established in the group self insurer's bylaws. There has been a number of

instances under existing regulations where it has been determined after an Interim Certificate holder's application has been received months after the issuance of an Interim Certificate that the applicant did not meet homogeneity requirements or meet the group self insurer's underwriting guidelines, such as a maximum experience modification as provided by the group self insurer's bylaws. This amendment is necessary to clarify that the Interim Certificate process is intended to allow eligible employers to immediately be granted consent to self insure as members of the group and follow up on paperwork later, and that the group self insurer can verify that the employer will meet these eligibility requirements.

Existing Section 15205(c)(1) through (c)(4) specifies that a request for an Interim Certificate must include the full legal name and federal tax Identification Number of the employer, the requested effective date of self insurance of the Interim Certificate, the annual payroll of the employer for the last 12 months, or the latest payroll totals available, and a statement that the Master Certificate holder shall be financially responsible for the payment of any claims arising out of the interim period of self insurance. These requirements in existing Section 15205(c)(1) through (c)(4), now amended to apply to individual private self insurers and their subsidiaries and affiliates only, are specified for group self insurers and group members requesting Interim Certificates in proposed Section 15482.2(c)(1) through (c)(5). The only substantive change regarding these four subsections related to Interim Certificate requests for new group members is to specify in a new subsection (c)(4)that the employer's NAICS code, experience modification and a description of the business be provided, information that is necessary to determine the employer's eligibility for the group. In addition, proposed subsection (c)(3) specifies that the last 12 months payroll be reported through the last completed quarter, and that an estimate of the next 12 months payroll and group member's annual group member contributions be provided in the request for an Interim Certificate. These changes are necessary in order for the Group Administrator and the Office of Self Insurance Plans to calculate any security deposit increase that may be required pursuant to proposed new Section 15496(d).

Proposed subsection (d) will specify that the Manager shall issue an Interim Certificate within 14 days of the request, or notify the group self insurer if the request is incomplete or does not comply with the requirements of this section. This amendment specifies the same provisions that are in existing Section 15205(d), and is necessary in order for the existing provisions to apply to group self insurance in amended Article 13.

Proposed subsection (e) will specify that the before an Interim Certificate may be replaced with a permanent certificate, the applicant must submit within the effective date of the Interim Certificate a complete and accurate application as provided by Section 15482.1. This amendment specifies the same provisions that are in existing Section 15205(e), but with references to the proper section dealing with the group application requirements, and is necessary in order for the existing provisions to apply to group self insurance in amended Article 13.

Proposed subsection (f) established provisions related to the revocation of an Interim Certificate of Consent to Self Insure before the expiration date or in the event that the

Interim Certificate expires without the issuance of a permanent Certificate of Consent to Self Insure. Proposed subsection (f)(1) specifies that if an Interim Certificate is revoked before the expiration date or allowed to expire without issuance of a permanent Certificate of Consent to Self Insure pursuant to subsection (e), the Interim Certificate holder shall provide proof of workers' compensation insurance to the Manager and to the group self insurer no later than 60 days after the date of revocation by the department. The subsection also specifies that the self insured group shall remain liable for all compensation liabilities of the employer until the effective date of the insurance coverage, the expiration date of the Interim Certificate, or the 60th day after any Notice of Intent to Revoke the Certificate issued by the Manager whichever comes first, and that the employer shall remain liable for payment of contributions and assessments as required by the self insured group for the employer's period of coverage as a member of the group. These subsections are necessary to ensure that the same provisions guarding against employers being uninsured are established for employers that are issued Interim Certificates as are established in amended Section 15480 for affiliate group members whose group membership is terminated.

Proposed subsection (f)(2) specifies that the Manager shall notify the Labor Commissioner if any employer granted membership in a private group self insurer under an Interim Certificate is subsequently denied an Affiliate Certificate of Consent to Self Insure by the Manager and after 45 days from such denial has not produced proof of coverage for workers' compensation liabilities to the Manager in the form of a binder, certificate of insurance or policy. This amendment is necessary to clarify that provisions of amended Section 15480 related to notification to the Labor Commissioner of potential failure to maintain workers' compensation coverage of employers whose group membership is terminated also applies to group members with Interim Certificates.

Section 15483. A new Section 15483 is proposed to address Agreements of Assumption and Guarantee of Workers' Compensation Liabilities for group members. Existing Section 15203.1(b) in Article 2 requires private group self insurers to "provide an individual Agreement of Assumption and Guarantee of Liabilities For Group Members for each group member or a single agreement listing all group members and all subsidiary (sic)or affiliates of each group member executed by the group administrator of the group applicant.," Existing subsection (b) specifies that if the group self insurer *or group applicant* (sic) will not execute an agreement, the Director may "require a deposit level of 200% of the group self insurer's estimated future liabilities, or higher," in lieu of an agreement, or may deny the application.

Existing Section 15211.2(a) in Article 3 specifies that, at the discretion of the Manager, the workers' compensation liabilities of a self insurer (therefore including private group self insurers) may be assumed or guaranteed in whole or in part by any other legal entity or person.. Subsection (c) specifies that regardless of whether the self insurer's parent company's financial condition is relied upon to qualify a subsidiary or affiliate for self insurance, the private subsidiary or affiliate shall provide an agreement of assumption and guarantee "executed by the owner, or controlling partners, or holding corporation or

other entity acceptable to the Manager." A note following existing subsection (c) provides that at the discretion of the Manager, the parental agreement may be waived, but if waived, the Manager shall require the self insurer to post and maintain a minimum of a 200% deposit rate in lieu of the assumption agreement.

Subsequent subsections in existing Section 15211.2 in Article 3 require the Board of Directors of a company guaranteeing liabilities to pass a Board Resolution authorizing execution of the agreement and granting signature authority, specify that in the event that the self insurer reincorporates, merges, or changes its identity, the surviving entity shall execute a new agreement, and that a 30 day notice for termination of an agreement is required.

The purpose of these requirements in these sections in Articles 2 and 3 related to guarantee agreements, is to ensure that parent companies or companies qualifying other companies to be self insured – that is, companies with the ability to draw assets out of a self insured subsidiary or affiliate, can be held liable for the obligations of the self insured subsidiary or affiliate. All requirements related to guarantee agreements of group self insurers and their members are relocated from Sections 15203.1 in Article 2 and Section 15211.2 in Article 3 to a new proposed Section 15483 in Article 13.

Proposed subsection 15483(a) addresses the relocated requirement of existing Section 15203.1(b) that private group self insurers provide an individual Agreement of Assumption and Guarantee of Liabilities For Group Members for each group member, or a single agreement listing all group members, executed by the group administrator of the group applicant. However, the option of establishing a 200% security deposit requirement as an alternative to denying an application t if the group self insurer will not execute the agreement is rescinded for group self insurers, so that proposed Section 15483(a) will specify that the Director shall deny the application of a group self insurer if it does not execute an agreement, or, if an Interim Certificate has been issued and the group self insurer declines to execute an agreement, it shall be cause for revocation of Consent to Self Insure of the group self insurer.. A basic tenet of group self insurance is the concept of joint and several liability, wherein all members constitute the group, and the group is liable for all claims. Therefore, no employer should be allowed to participate as an affiliate group member if the group self insurer declines to execute the guarantee agreement. This amendment is necessary for consistency and to enable the department to effectively ensure that group self insurers are liable for their claims.

Proposed new Section 15483(b) will specify that each group member that is a subsidiary or affiliate or is otherwise controlled or owned by an another entity shall provide a guarantee agreement executed by the parent or controlling company,. If the parent or controlling company declines to execute an agreement, the Director may deny the application, or, if an Interim Certificate has been issued and the Interim Certificate holder's parent or controlling company declines to execute an agreement, it shall be cause for revocation of Consent to Self Insure of the Interim Certificate holder. This amendment is necessary to ensure that a parent company or owner of a group member that has the ability to draw the assets out of a group member may be held liable for that member's joint and several liabilities. However, because the group self insurer is

required to execute the guarantee agreement whether the group parent company does or not, it is not mandatory to obtain a guarantee agreement from every non-group member parent company of a group member.

Proposed new subsection (c) specifies that the agreement of assumption and guarantee of liabilities shall be written upon a form provided by the Manager (Form A4-3 (Rev. 11/97)), the same form as required in existing Section 15211.2, and the form is available on the website of the Office of Self Insurance Plans at http://sip.dir.ca.gov/.

Section 15484. The requirements of existing Section 15203.2 related to continuing financial capacity for private group self insurers are relocated to this new proposed Section 15484 in Article 13, therefore separating the private group continuing financial requirements from non-group continuing financial requirements.

Proposed new section 15484(a) relocates the same existing requirement that the group self insurer annually submit a certified, independently audited financial statement, with no substantive changes other than for clarification. Existing Section 15203.2(a) indicates that "if the private self insurer did not prepare a current, certified, independently audited financial statement, the self insurer shall advise the Manager of that fact in writing and submit a consolidated financial statement prepared by an independent certified public accountant (CPA). The language of existing does not clearly describe the type of financial statement for the group self insurer, since the option of submitting a "consolidated" report prepared by a CPA is not clearly defined. Proposed Section 15484(a) requires that the certified, independently financial statement be prepared according to Generally Accepting Auditing Standards (GAAP), that the report be submitted by July 1 following the end of the program year, that if it cannot meet that deadline that it immediately advise the Manager in writing of the reasons and submit an un-audited financial statement, and follow up by submitting an audited financial statement within 60 days.

It is crucial that the Manager be able to ascertain the financial stability of the group self insurer at least annually in order to determine if assets exceed liabilities so that surplus funds may be released pursuant to amended Section 15477. In order to make that determination, the Manager must be able to look at a financial statement that is guaranteed to be conducted independently, and in according to standard audit procedures. The existing requirement that the audit report be "a certified, independently audited financial statement complete with all notes and schedules" implies that the report "be prepared according to Generally Accepting Auditing Standards (GAAP)", but does not specifically state so, and so this change is necessary for clarification. Existing regulation does not specify a deadline for submission of the financial statement, and one is needed. Since the group self insurer's program year ends at the end of the calendar year, July 1, six months after the end of the program year, gives the group self insurer adequate time to conduct review claims data for the year (required to be submitted to the Manager by March 1 pursuant to Section 15251), and obtain the audit report following the actual audit. Since it is imperative that the manager be able to review a certified, independently audited financial statement, no other option is provided in this section.

Proposed Section 15484(b) will specify that certain categories of financial data related to the operation of the group be itemized on the group self insurer's annual financial statement. This itemization is necessary in order for the group members, as well as the Manager, to be fully informed as to the group self insurer's expenses. Group members, who jointly and severally share liabilities for all the costs of maintaining group self insurance, must be able to evaluate the performance of the group and the group administrator. In addition, the Manager must be able to fully evaluate a group's expenses in order to address any corrective action that may be needed in the event the group self insurer is experiencing financial instability. This itemization in the financial statement is necessary in order to fully evaluate the group's performance.

Proposed Section 15484(c) relocates the requirement from existing Section 15203.2(c) that group member financial statements be submitted to the Board of Trustees annually and be made available to the Manager upon request. Subsection (b) will allow group members to submit their financial documentation to the group administrator to as well as the Board of Trustees, however. Many private employers are sensitive about who can read or see their financial statements. The Board of Trustees might consist of business competitors of some members, and the members may not want to share their current financial situations with them. Permitting the group administrator to review the financial statements to secure the necessary information without sharing the entire financial statement with the Trustees can resolve this situation. The only other substantive change from the requirements of existing Section 15203.2(c) is to provide that other documentation other than certified or reviewed financial statements can be obtained by the Board of Trustees from private group members that are not core members. This change is necessary to be consistent with amended Section 15472(a) and proposed new Section 15482.1(a)(1).

Proposed subsection (d) provides that the group administrator will submit on request any financial documentation received pursuant to subsection (c), and shall advise the Manager of any group member not submitting its financial documentation to the group self insurer. This change is necessary to ensure that after the group has been established the Manager may obtain financial statements or other documentation needed to substantiate continuing financial eligibility or the financial strength of any questionable group members.

Proposed subsection (e) specifies that the group self insurer shall demonstrate sufficient income from annual member contributions and/or assessments to fund the group self insurer's projected claim liabilities at the 80% confidence factor, the group self insurer's expected expenses, the cost of specific excess insurance, and the continued posting of the group's security deposit. These requirements are relocated from existing Section 15203.2(f) (1) through (f)(3). The change is necessary to clarify the amount of funds that the group self insurer needs to generate annually, and is consistent with the financial requirements provided in amended Section 15477(a)(2). The only substantive change from existing Section 15203.2(f) is to delete reference to net worth requirements. The change is necessary because group income from contributions is not related to core members' net worth, and for brevity (initial net worth requirements for core members are indicated in Section 15472).

Proposed subsection (f) requires the group administrator to immediately advise the Manager if the group self insurer does not meet the financial requirements specified in Section 15444(e). This requirement is relocated from existing Section 15203.2 with no substantive changes other than to be consistent with the financial requirements of core group members as specified in amended Section 15472(a).

Proposed subsection 15484(g) is relocated from existing Section 15203.2(d). Subsection (g) specifies that a group self insurer's solvency is presumed impaired if any of four factors exist. The first three factors - a marked reduction in financial strength, failure to submit a financial statement, the failure to substantiate net worth requirements of core members – are relocated from existing Section 115203.2(d), while the fourth, the failure to generate enough funds to cover projected costs required by subsection (e) is added. This change is necessary for thoroughness.

Proposed subsection (h) provides that demonstration of impaired insolvency of the group self insurer as described in subsection (g) is good cause for an increased security deposit or revocation of consent to self insure. This provision is relocated from existing Section 15203.2(d) with no substantive change.

Section 15485. Existing Section 15203.3 in Article 2 requires a resolution to authorize self insurance of workers' compensation liabilities from both individual private self insurance applicants and private group self insurers. These requirements have been relocated to this proposed new Section 15485 with no substantive changes other than editorial revisions to make the proposed Section applicable only to private group self insurers. The Note at the end of existing Section 15203.3 has been added to proposed Section 15485.3(c) rather than as a note at the end of the section and amended to reflect the current resolution form is available from the Manager or at the website for the Office of Self Insurance Plans. deleting the reference to the Appendix Plates at the end of the regulations. This change is necessary to make the model resolution more accessible to the public and is consistent with the similar revisions regarding forms included with certain plates in the index of the regulations. There has been no change to the Form since Section 15203.3 was enacted.

Section 15486. Existing Section 15203.5 in Article 2 requires all private group self insurers to execute an Agreement and Undertaking for Security Deposit, and for all security deposits to be posted in accordance with the provisions of the Agreement and Undertaking. The requirements are relocated into a new proposed Section 15486 for private group self insurers in order to be a part of Article 13 addressing private group self insurance. The reference to the availability of the form in a plate in the index following the regulation has been deleted, because the form is part of the application form itself. There has been no change to the application form or the Agreement of Undertaking, addressed in proposed new Section 15482, since it was enacted as part of existing Section 15203.5, now in proposed new Section 15486.

Section 15486.1. Existing Section 15353 in Article 7 requires private employers applying to become self insured to submit recent written reports of evaluations of the applicants' Injury and Illness Prevention Programs with their applications. The reports must be completed by qualified independent safety professionals or by the Division of Occupational Safety and Health, and proof of the abatement any serious safety violations must be provided. Failure of the applicants to have an effective injury prevention program is cause for denial of an application to self insure.

The requirements of existing Section 15353 are tailored to fit group self insurance as part of this new proposed Section 15486.1 in Article 13. The only changes to text from existing Section 15353 regarding safety evaluations for group self insurance are grammatical, except that proposed Section 154886.1 requires evaluations of the initial core members of the group self insurer, when the group self insurance application is submitted, and the Board of Trustees is then required to ensure that the group self insurer maintain an effective safety and risk control program among the group's membership. In addition, a qualified safety professional is required to submit a report of safety and risk control activities to the group's Board of Trustees no less frequently than annually. These changes are necessary in order to ensure that a group self insurer starts off with an effective safety program and then maintains it. Some group self insurers include many group member employers with less than 20 employees. These employers are excused by Labor Code Section 6401.7 from requirements to maintain written safety programs. In addition, many employers in the service and construction industries do not have permanent work sites such as factories or services centers. It is virtually impossible to inspect work sites and evaluate individual written programs for these typical group members, and it therefore becomes the group self insurer's responsibility to establish effective safety programs. These changes are necessary to maintain safe work environments for group self insurer member employers, therefore keeping losses down in effective self insurance programs.

Section 15487. Existing Section 15203.6 in Article 2 currently addresses delayed start up of any self insurer after approval by the Director for a Certificate of Consent to Self Insure. The requirements of Section 15203.6 as related to private group self insurers and their members are relocated to this new proposed Section 15487.

Aside from editorial revisions for greater clarity and revision of the text to apply to private group self insurers and group members only, the only substantive change is to add a provision in subsection (b) that the Manager may extend the approval for a new group self insurer for an additional three months upon a showing of good cause, and to provide that the required security deposit amount may be recalculated in the event that start up is delayed.

Allowing the Manager to extend for an additional three months approval to self insure for a new group self insurer if it fails to initiate self insurance within the six month period is necessary to avoid duplication in reapplying and evaluating newly completed applications and documentation if relevant details are not substantially altered since the time of approval. Reasons beyond the applicant's control may have delayed the initiation of self insurance after approval, such as delayed issuance of excess insurance caused by the carrier notification of penalties assessed by current carriers unless a current policy were in effect for a longer period of time. In such cases, the applicant should be able to show cause, and the Manager should be able to avoid duplication of effort that has no bearing on evaluation of the applicant's application. Because looses affecting the applicant's security deposit may have increased during the delay, it is necessary to specify that the security deposit requirement may be recalculated. Even so, extension should not exceed three months. If a full year has passed since approval, new fiscal years for the core members would have ended, and new complete policy years for their workers' compensation would have ended. Accordingly, new financial statements and loss histories would be required to properly re-evaluate the applications to self insure.

Section 15488. Existing Section 15203.7(a) in Article 2 specifies that after approval by the Director and "… the posting of an assumption agreement and adequate security deposit with the Department, within seven days the self insurer shall receive confirmation of its self insured status by receipt of a Certificate to Self Insure…." Subsection (b) requires the self insurer to prominently display the certificate at its principal place of business, subsection (c) requires that notice of workers' compensation coverage indicating the name of the agency that administers claims be provided to employees, and subsection (d) specifies that if evidence of self insured status is needed, the Manager shall provide certification of self insurance upon request.

Existing Section 15203.7 requirements as related to group self insurers and their members are relocated in this new proposed Section 15488 in Article 13 with re-wording for grammatical clarity and to specify that the section applies only to private group self insurers and affiliate group self insurers. In addition, the provision that the Certificate will be received within seven days of approval and posting of guarantee agreements and adequate deposit is removed. Aside from the Department not being able to control the date that confirmation is received by a self insurer, the change is necessary to specify that Certificates of Consent to Self Insure will be provided to the group administrator, who will disseminate the certificates to the group members. The change is necessary so that the group administrator, who coordinates all self insurance activities for the group members, can effectively administer the self insurance program of the group members.

Proposed subsection (d) indicates that one can determine whether an employer is self insured or not electronically at the website of the Office of Self Insurance Plans at http://sip.dir.ca.gov/, and that there is a ten dollar ($10) fee for signed certification of self insured status. The Office of Self Insurance Plans receives approximately a thousand requests to determine whether or not an employer is self insured on any given date per year. Requests are made by telephone, by mail, be fax, and by e-mail. All office

employees respond to these requests, with an average of ten to fifteen minutes utilized per request. In 2007 the database of the Office of Self Insurance Plans was re-designed, and a search engine is now available where the public, at no cost can determine whether or not an employer is self insured, what dates self insurance was effective, and where claims are handled. The amendment is necessary to inform the public that one can determine whether an employer is self insured or not easily and quickly b utilizing the website of the Office of Self Insurance Plans. The $10 fee for signed certification, the same fee that the Secretary of State's office charges for certification of corporate status, is necessary to encourage the public to utilize the website of the Office of Self Insurance Plans to obtain information.

Section 15489. Existing Section 15203.8(a) in Article 2 requires every self insurer to advise the Manager within 30 days of any amendments to the self insurer's articles, charter or agreement of incorporation that changes its business structure or ownership in a material manner from the status that existed at the time of the issuance of its Certificate to Self Insure.

In group self insurance there are generally two types of changes in status that affect the group self insurer: changes to the group self insurer itself - that is, the non-profit corporation formed as provided in Section 15470(a) or 15470(b), including changes to its bylaws, underwriting criteria, and/or group operating agreement; and, changes related to the status of an individual group member. While existing Section 15203.8 was written primarily to address changes to individual self insured employers, whether insured under their own individual Certificates of Consent to Self Insure or under Affiliate Certificates of Consent to Self Insure issued to group members, it does not specifically address the types of changes that are material to a group self insurer as a whole. A new Section 15489 is proposed to address the group self insurer's status, as distinguished from the status of any of its members.

Proposed new Section 15489 requires the Group Administrator and/or the Board of Trustees to notify the Manager in writing within 30 days of any amendment, change, or update to the group self insurer's charter, Articles of Incorporation, or bylaws, including changes to the group self insurer's underwriting criteria or group operating agreement. This amendment is necessary in order for the Manager to be able to address any significant change in the nature, scope, legal status, or basic operations of the private group self insurer that could invalidate the eligibility of the group self insurer or any of its members. For instance, the reincorporation or creation of a separate entity may merge the group self insurer out of existence and require a new application to address possible self insurance for the surviving entity. Amendments to group bylaws changing the underwriting criteria of the group could affect the eligibility of current and/or new proposed group members. This amendment is necessary to enforce adequate notice to the Manager of potential substantive changes to the group.

Section 15489.1. Existing Section 15203.8(a) in Article 2 requires every self insurer, including public and private employers, individual self insurers, and self insured group members, to advise the Manager within 30 days of any amendments to the self insurer's articles, charter or agreement of incorporation that changes its business structure or ownership in a material manner from the status that existed at the time of the issuance of its Certificate to Self Insure. The provisions of existing Section 15203.8 are re-stated in this proposed new Section 15489.1 in Article 13 with no substantive changes other than to tailor the language to apply to employer members of group self insurers, and for grammatical clarity.

Section 15490. Existing Section 15203.9(a) in Article 2 specifies that a Certificate of Consent to Self Insure is valid only for the entity to which it is issued, and requires each affiliate or subsidiary of a self insured employer to be issued its own Certificate of Consent to Self Insure in order to self insure. Existing Section 15203.9(b) specifies that except as provided by Labor Code Section 3701.7, the Manager shall not issue a Certificate of Consent to Self Insure with an effective date earlier than the date the application and all required documents were submitted to the Manager.

The provisions of Section 15203.9(a) are re-stated in this proposed new Section 15490, with minor changes in language to tailor the language to apply to employer members of group self insurers and for grammatical clarity. Subsection (b) of Section 15203.9 is re-stated in proposed Section 15490(b) to specify that the Manager shall not issue an Interim Certificate with an effective date earlier than the date the approval of the group member by the Board of Directors of the group self insurer, rather than earlier than the date the complete application is submitted to the Manager. The change is necessary to be consistent with provisions for the issuance of Interim Certificates of Consent to Self Insure to group members in proposed new Section 15482.2.

A new Section 15490(c) is proposed to relocate the provisions of existing Section 15203.6 related to delayed start-up of self insurance to this Section as it relates to group self insurance. The amendment is necessary so that the existing language indicating that a certificate is valid until revoked by order of the Director is located in the proper section of regulations for group self insurers - that is, this section addressing the validity of a Certificate of Consent to Self Insure.

Section 15490.1. Existing Section 15203.10(a) in Article 2 specifies that a private group self insurer who, because of a legal change in the business or corporate structure has had its consent to self insure revoked, may have its Certificate of Consent to Self Insure reinstated without lapse providing the employer can re-qualify for self insurance. Existing subsection (b) provides that the employer can re-qualify by submitting a complete application and required documents and submit a statement that the applicant assumes and guarantees all liabilities incurred during its prior period of self insurance. The section states that the Manager shall accept the statement if signed by a corporate officer, and attested by the corporate secretary and sealed with the corporate seal, and that the guarantee must be confirmed within 90 days with an executed Assumption and Guarantee of Workers' Liabilities and Board Resolution as part of the application.

The provisions of existing Section 15203.10 are re-stated in this new proposed Section 15490.1 with minor changes in language to tailor the language to apply to employer members of group self insurers, for grammatical clarity. The changes to address group self insurers specify that the group administrator will provide a statement indicating that the group self insurer's Assumption and Guarantee of all workers' compensation liabilities will include any additional self insured liabilities incurred after the group member's change in status, or, if indicated, a new Assumption and Guarantee Agreement regarding the affected group member. The change is necessary to be consistent with proposed new Section 15483 requiring that the group administrator execute a guarantee agreement on behalf of all members, and to ensure that no liabilities of group members are not guaranteed by the group self insurer.

Existing Section 15203.10 does not indicate how the Department will document a change in status that is made without an application being filed. Proposed subsection 15490.1(c) specifies that the Manager shall prepare and issue an order reflecting the change in status of the group self insurer and/or group members and reinstating its Certificate(s) to Self Insure. This change is necessary to clarify and inform the public of the current practice of the Office of Self Insurance Plans and to provide clear recordkeeping for the Department of Regulations in matters related to self insured status.

Section 15491. Labor Code Section 3702.5 requires the private self insurance program to be self supporting through license fee assessments and other fees or assessments to pay the cost of the program. Existing Section 15204 in Article 2 specifies an application fee structure that was promulgated before group self insurance was permissible and devised for individual private self insurers and their subsidiaries and affiliates. In 1994 the application fee structure was amended to include private group self insurers, but the amended application fee structure was devised without the benefit of ever having processed an application for a private group self insurer.

Once the process of evaluating applicants and group members for self insurance actually began, it became apparent that initial application materials are quite voluminous and the application process is complex and time consuming. In contrast, while many individual self insurers have subsidiaries or affiliated companies that apply for and become self insured under the parent company's master certificate, the numbers are relatively few for each employer and usually are long-term self insurers. Group self insurers, on the other hand, are likely to have hundreds of group members (in January of 2003, there was only one group self insurer, but by the end of 2006, thirty groups with over 2,000 employer-members had been granted certificates of consent to self-insure - one group has over 600 members). The first group self insurer to be approved was an auto dealer group with only five initial core members, one of which was able to financially qualify the entire group self insurer. By the end of the first year of operation, this group had 72 members. At the end of the third year, this auto group had 180 members.

The nature of group self insurance is that higher numbers of smaller employers are involved than with individual "stand alone" self insurance. Typical group members do

not remain self insured as long as stand alone self insurers - many remain self insured for a year or two and then return to insurance or discontinue operations. Each group member requires a separate application and requires staff attention in the way of evaluating homogeneity requirements and eligibility (factors that do not pertain to individual stand alone self insurers, researching changes to the status of the employer members, and issuing orders related to name changes, revocation, et al.

The Office of Self Insurance Plans obtains funding mainly through the collection of annual license fees pursuant to existing Section 15230 and application fees pursuant to existing Section 15204. Existing Section 15204 specifies an application fee of $500 for each private employer application (including private group employer applications – public employers do not pay application fees but are funded through the General Fund), except that the application fee is $500 for a single private employer application but $100 for each additional application submitted with the first application.

The annual license fee collected from private employers is based on data submitted with the private self insurer's annual report pursuant to Section 15230, and is based on the number of adjusting locations at which the employer's claims are administered by claims administrators and the total number of employees. If the Master Certificate of Consent to Self Insure covers an employer or employers with 0 to 2,999 employees and claims are handled at one adjusting location, the base annual license fee is $4,000; if the master certificate covers an employer or employers with 3,000 to 6,999 employees and claims are handled at one adjusting location, the base annual license fee is $6,000; and if the master certificate covers an employer or employers with 7,000 or more employees and claims are handled at one adjusting location, the base annual license fee is $8,000. There is an additional $300 fee for each additional adjusting location, regardless of the number of employees. Under this existing regulation, a single individual employer with 5,000 employers and no subsidiaries or affiliates covered under the Master or Certificate (or any number of subsidiaries for that matter), and with claims handled at two separate adjusting locations of a third party administrator, would pay an annual license fee of $6,300 A private group self insurer with 600 separate group employer members with affiliate certificates of consent, and with the same number of total employees and two separate adjusting locations, would pay the same amount – a $6,300 annual license fee.

Existing Section 15230(b) also provides that if the annual license fee based on numbers of employees and adjusting locations "… fails to produce sufficient funds to meet the total anticipated costs for the administration of the self-insurance program…, an additional charge per employee covered by each self-insurance plan shall be made to cover these costs." Since private group self insurance began in 2003 and began escalating in 2003, the Office of Self Insurance Plans increased its staff by adding one Workers' Compensation Compliance Officer, two Workers' Compensation Assistants, and one Office Technician to handle the increased workload related to group self insurance. From the fiscal years 2001/2002 until 2006/2007 the annual budgets for the Office of Self Insurance Plans have increased from $2,173,341 to $3,410,180 (approximately $3.3 million per year over the pas two years including the one time cost of $500,000 for replacing its data system). For fiscal years 2001/02, 2002/03, and 2003/04 an additional charge of $0.25 per employee was assessed against all private self

insurers. For the last two fiscal years, the additional charge was $0.50 assessed against all private self insured employers – not just private group self insured employers. For the four year period between July 1, 1999 and June 30, 2003, the average total in application fees collected was $32,950 per year. From July 1, 2003 until June 30, 2007 the average total in application fees collected was $189,775 per year. While the budget of the Office of Self Insurance Plans has increased by over a million dollars per year and staff has increased the average annual amounts in application fees have increased by less than $200,000 per year.

Once a group self insurer has been approved, posted its security deposit, and begun its self insurance program, most new group members are added as new affiliate members after the group administrator submits to the Office of Self Insurance Plans a Request for Interim Certificate, as described in existing Section 15205, and as to be addressed for private group self insurers pursuant to proposed new Section 15482.2. Applications that are bundled together and sent at the same time as other applications require no less evaluation and processing than applications that are submitted separately. There is therefore no reason for a lesser application fee for applications submitted in the same mailing than those submitted in separate mailings. The process that existed at the time application fees for new subsidiaries and affiliates of individual "stand alone" self insurers was addressed is much different than the process that is involved for new private self insured group members. Applications for new group members may submit requests for Interim Certificates at the same time and then send in subsequent applications and required documentation at different times and by piecemeal, or they may request Interim Certificates and then send in applications together or piecemeal. Some group administrators have requested Interim Certificates just to document a requested start date, and then have withdrawn the requests or otherwise not followed through with the application. In such cases current regulations do not authorize application fees when only Interim Certificates have been issued.

It is not fair or equitable for individual private self insurers to pay increased costs to cover increased expenses associated with private group self insurance, but that is exactly what has happened. Additional staffing requirements for the Office of Self Insurance Plans to address private group self insurance have been subsidized by the extra per capita charge assessed to all private employer pursuant to Section 151230(b).

A new Section 15491 is proposed to address application fees for group self insurers' and group members. The application fee for the group self insurer is increased from $500 in existing Section 15204 to $1,000 in proposed Section 15491(a)(1). This change is necessary to recognize the more complex and tine consuming evaluation process for group self insurers, with the requirements for feasibility studies, actuarial analyses, and underwriting requirements to address needs specific to the group.

Proposed subsection (a)(2) changes the application fee for all group members to $500 apiece, and does not reduce the fee if one application is submitted together with another rather than separately. This change is necessary to do away with the inequity of some employers paying reduced application fees if their applications were sent together with other applications, as well as to adequately cover the evaluation expenses associated with

group member applications. Proposed subsection (a)(2), however, specifies that the application fee is $400 if an Interim Certificate has already been issued. . The $100 reduction if an Interim Certificate has been issued is necessary to reflect that an evaluation has been partially completed once the Interim Certificate has been issued. The request for an Interim Certificate will now have an associated fee of $100 pursuant to new subsection (a)(3) in order to address the expense of processing Interim Certificates, whether subsequent applications are filed or not. Had application fees been set over the last four years as proposed in new Sections 15491(a)(1) through (a)(3), fees collected over that time would have totaled $999,000, exceeding the total of $759,100 actually collected by $239,900. The change is necessary to provide equity related to application fees charged to group applicants.

Proposed Section 15491(b) specifies that the application fee applies if a new filing is necessary because of a merger, acquisition, or reorganization of an existing self insured group member. This requirement is re-stated for group members as currently required of all private self insurers in existing Section15204(b), and is necessary in order for all private group application fee requirements to be addressed in the same section.

Section 15496. Existing Section 15210 in Article 3 addresses security deposit requirements for self insured employers. Subsection (a) specifies that public self insured employers are not required to post security deposit (since the security deposit requirements of Labor Code Section 3701 apply only to private self insured employers).Existing Title 8, Section 15210(b) specifies that private self insured employers shall post security deposit in accordance with Labor Code Section 3701 (which applies to security deposits posted with the Department of Industrial Relations), Section 3701.8 (which allows for an alternative composite security deposit for participating employers, implemented through assessments paid to the Self Insurers' Security Fund).

Labor Code Section 3701(b) requires private self insured employers to post a security deposit of no less than 125% of the private self insurer's estimated future liabilities plus 10% of the estimated future liabilities "… for compensation .to secure payment of all administrative and legal costs…". Labor Code Section 3701(b) also establishes a minimum security deposit of $220,000. Existing Title 8, CCR Section 15210(c) re-states these requirements and specifies additional requirements for private self insured employers by specifying an additional amount of the average annual estimated future liability over the past five years to be added to the deposit, "… posted in advance for liabilities of the current year…." Existing subsection (c) also allows a reduction for any amounts covered by specific excess insurance.

Existing Section 15210(d) specifies the manner of calculating the initial security deposit for an applicant that is approved to self insure, a factor that is necessary since when an employer first begins self insurance it has not yet incurred any liabilities. This "start up" deposit is set at an amount that it is equal to or greater than the prior three years incurred liability, the statutory minimum, or a higher amount approved by the Director. Existing

Section 15210(e) specifies that when a private self insurer adds a new subsidiary or affiliate under its self insurance plan, the security deposit shall be increased by the average one year liability of the new subsidiary or affiliate, the statutory minimum, or a higher amount approved by the Director.

Existing Section 15210(f) re-states in regulation the requirement of Labor Code Section 3701(d) that the security deposit shall be posted in the form of cash, approved securities, surety bond, or an irrevocable letter of credit in any combination, and existing Section 15210(g) provides that failure to maintain a security deposit shall be good cause for the assessment of civil penalties pursuant to Labor Code Section 3702.9 and/or revocation of consent to self insure.

Existing Section 15210(h) provides that failure to post a security deposit for 60 days shall be good cause for the Manager to summarily revoke a Certificate of Consent to Self Insure, which "… will provide for a 15-day notice of termination, without a hearing…", but also provides that the self insurer may request a hearing but shall be required to provide proof of workers' compensation coverage under a policy from an admitted carrier.

This proposed new Section 15496 will address security deposit requirements for group self insurers, while all reference to private group self insurers are being removed from Section 15210. Proposed Section 15496(a) specifies that each private group self insurer shall post and maintain a security deposit with the Director upon approval of its Certificate of Consent to Self Insure in accordance with the provisions of this section, but the deposit amount shall in no way be less than as required by Section 3701, plus an average one year's estimated future liabilities including an amount posted in advance for liabilities of the current year, consisting of the average annual estimated future liability over the past five years reported on the Self Insurer's Annual Report, and allowing an adjustment to reduce the liabilities reported on individual claims based on documentation of specific excess insurance coverage pursuant to Section 15300(e) of these regulations.

Aside from re-locating group self insurers' deposit requirements from Article 2 so as to be located with other group self insurance requirements in this Article 13, the only substantive change from existing Section 15210(b) is to add that the deposit calculation shall be in accordance with this section, taking into account the amount posted in advance for liabilities for the current year and allowing the reduction for specific excess insurance, as provided in existing Section 15210(c).

Proposed new Section 15496(b) specifies the manner in which the group self insurer's initial security deposit is calculated, that is, the deposit that is initially posted with the Director before self insurance begins and before the group self insurer begins filing Self Insurer's Annual Reports which become the basis for the deposit calculation indicated by Labor Code Section 3701(b). Proposed Section 15496(b)(1) specifies that the deposit shall not be less than the statutory minimum of $220,000 in accordance with Labor Code Section 3701(b). Proposed new Section 15496(b)(3) specifies that the deposit shall be no less than "a higher amount approved by the Director." This language is borrowed directly from existing Section 15210(d)(3), is not a substantive change from the existing

regulation, and is necessary to allow the same flexibility in determining the deposit amount as currently exists, for instance when a group self insurer is expected to grow rapidly in its first year of self insurance or when statutory increases in benefit that have not been considered in actuarial projections are anticipated.

A third method of calculating the group self insurer's initial deposit is proposed in new Section 15496(b)(2), which specifies that the initial deposit shall be no less than 60% of one year ultimate losses based on the actuarial report submitted with the application for the group self insurer. Existing Section 15210(d)(1) requires the initial security deposit of a new self insurer to be in an amount equal to or greater than its prior three years' incurred liabilities. This method of calculation was a part of regulations established long before private group self insurance was permissible, and did not take the principles of group self insurance into account. Because an employer pays claims as they become due, an individual "stand alone" employer's last three years incurred losses (paid plus future) of experience prior to self insurance is generally substantially higher than the amount of estimated future liabilities as they develop until the employer has been self insured for three years.

Although the point in time when a self insurer's security deposit begins to be calculated based on the Self Insurer's Annual Report rather than remaining as based on its initial requirement is not specified in regulation, the Office of Self Insurance Plans has always begun setting the deposit requirements based on the Self Insurer's Annual Report after three years of self insurance. At that time a substantial reduction in the deposit is usually allowed. In effect, the initial deposit is set at an amount that is substantially higher than the amount that develops after the employer has been self insured for some years and has incurred actual self insured experience. While it is not required of individual private self insurers, the amounts of ultimate losses are required to be actuarially projected for private group self insurance, including amounts for incurred but not reported losses and taking into account the anticipated growth of the group, which also adds to a more accurate projection of future losses than provided by current regulation

Regulations and statutes for group self insurance in other states more often than not do not require private group self insurers to post security deposits with the state, but instead allow funds collected be deposited in a "Trust," and allow the Board of Trustees of the Trust to fund the payment of claims and all other expenses from the trust account. Security deposits separate from amounts deposited in the trusts to pay claims are usually set at a statutory minimum that may be a small percentage of total estimated liabilities at any point in time. In California, a security deposit is posted with the state and cannot be used to pay claims as a part of a group self insurer's operation. The contributions collected from the group members cannot be co-mingled with the security deposit, and are restricted in use for the payment of claims and associated expenses for operation of the group Because the initial security deposit amount to be posted as provided in proposed subsection (b)(2) is based on actuarial projections, it is much more likely that the security deposit in California is an adequate projection of ultimate costs than if it were based on three years' incurred losses pursuant to existing Section 15210(d)(1), and because funds collected are restricted as to use, it is less likely that a security deposit would have to be utilized for the payment of claims.

The proposed method for calculating a group self insurer's first year deposit In new Section 15496(b)(2) is necessary to eliminate the burdensome and costly current deposit calculation requirement while ensuring that the deposit is adequate to cover possible losses for a new group self insurer. In addition, the continuing increases to the group self insurer's security deposit pursuant to proposed subsections (c) and (d) of this section ensure that the security deposit becomes more than adequate as the first year runs its course.

Proposed new subsection 15496(c) specifies that if a new group self insurer posts an initial deposit of 60% of one year ultimate losses based on the actuarial report submitted with the application for the group self insurer, the group self insurer shall increase the deposit by no less than 25% of one year ultimate losses in equal installment at no less than 120 days apart, with the first installment being posted at no less than 120 days from the effective date of self insurance. This amendment is to ensure that the group self insurer's security deposit is no less than 135% of its estimated future liabilities by the end of its first year of self insurance, as required by Labor Code Section 3701.

Proposed new Section 15496(d) specifies that each new affiliate self insurer whose exposure was not contemplated in the calculation of the initial deposit shall post an additional amount equal to an average year's incurred losses over the past three years as documented by the applicant's prior insurance carrier, or, if the applicant is a new employer with no loss history, calculated based on one year's projected contribution, and that the increase in deposit for the new affiliate group member shall be posted within 30 days of issuance of the Interim Certificate or Affiliate Certificate of Consent to Self Insure. This amendment dealing with deposit increases for new group members is taken directly from existing Section 15210(e) for all private self insurers with no substantive change except specifying that the increase must be posted within 30 days, and, if the new group members had no prior experience upon which to base the additional exposure, an increase in security deposit based on the new member's projected annual contribution will be required. These amendments are necessary to provide a deadline for the increase, upon which the current regulation is silent, and to provide a basis for the additional exposure for employers with no history, a factor that had not been addressed in current regulations.

Proposed new Section 15496(e), specifying the types of security deposit instruments acceptable for posting, is taken directly from existing Section 15210(f) with no substantive changes other than only to be applicable to private group self insurers in order that all private group self insurance regulations be in the same Article 13.

Proposed new Section 15496(f), providing that failure to post and maintain a security deposit shall be good cause for the assessment of civil penalties pursuant Labor Code Section 3702.9(a) and/or revocation of consent to self insure is taken directly from existing Section 15210(g) with no substantive changes other than only to be applicable to private group self insurers in order that all private group self insurance regulations be in the same Article 13.

Proposed new Section 15496(g) provides that a group self insurer or affiliate self insurer requesting a hearing pursuant to Article 11 shall provide proof of workers' compensation coverage under a policy from an admitted carrier for the period of time without the required security deposit or deposit increase, or proof of compliance with the Manager's request to post security. This amendment is taken from existing Section 15201(h) and added as a part of Section 15496 in Article 11 with no substantive exceptions, except that the Manager is not authorized to summarily revoke the certificate without a hearing as provided in existing Section 15201. This change is necessary to comply with labor Code Section 3702 which allows the Director to revoke a certificate at any time for cause after a hearing. However, the requirement that the self insurer post the full deposit or provide evidence of insurance is added in order to protect the group self insurer from extending coverage indefinitely without adequate deposit while a hearing is pending.

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

Proposed Section 15497(b) provides that in addition to any increase in the security deposit pursuant to subsection (a), the Manager may require the group self insurer to post additional amounts pursuant to Section 15496 in the event that new affiliate members have been added to the group self insurer but have not yet reported a full year of losses, or in the event of audit increases pursuant to Section 15301, or in the event of a change in the deposit rate pursuant to Sections 15497 or 15497.1. This amendment is taken from existing Section 15210.1(b) with no substantive changes and located in this section so that all private group self insurance deposit adjustment requirements will be in Article 13.

Proposed Section 15497(c) prohibits the group self insurer to decrease its security deposit based on its calculation of its deposit requirement based on its Self Insurer's Annual Report without prior written consent from the Manager. This amendment is taken from existing Section 15210.1(c) with no substantive change except to delete a reference to the review of the Self Insurer's Annual Report by staff of the Office of Self Insurance Plans to determine if the extent of any reduction that may be authorized, a statement with no regulatory effect. The amendment is necessary so that all private group self insurance regulations be in the same Article 13, and to make clear that decreases in security deposits may not be undertaken unless the decreased security deposit has been authorized.

Proposed new Section 15496(e) provides that if at any time the Manager determines that the group self insurer's security deposit is not adequate to cover the group self insurer's potential exposure, the Manager may increase the security deposit requirement. The amendment, including the factors that may indicate that the security deposit is inadequate are taken directly from existing Section 15210.1(d), but additional factors that may indicate an inadequate security deposit that are unique to private group self insurers are added. This amendment is necessary to ensure that the Manager has the authority to ensure that a private group self insurer's security deposit is adequate if there are indicators that it may be inadequate.

Proposed Section 15497(e) provides that when the Manager issues a letter demanding a security deposit increase from a private group self insurer, a perfected security interest in the private group self insurer's assets to the extent of any unsecured portion of the group self insurer's incurred liabilities is created in favor of the Director pursuant to Labor Code Section 3701(j).. The amendment, taken from existing Section 15210.1(e), is located in this section to specifically apply to private group self insurers, and is necessary to clarify that the Director will have the ability to acquire any assets of a group self insurer, in addition to any security deposit, needed to pay claims, in the event the group self insurer defaults on its obligations, therefore allowing the Director to obtain necessary funds if needed in the event the security deposit is not adequate to pay all claims.

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

This amendment locates in this section for private group self the requirements of existing Section 15210.2 in Article 3 with no substantive changes, except for editorial revisions made for grammatical clarity and apply specifically to private group self insurers.

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

Proposed Section 15498(a) provides that any group self insurer or group member shall be permitted to insure all or part of its liability to secure the payment of compensation pursuant to Labor Code Section 3700 by obtaining a standard workers' compensation

insurance policy from a carrier licensed to do business in California, and that full coverage for all workers' compensation liabilities under a standard policy shall be cause for revocation of consent to self insure. These provisions for private group self insurers and their members are taken from existing Section 15210.3(a) with no substantive changes other than for grammatical clarity, to tailor the language to apply to private group self insurers and their members, except that two additional provisions are added. The provision that insurance obtained must be from a carrier licensed to do business in California is added in order to clarify that any policy related to workers' compensation coverage must conform to the requirements of the California Department of Insurance. In addition, a provision is added that complete coverage of all members or a number of group members sufficient to reduce the size of the group to the extent that it no longer meets net worth and/or financial requirements is cause for revocation of the private group self insurer's Certificate of Consent to Self Insure. This amendment is necessary to ensure that group self insurers must continue to meet financial eligibility requirements in order to remain self insured.

Proposed Section 15498(b) provides that any group self insurer or group member shall provide the Manager upon request any information regarding standard workers' compensation insurance policies, specific excess insurance policies, and/or any aggregate excess insurance policies, as well as any documentation related to such insurance coverage, including Certification of Insurance, any binders or endorsements, or Notices of Cancellation. These provisions for private group self insurers and their members are taken from existing Section 15210.3(a) with no substantive changes other than for grammatical clarity and to tailor the language to apply to private group self insurers and their members.

Proposed Section 15498(c) provides that the Group Administrator of the group self insurer shall provide a Certificate of Insurance, a copy of the workers' compensation insurance policy or policies maintained by the group self insurer or its group members, and copies of insurer loss runs related to any affiliate group self insurer upon request of the Manager. These provisions for private group self insurers and their members are taken from existing Section 15210.3(c) with no substantive changes other than for grammatical clarity, to tailor the language to apply to private group self insurers and their members, and to specify that it is the group administrator's obligation to provide the documentation, including loss runs for group members if requested. The changes are necessary because the staff of the Office of Self Insurance Plans deals on a regular basis with the group administrator that handles the day to day operations of the group, not the individual group members, on matters related to the group self insurer and its members, and loss runs are often needed to verify loss history of new members for security deposit purposes.

Proposed Section 15498(d) provides that a group self insurer that elects to purchase an aggregate excess policy shall not be given any credit or reductions in its security deposit requirement based on its aggregate excess coverage. This amendment is taken from existing Section 15210.3(d) with no substantive changes other than for grammatical clarity and to tailor the language to apply to private group self insurers. However, the provision in existing Section 15210.4(d) that specific excess insurance is not required is

not applied to private group self insurers in this section because specific excess insurance is required pursuant to Section 15478. To avoid redundancy, the note following existing Section 15210.3(d) indicating that private group self insurers are required to maintain specific excess insurance is not included in this section, since those provisions are an integral part of these regulations that are addressed in Section 15478.

Proposed Section 15498(e) provides that a private group self insurer or group member may sell off any or all of its workers' compensation liabilities through the purchase of special excess workers' compensation insurance policy pursuant to Labor Code Section 3702.8(c). Labor Code Section 3702.8(c) permits all employers that are self insured, including group self insurers and their member employers, to retroactively obtain insurance coverage for self insurance exposure. The reference to Labor Code Section 3702.8(c) and its provisions are referenced here in order that group self insurers and their members can readily note these provisions in the group self insurance regulation that deals with insurance coverage.

Section 15499.. .Existing Section 15211 in Article 3 is being amended to prohibit the practice of posting separate deposits for subsidiaries and or affiliates of any Master Certificate holder. In most cases, subsidiaries and affiliates of parent companies have qualified for self insurance based on the parent company's financial statement and the parent company has executed agreements to guarantee and assume the liabilities of the subsidiaries and/or affiliates. To limit a portion of the overall security deposit of the Master Certificate holder's self insurance plan to an affiliate or subsidiary could result in a shortfall in the deposit that otherwise could be utilized to provide workers' compensation benefits in the event of a default of the subsidiary or affiliate in its workers' compensation obligations. In private group self insurance, private groups (group self insurers) are the equivalent of a Master Certificate holder and the group members are the equivalent of affiliates or subsidiaries of the master certificate holder. One of the major principles of group self insurance is that the group members qualify in aggregate for self insurance and the liabilities of the members are joint and several liabilities. Accordingly, this new Section 15499 is proposed to provide that security deposits may not be separately apportioned to specific group members of private group self insurers, but instead the group self insurer's security deposit must apply to all group members. This amendment is necessary to maintain the integrity of the joint and several liabilities of group members by prohibiting security deposit arrangements that would conflict with this aspect of private group self insurance.

Section 15499.5 A new Section 15499.5 is proposed to address the procedure a group self insurer must follow in order to appeal a security deposit increase required by the Manager because of the group self insurer's impaired financial condition. Existing Section 15211.1 in Article 3 provides that on receipt of a written appeal of a security deposit increase based on the employer's impaired financial condition, the Manager shall order a detailed, third-party financial evaluation of the private self insurer in order to

determine the employer's financial strength, and provides that "… (s)uch a third party financial evaluation shall include, but not be limited to, a Dun & Bradstreet Risk Assessment Report…." Existing Section 15211.1 provides that the cost of the report shall be paid by the self insurer, and that upon receipt of the report, "… the appeal will be considered by the Manager."

Existing Section 15211.1 is being amended to apply to individual private self insurers only, and subsection (a) of proposed Section 15499.5, which shall apply to private group self insurers, provides that the Manager "… shall order a detailed, independent third party financial and/or actuarial evaluation of the private group self insurer by a group self insurance risk and/or actuarial consultant…" at the group self insurer's expense. Proposed Section 15499.5(a), unlike existing Section 15211.1, does not require that the report contain a Dun & Bradstreet Risk Assessment Report, because a Dun & Bradstreet report assesses an employer's financial condition as a business, and is not appropriate to evaluate a private group self insurer's financial condition. Proposed subsection (a) specifies that a "detailed, independent third party financial and/or actuarial evaluation of the private group self insurer by a group self insurance risk and/or actuarial consultant" be obtained because such an evaluation is needed to evaluate the group self insurer's loss prevention program, claims administration, contractual arrangements between the Board of Trustees and the group administrator and other service providers, as well as the actuarial analysis of prior claim years and the rates and collection of contributions from group members. This amendment is necessary in order to obtain a thorough and relevant analysis of all factors that may affect a group self insurer's financial condition.

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

AMENDMENT TO SUBCHAPTER 2.06

WORKERS' COMPENSATION - ADMINISTRATIUON REVOLVING FUND ASSESSMENT, UNINSUREDEMPLOYERS BENEFITS TRUST FUND ASSESSMENT, SUBSEQUENT INJURIES BENEFITSTRUST FUND ASSESSMENTS, FRAUD SURCHARGE AND CAL-OSHA TARGETED INSPECTIONASSESSMENT

ARTICLE 2
Determination of Assessments and/or Surcharge

Section 15601.7. An amendment to Section 15601.7 of Subchapter 2.06 is also proposed. The amendment, proposed to replace references to Standard Industrial Classification (SIC) codes with references to North American Industry Classification (NAICS) codes, has no regulatory effect. The amendment is necessary to reflect the conversion by the U.S. Department of Labor from the Standard Industrial Classification system to the NAICS system in 1997.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The Department did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other reasonable alternatives were presented or considered by the Department.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department has not identified any reasonable alternatives or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

SIP is not aware that there will be any significant adverse economic impact on business.