

sation judge of the district office having venue; (2) by a Deputy Commissioner of the Appeals Board, if the petition to compel relates to the presiding workers' compensation judge of the district office having venue; or (3) by the Appeals Board, if the petition to compel relates to a pending or impending petition for reconsideration, removal or disqualification. The petition may be determined on the pleadings submitted or, in the discretion of the presiding workers' compensation judge or the Appeals Board, the petition may be set for a hearing.

(e) In determining whether to grant the petition to compel (and, if granted, in determining the terms and conditions upon which the testimony of the judicial or quasi-judicial officer may be given), the presiding workers' compensation judge or the Appeals Board may consider, among other things:

(1) Whether the testimony of the judicial or quasi-judicial officer is reasonably necessary, taking into consideration (A) whether statements in the judicial or quasi-judicial officer's opinion on decision, report on reconsideration, removal, or disqualification, or other similar statements are sufficient to resolve any allegation by a party or lien claimant; and (B) if not, whether the judicial or quasi-judicial officer's factual statements may be fairly provided by an affidavit or declaration under penalty of perjury.

(2) Whether the testimony of the judicial or quasi-judicial officer under the "percipient witness" exception would be cumulative to the testimony of other percipient witnesses.

(f) For purposes of this section, the term "judicial or quasi-judicial officer of the Workers' Compensation Appeals Board or of the Division of Workers' Compensation" shall include, but shall not be limited to: (1) any Commissioner; (2) any Deputy Commissioner; (3) any presiding workers' compensation judge or workers' compensation judge; (4) any pro tempore workers' compensation judge; (5) any special master appointed by the Workers' Compensation Appeals Board; (6) the Administrative Director and his or her designee; (7) the Court Administrator and his or her designee; (8) any workers' compensation consultant of the Rehabilitation Unit or of the Retraining and Return to Work Unit; and (9) any arbitrator or mediator.

(g) For purposes of this section, the term "testify" shall include testimony in either oral or written form (e.g., affidavits, declarations, inter-

rogatories) and shall include all testimony, whether given at a deposition or a hearing.

(h) This section shall apply solely to testimony sought in connection with a matter within the jurisdiction of the Workers' Compensation Appeals Board, and it shall not apply to testimony sought pursuant to the authority of any other forum.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5300, 5301, 5309, 5700, 5701 and 5708, Labor Code; and Section 703.5, Evidence Code.

History: 1. New section filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

ARTICLE 9 Evidence and Reports

§10603. Oversized Exhibits, Diagnostic Imaging, Physical Exhibits, and Exhibits on Media.

(a) The following exhibits shall be filed only at the time of trial:

(1) Oversized documents, other than medical reports, that are: (A) larger than 11 × 17 inches (e.g., maps, diagrams, and schematic drawings) or (B) over 25 pages in length;

(2) Diagnostic imaging, including but not limited to any X-ray, computed axial tomography (CAT) scan, magnetic resonance imaging (MRI), nuclear medicine, positron emission tomography (PET) scan, mammography, ultrasound, or other similar medical imaging that is stored on digital, film, or other non-paper media;

(3) Original business or office records;

(4) Physical objects or other tangible things;

(5) Any CD-ROM, DVD, or other digital media, including but not limited to: (A) digital photographs; (B) digital video recordings; and (C) digital audio recordings;

(6) Videotapes, audiotapes, films and other non-digital video and/or audio recordings or images; and

(7) Photographs printed on paper.

(b) Unless otherwise ordered by the Workers' Compensation Appeals Board, any exhibit listed in subdivision (a) that is offered into evidence (whether or not admitted into evidence) shall be retained by the filing party (or an agent of the filing party) until the later of either:

(1) five years after the filing of the initial application for adjudication (or other case opening document) or (2) at least six months after all appeals have been exhausted or the time for seeking appellate review has expired with respect to the decision on the issue(s) for which the exhibit was offered in evidence. After expiration of the later of these two time periods, the party may destroy the exhibit, unless the Workers' Compensation Appeals Board has ordered that the exhibit be preserved for a longer period.

(c) Before and during the period of retention, the filing party shall:

(1) Maintain the exhibit under conditions that will protect it against loss, destruction, or tampering, and that will preserve its quality and integrity as far as practicable;

(2) At the request of any other party to the action, promptly permit the party to inspect or view the exhibit; and

(3) At the request of any other party to the action, and if practicable, promptly furnish the party a copy of the exhibit or promptly permit the party to make a copy.

For purposes of subsection (c), the term "exhibit" shall include any item listed in subsection (a), whether or not the party or lien claimant in possession or control of that item intends to offer it in evidence.

(d) Any disputes regarding subdivision (c), including but not limited to issues of timing and costs, may be submitted for determination to the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5309, 5701, 5703, 5704 and 5708, Labor Code

History: 1. New section filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10608. Filing and Service of Medical Reports and Medical-Legal Reports.

(a) All medical reports and medical-legal reports filed with the Workers' Compensation Appeals Board shall be filed in accordance with the regulations of the Court Administrator, or as otherwise provided by these rules. Service of all medical reports and medical-legal reports on other parties and lien claimants shall be made in accordance with the provisions of this section.

(b) After the filing of an Application for Adjudication, if a party or lien claimant is requested by another party or lien claimant to

serve copies of medical reports and medical-legal reports relating to the claim, the party or lien claimant receiving the request shall serve copies of the reports that are in its possession or under its control on the requesting party or lien claimant within six (6) days of the request, if the reports have not been previously served. The party or lien claimant receiving the request shall serve a copy of any subsequently-received medical report or medical-legal report within six (6) days of receipt of the report.

(c) At the time of the filing of any Declaration of Readiness to Proceed or Declaration of Readiness to Proceed to Expedited Hearing, the filing declarant shall concurrently serve copies of all medical reports and medical-legal reports relating to the claim that have not been previously served and that are in the possession or under the control of the filing declarant on: (1) all other parties, whether or not they have previously requested service; and (2) all lien claimants that have previously requested service. The filing declarant also shall serve a copy of any subsequently-received medical report or medical-legal report relating to the claim within six (6) days of receipt of the report.

(d) Within six (6) days after service of any Declaration of Readiness to Proceed or Declaration of Readiness to Proceed to Expedited Hearing, all other parties and lien claimants shall serve copies of all medical reports and medical-legal reports relating to the claim that are in their possession or under their control, and that have not been previously served, on: (1) all other parties, whether or not they have previously requested service; and (2) all lien claimants that have previously requested service. The other parties and lien claimants also shall serve a copy of any subsequently-received medical report or medical-legal report relating to the claim within six (6) days of receipt of the report, consistent with subsections (d)(1) and (d)(2).

(e) If, at any time after the periods specified in subsections (b), (c) and (d), a lien claimant initiates a request for service of medical reports and medical-legal reports, all parties and other lien claimants shall serve the requesting lien claimant with copies of all medical reports and medical-legal reports relating to the claim that are in their possession or under their control, and that have not been previously served, within six (6) days of receipt of the request. The parties and other lien claimants also shall serve a copy of any subsequently-received medical report or

medical-legal report relating to the claim within six (6) days of receipt of the report.

(f) All medical reports or medical-legal reports relating to the claim that have not been previously served shall be served on all other parties and lien claimants upon the filing of a compromise and release or stipulations with request for award, unless the rights and/or liabilities of those parties or lien claimants were previously fully resolved.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5001, 5502, 5703 and 5708, Labor Code.

History: 1. Repealer and new section filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 93, No. 52).

2. Amendment of section heading, section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

3. Amendment of section heading, section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10616. Employer–Maintained Medical Records.

A written communication from a physician containing any information listed in Section 10606 that is contained in any record maintained by the employer in the employer's capacity as employer will be deemed to be a physician's report and shall be served as required in Sections 10608 and 10615. Records from an employee assistance program are not required to be filed or served unless ordered by the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4600, 5703 and 5708, Labor Code.

History: 1. Amendment of section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Amendment of section heading, section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10626. Examining and Copying Hospital and Physicians' Records.

Subject to Labor Code section 3762, and except as otherwise provided by law, all parties, their attorneys, agents and physicians shall be entitled to examine and make copies of all or any part of physician, hospital, or dispensary

records that are relevant to the claims made and the issues pending in a proceeding before the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 4600, Labor Code.

History: 1. Amendment filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Amendment of section heading, section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10629. Filing and Listing of Exhibits.

(a) Proposed exhibits shall be filed in accordance with the provisions of section 10233 and 10603.

(b) At every mandatory settlement conference, regular hearing, expedited hearing, and conference at which any issue will be submitted for decision, each party or lien claimant shall submit, and shall personally serve on each other appearing party or appearing lien claimant, a list of the exhibits that the party or lien claimant proposes to offer in evidence.

(1) If any such hearing is continued, a new list identifying all of the party or lien claimant's proposed exhibits (including all previously listed exhibits that the party or lien claimant still intends to offer, and any new exhibits) shall be prepared and served, with the exceptions that: (A) any exhibit already admitted in evidence, or marked in evidence but not admitted, need not be re-listed; (B) if the previous list was accepted for filing and scanned into EAMS, and no changes have been made to the previous list, a new list need not be prepared and served; and (C) if the previous list was served (but not accepted for filing and scanned into EAMS), and no changes have been made to the previous list, a new list need not be served, but the list still must be filed.

(2) If a list of exhibits is being submitted after an initial mandatory settlement conference, the list shall separately identify:

(A) the exhibits that the party listed at the time of the initial mandatory settlement conference; and

(B) the exhibits that the party did not list at the time of the initial mandatory settlement conference.

(c) If a party or lien claimant with a currently pending issue fails to appear after proper

notice at any hearing described in subdivision (b), even if the party or lien claimant was excused from appearing, then:

(1) the non-appearing party or lien claimant with a currently pending issue shall forthwith file and serve its exhibit list, but consideration of its exhibits shall be subject to the limitations or evidentiary sanctions set forth in section 10562; and

(2) the appearing party(ies) or lien claimant(s) shall forthwith serve their exhibit list(s) on the non-appearing party or lien claimant.

For purposes of this subdivision, a party or lien claimant will be deemed to have a "currently pending issue" if an issue directly related to that party or lien claimant has been raised in a declaration of readiness and that issue has not been resolved by a stipulation or adjudication, it has not been withdrawn (including by failure to raise the issue at the mandatory settlement conference or trial), and it has not been judicially deferred.

(d) Each exhibit listed must be clearly identified by author/provider, date, and title or type (e.g., "the July 1, 2008 medical report of John Doe, M.D. (3 pages)"). Each medical report, medical-legal report, medical record, or other paper or record having a different author/provider and/or a different date is a separate "document" and must be listed as a separate exhibit, with the exception that the following documents may be listed as a single exhibit, unless otherwise ordered by the Workers' Compensation Appeals Board:

(1) excerpted portions of physician, hospital or dispensary records, provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates of treatment or other service(s) covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of physician, hospital or dispensary records shall be admitted in evidence;

(2) excerpted portions of personnel records, wage records and statements, job descriptions, and other business records provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates covered by the

record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of personnel records, wage records and statements, job descriptions, and other business records shall be admitted in evidence; and

(3) Explanation of Benefits (EOB) letters.

(e) Each exhibit listed must specify an exhibit number or initial that identifies it and the party, parties, or lien claimant offering it (e.g., Applicant's Exhibit 1, 2, 3, etc.; Defendant's Exhibit A, B, C, etc.; Lien Claimant's AA, BB, CC, etc.; Joint Exhibit XX, YY, etc.).

(f) Nothing in this section shall prevent a workers' compensation judge from referring an unrepresented injured employee, dependent or uninsured employer to the Information and Assistance Office to prepare an exhibit list in accordance with the provisions of subdivisions (a), (b), (c), (d) and (e).

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5309 and 5708, Labor Code.

History: 1. New section filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10630. Return of Exhibits.

[Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

History: 1. Amendment of last paragraph filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Repealer filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

ARTICLE 12 Record of Proceedings

§10750. Record of Proceedings.

(a) The Workers' Compensation Appeals Board's record of proceedings consists of: the pleadings, declarations of readiness to proceed, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, or-

ders, decisions and awards, and the arbitrator's file, if any. Each of these documents are part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings.

(b) Upon approval of a compromise and release or stipulations with request for award, all medical reports that have been filed as of the date of approval shall be deemed to have been admitted in evidence and shall be deemed to have been transferred to the record of proceedings.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 126 and 5708, Labor Code.

History: 1. Amendment of section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Amendment of section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10751. Adjudication File.

(a) The Workers' Compensation Appeals Board's adjudication file shall consist of:

(1) all findings, orders, decisions, awards and correspondence issued by the Workers' Compensation Appeals Board, but not including documents that, under the rules of the Court Administrator, shall not be made available for inspection by any person (see current Rule 10271); and

(2) all documents filed by any party, lien claimant, attorney or other agent of record, but not including documents that, under the rules of the Court Administrator, shall not be filed (see current Rule 10222(b)), unless the Workers' Compensation Appeals Board has ordered that the document be filed.

(b) The adjudication file includes the record of proceedings.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 126, Labor Code.

History: 1. New section filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Amendment of section heading, section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10753. Inspection of Files.

Except as provided by sections 10754, 10271, and 10272, or as ordered by a workers' compensation judge or the Appeals Board, the adjudication case files of the Workers' Compensation Appeals Board may be inspected in accordance with the provisions of section 10270.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 126, Labor Code.

History: 1. Amendment of section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Amendment of section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10754. Sealed Documents.

Medical reports and other records contained in the adjudication case files of the Workers' Compensation Appeals Board shall be sealed only in accordance with the provisions of section 10272.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5708, Labor Code.

History: 1. Amendment filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Amendment of section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10755. Destruction of Records.

Except as otherwise provided by these rules, or as ordered by a workers' compensation judge or the Appeals Board, the adjudication case files of the Workers' Compensation Appeals Board shall be retained, returned, and destroyed in accordance with the provisions of section 10273.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 135, Labor Code.

History: 1. Amendment of section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10758. Destruction of Case Files.

[Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 135, Labor Code.

History: 1. Amendment filed 10-21-96; operative 11-1-96. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 96, No. 43).

2. Amendment filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

3. Repealer filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10762. Reporters' Notes. [Repealed]

Note: Authority cited: Section 133 and 5307, Labor Code. Reference: Section 14755, Government Code; and Section 5708, Labor Code.

History: 1. Amendment of first paragraph and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Repealer filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

ARTICLE 13 Liens

§10770. Lien Procedure.

(a) Unless the lien claimant is excepted by parts (A) through (C) of section 10228(c)(5), any lien claimant under Labor Code sections 4903 or 4903.1 shall file its lien in writing utilizing an optical character recognition lien form approved by the Appeals Board or electronically as approved by the Administrative Director or the Court Administrator. Lien claimants excepted by parts (A) through (C) of section 10228(c)(5) may file a lien utilizing a non-optical character recognition form provided that it is in the same format and contains the same information as the corresponding OCR form approved by the Appeals Board.

(b) All lien claims filed shall be accompanied by: (1) a full statement or itemized voucher supporting the lien and justifying the right to reimbursement; and (2) a proof of service.

(c) All liens, along with the full statement or itemized voucher supporting the lien, shall be concurrently served as follows:

(1) the injured worker (or, if deceased, the worker's dependent(s)) shall be served, unless: (A) the worker or dependent is represented by an attorney or other agent of record, in which event service may be made solely upon the

attorney or agent of record; or (B) the underlying case of the worker or dependent(s) has been resolved. For purposes of this subdivision, the underlying case will be deemed to have been resolved if:

(i) in a stipulated findings and award or in a compromise and release agreement, a defendant has agreed to hold the worker or dependent(s) harmless from the specific lien claim being filed and has agreed to pay, adjust, or litigate that lien;

(ii) a defendant had written notice of the lien in accordance with Labor Code section 4904(a) before the lien was filed and, in a stipulated findings and award or in a compromise and release agreement, that defendant has agreed to hold the worker or dependent harmless from all lien claims and has agreed to pay, adjust, or litigate all liens;

(iii) the application for adjudication of claim filed by the worker or the dependent(s) has been dismissed, and the lien claimant is filing or has filed a new application; or

(iv) the worker or the dependent(s) choose(s) not to proceed with his, her, or their case.

(2) any employer(s) or insurance carrier(s) that are parties to the case shall be served, unless the employer(s) or insurance carrier(s) is/are represented by an attorney or other agent of record, in which event service may be made solely upon the attorney(s) or other agent(s) of record.

Service of a lien on a party shall constitute notice to it of the existence of the lien.

(d) The Workers' Compensation Appeals Board shall not accept for filing a lien that does not bear an adjudication case number previously assigned by the Workers' Compensation Appeals Board for the injury, unless the lien claimant is also filing an initial (case opening) application in accordance with section 10770.5.

(e) The lien claimant shall provide the name, mailing address, and daytime telephone number of a person who will be available at the time of all conferences and trials, and who will have authority to resolve the lien on behalf of the lien claimant.

(f) After a lien has been filed, the lien claimant shall file any amendments to the lien, together with a full statement or itemized voucher supporting the amendment, and it shall serve the amended lien in accordance with

subsection (c). When filing an amended lien, the lien claimant shall indicate on the box set forth on the lien form that it is an “amended” lien. For purposes of this subdivision, an “amended” lien includes: (1) a lien that is for or includes additional services or charges for the same injured employee for the same date or dates of injury; (2) a lien that reflects a change in the amount of the lien based on payments made by the defendant; or (3) a lien that has been corrected for clerical or mathematical error. A subsequent lien claim that adds an additional adjudication case number or numbers is an “amended” lien with respect to the adjudication case number(s) originally listed.

(g) Within five business days after a lien has been resolved or withdrawn, the lien claimant shall notify the Workers’ Compensation Appeals Board, the party defendant(s), and the worker or dependent(s) (except as provided in subsection (c)).

(h) The lien claimant shall be notified by the Workers’ Compensation Appeals Board when any hearing is scheduled, whether or not the hearing directly involves the lien.

(i) Inclusion of the injured employee’s Social Security number on a lien form is voluntary, not mandatory. A failure to provide a Social Security number will not have any adverse consequences. Nevertheless, although a lien claimant is not required by law to include the employee’s Social Security number, lien claimants are encouraged to do so because this will facilitate the processing and filing of the lien claim. Social Security numbers are used solely for identification and verification purposes in order to administer the workers’ compensation system. A Social Security number will not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the applicant, or as permitted or required by statute, regulation, or judicial order.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903, 4903.1, 4903.4, 4903.5, 4903.6 and 4904, Labor Code.

History: 1. Amendment exempt from OAL review pursuant to Government Code section 11351 filed 12-19-90; operative 1-1-91 (Register 91, No. 7).

2. Amendment filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 93, No. 52).

3. Amendment filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to

Government Code section 11351 (Register 2002, No. 51).

4. Amendment of section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10770.5. Verification to Filing of Lien Claim or Application by Lien Claimant.

(a) Any lien claim or application for adjudication filed under Labor Code section 4903(b) shall have attached to it a verification under penalty of perjury which shall contain a statement specifying in detail the facts establishing that one of the following has occurred:

(1) Sixty days have elapsed since the date of acceptance or rejection of liability for the claim, or the time provided for investigation of liability pursuant to Labor Code section 5402(b) has elapsed, whichever is earlier.

(2) The time provided for payment of medical treatment bills pursuant to Labor Code section 4603.2 has elapsed.

(3) The time provided for payment of medical-legal expenses pursuant to Labor Code section 4622 has elapsed.

(b) In addition, if an application for adjudication is being filed, the verification under penalty of perjury also shall contain:

(1) A statement specifying in detail the facts establishing that venue in the district office being designated is proper pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2); and

(2) A statement specifying in detail the facts establishing that the filing lien claimant has made a diligent search and has determined that no adjudication case number exists for the same injured worker and same date of injury at any district office. A diligent search shall include contacting the injured worker, contacting the employer or carrier, or inquiring at the district office with appropriate venue pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2).

(c) The verification shall be in the following form:

I declare under penalty of perjury under the laws of the State of California that one of the time periods set forth in Rule 10770.5(a) has elapsed and, if an application for adjudication is being filed, that venue is proper as set forth in Rule 10770.5(b) and that I have made a diligent

search and have determined that no adjudication case number exists for the same injured worker and the same date of injury. In determining that no adjudication case number exists for the same injured worker and the same date of injury, I have made a diligent search consisting of the following efforts (specify):

s/s _____ on _____

Failure to attach the verification or an incorrect verification may be a basis for sanctions.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903 and 4903.6, Labor Code.

History: 1. New section filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10770.6. Verification to Filing of Declaration of Readiness By or on Behalf of Lien Claimant.

No Declaration of Readiness to Proceed shall be filed for a lien under Labor Code section 4903(b) without an attached verification certifying under penalty of perjury either (1) that the underlying case has been resolved or (2) that at least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with his or her case. The declarant shall make a diligent search to determine that the injured worker has chosen not to proceed with his or her case and the verification shall specify the efforts made in conducting the diligent search. A diligent search shall include contacting the injured worker, contacting the employer or carrier, or inquiring at the district office with appropriate venue pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2).

The verification shall be in the following form:

I declare under penalty of perjury under the laws of the State of California: (Check at least one box)

☐ that the underlying case has been resolved.

☐ that at least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with his or her case. In determining that the injured worker has chosen not to proceed with his or her case, I have made

a diligent search consisting of the following efforts (specify):

s/s _____ on _____

Failure to attach the verification or an incorrect verification may be a basis for sanctions.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903 and 4903.6, Labor Code.

History: 1. New section filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10771. Medical–Legal Expense. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4903.1, Labor Code.

History: 1. Amendment exempt from OAL review pursuant to Government Code section 11351 filed 12-19-90; operative 1-1-91 (Register 91, No. 7).

2. Amendment of section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

3. Repealer filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

ARTICLE 14 Attorneys and Representatives

§10779. Disbarred and Suspended Attorneys.

An attorney who has been disbarred or suspended by the Supreme Court for reasons other than nonpayment of State Bar fees, or who has been placed on involuntary inactive enrollment status by the State Bar, or who has resigned while disciplinary action is pending shall be deemed unfit to appear as a representative of any party before the Workers' Compensation Appeals Board during the time that the attorney is precluded from practicing law in this state.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 4907, Labor Code; and Section 6126, Business and Professions Code.

History: 1. Amendment of first paragraph filed 12-19-2002; operative 1-1-2003. Submitted to OAL

for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Amendment of section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

ARTICLE 15

Findings, Awards and Orders

§10782. Vexatious Litigants.

(a) For purposes of this rule, “vexatious litigant” means:

(1) A party or lien claimant who, while acting in propria persona (i.e., while representing himself or herself) in proceedings before the Workers’ Compensation Appeals Board, repeatedly relitigates, or attempts to relitigate, an issue of law or fact that has been finally determined against that party or lien claimant by the Workers’ Compensation Appeals Board or by an appellate court;

(2) A party or lien claimant who, while acting in propria persona in proceedings before the Workers’ Compensation Appeals Board, repeatedly files unmeritorious motions, pleadings, or other papers, repeatedly conducts or attempts to conduct unnecessary discovery, or repeatedly engages in other tactics that are in bad faith, are frivolous, or are solely intended to cause harassment or unnecessary delay; or

(3) A party or lien claimant who has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction(s), or occurrence(s) that are the subject, in whole or in substantial part, of the party or lien claimant’s workers’ compensation case.

For purposes of this rule, the phrase “finally determined” shall mean: (i) that all appeals have been exhausted or the time for seeking appellate review has expired; and (ii) the time for reopening under Labor Code sections 5410 or 5803 and 5804 has passed or, although the time for reopening under those sections has not passed, there is no good faith and non-frivolous basis for reopening.

(b) Upon the petition of a party or lien claimant, or upon the motion of any workers’ compensation judge or the Appeals Board, a presiding workers’ compensation judge of any district office having venue or the Appeals

Board may declare a party or lien claimant as a vexatious litigant.

(c) No party or lien claimant shall be declared a vexatious litigant without being given notice and an opportunity to be heard. If a hearing is requested, the presiding workers’ compensation judge or the Appeals Board, in his, her or its discretion, either may take and consider both oral and documentary evidence or may take and consider solely documentary evidence, including affidavits or other written declarations of fact made under penalty of perjury.

(d) If a party or lien claimant is declared to be a vexatious litigant, a presiding workers’ compensation judge or the Appeals Board may enter a “prefiling order,” i.e., an order which prohibits the vexatious litigant from filing, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness, petition, or other request for action by the Workers’ Compensation Appeals Board without first obtaining leave of the presiding workers’ compensation judge of the district office where the request for action is proposed to be filed or, if the matter is pending before the Appeals Board on a petition for reconsideration, removal, or disqualification, without first obtaining leave from the Appeals Board. For purposes of this rule, a “petition” shall include, but not be limited to, a petition to reopen under Labor Code sections 5410, 5803, and 5804, a petition to enforce a medical treatment award, a penalty petition, or any other petition seeking to enforce or expand the vexatious litigant’s previously determined rights.

(e) If a vexatious litigant proposes to file, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness, petition, or other request for action by the Workers’ Compensation Appeals Board, the request for action shall be conditionally filed. Thereafter, the presiding workers’ compensation judge, or the Appeals Board if the petition is for reconsideration, removal, or disqualification, shall deem the request for action to have been properly filed only if it appears that the request for action has not been filed in violation of subdivision (a). In determining whether the vexatious litigant’s request for action has not been filed in violation of subdivision (a), the presiding workers’ compensation judge, or the Appeals Board, shall consider the contents of the request for action and the Workers’ Compensation Appeals Board’s existing record of proceedings, as well

as any other documentation that, in its discretion, the presiding workers' compensation judge or the Appeals Board asks to be submitted. Among the factors that the presiding workers' compensation judge or the Appeals Board may consider is whether there has been a significant change in circumstances (such as new or newly discovered evidence or a change in the law) that might materially affect an issue of fact or law that was previously finally determined against the vexatious litigant.

(f) If any in propria persona Application for Adjudication of Claim, Declaration of Readiness, petition, or other request for action by the Workers' Compensation Appeals Board from a vexatious litigant subject to a prefiling order is inadvertently accepted for filing (other than conditional filing in accordance with subdivision (e), above), then any other party or lien claimant may file (and shall concurrently serve on the vexatious litigant and any other affected parties or lien claimants) a notice stating that the request for action is being submitted by a vexatious litigant subject to a prefiling order as set forth in subdivision (d). The filing of the notice shall automatically stay the request for action until it is determined, in accordance with subdivision (e), whether the request for action should be deemed to have been properly filed.

(g) A copy of any prefiling order issued by a presiding workers' compensation judge or by the Appeals Board shall be submitted to the Secretary of the Appeals Board, who shall maintain a record of vexatious litigants subject to those prefiling orders and who shall annually disseminate a list of those persons to all presiding workers' compensation judges.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Article XIV, section 4, California Constitution; and Sections 391, 391.2, and 391.7, Code of Civil Procedure.

History: 1. New section filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10785. Electronically Filed Decisions, Findings, Awards, and Orders.

The Appeals Board or a workers' compensation judge may electronically file any decision, findings, award, order or other document within EAMS, either by preparing the document in paper form and then scanning it into EAMS or by preparing the document directly within EAMS. Any such electronically filed document

shall have the same legal effect as a document filed in paper form.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 126, 5313 and 5908.5.

History: 1. New section filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

ARTICLE 17 Reconsideration, Removal, and Disqualification

§10840. Filing Petitions for Reconsideration, Removal, and Disqualification and Answers.

(a) Except as provided in sections 10865 and 10953, petitions for reconsideration, removal, or disqualification and answers thereto may be filed with any district office of the Workers' Compensation Appeals Board or with the office of the Appeals Board in San Francisco. Duplicate copies of petitions filed with a district office shall not also be filed with any other district office or with the Appeals Board in San Francisco.

(b) Except as provided in sections 10865 and 10953, the following persons and entities may file petitions for reconsideration, removal, or disqualification (and answers thereto) electronically within EAMS:

(a) a party, lien claimant, attorney, or other representative who has been assigned an individual EAMS login and password by the Division of Workers' Compensation as part of an electronic filing trial group; and

(b) a law firm, an insurance company, a self-insured employer, a third party administrator, or lien claimant who has been assigned an organizational EAMS login and password by the Division of Workers' Compensation as part of an electronic filing trial group.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5900, 5902 and 5905, Labor Code.

History: 1. Repealer and new section filed 12-16-92; operative 2-1-93 and exempt from OAL review pursuant to Government Code section 11351 (Register 92, No. 51).

2. Amendment of section heading and text filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 93, No. 52).

3. Amendment of article heading, section heading, section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10842. Contents of Petitions for Reconsideration, Removal, and Disqualification and Answers.

(a) Every petition for reconsideration, removal, or disqualification shall fairly state all of the material evidence relative to the point or points at issue. Each contention contained in a petition for reconsideration, removal, or disqualification shall be separately stated and clearly set forth. A failure to fairly state all of the material evidence may be a basis for denying the petition.

(b) Each petition for reconsideration, removal, or disqualification, and each answer thereto, shall support its evidentiary statements by specific references to the record.

(1) References to any stipulations, issues, or testimony contained in any Minutes of Hearing, Summary of Evidence, or hearing transcript shall specify: (A) the date and time of the hearing; and (B) if available, the page(s) and line number(s) of the Minutes, Summary, or transcript to which the evidentiary statement relates (e.g., “Summary of Evidence, 5/1/08 trial, 1:30pm session, at 6:11–6:15”).

(2) References to any documentary evidence shall specify: (A) the exhibit number or letter of the document; (B) the date and time of the hearing at which the document was admitted or offered into evidence; (C) where applicable, the author(s) of the document; (D) where applicable, the date(s) of the document; and (E) the relevant page number(s) and, if available, at least one other relevant identifier (e.g., line number(s), paragraph number(s), section heading(s)) that helps pinpoint the reference within the document (e.g., “the 6/16/08 report of John A. Jones, M.D., at p. 7, Apportionment Discussion, 3rd full ¶ [Defendant’s Exh. B, admitted at 8/1/08 trial, 1:30pm session]”).

(3) References to any deposition transcript shall specify: (A) the exhibit number or letter of the document; (B) the date and time of the hearing at which the deposition transcript was admitted or offered into evidence; (C) the name of the person deposed; (D) the date and time of the deposition; and (E) the relevant page number(s) and line(s) (e.g., “the 6/20/08 depo of William A. Smith, M.D., at 21:20–22:5 [Appli-

cant’s Exh. 3, admitted at 12/1/08 trial, 8:30am session]”).

(c) Copies of documents that have already been received in evidence or that have already been made part of the adjudication file shall not be attached as exhibits to petitions for reconsideration, removal, or disqualification or answers thereto. Except as provided by section 10856, documents attached in violation of this rule may be detached from the petition or answer and discarded.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 126, 5310, 5311, 5900, 5902 and 5904, Labor Code.

History: 1. New section filed 5-25-82; designated effective 7-1-82 (Register 82, No. 22).

2. Amendment of section heading and text filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 93, No. 52).

3. Amendment of last paragraph filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

4. Amendment of section heading, section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10843. Petitions for Removal and Answers.

(a) At any time within twenty (20) days after the service of the order or decision, or of the occurrence of the action in issue, any party may petition for removal based upon one or more of the following grounds:

(1) The order, decision or action will result in significant prejudice.

(2) The order, decision or action will result in irreparable harm.

The petitioner must also demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order, decision or award. Failure to file the petition to remove timely shall constitute valid ground for dismissing the petition for removal.

(b) The petition for removal and any answer thereto shall be verified upon oath in the manner required for verified pleadings in courts of record.

(c) A copy of the petition for removal shall be served forthwith upon all parties by the petitioner. Any adverse party may file an answer within ten (10) days after service. No supplemental petitions, pleadings or responses shall be

considered unless requested or approved by the Appeals Board.

(d) The workers' compensation judge may, within fifteen (15) days of the filing of the petition for removal, rescind the order or decision in issue, or take action to resolve the issue raised in the petition. If the judge so acts, or if the petitioner withdraws the petition at any time, the petition for removal will be deemed automatically dismissed, requiring no further action by the Appeals Board. The issuance of a new order or decision, or the occurrence of a new action, will recommence the time period for filing a petition for removal as described above.

(e) The filing of a petition for removal does not terminate the judge's authority to proceed in a case or require the judge to continue or cancel a previously scheduled hearing absent direction from the Appeals Board. After a petition for removal has been filed, the workers' compensation judge shall consult with the presiding workers' compensation judge prior to proceeding in the case or continuing or canceling a scheduled hearing.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5310, Labor Code.

History: 1. New section filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 93, No. 52).

2. Amendment filed 12-12-2000; operative 1-1-2001. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2000, No. 50).

3. Amendment filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

4. Amendment of section heading, section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10844. Petitions for Disqualification and Answers.

In addition to the requirements of section 10452, the petition for disqualification and any answer thereto shall be verified upon oath in the manner required for verified pleadings in courts of record.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5311, Labor Code; and Section 641, Code of Civil Procedure.

History: 1. New section filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10845. General Requirements for Petitions for Reconsideration, Removal, and Disqualification, and for Answers and Other Documents.

(a) Except as otherwise provided by sections 10840 or 10865, all documents filed in connection with any petition for reconsideration, petition for removal, petition for disqualification or any other matter pending before the Appeals Board shall comply with the requirements of sections 10227, 10228, 10230, 10232, 10235, and 10236, including but not limited to the 25-page limitation of section 10232(a)(10), except that any supplemental petition or answer allowed by the Appeals Board under section 10848 shall not exceed ten pages. Any verification, proof of service, exhibit, or document cover sheet filed with the petition or answer shall not be counted in determining the page limitation.

(b) Upon its own motion, or upon a clear and convincing showing of good cause, the Appeals Board may allow the filing of a petition, answer, or supplemental petition or answer that does not comply with the provisions of subdivision (a), including but not limited to the page limitations. A request to exceed the page limitations shall be made by a separate petition, made under penalty of perjury, that specifically sets forth the facts or other reasons why the request should be granted.

(c) A document that has been sent directly to the Appeals Board by fax or e-mail will not be accepted for filing, unless otherwise ordered by the Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5310, 5311, 5900 and 5905, Labor Code.

History: 1. New section filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10846. Skeletal Petitions.

A petition for reconsideration, removal, or disqualification may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5310, 5311, 5902, 5903 and 5904, Labor Code.

History: 1. Amendment of section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10848. Supplemental Petitions.

When a petition for reconsideration, removal or disqualification has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board. Supplemental petitions or pleadings or responses other than the answer, except as provided by this rule, shall neither be accepted nor deemed filed for any purpose and shall not be acknowledged or returned to the filing party.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5310, 5311 and 5900, Labor Code.

History: 1. Repealer and new section filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 93, No. 52).

2. Amendment of section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10850. Proof of Service.

Service of copies of any petition for reconsideration, removal, or disqualification or any answer thereto shall be made, in accordance with Rule 10505, on all parties to the case and on any lien claimant, the validity of whose lien is specifically questioned by the petition, and to any case that has been consolidated therewith pursuant to Section 10590. Failure to file proof of service shall constitute valid ground for dismissing the petition.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5310, 5311, 5902 and 5903, Labor Code.

History: 1. Amendment of section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Amendment of section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10860. Report of Workers' Compensation Judge.

Petitions for reconsideration, petitions for removal and petitions for disqualification shall be referred to the workers' compensation judge from whose decisions or actions relief is sought.

The workers' compensation judge shall prepare a report that shall contain:

(a) a statement of the contentions raised by the petition;

(b) a discussion of the support in the record for the findings of fact and the conclusions of law that serve as a basis for the decision or order as to each contention raised by the petition, or, in the case of a petition for disqualification, a specific response to the allegations and, if appropriate, a discussion of any failure by the petitioner to comply with the procedures set forth in Rule 10452, and

(c) the action recommended on the petition.

The workers' compensation judge shall submit the report to the Appeals Board within 15 days after the petition is filed unless the Appeals Board grants an extension of time. The workers' compensation judge shall serve a copy of the report on the parties and any lien claimant, the validity of whose lien is specifically questioned by the petition, at the time the report is submitted to the Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5900 and 5906, Labor Code.

History: 1. Amendment filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 93, No. 52).

2. Amendment filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

3. Amendment of section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10865. Reconsideration of Arbitration Decisions Made Pursuant To—Labor Code Sections 3201.5 and 3201.7.

(a) A petition for reconsideration from an arbitration decision made pursuant to Labor Code Section 3201.5(a)(1) or Section 3201.7(a)(1) (known as "carve-out" cases) shall be filed directly with the office of the Appeals Board in San Francisco within twenty (20) days of the service of the final order, decision, or award made and filed by the arbitrator or board of arbitrators. A copy of the petition for reconsideration shall be served on the arbitrator or arbitration board.

(b) Notwithstanding any other provision of these rules, a petition for reconsideration in a carve-out case shall be filed directly with the office of the Appeals Board in San Francisco, and not with any district office, including the San Francisco district office. The street address and the post office box address of the Appeals Board may be found at the website of the Department of Industrial Relations, Workers' Compensation Appeals Board (currently, at http://www.dir.ca.gov/wcab/WCAB_PetitionforReconsideration.htm) or by telephoning the Appeals Board in San Francisco (currently, (415) 703-4550). Any petition for reconsideration in a carve-out case that is received by any district office shall neither be accepted for filing nor deemed filed for any purpose. If a carve-out petition for reconsideration is submitted to a district office in violation of this rule, the petition shall be returned to the petitioner with a letter referencing this rule, noting that the petition was improperly submitted to a district office and has been rejected, and indicating that the petition should be filed directly with the Appeals Board in San Francisco consistent with this rule.

(c) The petition for reconsideration in a carve-out case, which shall be submitted with a document cover sheet, shall also comply with each of the following requirements:

(1) it shall be captioned so as to identify it as a "Petition for Reconsideration from Arbitrator's Decision Under Labor Code section 3201.5 or 3201.7" and it shall caption: (A) the injured employee's first and last names; (B) the name(s) of the defendant(s); (C) the alternative dispute resolution (ADR) case number (i.e., the carve-out arbitration case number); and (D) the Workers' Compensation Appeals Board adjudication case number, if previously assigned;

(2) it shall set forth the date on which the arbitrator or board of arbitrators served the arbitration decision. Proof of service of the arbitration decision on the parties shall be either by a verified statement of the arbitrator or the board of arbitrators indicating the date of service and listing the names and addresses of the persons served or by written acknowledgment of receipt by the parties at the time of the arbitration proceedings;

(3) it shall append, under a document separator sheet a copy of that portion of the collective bargaining agreement relating to the

workers' compensation arbitration and reconsideration processes;

(4) it shall append, under a document separator sheet, a completed application for adjudication of claim (but without any venue designation), which is required solely for the purpose of obtaining the information set forth therein (e.g., the injured employee's date(s) of injury and date of birth; the names and mailing addresses of the parties); therefore, it shall not be deemed an application for purposes of Labor Code section 4064(c); and

(5) it shall contain a proof of service of the petition, including service on the arbitrator or board of arbitrators.

(d) After the filing of the carve-out petition for reconsideration, an adjudication file will be created and an adjudication case number will be assigned, if there is no existing adjudication case number. Any new adjudication case number will be served by the Appeals Board on the parties and attorneys, and on the arbitrator or board of arbitrators, at the addresses listed in the proof of service to the petition.

(e) Following the Appeals Board's service of the adjudication case number (or, if there is an existing case, following the filing of the carve-out petition for reconsideration), and until the Appeals Board issues a decision disposing of all issues raised in the petition, all further documents shall be filed directly with the office of the Appeals Board in San Francisco, and not with any district office.

(f) Within 15 days after receiving the petition for reconsideration, the arbitrator or board of arbitrators shall submit to the Appeals Board in San Francisco a photocopy of the complete record of proceedings, including: (1) the transcript of proceedings, if any; (2) a summary of testimony if the proceedings were not transcribed; (3) the documentary evidence submitted by each of the parties; (4) an opinion that sets forth the rationale for the decision; and (5) a report on the petition for reconsideration, consistent with the provisions of section 10860. The original arbitration record shall not be filed.

(g) The Appeals Board may scan the petition for reconsideration, any answer, and the photocopied record of the arbitration proceedings into the adjudication file within EAMS. Upon scanning, the paper documents shall be destroyed.

(h) The petition for reconsideration, any answer, and the arbitration record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under section 10750.

(i) After an arbitration decision has been made, the arbitrator or board of arbitrators shall maintain possession of the original record of the arbitration proceedings until the time for filing a petition for reconsideration has passed. Thereafter one of the parties may be designated custodian of the arbitration record as provided for in the collective bargaining agreement.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 3201.5 and 3201.7, Labor Code.

History: 1. New section filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 93, No. 52).

2. Amendment of section heading, section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

3. Amendment of section heading, section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10866. Reconsideration of Arbitrator's Decisions or Awards Made Pursuant to the Mandatory or Voluntary Arbitration Provisions of Labor Code Sections 5270 through 5275.

(a) Any final order, decision or award filed by an arbitrator under the mandatory or voluntary arbitration provisions of Labor Code Sections 5270 through 5275 shall be subject to the reconsideration process as set forth in Labor Code Sections 5900 through 5911 and Rules 10842 through 10850. The parties, respectively, shall serve the arbitrator with the petition for reconsideration and the answer.

(b) A petition for reconsideration from any final order, decision or award filed by an arbitrator under the mandatory or voluntary arbitration provisions of Labor Code sections 5270 through 5275, and any answer to such a petition, may be filed with any district office or with the office of the Appeals Board in San Francisco. Duplicate copies of petitions filed with a district office shall not also be filed with any other district office or with the Appeals Board in San Francisco.

(c) When a petition for reconsideration is filed from any final order, decision or award made by an arbitrator under Labor Code Sections 5270 through 5275, the arbitrator shall prepare and serve a report on reconsideration as provided in Rule 10860. Upon completion of the report on reconsideration, the arbitrator shall concurrently forward the arbitrator's original report and a photocopy of the complete arbitration file directly to the presiding workers' compensation judge of the district office having venue over the matter. Upon receipt of the arbitrator's original report and the photocopy of the arbitration file, the district office shall scan the report and the photocopied file into the EAMS adjudication file and, after scanning, shall destroy these documents. Thereafter, the adjudication file shall be electronically transferred to the Appeals Board for action on the petition for reconsideration or, to the extent that the adjudication file is in paper form, the file shall be delivered to the Appeals Board.

(d) The petition for reconsideration, any answer, and the arbitration record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under section 10750.

(e) The costs of photocopying the arbitrator's file shall be reimbursed to the arbitrator in accordance with the provisions of Labor Code section 5273, within 30 days after the liable party or parties receives the arbitrator's billing for those costs.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5273, 5275, 5277(c) and 5900-5911, Labor Code.

History: 1. New section filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 93, No. 52).

2. Amendment of section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

3. Amendment of section heading, section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

**§10867. Report of Arbitrator.
[Repealed]**

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5275, 5277(c) and 5900-5911, Labor Code.

History: 1. New section filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant

to Government Code section 11351 (Register 93, No. 52).

2. Amendment of section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

3. Repealer filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

ARTICLE 18 Settlements

§10890. Walk-Through Documents. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4053, 4054, 5001, 5002, 5702 and 5710, Labor Code.

History: 1. New section filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Repealer filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

ARTICLE 19 Subsequent Injuries Fund

§10946. Medical Reports in Subsequent Injuries Benefits Trust Fund Cases.

When an application is filed against the Subsequent Injuries Benefits Trust Fund, any party who has previously filed medical reports shall forthwith serve copies on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund, and in no case later than thirty (30) days prior to the mandatory settlement conference or other hearing, unless service is waived by the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.

History: 1. Amendment filed 6-28-83; designated effective 7-1-83 pursuant to Government Code Section 11346.2(d) (Register 83, No. 27).

2. Amendment of section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

3. Amendment of section heading, section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

ARTICLE 20

Review of Administrative Orders

§10950. Petitions Appealing Orders Issued by the Administrative Director.

Except as provided in Rule 10953, petitions appealing orders issued by the Administrative Director shall be filed in accordance with the provisions of Article 9 (section 10290 et seq.) of the Rules of the Court Administrator. Where a workers' compensation judge has determined such an appeal, any aggrieved party may file a petition for reconsideration in accordance with the provisions of Labor Code section 5900 et seq. and Appeals Board Rules 10840 et seq.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 129, 4603, 4604, 5300, 5301 and 5302, Labor Code.

History: 1. Amendment of section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Amendment of section heading, section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10952. Appeal of Notice of Compensation Due. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 129, 5300 and 5301, Labor Code.

History: 1. New section filed 6-11-92 with Secretary of State by Workers' Compensation Appeals Board; operative 6-11-92. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 92, No. 24).

2. Amendment filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

3. Repealer filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10953. Petition Appealing Audit Penalty Assessment—Labor Code Section 129.5(g).

(a) An insurer, self-insured employer, or third-party administrator may appeal a civil penalty assessment issued pursuant to subdivision (g) of Labor Code section 129.5 by filing a petition with any district office or with the Appeals Board in San Francisco, in the same time and manner as provided by the Labor Code

and Rule 10840 et seq. for the filing of a petition for reconsideration, except that a copy of the petition also shall be served on the Administrative Director. The petition shall be accompanied by a completed document cover sheet.

(b) The Administrative Director may answer the petition in the same time and manner provided for the filing of an answer to a petition for reconsideration.

(c) After the filing of a petition appealing a civil penalty assessment issued pursuant to Labor Code section 129.5(g), an adjudication case will be created and an adjudication case number will be assigned. The adjudication case number will be served by the Appeals Board on the Administrative Director and on the parties and attorneys listed on the proof of service to the petition.

(d) Within 15 days after the Administrative Director receives a copy of petition appealing a civil penalty assessment issued pursuant to Labor Code section 129.5(g), the Administrative Director shall submit to the Appeals Board in San Francisco a certified copy of the complete record of proceedings created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, § 10113 et seq.) The certified copy of the record shall include, but shall not necessarily be limited to: (1) the Order to Show Cause Re: Assessment of Civil Penalty and Notice of Hearing; (2) the Answer to the Order to Show Cause; (3) any amended complaint or supplemental Order to Show Cause that may have been issued, and any Amended Answer filed in response thereto; (4) any pre-hearing written statement filed by the claims administrator; (5) any pre-hearing Minutes and pre-hearing Orders; (6) the Minutes of any Hearing, a transcript or summary of any oral testimony offered at the hearing, any documentary evidence or affidavits offered at the hearing; and (7) the Administrative Director's written Determination and statement of the basis for the Determination. The original record of the proceedings conducted pursuant to Labor Code section 129.5(g) shall not be filed.

(e) The Appeals Board may scan the appeal, any answer, and the photocopied record of the Administrative Director's proceedings into the adjudication file within EAMS. Upon scanning, the paper documents may be destroyed.

(f) The Appeals Board shall determine the appeal using the record created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, §10113 et seq.) The Administrative Director's record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under section 10750.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 129.5(g), Labor Code.

History: 1. New section filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Amendment of section and Note filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10955. Rehabilitation Appeals. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 139.5, 4645 and 5500, Labor Code.

History: 1. Repealer and new section filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 93, No. 52).

2. Amendment filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

3. Repealer filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10957. Deposition of Rehabilitation Consultants. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5708, Labor Code.

History: 1. Amendment of section and Note filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

2. Repealer filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

ARTICLE 22 Arbitration

§10995. Mandatory Arbitration. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5270 through 5277, Labor Code.

History: 1. New section filed 1-12-90; operative 1-12-90 (Register 90, No. 5). This section is exempt from review by OAL pursuant to Government Code section 11351.

2. Change without regulatory effect filed 1-26-90 (Register 90, No. 5).

3. Amendment exempt from OAL review pursuant to Government Code section 11351 filed 12-19-90; operative 1-1-91 (Register 91, No. 7).

4. Amendment of article heading filed 12-23-93; operative 1-1-94. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 93, No. 52).

5. Renumbering of former article 25 to article 22 and amendment of section filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

6. Repealer filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

§10996. Voluntary Arbitration. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5270 through 5277, Labor Code.

History: 1. New section filed 1-12-90; operative 1-12-90 (Register 90, No. 5). This section is exempt from review by OAL pursuant to Government Code section 11351.

2. Change without regulatory effect filed 1-26-90 (Register 90, No. 5).

3. Amendment exempt from OAL review pursuant to Government Code section 11351 filed 12-19-90; operative 1-1-91 (Register 91, No. 7).

4. Amendment filed 12-19-2002; operative 1-1-2003. Submitted to OAL for printing only pursuant to Government Code section 11351 (Register 2002, No. 51).

5. Repealer filed 11-17-2008; operative 11-17-2008. Submitted to OAL for printing only (Register 2008, No. 47).

CHAPTER 8 OFFICE OF THE DIRECTOR

SUBCHAPTER 2 ADMINISTRATION OF SELF- INSURANCE PLANS

ARTICLE 1 Definitions

§15201. Definitions.

The following definitions apply in Articles 1 through 13 of these regulations:

(a) **Adjusting Location.** The office address designated in accordance with Section 15402 of these regulations where:

(1) The named administrator of the self insurer fulfills his/her function; and

(2) The original records called for in Article 9 of these regulations are maintained.

In the event that claims are administered at the home of a telecommuting adjuster, the location shall be considered as a separate adjusting location for reporting and audit purposes unless the telecommuting adjuster reports to a California location of the administrator no less than weekly.

(b) **Administrative Director.** The Administrative Director of the Division of Workers' Compensation within the Department of Industrial Relations.

(c) **Administrative Agency.** The person or firm that performs the day-to-day claims administration functions of a workers' compensation self insurance program. The administrative agency may be:

(1) An independent contractor possessing a certificate to administer and designated by a self-insurer to be the administrative agency for all or a portion of its claims; or

(2) A partnership or corporation possessing a master certificate to self insure, which administers its own claims and the claims of other affiliate or subsidiary self insurers issued affiliate or subsidiary certificates to self insure under the same master certificate number;

(3) A joint powers authority possessing a master certificate to self insure, which self administers in whole or part the claims of its affiliate public self insurers issued affiliate certificates to self insure under the same master certificate number of the joint powers authority; or

(4) The claims department of an insurance carrier admitted to transact workers' compensation insurance in California, which is exempt from the requirement to possess a certificate to administer under Labor Code Section 3702.1(a).

(d) **Administrator.** A competent person pursuant to Section 15452 of these regulations, at an adjusting location, who is responsible for day-to-day management of an employer's self-insurance workers' compensation program. The responsibility includes but is not limited to, the making and reviewing of decisions relating to the furnishing of all workers' compensation

benefits in accordance with law and the maintenance of the self insurer's claim records.

(e) Affiliate Certificate.

(1) A type of certificate to self insure issued to a private self insurer that has common ownership to another private self insurer holding a master certificate to self insure, but the affiliated certificate holder is not a subsidiary to the master certificate holder; or

(2) A type of certificate to self insure issued to a public self insurer that is a member of a joint powers authority for pooling of workers' compensation liabilities with the master certificate number issued to the joint powers authority.

(3) A type of certificate to self insure issued to a private self insurer that is a member of a group self insurer for pooling of workers' compensation liabilities under the master certificate number issued to the group self insurer.

(f) Alternative Composite Deposit. A security deposit system pursuant to Labor Code Section 3701.8 whereby all eligible private self insurers collectively secure, in whole or in part, aggregate self insured worker's compensation liabilities through the Self Insurer's Security Fund.

(g) Audit. Any examination of self insured workers' compensation claim files performed by or at the request of the Office of Self Insurance Plans pursuant to Labor Code Section 3702.6.

(h) Board of Trustees. In group self insurance, the representative body in a group self insurer selected by the group members to be responsible for managing the assets and directing the affairs of the group self insurer corporation and assuring the group self insurer, through the group members, is financially sound and able to meet the workers' compensation liabilities under the statutes and regulations applicable in California.

(i) Cancellation of Surety Bond. An act whereby the surety gives written notice to the Manager, as beneficiary of the workers' compensation self insurance surety bond, that the surety is terminating its contractual obligations under the named bond pursuant to Sections 996.320 and 996.330 of the California Code of Civil Procedure and the liability of the surety bond after the effective date of the cancellation is set forth in Section 996.360 of the California Code of Civil Procedure.

(j) Certificate to Self Insure. A Certificate of Consent to Self-Insure issued to an employer pursuant to Section 3700(b) of the Labor Code.

(k) Certificate to Administer. A Certificate of Consent to Administer self insured workers' compensation claims issued to an administrative agency, except exempt insurance carriers, pursuant to Labor Code Section 3702.1.

(l) Claim File. A separate case file containing all pertinent documents and matters relating to a specific or companion work-injury claim. The claim file contents are specified in Section 15400 of these regulations.

(m) Claim Log. A manual or electronic listing of workers' compensation claims maintained by the self insurer or administrative agency for the self insurer. The claim log for private self insurers shall list each work injury claim by the calendar year in which the claim was reported to the employer or the claims administrator, whichever first occurred. The log for public self insurers shall list each work injury claim by the fiscal year in which the claim was reported. The claim log contents are specified in Section 15400.1 of these regulations.

(n) Compensation. Compensation as defined in Labor Code Section 3207.

(o) Contribution. The amount of payments required of each group member in order to fund the compensation and deposit obligations of the group self insurer.

(p) Core Group Member. Is an affiliate member of a group self insurer as defined by subsection (v) of this section that together with other specific members meet the aggregate financial requirements pursuant to Section 15472 of these regulations. Core group members of an existing group self insurer need not be the same Affiliate Group Certificate holders from year to year.

(q) Director. The Director of the Department of Industrial Relations.

(r) Exoneration of Surety Bond. The discharge of a surety from all past, present and future liability under its workers' compensation self insurance surety bond by the execution of a "Release of Surety", Form A4-24 (Rev. 11/92) by the Manager.

(s) First Aid. First Aid as defined in Labor Code Section 5401(a).

(t) Group Administrator. The individual or business entity authorized to serve as the representative of a group self insurer and its group

members to execute the policies of the Board of Trustees of the group self insurer and manage the activities of the group self insurer corporation.

(u) Group Member. A private employer issued an Affiliate Certificate as a member in a group self-insurance program that has, in turn, been issued a Certificate to Self Insure as a group self insurer.

(v) Group Self Insurer. A private, non-profit, mutual benefit corporation, a private, non-profit charitable corporation, a private, non-profit public benefit corporation, or a private, non-profit religious corporation created as set forth in Section 15470 of these regulations and pursuant to Part 3 of Division 2 of Title 1 of the California Corporation Code. Said corporation shall be established for the sole purpose of operating a group workers' compensation self-insurance program to pool the California workers' compensation liabilities of two or more private employers in the same homogeneous grouping pursuant to Section 15473. A group self insurer issued a Certificate of Consent to Self Insure pursuant to Labor Code Section 3700(b) and these regulations are not intended to deem such a group self insurer to be an insurance company subject to regulations governing insurers contained in Title 10, California Code of Regulations, except as otherwise provided by statute and by Title 8, California Code of Regulations.

(w) Indemnity Agreement and Power of Attorney. The written agreement executed by each group member or proposed group member of a group self insurer pursuant to Section 15479 of these regulations.

(x) Indemnity Claim. A work-injury case which has or may result in any of the following benefits:

- (1) Temporary Disability or salary in lieu thereof
- (2) Permanent Disability
- (3) Life Pension
- (4) Death Benefits
- (5) Vocational Rehabilitation

(y) Industry. Employer classification as determined using the first three digits of the North American Industry Classification System Code (NAICS Code), provided by the Department of Commerce, Bureau of Management and Budget.

(z) Joint Powers Authority. A public entity created by agreement of two or more public

agencies pursuant to Division 7, Chapter 5, Article 1, Sections 6500 et seq. of the California Government Code. These regulations apply only to Joint Powers Authorities who have among their purposes for existence, the forming of workers' compensation liability pooling arrangements.

(aa) Labor Code. The Labor Code of the State of California.

(bb) Manager. The Manager, Office of Self-Insurance Plans, in the Department of Industrial Relations.

(cc) Medical-Only Claim. A work-injury case which does not result in compensable lost time but results in medical treatment beyond first aid.

NOTE: Payment of medical examinations pursuant to Labor Code Section 4600 will be considered a medical payment.

(dd) Open Claim. A work-injury case in which it appears that one or more future payments of workers' compensation benefits may be due.

(ee) Release of Surety Bond. Action of Manager of Self Insurance Plans by which a surety is exonerated. A released surety bond does not constitute part of the security deposit of a self insured entity.

(ff) Security Fund. The Self Insurer's Security Fund as established by Labor Code section 3742.

(gg) Self-Insurer. An individual public or private sector employer or joint powers authority or private group of employers that has been issued and lawfully holds a valid Certificate to Self-Insure its workers' compensation liabilities pursuant to:

(1) The provisions of Section 29(a), Chapter 586, Laws of 1917 and amendments thereto; and/or

(2) Labor Code, Section 3700(b) for private sector employers or 3700(c) for public sector employers.

(hh) Special Audit. Any audit performed other than that in accordance with Labor Code Section 3702.6.

(ii) Subsidiary Certificate. A type of certificate to self insure issued to a subsidiary of a self-insurer, where the self insurer holds the master certificate to self insure.

(jj) Termination of Surety Bond. See definition of "Cancellation of Surety Bond".

(kk) **Work-Injury Claim.** An injury that is reported or reportable to the Division of Labor Statistics and Research pursuant to Labor Code Sections 6409, 6409.1 and 6413.

Note: Authority cited: Sections 54, 55, 3701.8 and 3702.10, Labor Code. Reference: Sections 59, 129, 3700, 3701, 3701.5, 3701.8, 3702, 3702.3, 3702.5, 3702.6, 3702.10, 3703, 3705, 3740-3747 and 3850, Labor Code; Section 6500, Government Code; and Sections 995.430, 996.320 and 996.330, Code of Civil Procedure; and Sections 5002, 5003, 5059, 5060, 5061 and 5080, Corporations Code.

History: 1. Repealer and new section filed 12-3-69; effective thirtieth day thereafter (Register 69, No. 49).

2. Repealer and new section filed 6-1-72; effective thirtieth day thereafter (Register 72, No. 23).

3. Repealer and new section filed 11-19-75; effective thirtieth day thereafter (Register 75, No. 47).

4. Amendment placing the defined terms in alphabetical order, removal of letter designators, amendment of existing terms, addition of terms "Administrative Director," "Affiliate Certificate," "Certificate to Administer," and "Joint Powers Authority" and addition of Note filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

5. New definitions "Cancellation of Surety Bond," "Exoneration of Surety Bond," "Release of Surety Bond," and "Termination of Surety Bond" and amendment of Note filed 8-12-93; operative 9-13-93 (Register 93, No. 33).

6. Amendment filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

7. Amendment of section and Note filed 5-30-2003 as an emergency; operative 5-30-2003 (Register 2003, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-29-2003 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 5-30-2003 order transmitted to OAL 9-29-2003 and filed 11-12-2003 (Register 2003, No. 46).

9. Amendment of subsections (a)(2) and (m) filed 2-9-2006; operative 3-11-2006 (Register 2006, No. 6).

10. Amendment of subsections (e)(3), (h)-(i), and (m); new subsection (p), subsection relettering, amendment of newly designated subsections (t), (v), (y)-(z) and (gg)(2) and amendment of Note filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

ARTICLE 2

Certificate of Consent to Self Insure

§15203. Applications and Required Forms.

(a) Application forms for individual Certificates of Consent to Self Insure and other

required self insurance forms are available on the website of the Office of Self Insurance Plans at <http://sip.dir.ca.gov/>. Every employer desiring to procure an initial, individual private or public certificate to self insure its workers' compensation liabilities shall make application on:

(1) Form A4-1 (Rev. 2/92) for private individual employer applicants seeking an individual Certificate to Self Insure;

(2) Form A4-2 (Rev. 2/92) for public employer applicants;

(3) Form A4-5 (Rev. 11/97) for an interim self insurer seeking a permanent Certificate to Self Insure.

(b) A new application may be required when an existing, individual self insurer reincorporates, merges, changes ownership, or adds a new or separate subsidiary or affiliate to its existing workers' compensation self insurance program. In some cases, it may be possible to amend and transfer an existing certificate without a new application.

(c) A complete application to self insure by an individual, private employer (Form A4-1 (Rev. 2/92)) shall include all attachments requested on the application form itself, and, as applicable, the following:

(1) A current, certified, independently audited financial statement complete with all schedules and notes for the past three years.

The application of a private sector subsidiary or affiliate may include the consolidated financial statement of its parent in lieu of the subsidiary's financial statement;

(2) An unaudited financial statement or published quarterly report, or a consolidated financial statement for the current year or portion thereof;

(3) An Agreement of Assumption and Guarantee of Liabilities for each self insurer and subsidiary or affiliate applicant executed by the parent employer or majority owner, or partners;

(4) A Resolution authorizing the application to self insure and empowering employees or officers of the applicant employer to sign the application form and any other necessary documents on behalf of the applicant employer;

(5) A Resolution by the general partners, or parent corporation authorizing the execution of the Agreement of Assumption and Guarantee of Liabilities on behalf of a subsidiary or affiliate applicant employer;

(6) Original Certificates of Status or other appropriate registration documents showing that the applicant employer is licensed or registered to do business in California;

(7) A written evaluation of the applicant's injury and illness prevention program or proof of a DOSH inspection pursuant to Section 15353 of these regulations; and

(8) Payment of any required application filing fee.

(d) A complete application to self insure by a public employer (Form A4-2) (Rev. 2/92) shall include all attachments requested on the public sector application form and, as applicable, the following:

(1) An Agreement of Assumption and Guarantee of Liabilities for the predecessor agency due to a unification, merger, realignment of the boundaries of an existing self insured public agency, or name change by the successor or surviving public agency;

(2) A Resolution authorizing the application to self insure and empowering employees or officers of the applicant employer or joint powers authority to sign the application form and any other necessary documents on behalf of the applicant.

(3) Each public applicant shall indicate the proposed start up date of its self insurance program as part of its application.

(e) A complete application to self insure on a Form A4-3 by a private group of employers shall include all information and documents as indicated in Section 15482 of these regulations.

(f) A complete application to self insure on a Form A4-3M (Rev. 1/94) by each member of a group shall include all information as indicated in Section 15482.1 of these regulations.

(g) The Manager shall issue a Certificate of Consent to Self Insure to an approved joint powers authority that pools the workers' compensation liabilities of its public agency members and the master certificate number shall be assigned to the joint powers authority. Each approved member of the joint powers authority shall be issued an affiliate certificate numbers under the certificate number issued to the joint powers authority.

(h) Upon receipt of a complete private individual employer application, the applicant will be notified within 45 days of the Director's decision to allow or deny self insurance or to advise that the application is deficient. A notice

indicating that the application is deficient will include a list of items required to be included or completed.

(i) Upon receipt of a complete public entity application, the applicant will be notified within 30 days of approval or denial of application.

Note: Authority cited: Sections 54, 55, 59 and 3702.10, Labor Code. Reference: Sections 3700, 3700(b), 3701, 3702, 3702.5 and 6401.7(a), Labor Code.

History: 1. Repealer and new section filed 6-1-72; effective thirtieth day thereafter (Register 72, No. 23).

2. Amendment filed 11-19-75; effective thirtieth day thereafter (Register 75, No. 47).

3. Amendment filed 11-21-78; effective thirtieth day thereafter (Register 78, No. 47).

4. New article 2 heading, newly designated subsections (a) and (b)-(b)(1), new subsections (b)(2)-(g)(1), amendment of Note, and repealer of form filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

5. Amendment filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

6. Amendment of subsection (a)(4), new subsection (a)(5), amendment of Note 1 and amendment of subsections (g) and (h) filed 6-4-98; operative 7-4-98 (Register 98, No. 23).

7. Amendment of article heading, section heading, section and Note filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15203.1. Agreement of Assumption and Guarantee of Subsidiary's or Affiliate's Liabilities.

Each private subsidiary or affiliate applicant for a Certificate to Self Insure of an individual private self insurer shall provide an Agreement of Assumption and Guarantee of Liabilities executed by the holding company, ultimate parent corporation, controlling partners, owners, or other controlling entity in accordance with Section 15211.2 of these regulations. If the holding company, ultimate parent corporation, controlling partners, owners, or other controlling entity will not execute the Assumption and Guarantee agreement, the Director may:

(a) Require a deposit level of 200% of the master certificate holder's, subsidiary's or affiliate's estimated future liabilities for the payment of compensation, or higher, in lieu of the Agreement of Assumption and Guarantee of Liabilities; or

(b) Deny the application to self insure by the private applicant.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3550, 3700, 3701, 3701.5, 3702, 3702.10 and 3705, Labor Code.

History: 1. New section filed 11-21-78; effective thirtieth day thereafter (Register 78, No. 47).

2. Amendment of section heading and text filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

3. Amendment filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

4. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15203.2. Continuing Financial Capacity for Individual Private Self Insurers.

(a) Each individual private self insurer holding an active or revoked Certificate of Consent to Self Insure shall submit annually to the Manager two copies of the employer's current, certified, independently audited financial statement complete with all notes and schedules. If the individual private self insurer or former self insurer did not prepare a current, certified, independently audited financial statement of its financial condition, or of a parent or holding company's financial condition if an Agreement of Assumption and Guarantee of Workers' Compensation Liabilities (Form A4-6 (Rev. 11/97)) has been executed on its behalf by that parent or holding company pursuant to Section 15211.2 of these regulations, the self insurer or former self insurer shall advise the Manager in writing and submit a financial statement prepared by an independent certified public accountant. Failure to submit a qualifying financial statement pursuant to this section may result in an increased security deposit requirement pursuant to subsection (c) and/or revocation of the Certificate of Consent to Self Insure for good cause pursuant to Labor Code Section 3702.

(b) Any joint powers authority which is solely responsible for the self insurance claims of its public members shall submit annually to the Manager a consolidated report of its financial condition and/or, if available, a current, certified, independently audited financial statement complete with all notes and schedules.

(c) Impairment of solvency of a current or former private individual self insured employer, indicated by a marked reduction in financial strength or the lack of the minimum net worth requirement set forth in subsection (e) of this

section, or the lack of an independently prepared, audited financial statement, is good cause for an increased security deposit pursuant to Section 15210.1 of these regulations and/or involuntary revocation of a Certificate of Consent to Self Insure, an Affiliate Certificate, or a Subsidiary Certificate pursuant to Labor Code Section 3702.

(d) After July 1, 1994, all private individual employer applicants for a master Certificate of Consent to Self Insure shall demonstrate and maintain a current net worth of at least \$5,000,000 and average net income for the preceding 5 years of at least \$500,000.

(e) Any private self insurer granted a Certificate to Self Insure prior to the July 1, 1994 that has continued as a self insurer shall demonstrate and maintain a net worth of at least \$2,200,000 and an average net income for the preceding 5 years of at least \$300,000.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3702 and 3702.10, Labor Code.

History: 1. New section filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

2. Amendment of section and Note filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

3. Amendment of section heading and section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15203.3. Resolution To Authorize Self Insurance for an Individual Private Employer.

(a) The resolution to authorize self insurance of workers' compensation required pursuant to Section 15203(c) of these regulations as part of the application for a certificate to self insure by any individual private employer shall be adopted by the private employer's Board of Directors or the general partners of an applicant partnership or joint venture, or owner of an applicant sole proprietorship. The resolution to authorize self insurance shall include the following:

(1) A statement identifying the applicant by corporate or other legal name, the state of registration, and the date that the resolution was adopted;

(2) Identification by title of appointed officers or other company employees authorized to sign the application, execute any and all documents required for the application, and do sub-

sequent acts required to maintain self insurance approval.

(b) If an individual private self insurer reincorporates, merges, or changes its identity, a new resolution shall be submitted to the Manager within 30 days of the change. The resolution shall confirm and authorize the maintenance of the self insurer's responsibility under the successor's identity. The Manager may extend the period of time to submit the resolution for good cause.

(c) The Manager shall provide a model corporate resolution as part of the application form and will provide a model resolution for a non-corporate entity upon request.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3702 and 3702.10, Labor Code.

History: 1. New section filed 11-21-78; effective thirtieth day thereafter (Register 78, No. 47).

2. Amendment filed 1-19-79; effective thirtieth day thereafter (Register 79, No. 3).

3. Amendment of section heading and text filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

4. Amendment of section heading and text filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

5. Amendment of section heading and section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15203.4. Resolution to Self Insure for Public Entities.

(a) The resolution of the governing body of a public entity or joint powers authority seeking approval for a Certificate of Consent to Self Insure shall be executed by the governing board and attached to the application form. The resolution shall be sealed with the seal of the adopting agency or the resolution's signatures shall be notarized.

(b) The officers of the joint powers authority which is the holder of the master Certificate to Self Insure may sign documents, including the Self Insurer's Annual Report, on behalf of the affiliated members of the JPA for self insurance purposes.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3702 and 3702.10, Labor Code.

History: 1. New section filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

2. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15203.5. Agreement and Undertaking for Security Deposit.

(a) Each private individual employer applicant for self insurance shall execute an Agreement and Undertaking For Security Deposit as part of the application process.

(b) Each security deposit shall be posted in accordance with the provisions of the Agreement and Undertaking.

(c) The form of such Agreement and Undertaking shall be supplied by the Manager as part of the application (Form A4-1 (Rev. 2/92)) for an individual private employer).

(d) The Agreement and Undertaking for Security Deposit (Form A 4-32 (Rev. 12/92)), included as part of the application) shall confirm the applicant employer's agreement to secure incurred liability for the payment of compensation as a condition to issuance of a Certificate of Consent to Self Insure by posting a security deposit with the State of California to be held by the Department of Industrial Relations in trust for the applicant employer, with power to the Director of Industrial Relations to order the sale or use of said security deposit to pay any compensation that may become due and of which said employer may be in default.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3701, 3701.5 and 3702.10, Labor Code.

History: 1. New section filed 11-21-78; effective thirtieth day thereafter (Register 78, No. 47).

2. Renumbering and amendment of former section 15203.5 to section 15203.6 and renumbering and amendment of former section 15213 to section 15203.5 filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

3. Amendment of subsection (c) and following Note filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

4. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15203.6. Delayed Start-up of a Self Insurance Program.

(a) The Certificate of Consent to Self Insure for a public or individual private employer shall be initially valid for six months after the date of approval by the Director. If the self insurer has not initiated its self insurance program within the initial six month period, the approval of the certificate to self insure shall be void and a new application shall be filed for approval.

(b) An individual private employer applicant that fails to initiate a self insurance program within three months of notification of approval by the Director may be required to establish current good standing with the Secretary of State and to provide current financial information before issuance of a Certificate of Consent to Self Insure.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700 and 3702.10, Labor Code.

History: 1. Renumbering and amendment of former section 15203.5 to section 15203.6 filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

2. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15203.7. Documentation of Consent to Self Insure and Notice to Employees of Self Insured Status.

(a) The original Certificate of Consent to Self Insure or a copy of the original Certificate of Consent to Self Insure issued to each private individual self insured employer or public self insured employer shall be prominently displayed at the self insurer's principal place of business in California.

(b) Notice to employees of workers' compensation coverage as required by Labor Code Section 3550 shall be accomplished by display of a copy of the self insurer's Certificate of Consent to Self Insure accompanied by a notice stating the name of the person(s) or administrative agency responsible for claims adjustment.

(c) If a self insurer is required to provide evidence of its approved self insured status to prove compliance with Labor Code Section 3700, the Manager shall provide a Certification of Self Insurance upon request from the certificate holder. Whether or not an employer is self insured can be determined electronically at the website of the Office of Self Insurance Plans at <http://sip.dir.ca.gov/>. Beginning April 1, 2009, there is a ten dollar (\$10) fee for signed certification of self insured status requested by third parties.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3550, 3602, 3700, 3701, 3702 and 3702.10, Labor Code.

History: 1. Renumbering and amendment of former section 15203.7 to section 15203.8 and new section filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

2. Amendment of section heading, section and Note filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15203.8. Change in Status.

(a) A public or individual private self insured employer shall notify the Manager in writing within 30 days of any of the following actions:

(1) Any amendment to the self insurer's articles, charter, or agreement of incorporation, association, or co-partnership which changes its identity or business structure or ownership in a material manner from the status as it existed at the time of issuance of its Certificate of Consent to Self Insure; or

(2) If the self insurer proposes to cease doing business entirely, proposes to cease doing business in California, or proposes to dispose of, by sale or otherwise, the controlling interest of the business for which the Certificate of Consent to Self Insure was issued.

(b) If any self insurer desires to retain its self insured status following any amendment to the articles, charter, or agreement of incorporation, association, or copartnership which changes its identity or business structure or ownership, the self insurer shall provide to the Manager the following information:

(1) A written description of the change and of the date the event(s) occurred;

(2) Copies of Certificates of Status or other appropriate registration documents filed with the Secretary of State in which the self insurer is incorporated concerning the change of the self insurer's status; and

(3) Written notice indicating that the certificate holder will continue to provide an annual financial statement or that a financial statement will be issued by a parent corporation.

(c) If a self insured corporation reincorporates, merges, or changes its identity, a new resolution shall be submitted to the Manager in accordance with Section 15203.3 of these regulations.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3702, 3702.3, 3702.10 and 3703, Labor Code.

History: 1. New section filed 11-21-78; effective thirtieth day thereafter (Register 78, No. 47).

2. Renumbering and amendment of former section 15203.7 to section 15203.8 filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

3. Amendment of subsection (a) filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

4. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15203.9. Validity of Certificate of Consent to Self Insure.

(a) A Certificate of Consent to Self Insure shall be valid only to the individual private corporation, partnership, limited liability corporation, limited liability partnership, company, subsidiary, sole proprietorship, individual or affiliate public entity, or joint powers authority, to which the Certificate of Consent to Self Insure, Affiliate Certificate, Interim Certificate, or Subsidiary Certificate was issued. Each subsidiary or affiliate shall be issued its own Certificate of Consent to Self Insure.

(b) Except as provided in Labor Code Section 3701.7, the Manager may not issue a Certificate of Consent to Self Insure with an effective date earlier than the date the application and all other documents or information required by these regulations were submitted and deemed a complete application.

(c) Other than for an employer issued an Interim Certificate pursuant to Section 15205, once the self insurance program has been initiated by the employer, the Certificate of Consent to Self Insure shall be valid until revoked by order of the Director.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5 and 3702.10, Labor Code.

History: 1. New section filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

2. Amendment of subsection (a) filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

3. Amendment of section heading, section and Note filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15203.10. Reinstatement of a Certificate of Consent to Self Insure.

(a) The Certificate of Consent to Self Insure of an individual private or public self insurer, that has had its self insurance privilege terminated because of a legal change in business or corporate structure may be reinstated without lapse, providing the employer can re-qualify for self insurance.

(b) To request reinstatement of a Certificate of Consent to Self Insure, the applicant shall submit to the Manager a complete application and a statement that the applicant assumes and guarantees all workers' compensation liabilities incurred during its prior period of self insurance and will be responsible for any additional self insured liabilities incurred after termination of its Certificate of Consent to Self Insure. The Manager shall accept the statement of the employer's assumption of all past liabilities if signed by a corporate officer, attested to by the corporate secretary, and sealed with the corporate seal. If the statement is approved by the Manager, the applicant must submit within 90 days of the approval as part of the application an Agreement of Assumption and Guarantee of Workers' Liabilities fully executed pursuant to Section 15211.2 of these regulations. The Agreement of Assumption and Guarantee of Workers' Liabilities must be submitted before the Certificate to Self Insure may be reinstated.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3702 and 3702.10, Labor Code.

History: 1. New section filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

2. Amendment of section heading and section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15204. Application Filing Fee.

(a) Each private employer making application for an individual Certificate of Consent to Self Insure shall at the time of filing the application, pay a non-refundable filing fee as follows:

(1) A filing fee of \$500;

(2) For each application submitted to replace an Interim Certificate that has previously been issued to the applicant and is in effect at the time the application is submitted, the filing fee shall be \$400;

(3) There shall be a \$100 filing fee for each Request for an Interim Certificate submitted pursuant to Section 15205 of these regulations.

(b) Any subsequent filing of an application by an existing private individual self insurer to add a new subsidiary or affiliate, or required due to merger, acquisition, or reincorporation shall be considered a new application and shall be subject to the payment of the fees set forth in subsection (a).

(c) No application filing fee shall be required from a public entity making application for a Certificate to Self Insure.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3702.5 and 3702.10, Labor Code.

History: 1. New section filed 11-19-75; effective thirtieth day thereafter (Register 75, No. 47).

2. Amendment of section heading and text and adoption of Plates A-1 through C and Plate H filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

3. Change without regulatory effect relocating Appendix Plates to section 15463 filed 9-14-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 38).

4. Designation of subsection (a) and new subsections (d)-(d)(4) filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

5. Amendment of section heading and section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15205. Interim Certificates.

(a) The Manager may issue an Interim Certificate of Consent to Self Insure to a subsidiary or affiliate of an existing private individual self insurer or an existing public agency self insurer. The Interim Certificate of Consent to Self Insure will be issued for a period not to exceed 180 days. 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 15203 and the application fee required by Section 15204 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 by the Interim Self Insurer.

(b) To qualify for an Interim Certificate, the existing private individual self insurer must demonstrate the following:

(1) Net worth on the last financial report filed with the Manager of Self Insurance Plans, pursuant to Section 15203.2, that shows at least \$10 million in net worth,

(2) The private self insurer holding the Master Certificate of Consent to Self Insure has furnished proof satisfactory to the Manager of financial responsibility and ability to guarantee the payment of any compensation due.

(3) The subsidiary or affiliate being added to the self insurance program does not represent

more than 50% of the annual payroll of the existing self insured as reported on the most recent Self Insurers' Annual Report.

(c) A request for an Interim Certificate shall be made by the existing public agency or individual private self insurer in writing to the Manager and provide the following information on each subsidiary or affiliate new to the self insurance program:

(1) The full legal name, state of incorporation, and Federal Tax Identification Number;

(2) The requested effective date of the Interim Certificate;

(3) Documentation of the total annual payroll of the subsidiary or affiliate during the last 12 months and of the dates for which the payroll information represents or for the latest 12-month period for which payroll figures are available.

(4) A statement that the Master Certificate holder shall be financially responsible for payment of all workers' compensation claims arising out of the period of time its subsidiary or affiliate is granted an Interim Certificate.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3702.5 and 3702.10, Labor Code.

History: 1. New section filed 2-26-97; operative 3-28-97 (Register 97, No. 9).

2. Amendment of subsection (e) filed 6-4-98; operative 7-4-98 (Register 98, No. 23).

3. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

ARTICLE 3

Security Deposit Requirements

§15210. Security Deposit.

(a) Public self insurers are not required to post or maintain a security deposit with the Director for workers' compensation liabilities.

(b) Individual Private self insurers shall post and maintain a security deposit, in accordance with the provisions of Labor Code Section 3701 and the requirements of Article 3 of this subchapter 2 and/or in accordance with Labor Code Section 3701.8 and Article 3.1 of this subchapter 2.

(c) The minimum required security deposit pursuant to Labor Code Section 3701 for existing, private self insurers shall be equal to:

(1) 135 percent of the individual private self insurer's estimated future liabilities for the

payment of compensation for known claims; and

(2) An amount posted in advance for liabilities of the current year, consisting of the average annual estimated future liability over the past five (5) years reported on the Self Insurer's Annual Report; and

(3) an adjustment to reduce the liability reported on individual claims based on documentation of specific excess insurance pursuant to Section 15300(e) of these regulations.

The required deposit may be increased at the Director's discretion as set forth in Article 3 of these regulations. Said future liability may be ascertained from any relevant source.

(d) New individual private self insurers shall initially post a security deposit pursuant to Labor Code Section 3701 in an amount equal to the greater of the following:

(1) The prior three (3) years' incurred liability; or

(2) The statutory minimum required by Labor Code Section 3701(b); or

(3) A higher amount approved by the Director.

(e) The addition of a new subsidiary or affiliate private self insurer to the holder of an existing individual private Certificate to Self Insure shall initially post a security deposit pursuant to Labor Code Section 3701 in an amount equal to the greater of the following:

(1) The average one year incurred liability for the new subsidiary or affiliate self insurer based upon the prior three years' incurred liability; or

(2) A higher amount approved by the Director.

(f) Security deposit shall be posted in the form of:

(1) A surety bond executed on State issued bond and rider forms pursuant to Section 15212 of these regulations;

(2) An irrevocable letter of credit issued by a bank or savings institution or other financial institution pursuant to Section 15215 of these regulations;

(3) Approved securities in the form of government issued or corporate issued securities, meeting the requirements of Section 15213 of these regulations;

(4) Cash in trust deposited pursuant to requirements of Section 15214 of these regulations; or

(5) Any combination of one or more of the above four types of security deposit.

(g) Failure of an individual private self insured employer to maintain the required amount of deposit or to post an acceptable form of deposit as set forth in this Article shall be good cause for assessment of civil penalties pursuant to Labor Code Section 3702.9(a) by the Manager and/or, in the Director's discretion, revocation of the Certificate to Self Insure.

(h) Failure of an individual private self insured employer to post and maintain the required amount of security deposit for a period of 60 days shall be good cause for the Manager to summarily revoke a Certificate of Consent to Self-Insure. The summary revocation of the Self Insurer's Certificate of Consent will provide for a 15-day notice of termination, without a hearing.

(1) Notwithstanding subsection (h) above, the individual private self insured employer may still request a hearing on the Manager's Revocation Order before the Director as provided in Article 11 of this subchapter 2.

(2) An individual private self insurer requesting a hearing pursuant to subsection (h)(1) shall be required to provide proof of workers' compensation coverage under a policy from an admitted carrier for the period of time without security deposit or proof of compliance with the Manager's request to post security.

Note: Authority cited: Sections 54, 55, 3701.8 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3701.8, 3702, 3702.3, 3702.6, 3702.10 and 3740-3745, Labor Code.

History: 1. Amendment of article heading, section heading and text and adoption of Note filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

2. Change without regulatory effect amending subsection (f)(3) filed 8-27-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 35).

3. Change without regulatory effect amending subsections (c)(1) and (c)(3) filed 4-9-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 15).

4. Amendment of section and Note filed 5-30-2003 as an emergency; operative 5-30-2003 (Register 2003, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-29-2003 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 5-30-2003 order, including amendment of subsection (h)(1), transmitted to OAL 9-29-2003 and filed 11-12-2003 (Register 2003, No. 46).

6. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15210.1. Adjustments in the Amount of Security Deposit.

(a) Pursuant to Labor Code Section 3701, the security deposit requirement of each individual private self insured employer shall be reviewed by the Manager at least annually following receipt of the private Self-Insurer's Annual Report.

(b) The individual private self insurer shall post any annual increase in security deposit required pursuant to Labor Code Section 3701 indicated in the deposit calculations contained in the Self-Insurer's Annual Report or as determined by the Manager due to an audit, change in the self-insured employer's program or change in deposit rate. The deposit shall cover both prior known liabilities; plus an advance deposit for the current year liabilities based on an average estimated future liability of claims for the past five years; minus credit for liabilities above the retention level of specific excess workers' compensation insurance policies as reported on the current year annual report. This deposit posting is due no later than May 1 each year.

(c) No reduction or decrease in security deposit shall be made without prior written authorization of the Manager. The Manager shall review each individual private certificate holder's annual report and the certificate holder's file no less frequently than annually to determine the extent to which a decrease in deposit, if any, may be authorized.

(d) For good cause, the Manager shall require the individual private self insurer to post and maintain additional security deposit or adjust the deposit rate for a specific private self insurer above the statutory minimum deposit set forth in Labor Code Sections 3701, 3701.7, and 3701.8. Good cause includes, but is not limited to, understated future liability of claims on the Self-Insurer's Annual Report; a pattern of understated liabilities in claim files audited in an audit; failure to report all claims; poor administration of claims or payment of benefits due injured workers found in the audit results of the

Office of Benefits Audits and Enforcement in the Division of Workers' Compensation or audits by Self Insurance Plans; lack of an effective safety and health program as indicated by final citations issued by the Division of Occupational Safety and Health showing repeat or willful violation of safety and health regulations; impairment of financial condition of the self insurer; the result of evaluation of an application to self-insure; or to cover a period of unlawful self insurance; or being required to post security deposit in whole or part pursuant to Section 3701.8 of the Labor Code and Article 3.1 (commencing with Section 15220) of this subchapter 2.

(e) Whenever the Manager determines that a deposit increase is required, the Manager shall send written notice to the individual private self insurer pursuant to Labor Code Section 3701(b) and (j). Notice of the amount of deposit due shall create a perfected security interest for the Self Insurer's Security Fund.

(f) Any increase in the security deposit requirement for an individual private self insurer following the Manager's determination that estimated future liabilities had been understated on the private employer's Self Insurer's Annual Report, shall be reported to the Security Fund. The Security Fund shall be authorized to adjust the deposit assessment for the alternative composite deposit.

Note: Authority cited: Sections 54, 55, 3701.8 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3701.7, 3701.8, 3702, 3702.3, 3702.6, 3702.10, 3740, 3741, 3742, 6319(f), 6401.7, Labor Code.

History: 1. New section filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

2. Change without regulatory effect amending subsection (e) filed 8-27-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 35).

3. Amendment of section and Note filed 5-30-2003 as an emergency; operative 5-30-2003 (Register 2003, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-29-2003 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 5-30-2003 order transmitted to OAL 9-29-2003 and filed 11-12-2003 (Register 2003, No. 46).

5. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15210.2. Deposit Adjustment Upon Revocation of Certificate to Self Insure.

(a) As part of the revocation of a Certificate to Self Insure pursuant to Sections 15422 and 15423 of these regulations, the Manager shall determine the need for a special revocation audit of the claims of any individual private self insurer and the need for a deposit adjustment to secure future liabilities of the revoked private self insurer pursuant to Labor Code Section 3701 and/or Section 3701.8.

(b) The amount of deposit or deposit rate required by the Manager on a revocation of a private self insurer's certificate to self insure may be at an amount or rate above the minimum required by Labor Code Section 3701 and/or Section 3701.8. The Manager in his/her discretion shall adjust the rate of deposit or the amount of deposit down to the statutory minimum required to secure the remaining workers' compensation liabilities for a revoked self insurer as necessary over time as the liabilities of the remaining claims inventory are run off by the administrator.

Note: Authority cited: Sections 54, 55, 3701.8 and 3702.10, Labor Code. Reference: Sections 59, 129, 3700, 3701, 3701.5, 3701.8, 3702, 3702.3, 3702.6, 3702.8, 3740-3745, Labor Code.

History: 1. New section filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

2. Amendment of section heading, section and Note filed 5-30-2003 as an emergency; operative 5-30-2003 (Register 2003, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-29-2003 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 5-30-2003 order transmitted to OAL 9-29-2003 and filed 11-12-2003 (Register 2003, No. 46).

4. Amendment of subsection (a) filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15210.3. Insurance Coverage.

(a) Any public self insurer or individual private self insurer shall be permitted to insure any part of its liability to secure the payment of compensation pursuant to Labor Code Section 3700 with a standard workers' compensation insurance policy issued by a carrier. Full coverage of a self insurer's workers' compensation liability under a standard workers' compensation insurance policy shall be good cause for revocation of the certificate to self insure.

(b) All public self insurers and individual private self insurers shall provide the Manager with information on any standard workers' compensation insurance policies, specific excess workers' compensation insurance coverage, and any aggregate excess (stop loss) workers' compensation insurance coverage carried, as part of the Self Insurer's Annual Report or upon the request of the Manager. Evidence of any of these three types of insurance coverage shall also be provided to the Manager in the form of a Certificate of Insurance from the carrier, along with any changes, cancellations, revisions, or new policies.

(c) Upon the request of the Manager, any public self insurer or individual private self insurer shall provide a Certificate of Insurance or a copy of the workers' compensation insurance policy or policies maintained by the self insurer for any year or partial year in which claims have been reported.

(d) Specific excess workers' compensation insurance policies are not required to be purchased or maintained by any public self insurer or individual private self insurer.

(e) Any individual private self insurer who elects to purchase an aggregate workers' compensation excess policy shall not be given any credit by the Manager toward the security deposit to be posted due to aggregate excess insurance coverage.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 129, 3700, 3701, 3701.5, 3702, 3740, 3743 and 3744, Labor Code.

History: 1. New section filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

2. Amendment of subsections (c)-(e) filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

3. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15211. Allocation of the Security Deposit for Private Individual Self-Insurers.

(a) The security deposit of each private individual self insurer shall apply to all subsidiaries and affiliates included under the Master Certificate of Consent to Self Insure issued to that self insurer during its respective period of self insurance, and no portion of the overall security deposit for that self insured plan may be limited to any specific affiliate or subsidiary under the Master Certificate. In the event that a

subsidiary or affiliate certificate holder seeks to post a separate security covering its self insured liabilities only, a separate individual Certificate of Consent to Self Insure covering its period of self insurance shall be issued to that self insured employer and liabilities shall be transferred to a separate Certificate of Consent to Self Insure through an Order Amending and Transferring Liabilities.

(b) For purposes of these regulations, Section 189 of the California Corporations Code shall be used to define “subsidiary corporation” and “holding corporation.”

(c) For purposes of these regulations, legal entities with common ownership are sufficient to qualify for a common security deposit and may be included as co-principals on the same surety bond, or as named entities on a letter of credit, or as co-trustors on securities or a cash deposit.

(d) The Manager may require certification or other proof of stock ownership of the self-insured subsidiary corporation or corporations before allowing a self insurer to be included in the deposit of another self insurer.

(e) If the private holding corporation loses its power to elect a majority of the directors of a subsidiary self-insured corporation or corporations, the holding corporation and subsidiary corporation or corporations shall notify the Manager within 30 days of the event.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 129, 3700, 3700(b), 3701, 3702, 3702.5, 3702.6, 3703, 3704, 3705 and 3740-3745, Labor Code; and Section 189, Corporations Code.

History: 1. Amendment filed 6-1-72; effective thirtieth day thereafter (Register 72, No. 23).

2. Amendment filed 11-19-75; effective thirtieth day thereafter (Register 75, No. 47).

3. Amendment filed 11-21-78; effective thirtieth day thereafter (Register 78, No. 47).

4. Editorial correction to remove duplicate history note (Register 78, No. 50).

5. Amendment filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

6. Amendment of subsection (a) and new subsection (e) filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

7. Editorial correction of History 6 (Register 96, No. 52).

8. Amendment of section heading and section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15211.1. Appeals to Increase in Security Deposit Due to Impaired Financial Condition of Self Insurer.

(a) Where the Manager has required an increase in security deposit due to the impaired financial status of an individual private self insurer and the self insurer wishes to appeal the Manager’s decision, upon receipt of the written appeal, the Manager shall order a detailed, third-party financial evaluation of the self insurer in order to determine the employer’s financial strength. Such a third party financial evaluation shall include, but not be limited to, a Dun & Bradstreet Risk Assessment Report. The cost of the third party financial evaluation report shall be paid by the self insurer.

(b) Upon receipt of the evaluation report, the appeal will be considered by the Manager, and if not resolved between the Manager and the self insurer, addressed pursuant to Article 11 of these regulations and Labor Code Section 3701.5(g).

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3701 and 3701.5(g), Labor Code.

History: 1. New section filed 6-1-72; effective thirtieth day thereafter (Register 72, No. 23).

2. Repealer and new section filed 11-19-75; effective thirtieth day thereafter (Register 75, No. 47).

3. Repealer and new section filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

4. Amendment of section and Note filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15211.2. Agreement of Assumption and Guarantee of Liabilities.

(a) At the discretion of the Manager, the workers’ compensation liabilities of a public, a private individual, subsidiary, or affiliate self-insurer may be assumed and guaranteed in whole or part by any other legal entity or person.

(b) The Agreement of Assumption and Guarantee of Liabilities shall be written upon a form provided by the Manager (Form A4-6 (Rev. 11/97)). The form is available on the website of the Office of Self Insurance Plans at <http://sip.dir.ca.gov/>.

(c) Regardless of whether an individual private affiliate or subsidiary or the self insurer’s parent company’s financial condition is relied upon to qualify the subsidiary or affiliate for self insurance, the holding company, ultimate parent

corporation, controlling partners, owner, or other controlling entity acceptable to the Manager shall execute an agreement of assumption and guarantee of liabilities on behalf of the affiliate or subsidiary. In the event that the holding company, ultimate parent corporation, controlling partners, owner, or other controlling entity declines to execute an Agreement of Assumption and Guarantee of Liabilities, the Manager may require an increase in the self insurer's security deposit requirement pursuant to Section 15203.1 of these regulations.

(d) A corporate guarantor shall provide a Board of Directors resolution which authorizes the assumption and guarantee of the liabilities of the affiliated or subsidiary company or public agency. The board resolution shall grant signature authority to the person or position title of the person signing the Agreement of Assumption and Guarantee of Liabilities.

NOTE 1: The assumption resolution may be worded in such a manner as to be applicable to only the specific applicants to self insure or the assumption resolution may list all present subsidiaries or affiliates and authorize the addition of future, unnamed additions to the assumption resolution as an attachment without execution of a new resolution.

NOTE 2: The Manager shall provide an acceptable model resolution to any party upon request. The current model assumption resolutions are contained in Plate E of the Appendix following the last Article of these Subchapter 2 regulations.

(e) In the event that a public self insurer or individual private self insurer reincorporates, merges, or changes its identity, the surviving entity shall execute a new Agreement of Assumption and Guarantee of Liabilities and a new assumption resolution to cover the liabilities of the prior self insurer as part of the reapplication process to continue self insurance of workers' compensation liabilities.

(f) A foreign entity (i.e. outside the United States) may execute a parental Agreement of Assumption and Guarantee of Liabilities for a subsidiary or affiliate self insurer provided such foreign entity:

(1) executes in the English language the Agreement of Assumption and Guarantee of Liabilities and the assumption resolution; and

(2) includes a statement in the Agreement of Assumption and Guarantee of Liabilities that, in the event of the Director's need to enforce the Agreement of Assumption and Guarantee of Liabilities executed by the foreign entity on

behalf of a self-insured subsidiary or subsidiaries, the foreign entity will:

(A) become subject to the jurisdiction of California courts and administrative agencies; and

(B) become controlled by California law in the resolution of any dispute under the assumption and guarantee agreement.

(g) Execution of an agreement of Agreement of Assumption and Guarantee of Liabilities shall not reduce the amount of security deposit required to be posted by any self insurer as set forth in Section 15210 and 15210.1.

(h) An Agreement of Assumption and Guarantee of Liabilities executed pursuant to this section may be terminated upon receipt of a written notice of such termination, but except as provided in subsection (i), the termination shall not take effect sooner than 30 days after receipt of the written termination notice.

(i) The Director may approve an earlier termination date than provided in subsection (h) in the event that a self-insurer is sold to a new owner and workers' compensation liabilities are either covered by an insurance policy or the new owner executes an Agreement of Assumption and Guarantee of Liabilities effective on or before the date of the sale.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 129, 3700, 3701, 3701.5, 3702, 3702.5, 3702.6, 3702.10, 3703, 3705 and 3740-3744, Labor Code.

History: 1. New section filed 11-19-75; effective thirtieth day thereafter (Register 75, No. 47).

2. Amendment filed 11-21-78; effective thirtieth day thereafter (Register 78, No. 47).

3. Amendment filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

4. Editorial correction of subsection (f)(2)(A) (Register 98, No. 8).

5. Change without regulatory effect amending subsection (b) filed 2-17-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 8).

6. Amendment of subsection (c) filed 6-25-98; operative 7-25-98 (Register 98, No. 26).

7. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15215. Letters of Credit.

(a) An irrevocable standby letter of credit may be accepted by the Manager as all or part of the security deposit for a private self insurer. The Manager shall determine whether the letter

of credit submitted is acceptable and if its language and format meets the requirements of this Section.

(b) Irrevocable letters of credit shall be issued by and payable at a branch in the continental United States, Alaska or Hawaii. The issuing bank or financial institution shall meet the requirements of this section and may be:

(1) A State of California chartered bank or savings institution; or

(2) A federally chartered bank or savings institution; or

(3) Any other foreign or domestic bank or savings institution; or

(4) A group (syndication) of domestic or foreign banks or savings institutions.

(5) A federally chartered or State of California chartered credit union

(c) The Manager shall provide a model letter of credit format and language that will meet the requirements for acceptance. The letter of credit shall include, but not be limited to, the following provisions:

(1) The letter of credit will be automatically extended without amendment for an additional one year from the expiry date or any subsequent expiry date unless, at least 45 days before the expiry date, the Manager is notified in writing by the bank or financial institution that the letter of credit will not be renewed;

(2) The letter of credit can be called if the self insurer fails to pay its workers' compensation liabilities; or the self insurer files bankruptcy; or the self insurer fails to renew or substitute acceptable security by ten days prior to the expiry date of the letter of credit; or any combination of these events;

(3) The letter of credit is not subject to any qualification or condition by the issuing or confirming bank or financial institution and is the bank or financial institution's individual obligation which is in no way contingent upon reimbursement;

(4) Payment of any amount under the letter of credit shall be made only by wire transfer in the name of "The Department of Industrial Relations In Trust For [the legal name of the self insurer]" to an account of the State Controller, State of California, at a designated bank;

(5) All letters of credit shall include a statement that if legal proceedings are initiated by any party with respect to the payment of any letter of credit, it is agreed that such proceedings

shall be subject to the jurisdiction of California courts and administrative agencies and subject to California law; and

(6) Letters of credit shall be subject to the Uniform Customs and Practices for Documentary Credits, UCP600, 2007 Revision, ICC Publication No. 600, which is hereby incorporated by reference, and a reference to this publication shall be included within the text of the letter of credit.

(7) Discrepancy fees, if any, shall be payable by the self insurer.

NOTE: A model single bank letter of credit (Revised 7/94) is contained in Plate I of the Appendix following the last Article in these Subchapter 2 regulations.

(d) A syndicated letter of credit shall include all the language of the single bank or financial institution issued letter of credit and in addition:

(1) Authorize all demands for payment to be presented at a designated branch ("agent bank" or "agent") of one of the participating banks or financial institutions;

(2) Include a draft to be presented for payment of all or part of the credit available under the letter of credit;

(3) Permit any participating bank's or financial institution's portion of the total credit available to be drawn upon if the participating bank's or financial institution's credit rating falls below the acceptable credit rating level specified in subsection (e) of this Section; and

(4) State that the obligations of the banks or financial institutions issuing a syndicated letter of credit are several and not joint, and neither the agent bank or financial institution or any other participating bank or financial institution shall be responsible for or otherwise liable for the failure of any other participating bank or financial institution to perform its obligations under the syndicated letter of credit. The failure of any participating bank or financial institution to perform its obligations under the syndicated letter of credit shall also not relieve any other participating bank or financial institution of its obligations under the syndicated letter of credit.

(e) The issuing bank(s) or financial institution(s) or the parent holding corporation of an unrated bank or financial institution issuing a letter of credit shall have at the time of issuance of the letter of credit an acceptable credit rating as set forth below:

(1) An “Aaa”, “Aa”, “A” long term certificate of deposit (CD) rating for the bank or financial institution in the current monthly edition of “Moody’s Statistical Handbook” prepared by Moody’s Investors Service, Inc., New York; or

(2) An “AAA”, “AA” or “A” long term certificate of deposit (CD) rating for the bank or financial institution in the current quarterly edition or monthly supplement of “Financial Institutions Ratings” prepared by Standard & Poor’s Corporation, New York; or

(3) An “AAA”, “AA+” or “AA” credit quality rating for the issuing financial institution along with a CD/Debt Credit Limit Code above the dollar amount of the letter of credit as well as a Credit Limit Maturity Code of “a, b, c or d” in the current annual edition of “GFI Credit Ratings”, or the latest monthly “GFI Bank Letter” supplement thereto; or

(4) If applicable, be backed by federally chartered instrumentalities of the United States operating under authority of the Farm Credit Act of 1971, as amended, or be a state or federally chartered credit union whose shares are insured by the National Credit Union Share Insurance Fund.

(f) A letter of credit issued by a bank or financial institution or syndication of banks or financial institutions that does not meet the credit rating set forth in subsection (e) at the time of issuance shall be accepted by the Manager with a confirming letter of credit issued by a bank or financial institution meeting the criteria of subsection (e). The confirming letter of credit shall state that the confirming bank or financial institution is primarily obligated to pay on demand the full amount of the letter of credit regardless of reimbursement from the bank or financial institution whose letter of credit is being confirmed.

NOTE: Advising letters of credit shall not be accepted in lieu of the confirmation requirement for the letter of credit bank with a unacceptable credit rating.

(g) If a bank or financial institution’s rating subsequent to the issuance of the letter of credit falls below the acceptable rating level as set forth in subsection (e), the Manager shall, within 60 days of the publication of the lower credit rating, require the self insurer to:

(1) Replace the letter of credit with a new letter of credit issued by a bank or financial institution with an acceptable credit rating; or

(2) Confirm the letter of credit by a bank or financial institution with an acceptable rating.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3702, 3702.3, 3702.6, 3702.10, 3740, 3741 and 3742, Labor Code.

History: 1. New section filed 12-22-92; operative 1-21-93 (Register 93, No. 2).

2. New subsection (e)(3) and subsection redesignation, and amendment of subsections (e)(1) and (2) filed 3-24-94; operative 4-25-94 (Register 94, No. 12).

3. Amendment of subsection (c)(6) and (c)(7) Note filed 12-1-94; operative 1-2-95 (Register 94, No. 48).

4. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

ARTICLE 4 Assessments

§15230. Private Sector License Fee Assessment.

(a) After July 1, 2001, an annual license fee shall be assessed by the Manager against each private self-insurer and paid by each private self-insurer on the following basis:

<i>Number of Employees</i>	<i>Single Adjusting Location *</i>
0-2999	\$4000
3000-6999	\$6000
7000 and over	\$8000

*An additional \$300 per adjusting location for every location over 1.

The fees shall apply against the last full year Self-Insurer’s Annual Report submitted. If two or more annual reports are prepared from separate records at the same address, they shall be counted as separate adjusting locations.

(b) If the above table fails to produce sufficient funds to meet the total anticipated costs for the administration of the self-insurance program by the Director, an additional charge per employee covered by each self-insurance plan shall be made to cover these costs.

(c) The Manager shall invoice each private self-insurer on or before October 1 of each year an assessment for the total cost of administration of the private Self-Insurance Plans program for the current fiscal year. Payment is due 30 days after the date of the invoice.

(d) Each private self insured certificate holder whose certificate is revoked after June 30, 2001 shall pay the full license fee assess-

ment for the next five full calendar years after the date of revocation order or until its security deposit no longer exceeds the statutory minimum.

Note: Authority cited: Sections 54, 55, 3702.5 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3702.5 and 3702.10, Labor Code.

History: 1. Repealer of article 4 (section 15230) and new article 4 (sections 15230-15233) filed 6-1-72; effective thirtieth day thereafter (Register 72, No. 23).
2. Amendment filed 1-21-92; operative 2-20-92 (Register 92, No. 13).
3. New subsection (e) filed 7-27-93; operative 8-26-93 (Register 93, No. 31).
4. Amendment of article heading filed 6-30-94; operative 6-30-94 (Register 94, No. 26).
5. Amendment of subsections (a), (c) and (e) filed 4-19-2001; operative 5-19-2001 (Register 2001, No. 16).
6. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

ARTICLE 5

Self Insurer's Annual Report

§15251. Self Insurer's Annual Report.

(a) Each self insurer shall file a Self Insurer's Annual Report every year as required by subsections (b) through (g) of this section and shall continue to file a Self Insurer's Annual Report annually after revocation of the Certificate of Consent to Self Insure until a final Self Insurer's Annual Report has been filed showing all claims have been closed and there are no remaining claims with the expectation of future liabilities. Each year no later than 60 days before the deadline for filing the Self Insurer's Annual Report pursuant to subsection (b) or subsection (c) of this section, whichever applies, the Manager shall post the Annual Report form, along with instructions for completing the form and showing the years to be reported, on the website of the Office of Self Insurance Plans at <http://sip.dir.ca.gov/>. Each self-insurer shall file a Self-Insurer's Annual Report on forms supplied by the Manager as follows:

(1) Form A4-40a (Rev. 6/2001) for individual private and private group self insurers;

(2) Form A4-40b (Rev. 4/92) for all public self insurers, including those that are members of a Joint Powers Authority;

(b) For private self insurers, individual or with a group, the report shall be filed on or

before March 1 of each year and shall include the following information:

(1) General Information.

(A) Certificate to Self Insure number, status of certificate, and period of report.

(B) Name and address of master certificate holder, state of incorporation, federal tax identification number, and first four digits of North American Industry Classification System (NAICS).

(C) List of all subsidiaries or affiliate companies that are covered by the master certificate to self insure, their state of incorporation, and their subsidiary/affiliate certificate number.

(D) Notification of any reincorporation, merger, change in name or identity or any additions to the self insurance program by the master certificate holder or any subsidiary/affiliate company during the reporting period.

(E) Name and address of person to whom all correspondence related to self insurance should be addressed.

(F) Employment and wages paid in that calendar year as reported to Employment Development Department on the employer's Form DE-6 Quarterly Report.

EXCEPTION: A Certificate to Self Insure that is revoked for three full years is not required to submit this employment and wage information.

(2) Claims Liability and Administrator Information.

A Liabilities by Reporting Location report shall be submitted by each claims administrator administering claims for the said self insurer and shall include:

(A) All claims reported on or before December 31 of each of the five prior calendar years (January 1 through December 31), showing indemnity and medical payments grouped as incurred liability, paid to date and future liability.

(B) All open claims reported prior to the five years shall also be reported as in subsection (b)(2)(A), but in a single line entry;

(C) For the reporting year of the annual report the total of indemnity and medical future liability, the total estimated future liability of claims, the total benefits paid, number of medical only cases reported, number of indemnity cases reported; number of fatality cases, number of claims for which the employer or administrator was notified of representation by an attorney or legal representative in the reporting year, and

number of new applications for adjudication received for any claims that year.

(D) Total number of open indemnity cases in all years.

(E) Name, address and Certificate to Administrator number of the self insurer's claims administrator.

(F) Notification of any change in administrator during the period covered by the report and, if applicable, the name and address of the prior administrator.

(G) A certification by the qualified claims administrator that the report is true, correct and complete with respect to the workers' compensation liabilities incurred and paid, signed and dated with the name and address of the said administrator completing the Liabilities by Reporting Location page.

(3) Location of Claims Records Information. The name and address of any location other than the current administrator where self insurance claims records are stored.

(4) Insurance Information. Name and policy number of any standard workers' compensation insurance policy, specific excess workers' compensation insurance policy, or aggregate worker's compensation insurance policy held by the self insurer along with policy issue date and retention levels of liability of the policies.

(5) Open Indemnity Claims Information. A list of all open indemnity claims by reporting location by year, and alphabetically within each year. The list shall:

(A) Show the name of each claimant, date of injury, description of injury, amount of benefits paid-to-date in indemnity and medical payments and estimated future liability of claim for indemnity and medical benefits.

NOTE: Computer Loss Runs showing the information requested and organized as set forth in this subsection will be acceptable in lieu of the List of Open Indemnity Claims, a section of Form A4-40a (Rev. 6/2001) or Form A4-40b (Rev. 4/92) provided by the Manager.

(B) Show any open claim reported to the carrier of a specific excess insurance policy, and for which the carrier has not denied in writing the claim liability in whole or part above the retention level of the policy. The list shall include the name of the claimant, claim number, date of injury, description of injury, carrier name and policy number, policy coverage period, retention level of policy and paid to date in indemnity or medical benefits, and the estimated

future liability of the claim minus the total unpaid employer retention, which equals the total unpaid carrier liability. The list shall also indicate whether the claim has been reported to a carrier, if the claim has been accepted by the carrier, if the carrier has denied any part of the liability of the claim.

(6) Specific Excess Coverage Calculation. A calculation which includes a total of all unpaid carrier liability times the applicable deposit rate for the self insurer. This number will be included in the deposit calculation as provided for in Section 15251(b)(7).

(7) Deposit Calculation Information. A Deposit Calculation which includes the estimated future liability from the Liabilities Report multiplied by the deposit rate factor to determine a minimum deposit required for known liabilities; plus a deposit in advance for the current new year based on the average estimated future liability of claims for the past five years to secure average unpaid liability in the current year's new claims; less any credit for claims exceeding the retention level of any specific excess insurance policy for which the carrier has accepted liability in writing to arrive at the deposit required calculation. The specific excess credit shall be not exceed \$500,000 per occurrence unless the excess carrier or its parent company has as of December 31 of the last year covered by the Self Insurer's Annual Report an acceptable credit rating as set forth below:

(A) Standard and Poors Insurer Financial Strength Rating of A or better rating, or

(B) A.M. Best Company, Financial Strength Rating of B+ or better rating.

The total of the current security deposit is then subtracted from the minimum deposit required to determine if a deposit increase is due or a deposit decrease is indicated.

(8) Company Officer Certification Information. The name, title, address, phone number and original signature of the company officer authorized by Board Resolution to certify that the report is true, correct and complete and acknowledging the company's responsibility to post and maintain the required security deposit that is due as a result of this report.

(c) For all public self insurers, whether or not a member of a joint powers authority, the report shall be filed by October 1 of each year to cover liabilities during the July 1–June 30 fiscal year and shall include:

(1) General Information.

(A) Name and address of master certificate holder (individual agency or joint powers authority as applicable), federal tax identification number, and type of public agency.

(B) Agency name and certificate numbers of all of the joint powers authority's members.

(C) A certification by the individual public agency or joint powers authority official that the report is true, correct and complete.

(D) Notification of any reincorporation, merger, change in name or identity or any additions to the self insurance program by the master certificate holder or any subsidiary/affiliate company during the reporting period, and identification of any employees not included in the self insurance program.

(E) Name and address of person to whom all correspondence related to self insurance should be addressed.

(F) Employment and wages paid in that fiscal year as reported to Employment Development Department on the employer's Form DE-6 Quarterly Report.

EXCEPTION: A public employer whose Certificate of Consent to Self Insure has been revoked is not required to submit employment and wage information.

(2) Liability Report and Administrator Information.

A Liabilities Report which shall include:

(A) All claims reported shall be on a fiscal year basis (starting July 1 and ending June 30 of the reporting years), with all claims reported on or before June 30 of each of the five prior fiscal years, showing indemnity and medical payments grouped as incurred liability, paid to date and future liability.

(B) All open claims reported prior to the five years shall also be reported as required in (b)(2)(A), but in a single line entry.

(C) Each Joint Powers Authorities (JPA) shall report the consolidated liabilities of all members of the JPA on one Liabilities Report.

(D) A Liabilities by Reporting Location Report shall be completed in full for each claims adjusting location in addition to the consolidated report totaling liabilities from all locations.

(E) For any Joint Powers Authority, one list of all open indemnity claims may be consolidated into a single listing for the entire JPA, as long as the individual JPA member is identified for each claim.

(3) Claims Information for each year shall meet the requirements of subsection (b), except that no deposit calculation page shall be submitted as required for private self insurers pursuant to subsection (b)(7).

(d) The Manager may, for good cause, require any self insurer to submit a Self Insurer's Annual Report covering a six-month interim period, in addition to the annual report specified in subsection (b) and (c) of this section.

(1) For private self insurers, such interim reports, when required, shall cover the period starting January 1 and ending June 30 of each year and shall be due on September 1 of each year.

(2) Public self insurer's interim reports shall cover July 1 through December 31 and shall be due on March 1 of each year.

(e) The Manager shall assess the civil penalty set forth in Labor Code Section 3702.9(a) against any self insurer for failure to file a complete and timely Self Insurer's Annual Report. Continued failure to file an Annual Report sixty days after assessment of civil penalties pursuant to Section 3702.9(a) shall be good cause for revocation of a certificate to self insure.

(f) For good cause shown by the self insurer or its administrative agency, the Manager may grant additional time to a self insurer to file the report without penalty.

(g) Unless otherwise approved by the Manager, the consolidated liabilities report (page 2 of the annual report) and reporting location reports (page 3 of the annual report) shall be signed by a competent person, as demonstrated pursuant to Section 15452(b) of these regulations, in the employment of the self insurer or administrative agency for the self-insurance plan.

(h) The employer's certification on the Self Insurer's report shall be signed by:

(1) an officer or employee of the self insurer authorized by the Board of Director's Resolution to sign documents for self insurance matters; or

(2) an authorized public self insurer officer or employee; or

(3) an authorized officer or employee of the joint powers authority to which the public agency is a member; or

(4) an authorized officer or employee of the Self Insurer's Security Fund where the Director

has turned over responsibility for an insolvent private self insurer's claim liability to the Fund pursuant to Labor Code Section 3701.5(c).

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 129, 3700, 3701.5, 3702.2, 3702.3, 3702.9 and 3702.10, Labor Code; and Sections 1063.1 and 1063.3, Insurance Code.

History: 1. Amendment filed 6-1-72; effective thirtieth day thereafter (Register 72, No. 23).

2. Amendment of section heading and text filed 10-16-92; operative 11-16-92 (Register 92, No. 42).

3. Amendment of subsections (a) and (b)(5)(B) and new subsection (b)(5)(B)1 filed 8-10-93; operative 8-10-93 (Register 93, No. 33).

4. Amendment of subsections (a)-(b), (b)(1)(F) Exception and (b)(5)(B) filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

5. Change without regulatory effect amending subsections (b)(1)(F) and (c)(1)(F) filed 10-18-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 42).

6. Amendment filed 5-7-2001; operative 6-6-2001 (Register 2001, No. 19).

7. Change without regulatory effect amending subsection (a)(1) and form A4-40a (incorporated by reference) filed 8-1-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 31).

8. Change without regulatory effect amending subsection (b)(2)(A)(7.) filed 4-7-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 15).

9. Amendment of section and Note filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

ARTICLE 7

Injury and Illness Prevention Program

§15353. Injury and Illness Prevention Program.

(a) As part of the application process, an individual private sector applicant for a Certificate to Self-Insure shall provide one of the following:

(1) an independent evaluation of the applicant employer's injury and illness prevention program as set forth in Labor Code Section 6314.5 and 6401.7 and Section 3203 of Title 8, California Code of Regulations prepared by an independent, licensed, California professional engineer, a Certified Safety Professional certi-

fied by the Board of Certified Safety Professionals, and/or a Certified Industrial Hygienist.

(A) The evaluation preparer shall be considered independent if: (i) the preparer or the preparer's firm has had no business dealings with the applicant employer or its owner for the prior two years; (ii) the preparer is not or has not been employed by the applicant employer's present or prior insurance carrier or insurance broker during the past five years; and (iii) the preparer or preparer's firm has not been employed by the applicant employer or its parent in a safety and health or accident prevention capacity during the past five years.

(B) The evaluation report preparer shall disclose any such business relationships noted in subsection (a)(1)(A) of this Section in the evaluation report. The Manager shall reject a submitted evaluation report where a conflict of interest may exist between the evaluation preparer and the applicant employer as set forth in Subsection (1)(1)(A); or

(2) Written report or citation of a Division of Occupational Safety and Health (DOSH) inspection of the applicant employer's injury and illness prevention program pursuant to Labor Code Sections 6314.5 and 6401.7 and Section 3203 of Title 8, California Code of Regulations. The Division of Occupational Safety and Health (DOSH) inspection shall have been conducted within 120 days of the date of application to become self insured.

(b) An evaluation report pursuant to subsection (a) that shows the applicant for a Certificate to Self Insure to be without an effective injury prevention program shall be good cause for denial of the application for self insurance by the Director without prejudice to reapplication at a later date.

(c) The applicant employer must abate all serious violations found in the safety and health evaluation report. Written verification of abatement must be sent from the evaluation preparer to Self Insurance Plans.

NOTE: The pamphlet "A sample of an Injury and Illness Prevention Program" can be obtained from the Cal/OSHA Consultation Services.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3702, 3702.10, 6314.5, 6319 and 6401.7, Labor Code.

History: 1. New section filed 11-21-78; effective thirtieth day thereafter (Register 78, No. 47).

2. Amendment of section heading, section and Note filed 12-18-92; operative 1-19-93 (Register 92, No. 51).

3. Amendment of subsections (a)-(a)(1)(A) filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

Editor's Note: It is the Publisher's belief that the citation in subsection (a)(1)(B) to "Subsection (1)(1)(A)" should be to "Subsection (a)(1)(A)."

ARTICLE 8

Transfer of Liabilities

§15360. Transfer of Claim Liabilities.

A current or former self insurer may transfer claim liabilities to a third party as set forth in subsections (a) through (e) of this section.

(a) Self-insured workers' compensation claim liabilities cannot be transferred to another entity without first applying for and receiving permission from the Director. Except as provided in Labor Code Section 3702.8(c), the claim liabilities being transferred shall be assumed and guaranteed with the standard Agreement of Assumption and Guarantee of Liabilities as provided for in Section 15211.2 of these regulations, with an assumption resolution executed by the Board of Directors if a corporation, by the general partners if a partnership, or by the owners if a sole proprietorship of the entity taking over the liabilities.

(1) The new holder of claim liabilities shall post the security deposit determined necessary by the Manager pursuant to Article 3 or Article 13 of these regulations, whichever is applicable.

(2) The Manager shall be provided with copies of the necessary documents involved in a sale or transfer of claim liabilities from a self-insurer to another party.

(3) All other duties of a self insured employer in Labor Code Section 3702.8(a) shall be complied with by the self insured employer.

(b) The Manager may authorize the contractual transfer of claim liabilities, other than through a special excess worker's compensation insurance policy, from a self-insurer to an admitted worker's compensation insurance carrier provided:

(1) A copy of the signed contract between the self-insurer and carrier is provided to the Manager;

(2) The self-insurer continues to post the amount of deposit required by the Manager pursuant to Article 3 of these regulations;

(3) The claims contractually transferred to the carrier are administered in California by an admitted carrier or by an administrative agency holding a Certificate to Administer;

(4) Self Insurer's Annual Reports are submitted by the self-insurer as required by these regulations until all claims are resolved; and

(5) All other duties of a self insurer in Labor Code Section 3702.8(a) are complied with by the self insured employer.

(c) Where a former self-insurer transfers liabilities to a carrier via a special excess workers' compensation insurance policy as provided in Labor Code Section 3702.8(c), but no carrier performance bond is posted, the self-insurer's security deposit shall be held for three years before release. Whether a performance bond is posted or not, the director shall not accept the special 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 set forth below:

(1) Standard and Poors Insurer Financial Strength Rating of A or better rating, or

(2) A.M. Best Company, Financial Strength Rating of B+ or better rating.

(d) Claim liabilities of a member public agency of a pooling workers' compensation joint powers authority may be transferred if:

(1) The joint powers authority agreement permits a member public agency to take their claim liabilities out of the joint powers authority pool if the public agency elects to do so;

(2) The public agency member elects to transfer its claim liability; and

(3) The claims are transferred to another workers' compensation joint authority, or to a self administered or administrative agency administered or carrier administered self insurance program.

(e) Private group self insurers and/or their group members or former group members shall not transfer their claim liabilities except as provided by Labor Code Section 3702.8(c) and subsection (c) of this section, or as provided by either subsection (f) or subsection (g) of this section.

(f) A current or former group member's claims may be transferred to another private self insured group if the Bylaws of the two groups

permit the transfer, and if the transfer is approved by the Manager.

(g) A current or former group member's claims may be transferred entirely to the individual member under its individual Certificate of Consent to Self Insure if all of the following apply:

(1) If the Bylaws of the group self insurer permit the transfer;

(2) If a valid individual Certificate of Consent to Self Insure is issued to the former group member by the Director; and

(3) If the transfer is approved by the Manager.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 129, 3700, 3700(b), 3701, 3702, 3702.5, 3702.6, 3702.8, 3703, 3705 and 3740-3745, Labor Code.

History: 1. Amendment of article heading, repealer of section 15360, and renumbering and amendment of former section 15361.5 to section 15360 filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

2. Amendment filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

3. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

ARTICLE 9

Recordkeeping and Audits

§15405. Confidentiality.

(a) Financial information submitted to the Director or Manager to establish the solvency and worth of any self insurer, applicant to be self insured, third party administrator, or of a guarantor of a self insurer or applicant to be self insured shall be considered confidential in accordance with California Government Code Sections 6254 and 6255, and California Labor Code Section 3701.8(b)(5). Except as otherwise provided by law, such information shall not be disclosed to any other entity or person without an order from an appropriate court or administrative subpoena from an agency of the State, with the following exceptions:

(1) The Manager shall disclose any financial information to the Self Insurers' Security Fund on any private self insurer whose liabilities have been turned over to the Fund pursuant to Labor Code Section 3701.5, or that has filed bankruptcy, failed to pay its liabilities, or failed to post an increase in deposit due that would

potentially put the Fund in jeopardy for the self insurer's liabilities.

(2) Pursuant to Labor Code Section 3701.8(b)(5) and Section 15220.1(d) of these regulations, the Manager may provide to the Self Insurers' Security Fund any financial information for any self insurer needed to determine and set deposit assessments for self insured employers participating in the alternative composite deposit program.

(3) Notwithstanding this section, the Board of Trustees of any private group self insurer currently or previously self insured pursuant to Labor Code Section 3700(b) and sections 15470 through 15500 of these regulations shall upon written request provide a copy of the group's most recent certified, independently audited financial statement to any affiliate employer self insured through the group.

(b) Self Insurers' Annual Reports filed with the Office of Self Insurance Plans pursuant to Labor Code Section 3702.2 and Section 15251 of these regulations shall be considered confidential in accordance with Government Code Sections 6254 and 6255 and Labor Code Section 3701.8(b)(5). Except as otherwise provided by law, information from the annual reports showing the extent of liabilities of self insured employers shall not be disclosed to any other entity or person without an order from an appropriate court or administrative subpoena from an agency of the State, with the following exceptions:

(1) The Manager shall provide copies of any Self insurer's Annual Reports and/or lists of open indemnity claims to the Self Insurers' Security Fund for any private self insurer whose liabilities have been turned over to the Fund pursuant to Labor Code Section 3701.5 or that has filed bankruptcy, failed to pay its liabilities, or failed to post an increase in deposit due that would potentially put the Fund in jeopardy for the self insurer's liabilities.

(2) Pursuant to Labor Code Section 3701.8(b)(5) and Section 15220.1(d) of these regulations, the Manager may provide to the Self Insurers' Security Fund copies of any and all Self Insurer's Annual Reports needed to determine and set deposit assessments for self insured employers participating in the alternative composite deposit program, except that lists of open indemnity claims shall not be provided

to the Security Fund for the sole purpose of setting deposit assessments.

(3) For public self insured employers and/or Joint Powers Authorities only, copies of and/or data from Self Insurers' Annual Reports may be provided to parties pursuant to Labor Code Section 3702.2(c) and Government Code Section 6253 upon written request to the Manager, except that no information identifying injured workers or dependents or related to specific claims may be provided.

(c) Except as otherwise provided by law, information obtained from any audit regarding the nature, extent or financial liability of any self insurer's workers' compensation claims, together with any and all specific information regarding any claims, shall not be disclosed to any other entity or person without an order from an appropriate court or administrative subpoena from an agency of the State, with the following exceptions:

(1) The Manager may provide copies of audit reports to the Self Insurers' Security Fund for any private self insurer whose liabilities have been turned over to the Fund pursuant to Labor Code Section 3742, et seq. or that has filed bankruptcy, failed to pay its liabilities, or failed to post an increase in deposit due that would potentially put the Fund in jeopardy for the self insurer's liabilities.

(2) The Manager may provide copies of any audit reports and/or Self Insurer's Annual Reports to the Division of Workers' Compensation in conjunction with any requests for audit and/or investigation by the Division of Workers' Compensation or Office of Self Insurance Plans.

Note: Authority cited: Sections 54, 55, 3701.8(b)(5), 3702.2 and 3702.10, Labor Code; and Sections 6253, 6254 and 6255, Government Code. Reference: Sections 59, 129, 3700, 3701.5, 3702.2, 3702.6 and 3702.10, Labor Code; and Sections 6253, 6254 and 6255, Government Code.

History: 1. Amendment filed 2-19-92; operative 3-20-92 (Register 92, No. 13).
2. Amendment of section and Note filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

ARTICLE 12 Claims Administration

§15463. Revocation of Certificate.

(a) The Manager may issue a Notice of Intent to Revoke to any holder of a Certificate to

Administer. The notice shall indicate the cause for the revocation action and advise the holder of the Certificate of the right to a hearing.

(b) The procedure for revocation of a Certificate of Consent to Administer shall be in accordance with Article 11 of these regulations.

Note: Authority cited: Sections 54, 55, 59 and 3702.10, Labor Code. Reference: Sections 59, 3702.1, 3702.7 and 3702.10, Labor Code.

History: 1. Amendment and new forms filed 2-19-92; operative 3-20-92 (Register 92, No. 13).
2. New Appendix plates D, E, F1-F6, G and I filed 12-22-92; operative 1-21-93 (Register 93, No. 2).
3. Amendment of Plate F-6 filed 8-12-93; operative 9-13-93 (Register 93, No. 33).
4. Change without regulatory effect relocating Appendix Plates A-1, A-2, B, C, and H from section 15204 to section 15463 filed 9-14-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 38).
5. Amendment of forms filed 6-30-94; operative 6-30-94 (Register 94, No. 26).
6. Amendment of Appendix Plate I filed 12-1-94; operative 1-2-95 (Register 94, No. 48).
7. Change without regulatory effect renumbering a portion of Form A4-3 (Agreement of Assumption and Guarantee of Workers' Compensation Liabilities) to new Form A4-6, including amendments, filed 2-17-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 8).
8. Amendment adding new form A4-5 filed 6-4-98; operative 7-4-98 (Register 98, No. 23).
9. Amendment filed 2-9-2006; operative 3-11-2006 (Register 2006, No. 6).
10. Amendment adding new forms A4-7, A4-40a and A4-40b filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

Editor's Note: The following forms are available from:

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL
RELATIONS
OFFICE OF SELF-INSURANCE PLANS
2848 Arden Way, Suite 105
Sacramento, Ca. 95825
(916) 483-3392

Application for a Certificate to Self-Insure

—Form No. A4-1 (2/92)

Application for a Public Entity Certificate to Self-Insure

—Form A4-2 (Rev. 2/92)

A Model Corporate Resolution Authorizing Application to the Director of Industrial Relations, State of California for a Certificate to Self-Insure Workers'

Compensation Liabilities

—(3/92)

Model Partnership Agreement Authorizing Application for a Certificate to Self-Insure Workers' Compensation Liabilities

—(3/92)

Certificate of Self-Insurance of Workers' Compensation

Application for a Certificate of Consent to Self-Insure by a Group of Employers

—Form A4-3 (1-94)

Agreement to Abide by Self-Insurance Regulations

Personal Agreement of Assumption & Guarantee of Workers' Compensation Liabilities

—Form A4-3A (2/91)

Model Resolution for Agreements of Parental Assumption and Guarantee

Model Partnership Agreement and Guarantee Resolution

Agreement of Assumption and Guarantee of Workers' Compensation Liabilities for Group Members

—Form A4-3G (Rev. 1/94)

Application for an Affiliate to Self-Insure as a Member of a Group Self-Insurer

—Form A4-3M (1/94)

Application for a Permanent Certificate to Self-Insure by an Interim Self Insurer

—Form A4-5 (Rev. 11/97)

Agreement of Assumption and Guarantee of Workers' Compensation Liabilities

—Form A4-6 (Rev. 11/97)

Request for Interim Certificate for Group Member

—Form A4-7 (11/08)

Indemnity Agreement and Power of Attorney

—Form A4-8 (Rev. 1/94)

Surety Bond

—Form No. A4-20 (4/92)

Surety Bond—Decrease Rider

—Form A4-21a (4/92)

Surety Bond—Increase Rider

—Form A4-21b (4/92)

Surety Bond—Name Change Rider

—Form A4-22 (4/92)

Surety Bond—Special Form Change Rider

—Form A4-23 (4/92)

Surety Bond—Release of Surety

—Form A4-24 (11/92)

Model Letter to Request Approval of Securities

Informational Bulletin—Letter of Credit

—Revised (7/94)

Syndicated Letter of Credit

Certificate of Drawing

Amendment to Irrevocable Standby Letter of Credit

—(7/94)

Agreement and Undertaking for Security Deposit

—Form A4-32 (12/92)

Private Self Insurer's Annual Report

—Form A4-40a (6/01)

Public Self Insurer's Annual Report

—Form A4-40b (4/92)

Private Group Self-Insurer's Annual Report

—Form A4-40d (1/94)

Application for a Certificate of Consent to Administer Workers' Compensation Self Insurance Claims

—Form No. A4-50 (4/91)

Application for Self Insurance Administrator's Examination

—Form No. A4-100 (9/91)

Workers' Compensation Self-Insured/Self-Administered Employer Report of Changes

—AE Form 101 (10/90)

Workers' Compensation Adjusting Agency/Third-Party Administrator Report of Changes

—AE Form 102 (10/90)

Agreement and Undertaking for Security Deposit

—Form A4-GAU (1/94)

Group Resolution Authorizing Application to the Director of Industrial Relations, State of California for a Certificate of Self-Insure Workers' Compensation Liabilities

—Form GR-1 (Rev. 1/94)

Resolution of Agreement of Assumption and Guarantee of Workers' Compensation Liabilities for a Group Self Insurer

—Form GR-2 (Rev. 1/94)

ARTICLE 13

Group Self Insurance

§15470. General.

(a) In order to form and operate a group self insurer for private, for-profit employers, a mutual benefit corporation shall be formed pursuant to Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the California Corporations Code. The mutual benefit corporation shall be the group self insurer and shall be formed for the sole purpose of operating a group workers' compensation self insurance fund to pool compensation liabilities of two or more for-profit private employers.

(b) In order to form and operate a group self insurer for private, non-profit employers, a non-profit corporation shall be formed pursuant to Division 2 of Title 1 of the Corporations Code. The non-profit corporation shall be a non-profit charitable corporation, a non-profit public benefit corporation, a non-profit mutual benefit corporation, or a non-profit religious or apostolic corporation, as is appropriate based on the nature and purpose of the non-profit em-

ployer. The non-profit corporation shall be the group self insurer and shall be formed for the sole purpose of operating a group workers' compensation self insurance fund to pool compensation liabilities of two or more non-profit private employers.

(c) The group self insurer will make application to the Manager for a Certificate of Consent to Self Insure as provided in Section 15482 of these regulations and, if granted approval by the Director, shall be the holder of the Certificate of Consent to Self Insure.

(d) Each initial proposed group member shall make application to the Manager for an Affiliate Certificate of Consent to Self Insure as one of the qualifying group applicants pursuant to Section 15482.1 of these regulations. Once a Certificate of Consent to Self Insure has been approved and issued, each subsequent proposed member shall make application to the Manager for an Affiliate Certificate of Consent to Self Insure pursuant to Section 15482.2 of these regulations. If granted by the Director, each approved member of a group self insurer shall be the holder of an Affiliate Certificate of Consent to Self Insure under the Certificate of Consent to Self Insure granted to the group self insurer.

(e) The group self insurer shall post and maintain a security deposit with the Manager as set forth in Sections 15210 and 15496 of these regulations to secure the expected workers' compensation liabilities of the group self insurer.

(f) The group self insurer shall file a Self Insurer's Annual Report as set forth in Article 5 of these regulations and shall estimate compensation liabilities as set forth in Article 6 of these regulations.

(g) The group self insurer shall not transfer liabilities to a third party except to a carrier meeting the requirements of Section 15360(c) under a special excess workers' compensation policy as provided by Labor Code Section 3702.8(c) and/or as provided by Article 8, Section 15360 of these regulations.

(h) The group self insurer shall fall under the continuing jurisdiction of the Director and any Certificates or Affiliate Certificates of Consent to Self Insure issued to a group self insurer or a group member may be revoked as set forth in Article 10 of these regulations.

(i) Hearing and appeal procedures set forth in Article 11 shall be applicable to self insurance matters set forth in Section 15430 involving group self insurers or group members.

(j) Each group self insurer shall comply with recordkeeping and audit requirements in Article 9 and the claims administration requirements of Article 12 of these regulations.

(k) Each private group self insurer shall be subject to assessments as set forth in Article 4 of these regulations.

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

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3702, 3702.2, 3702.5 and 3702.10, Labor Code.

History: 1. New article 13 and section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

2. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15471. Initial Feasibility Study.

Included with each group self insurer's initial application for a Certificate To Self Insure required by Section 15482 of these regulations shall be a feasibility study report prepared by the prospective Group Administrator or an independent risk management individual or firm, consisting of the following:

(a) An analysis of the advantages and disadvantages of group self insurance for the proposed group members as compared to the options of individual self insurance or coverage under a policy issued by a carrier(s);

(b) Identification of all of the initial proposed group members and the combined total payroll for the proposed group self insurer;

(c) A consolidated summary of the historical workers' compensation claims loss experience and the allocated loss expenses of the proposed group members for a minimum of the three most recent, full policy years, as well as the current policy year through the last completed quarter under the current policy at the time the application is submitted;

(d) An evaluation of the historical workers' compensation claims costs for the anticipated initial group members, including an actuarial projection of the expected claims costs for each of the first five years of the group self insurer's operation. The actuarial projection shall be prepared by an independent person with current experience in making California workers' compensation actuarial projections for self insured employers or group insurance, and who shall have a designation of Fellow of the Casualty Actuarial Society (FCAS) or be a member of the American Academy of Actuaries (MAAA).

(e) A five year pro forma financial statement including, but not limited to, an income statement, balance sheet, projected cash flows, and claims payout projections. The pro forma financial statement must include a detailed separation of assets, liabilities, retained earnings, taxes, and accrual and distribution of excess contributions. If any claims costs are discounted, the interest rate assumptions and payout patterns must be described and must be based on reasonable assumptions. The claims payout schedule shall be calculated using the 80th percent actuarial confidence level figures from the actuarial study.

(f) A summary of the specific details of the group self insurer's operating plan or the plan itself, including, but not limited to, descriptions of:

- (1) The group self insurer's legal and organizational structure;
- (2) Method of governance;
- (3) General management of the group self insurer, including underwriting policies, insurance coverage, billing, commissions, fees, and all other expenses.
- (4) Rating or contribution plans, or other means by which group funding during the first five years of operation will be generated and the amounts to be generated by the methods proposed for each of the first 5 years of operation.
- (g) The first 12 month budget of the group self insurer;
- (h) The names and credit ratings of any anticipated excess insurance coverage carriers, including estimated cost, levels of retention for specific excess insurance, aggregate excess insurance if obtained, and maximum liability levels of each excess policy;
- (i) The company name and name of the person designated as the independent Group

Administrator and the company name of the independent third party claims administrator chosen by the Board of Trustees;

(j) A description of safety and loss control services available from the group self insurer to group members;

(k) A description of the underwriting requirements for member selection for the group self insurer, including a description of any underwriting requirements or restrictions imposed by the specific excess insurance carrier;

(l) The name of the certified public accountant that will prepare annual financial reports for the group self insurer;

(m) The name and professional actuarial designation of the actuary who will prepare actuarial reports for the group self insurer, as well as an indication of how frequently actuarial reports will be completed;

(n) A statement indicating the means by which the group self insurer will post the required security deposit; and

(o) A statement describing any fidelity insurance coverage and errors and omissions insurance coverage to be maintained by the group self insurer, and/or by vendors with the group self insurer named as beneficiary.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3701 and 3702.1, Labor Code.

History: 1. New section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

2. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15472. Minimum Financial Requirements for a Group Self Insurer.

(a) In addition to other requirements specified in this Article 13, no private group shall be approved as a group self insurer, nor continue as a group self insurer, unless it demonstrates aggregate net worth and net earnings of the initial qualifying employer members and continuing qualifying core group members, as evidenced from the financial statements of those group members, as follows:

- (1) No less than \$5,000,000 in current consolidated net worth and a consolidated annual net income of the group core members of no less than \$500,000, as documented in certified and independently audited financial statements; or

(2) No less than \$10,000,000 in current consolidated net worth of core group members if the core group members do not demonstrate an consolidated net income of \$500,000, as documented in certified and independently audited financial statements; or

(3) No less than \$15,000,000 in current consolidated net worth of core group members, as documented in certified and independent CPA reviewed financial statements with the reviewer's report attached, or if the qualifying core group members consist, in whole or in part, of IRS Subchapter S-corporations as documented by certified and independent CPA reviewed financial statements with the reviewer's reports included with each statement.

(b) The Group Administrator shall provide to the Manager within 30 days of request documentation showing that the core members of the group self insurer continue to meet the requirements of subsection (a). The core members of the group self insurer need not be the same affiliate group members from year to year.

(c) The Group Administrator shall immediately advise the Manager in writing if at any time the consolidated net worth of the core group members of the group self insurer falls below the minimum amount set forth in subsection (a) of this section.

(d) Financial statements submitted to qualify group members pursuant to subsection (a) must be prepared according to Generally Accepted Accounting Principles (GAAP). If approved by the Manager and documented in the financial statement or schedules and notes accompanying the financial statement, the following may be accepted as meeting requirements:

(1) If documented in a written report from an independent real estate appraiser acceptable to the Manager and valued no more than 60 days before submission to the Manager, up to 75% of the fair market value of real property of the audit subject, as opposed to the purchase price of the real property when acquired, may be counted as a part of the audit subject's net worth;

(2) If documented in the financial statement, up to 50% of a corporate owner/officer's payroll may be considered as earnings rather than liabilities.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3701, 3701.5, 3702, 3702.2 and 3702.10, Labor Code.

History: 1. New section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

2. Amendment of section heading and section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15473. Homogeneity of Group Members.

(a) Each private group self insurer shall demonstrate and maintain homogeneity of its group members by one of the following methods:

(1) Each group member shall share the same, predominant three-digit North American Industry Classification System (NAICS) Code; or

(2) Each group member shall share the same governing class code as established by the Workers' Compensation Insurance Rating Bureau (WCIRB) definition.

(b) In addition to the methods for demonstrating homogeneity indicated in subsections (a)(1) and (a)(2), applicants may demonstrate homogeneity for the purposes of eligibility for group self insurance if one of the following occurs:

(1) The group self insurer demonstrates to the Manager's satisfaction that the risk exposures of an affiliate group member or applicant affiliate group member are comparable to those contemplated in the feasibility study of the group self insurer.

(2) 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 the proposed group members' payroll fails to meet homogeneity requirements as set forth in subsection (a).

(3) The group self insurer demonstrates to the Manager's satisfaction that no less than 75% of payroll for each affiliate group self insurer or applicant affiliate group self insure is distributed among two shared industry-specific workers' compensation payroll classifications as established by the California Workers' Compensation Insurance Rating Bureau, and WCIRB insurance rates for those classifications are within 10% of each other.

(c) The Manager may require the group applicant or group self insurer to present additional information or documentation to verify

that any or all group members or prospective group members meet the requirements of subsections (a) or (b).

(d) A group self insurer shall not modify its homogeneity underwriting requirements in any way unless it first obtains written approval from the Manager. In order to obtain approval from the Manager, the group self insurer must submit a written feasibility study and a draft of amended group self insurer's bylaws to the Manager no less than 30 days before the date of the change requested, addressing the following:

(1) The feasibility study must include:

(A) The reasons for the group self insurer's proposed modification of its homogeneity requirements;

(B) The proposed underwriting requirements for group self insurer membership;

(C) A demonstration that the risk exposures contemplated in the proposed modification are comparable, can reasonably be expected to develop comparable loss experience, and meet the requirements of subsections (a) or (b) of this section;

(D) A statement that the excess insurance carrier or carriers for the group self insurer approve of the modification;

(E) A statement by the Board of Trustees of the group self insurer in support of the modification;

(F) A plan for communication to all group members of the group self insurer describing the proposed modification of homogeneity requirements.

(2) The group self insurer's amended bylaws shall ensure that:

(A) No member of the group self insurer shall be penalized in any way for terminating membership in the group self insurer because of the change in homogeneity requirements;

(B) The modification to homogeneity requirements shall not disqualify any existing group member of the group self insurer that qualifies for membership before the modification of homogeneity requirements.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700 and 3702.10, Labor Code.

History: 1. New section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).
2. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15474. Reporting Periods.

Regardless of the date that self insurance begins or the term of the program year of a group self insurer, the group self insurer shall file a Self Insurer's Annual Report by March 1 of each year as required by Section 15251. While the filing of the group self insurer's first Self Insurer's Annual Report may be for a period shorter than a year, the duration of the initial program year of the group self insurer, may be shorter or longer than twelve months.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3702.1, 3702.2 and 3702.10, Labor Code.

History: 1. New section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).
2. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15475. Board of Trustees.

(a) Each group self insurer shall have a Board of Trustees that is responsible for all operations of the group self insurer.

(b) Each trustee on the Board of Trustees shall be elected by the group members or, if each group member has a seat on the Board of Trustees, the trustee may be appointed by the group members. At least two-thirds of the trustees shall be employees or officers of the group members. No service provider, director, officer, or employee of a service provider, or person with a direct or indirect management or financial interest in a service provider of the group self insurer shall serve as a voting member of the Board of Trustees of the group self insurer. The Group Administrator may be a non-voting member of the Board of Trustees but shall not vote on any matters before the Board. Service providers of the group self insurer include, but are not limited to, all service providers described in Section 15475.1 of these regulations.

(c) The duties of the Board of Trustees shall include the responsibility to approve or deny the request of any proposed member to join the group self insurer, subject to subsequent application and approval of the proposed group self insurer member by the Director of Industrial Relations.

(d) The Board of Trustees shall take all necessary precautions to protect the assets of the group self insurer, including all of the following:

(1) Designate a "Group Administrator" to administer the financial affairs and normal day-to-day operations of the group self insurer and ensure that there are no conflicts of interest or potential conflicts of interest involving the Board of Trustees, the Group Administrator, or any service providers utilized by the group self insurer, as provided by Section 15475.1;

The group administrator shall not be an owner, operator or employee of any member of the group self insurer or of the third party administrator handling the claims of the group self insurer.

(2) Obtain fidelity coverage in an amount determined by the Board of Trustees to be sufficient to ensure the integrity of affiliate group member or group funds handled by the Trustees and employees of the group self insurer, and obtain errors and omissions insurance coverage sufficient to protect its interests. Evidence of such bond shall be provided to the Manager upon request. The Group Administrator shall obtain and maintain fidelity insurance sufficient to cover funds handled for the group self insurer and errors and omissions insurance coverage sufficient to protect the group self insurer's and its members' interests.

(3) Contract with a third party claims administrator to work directly for the Board of Trustees to administer in California the workers' compensation claims of the group self insurer and require the third party claims administrator to carry fidelity insurance naming the group self insurer as beneficiary that is sufficient to protect the funds handled, and to carry errors and omissions insurance naming the group self insurer as beneficiary that is sufficient to protect against errors and omissions made in the claims handled.

(4) Manage disbursements for the payment of expenses of handling claims, administrative expenses, posting of security deposit, and other expenses necessary for operating the group self insurer;

(5) Appoint a financial institution and establish necessary accounts in California to handle the fiscal needs of the group self insurer and adopt a board resolution authorizing signature authority for each account;

(6) Immediately after the December 31 close of each reporting year, obtain an annual audit of the financial accounts and records of the each group self insurer by an independent,

certified public accountant. The Group Administrator may not serve as the independent certified public accountant for the private group self insurer.

(7) Contract with an actuary that meets the requirements of Section 15471(d) to conduct an annual actuarial review of the group self insurer's claims and produce a written actuarial report that projects ultimate liabilities of the group self insurer by program year at the 80% actuarial confidence level and at the expected actuarial confidence level, inclusive of incurred but not reported (IBNR) liabilities and unallocated loss adjustment expense (ULAE) in both calculations to ensure that all claims and associated costs are recognized;

(8) Ensure that contributions are collected for each program year based upon projected losses calculated at the 80% actuarial confidence level, inclusive of incurred but not reported (IBNR) liabilities and unallocated loss adjustment expense (ULAE), that all group members pay their requisite shares of the group self insurer's expenses, and that all group self insurer funds, including funds not immediately needed for the payment of current liabilities of the group self insurer, are handled pursuant to Section 15475.2 and/or invested pursuant to Section 15475.3. If factors reflecting loss histories such as experience modification calculations are utilized to modify group self insurer or individual member contributions, the contributions for the funding of group self insurer claims for the program year shall nonetheless be calculated at the overall 80% actuarial confidence level. The Board shall ensure that credit for contributions due to the group self insurer shall not be extended to any group member nor applied toward the delinquent contributions of another member.

(9) Ensure that funds collected from group members shall not be used for any purpose not directly related to the payment of compensation liabilities of the group self insurer, posting of security deposit, payment of assessments and penalties as a group self insurer or the reasonable expenses of operation of the group self insurer. Excess moneys not needed for current operation of the group self insurer may be invested by the Board of Trustees, at its discretion, only as provided by Section 15475.3 of these regulations.

(10) Hold meetings no less frequently than annually to adopt a budget for the upcoming

year, approve contribution rates, and review the investment portfolio for compliance with these regulations;

(11) Ensure that the Group Administrator immediately reports to the Manager, in writing, any information that indicates the private group self insurer is no longer in compliance with statutory or regulatory requirements of the workers' compensation self insurance program or of any instance wherein the group self insurer terminates an affiliate group self insurer's group membership for cause.

(e) If specifically authorized in the group self insurer's bylaws, the Board of Trustees may delegate specific functions to the Group Administrator of the private group self insurer, including, but not limited to:

(1) Contracting with one or more third party claims administrators for handling of claims;

(2) Calculating the annual contribution rates to or other means of cost sharing to be charged each group member;

(3) Investing funds subject to Section 15475.3 of these regulations and any restrictions adopted by the Board of Trustees in addition to those contained in subsection (d);

(4) Reviewing and accepting applications from prospective members to the group self insurer and advising the Board if the prospective members do not fully meet the underwriting criteria for group membership;

(5) Executing the Agreements of Assumption and Guarantee For Group Members and the Indemnity Agreement on behalf of the group self insurer;

(6) Establishing accounts in California financial institutions and accounting procedures for controlling funds and ensuring accurate financial reporting with the financial institutions selected by the Board of Trustees.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3700.1, 3701, 3701.5, 3702.1, 3702.2 and 3702.10, Labor Code.

History: 1. New section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

2. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15475.1. Separation Among Service Providers.

(a) No claims administrator or employee, officer, or director of a claims administrator

shall be an employee, officer or director of, or have a direct or indirect management or financial interest in either the Group Administrator or an affiliate member of the private group self insurer, nor shall any owner or employee of the Group Administrator or affiliate member of the private group self insurer be an owner, employee, officer or director of, or have a direct or indirect management or financial interest in the claims administrator.

(b) No Group Administrator, claims administrator, or insurance broker or employee, officer, or director thereof, shall serve as the certified public accountant for any group self insurer for which it provides services as a Group Administrator, claims administrator or insurance broker, respectively, nor shall any owner or employee of an affiliate group member of group self insurer serve as the certified public accountant for the group self insurer.

(c) No insurance broker of a group self insurer, or employee, officer, or director of such insurance broker with a direct or indirect management or financial interest in the group self insurer's claims administrator shall be an employee, officer or director of, or have a direct or indirect management or financial interest in the Group Administrator of the same group self insurer unless the Group Administrator notifies the group self insurer in writing of its relationship, and in no event shall the group self insurer be required by the Group Administrator to utilize the Group Administrator as broker.

(d) No actuary of a private self insured group preparing a written actuarial report pursuant to Section 15475(d)(7) shall be an employee, officer or director of, or have a direct or indirect management or financial interest in the Group Administrator of the same private self insured group unless the Group Administrator notifies the group self insurer and the Manager in writing of its relationship; notwithstanding this subsection, the Manager at his or her discretion may require that a written actuarial report pursuant to Section 15475(d)(7) be prepared at the expense of the group self insurer by an independent actuary with no relationship to the group administrator.

(e) No claims bill reviewer of a group self insurer shall be an employee, officer, or director of, or have a direct or indirect management or financial interest in, the Group Administrator of the group self insurer unless the Group Administrator notifies the group self insurer and the

Manager in writing of its relationship. In no event shall the group self insurer be required by the Group Administrator to utilize services of the claims bill reviewer in which the Group Administrator has a direct or indirect interest.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3700.1, 3701, 3701.5, 3702.1, 3702.2 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15475.2. Restriction on Use of Funds.

(a) The group self insurer, its trustees, group members, Group Administrator, claims administrator, or other agents or vendors of the group self insurer shall not utilize funds collected from group members or from other parties conducting business with the group self insurer, and/or funds earned by the group through investments for any purpose not directly related to the payment of claims, the payment of fees related to funding the group, including the posting of a security deposit, penalties, excess insurance premiums, or for any other reasonable obligations or costs of operation of the group self insurer as determined and authorized by the Board, including the refunding of surplus funds authorized pursuant to Section 15477.

(b) The group self insurer shall not lend any money to any trustee, core member or affiliate member of the private group self insurer, or to the Group Administrator, the claims administrator, and/or any other agent, vendor, or service provider. The group self insurer shall not lend or issue any debt instruments incur other encumbrances or obligations, or extend credit to any group member for the payment of contributions or assessments. Notwithstanding this section, the group self insurer may:

(1) permit fixed installment plans not to exceed ten (10) months to collect contributions for the payment of current group members;

(2) permit fixed installment plans approved by the Manager for the payment of special assessments to make up a funding insufficiency pursuant to Section 15477.

(c) Funds of the private group self insurer shall not be commingled with the funds or assets of any group member or any other group self insurer.

(d) Once surplus funds have been declared, such surplus funds of the private group self insurer shall not be commingled in the checking account(s) established for the payment of and administration of current liabilities of group member claims, assessments, and other expenses of the group self insurer's operation.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3701, 3701.5, 3702.1, 3702.2 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15475.3. Investment of Funds.

(a) Subject to the limitations set forth in Section 15475.2, the Board of Trustees of a group self insurer may invest excess funds not immediately needed for the payment of the group insurer's liabilities in any of the following:

(1) United States Treasury Bills, Notes, and Bonds for which the full faith and credit of the United States are pledged for the payment of interest and principal.

(2) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government sponsored enterprises.

(3) Certificates of Deposit that are FDIC or NCUA insured or collateralized by the issuing institution. Investments in eligible certificates of deposit shall have a maximum maturity of two years, and shall not exceed 15% of the total portfolio as measured at the date of purchase.

(4) Money market accounts and savings accounts offered by financial institutions whose deposits are insured by a federal agency. Such deposit accounts in financial institutions shall be limited to offices or branches of the financial institutions located in the State of California. Should the amount deposited in any single account exceed the federally insured amount for any one account, the financial institution shall also meet the credit rating requirements as set forth in Section 15215(e).

(5) Bonds, notes, warrants, or other evidence of indebtedness of any local agency or State agency within the United States of America, including bonds payable solely out of the revenues from a revenue-producing property

owned, controlled, or operated by the State or local agency, or by the department, board, agency, or authority of the State or local agency, provided the credit worthiness of the security meets the same requirements of securities posted with the Director as security deposit in Section 15213(a)(1).

(b) In addition to investments made pursuant to subsections (a)(1) through (a)(2) of this section, but only if invested through the services of a registered investment advisor, the Board of Trustees of a private group self insurer may invest excess funds not immediately needed for the payment of group liabilities in any of the following:

(1) Prime Bankers' Acceptances of the 50 largest global banks.

(2) Commercial Paper rated A1/P1/F1 by a nationally recognized statistical rating organization. Investments in eligible commercial paper shall have a maximum maturity of 270 days or less, and shall not exceed 25% of the total portfolio as measured at the date of purchase.

(3) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Investments in eligible medium-term notes shall be rated "A" or better by a nationally recognized statistical rating organization, shall not exceed 30% of the total portfolio as measured at the date of purchase, and shall have a maximum remaining maturity not to exceed 10 years.

(4) Preferred stock issued by any solvent American institution registered as provided by the Securities and Exchange Act of 1934 (15 U.S.C. 78a-78kk); preferred stock shall not exceed 10% of the total portfolio as measured at the date of purchase.

(5) Bond Funds regulated by the Securities and Exchange Commission, and rated AA or better by a nationally recognized statistical rating organization.

(6) The maximum percentage of a self insured group's portfolio that may be invested in equities securities is thirty percent (30%). In the event the investment in equity securities exceeds 30% of the group self insurer's portfolio, the

group shall re-balance the portfolio in order to comply with this section.

(c) The Board of Trustees, whether through its registered investment advisor or not, shall not participate in "short selling" (a sale of a security not owned by the seller; a technique used to take advantage of an anticipated decline in price or to protect a profit), or "margin transactions" (purchase of a security on credit after a margin has been deposited).

(d) The Board of Trustees shall not invest in any of the following assets:

(1) Commodities or Futures Contracts;

(2) Investment in stock not listed on an exchange or sold to the public;

(3) Stock options;

(4) Limited partnerships.

(e) With the exception of United States Treasury Bills, Notes and Bonds, and United States government agency or government sponsored enterprise obligations, the maximum percentage of the group self-insurer's portfolio that may be invested in a single issuer or single mortgage-related security is 5%.

(f) The weighted average portfolio maturity may not exceed five years.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3701, 3701.5, 3702.1, 3702.2 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15476. Advance Contribution Discounts.

The Board of Trustees of a group self insurer using a contribution plan shall not authorize discounts to any member.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3701 and 3702.10, Labor Code.

History: 1. New section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

2. Amendment of section heading and section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15477. Surplus or Insufficient Funding.

(a) The Board of Trustees of a group self insurer shall not declare that surplus contributions collected in excess of the amount necessary to fund all obligations for any given pro-

gram year will be refunded to group members unless the group self insurer's most recent annual certified, independently audited financial statement indicates that the group self insurer's assets exceed its liabilities and unless the group self insurer's current actuarial report indicates a surplus of group funds for each program year as indicated in subsections (a)(1) and (a)(2) below.

(1) The group self insurer may transfer excess funds to an escrow account at any time, but shall not declare surplus fund amounts or distribute any surplus funds to group members for any given program year sooner than 23 months after the close of the program year without express written consent from the Manager. Any such disbursements made without written consent from the Manager, including any subsequent disbursements from the same program year or disbursements from a subsequent program year, shall only be from a program year that remains funded at the 80% actuarial confidence level for the remaining claims in that program year as stated in the most recent annual actuarial report calculated pursuant to Section 15481 of these regulations. Approval from the Manager is not required as long as the group self insurer's current actuarial report and current financial statement support the determination of the surplus amount, and as long as claim funding for each program year meets or exceeds the 80% actuarial confidence level amounts.

(2) Notwithstanding subsection (a)(1) of this section, the group self insurer may request the Manager to allow that funds be released sooner than 23 months after the end of a program year and/or that the determination of a program year's surplus be based upon the actuarial study conducted with a confidence factor of less than 80%, and the Manager may allow such a release of surplus funds upon a showing of good cause by the group self insurer. The Manager may require that a special audit be conducted, an independent actuarial study be completed at the group self insurer's expense, and/or other documentation be submitted to support the request from the group self insurer. In no event shall surplus funds be distributed sooner than 23 months after the completion of a program year or based upon actuarial studies conducted at less than an 80% actuarial confidence factor without express written consent of the Manager.

(3) No reduction in contribution rates for group members shall be authorized unless supported by an actuarial study less than one year old conducted pursuant to Section 15481 of these regulations.

(b) If at the end of any program year member funds collected and investment income associated with any program year are insufficient to completely fund all estimated future claim liabilities and expenses at the required confidence level for any program year, unfunded amounts by program year shall be immediately reported to the Manager, along with a proposed plan to achieve correction of the deficiency. Any plan to correct the deficiency shall be subject to approval by the Manager. The plan may include, but is not limited to, any or all of the following:

(1) Reallocation of surplus group self insurer funds collected in other program years that are unnecessary for the payment of claims or expenses for the program year collected;

(2) Reallocation of investment earnings associated with other program years that are not necessary for the payment of claims or expenses in the program year in which the earnings are associated;

(3) One or more special assessments of all group self insurer members participating in the program year or years in which the deficiency exists to make up the funding insufficiency;

(4) Re-evaluation of past group member contribution rates and the projected plan for future contributions from members to properly collect past rating shortfalls, and/or a revised current and future contribution rating plan for group members for any period of time necessary to correct past and present rate inequities.

(5) Prohibition of the addition of new members into the group; suspension of any distribution of over-collected contributions or assessments and any earnings on investments; or, the immediate collection of all assessments or any portion of such assessments until the group self insurer is deemed by the Manager to be adequately capitalized in accordance with this section;

(6) An examination and restructuring of the group self insurer's operations, contracts with vendors, and finances by an outside qualified professional acceptable to the Manager;

(7) Any other action the Manager may determine appropriate to promptly correct the group's funding deficiency.

(c) If the plan to achieve prompt correction of the funding deficiency for all claims is not approved by the Manager, the Manager may order the Board of Trustees of the group self insurer to show good cause before the Director why it should not be ordered by the Director to (1) immediately assess the group members for the full amount of the funding deficiency and/or (2) order that any surplus funds distributed to group members during the previous twelve calendar months from the date of discovery of the funding deficiency by the group self insurer be immediately returned to the group self insurer; and/or (3) why the Director should not order the appointment of a conservator or liquidator for the group self insurer.

(d) If the Director determines that actions specified in subsections (b) and (c) of this section will not achieve full funding of all claim liabilities for the group self insurer, the Director may in his or her discretion order that an outside conservator or liquidator, including the Self Insurer's Security Fund, be appointed at the expense of the group self insurer to manage the financial affairs of the group self insurer and to take whatever steps may be necessary in order to return a financially troubled group self insurer to full financial solvency or to liquidate the group's liabilities.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3701, 3701.5 and 3702.10, Labor Code.

History: 1. New section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

2. Amendment of section heading and section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15478. Excess Insurance.

(a) Each group self insurer shall have and maintain in full force one or more specific excess workers' compensation insurance policies issued by an admitted casualty insurance carrier or carriers authorized to transact such business in the State of California by the California Department of Insurance. The specific excess policy shall not have a retention level above \$500,000 nor an upper limit of less than twenty-five million dollars (\$25,000,000) without express written consent of the Manager pursuant to subsection (b). The policy may not lapse, be canceled or otherwise terminated without prior written notice to the Manager and the group self insurer no later than 30 days prior to

the date of cancellation or termination by the carrier. On the policy issuance date and on any subsequent renewal date of the policy, the excess carrier or its parent company shall have an adjusted policyholders' surplus of no less than twenty-five million dollars (\$25,000,000) and an acceptable credit rating as set forth below:

(1) Standard and Poor's Insurer Financial Strength Rating of A or better rating, or

(2) A.M. Best Company, Financial Strength Rating of B+ or better rating.

If the group self insurer's specific excess carrier's credit rating falls below a B rating as rated by either rating agency specified in subsections (a)(1) or (a)(2), the group self insurer shall replace the policy or obtain new coverage for the remainder of the unused prior policy period and for future coverage through a specific excess carrier that meets the requirements of this section.

(b) Each private group self insurer seeking to maintain a specific excess policy with a retention level above \$500,000 or an upper limit of less than twenty-five million dollars (\$25,000,000) shall first demonstrate in writing to the satisfaction of the Manager through its audited financial statement(s) and a current written actuarial report or portion thereof specifically demonstrating that the group self insurer has the financial strength to assume a retention level above \$500,000 per occurrence and/or an upper limit of the policy of less than twenty-five million dollars (\$25,000,000). The Manager may consider the group self insurer's financial reports, actuarial reports, spread of risk, its level of contributions and/or assessments, current membership size, loss prevention program, any aggregate stop loss insurance policy in place, and/or other factors the requesting group wishes to have the Manager consider in making his or her determination on the request to grant the group self insurer permission to carry specific excess insurance above the \$500,000 per occurrence level. The group self insurer shall maintain specific excess coverage with a minimum \$500,000 self insurer's retention and an upper limit of the policy of less than twenty-five million dollars (\$25,000,000) unless written consent from the Manager for a higher retention level and/or upper limit of less than twenty-five million dollars (\$25,000,000) is obtained. In no event shall the group self insurer's retention level be greater than \$1,000,000 per occurrence.

(c) Any private group self insurer may have and maintain in full force an aggregate excess workers' compensation insurance policy. As set forth in Section 15210.3 of these regulations, no security deposit credit will be allowed for aggregate excess coverage.

(d) If the Director orders the Self Insurer's Security Fund to assume the liabilities of the group self insurer pursuant to Labor Code Section 3701.5, the specific excess carrier or aggregate excess carrier shall make all payments due directly to the Security Fund as would have been made by the excess carrier to the group self insurer after the retention level of the policy had been reached.

(e) The group self insurer or any affiliate member of the group self insurer shall not own or have controlling ownership in the specific excess carrier that issues the specific excess policy. Any known direct ownership in the specific excess carrier or carriers by any current or proposed service providers, including the Group Administrator, shall be disclosed in writing to the group's Board of Trustees along with the price quoted for the policy or policies. No group self insurer or member of a group self insurer shall function as a re-insurer of any specific excess insurance policy or policies issued to a group self insurer or renewed by a group self insurer.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3701, 3701.5, 3702.10 and 3744, Labor Code.

History: 1. New section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

2. Amendment of section and Note filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15479. Indemnity Agreement and Power of Attorney.

(a) Each member of a group self insurer shall execute an indemnity agreement and power of attorney that shall be on either a Form A4-8 (Rev 1/94), Indemnity Agreement and Power of Attorney or another form of an Indemnity Agreement and Power of Attorney which shall be subject to the approval of the Manager.

(b) The Indemnity Agreement and Power of Attorney shall contain, in substance, the following provisions:

(1) An agreement under which each member of a group self insurer agrees to assume and discharge, jointly and severally, any compensa-

tion liability under Labor Code Section 3700-3705 of any and all other employers that are parties to the group self insurer indemnity agreement;

(2) The agreement provides that, in addition to the rights of the group self insurer to enforce the indemnity agreement in the event of a failure of the group self insurer to enforce such rights after reasonable notice to the group self insurer, the Director of Industrial Relations independently shall have the right to enforce the indemnity agreement on behalf of the group self insurer including the joint and several liability of group members for payment of all compensation liabilities under the indemnity agreement and the liability of group members for any unpaid contributions and assessments;

(3) Provisions requiring that the Board of Trustees of the group self insurer designate and appoint a Group Administrator empowered to accept the service of process on behalf of the group members and authorized to act for and bind the group self insurer and all group members in all transactions relating to or arising out of the operation of the group self insurer;

(4) Provisions for the right of the Director of Industrial Relations to substitute an outside Conservator for the Group Administrator;

(5) A provision granting full power of attorney and signature authority to the Group Administrator of the group self insurer to execute documents, enter contracts, accept service of process on behalf of the group self insurer, and conduct the general business of the group self insurer, and, that said signature of the Group Administrator shall bind each and every group member jointly and severally.

Note: A copy of Form A4-8 (Rev 1/94), Indemnity Agreement and Power of Attorney is available from the Manager and is available at <http://sip.dir.ca.gov/> and is contained in the Appendix following Article 12 of Chapter 8, Subchapter 2.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3701, 3701.5, 3702, 3702.1, 3702.2, 3702.3, 3702.5, 3702.7 and 3702.10, Labor Code.

History: 1. New section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

2. Amendment filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15480. Termination of Membership in a Group Self Insurer.

(a) No member of a group self insurer may be involuntarily canceled or terminated from group membership by the group self insurer unless at least 60 days advance written notice has been provided to the group member and to the Manager. Notice to a broker or other third party shall not be deemed as notice to the group member.

(b) In the case of cancellation or termination of coverage of a group member, whether voluntary or involuntary, the group self insurer shall remain liable for all compensation liabilities of the group member resulting from any claim with a date of injury during the period of membership in the group self insurer up to the effective date of the termination and revocation of the group member's Affiliate Certificate of Consent to Self Insure, including the 60 day notice period in the event of involuntary termination. The group member shall remain responsible for all contributions and assessments for the period of membership in the private group self insurer, including the 60 day notice period and/or any period during which the termination and revocation of the group member's Affiliate Certificate of Consent to Self Insure was under appeal.

(c) Notwithstanding subsection (b), the following provisions apply in the case of the cancellation or termination of membership of a member in a group self insured group, whether voluntary or involuntary:

(1) The group self insurer shall not incur liability for any claim of a member incurred on or after the date a member obtains coverage through a standard workers' compensation policy issued by an admitted carrier.

(2) Liabilities of a group member may be transferred pursuant to Labor Code Section 3702.8 and/or Article 8, Section 15360 of these regulations.

(d) Notice to the Manager of involuntary cancellation or termination of a group member from a group self insurer as set forth in subsection (a) shall be good cause for revocation of the Affiliate Certificate issued to the group member on the applicable effective date of the involuntary cancellation or termination date without issuance of further notice from the Manager.

(e) Any group member leaving a group self insurer shall provide proof of workers' compen-

sation coverage to the Manager and to the group self insurer within 45 days after the notice of cancellation or termination. Notice to the Manager may be provided by the group self insurer, the Group Administrator, or the group member. However, if the group member no longer has employees in California, the group member or group self insurer shall notify the Manager and no proof of insurance need be provided. Unless the group member no longer has employees in California, the Manager shall notify the Labor Commissioner of any group member that voluntarily or involuntarily leaves a private group self insurer and has failed to provide proof of coverage for workers' compensation liabilities in the form of a binder or certificate of insurance within 45 days after the notice of cancellation or termination.

(f) Any member of a group self insurer may voluntarily withdraw from the group self insurer at the end of a program year after obtaining alternate coverage and providing written notice to the Group Administrator of its intent to voluntarily end its participation in the group self insurer. Notwithstanding this section, the group self insurer's bylaws may require periods of membership longer than one year and, except as specified by Section 15473(d)(2), may specify penalties, loss of any return of surplus funds, or other sanctions for early termination of group membership.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3701, 3701.5, 3702 and 3702.10, Labor Code.

History: 1. New section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

2. Amendment of section heading and section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15481. Annual Actuarial Certification of Losses.

(a) Annually, each group self insurer shall obtain an actuarial analysis by program year of its historical loss development at the 80% actuarial confidence level and at the expected confidence level, including incurred but not reported (IBNR) projections and unallocated loss adjustment expense (ULAE) for both calculations. The actuary performing this study shall have current experience in performing such actuarial projections involving California workers' compensation claims, and shall be:

(1) An Associate or Fellow of the Casualty Actuary Society; or

(2) A Member of the American Academy of Actuaries.

(b) The analysis and results of the study shall be presented to the group self insurers' Board of Trustees and made available in written form to the Board of Trustees and to any group member requesting a copy. The study shall be presented to the Group Administrator and the Board of Trustees within ninety (90) days after the end of the group self insurer's program year.

(c) The Group Administrator shall submit the written annual actuarial report to the Manager within 120 days of the end of the group self insurer's program year. Included with the annual actuarial report shall be a separate page or pages with the following information for each program year reported on the Self Insurer's Annual Report:

(1) The amount of ultimate losses projected at the 80% actuarial confidence level and at the expected confidence level, inclusive of incurred but not reported (IBNR) liabilities and unallocated loss adjustment expense (ULAE) in calculations for each of the program years covered by the report;

(2) The amount of contributions collected from affiliate group members for each of the program years covered by the report;

(3) The amount of any surplus funds distributed to affiliate group members for the program years covered by the report.

(d) The Board of Trustees shall ensure that contribution rates for the initial funding of claims for each program year shall be based on the actuarial projection at the 80% confidence level as provided by Section 15475(d)(8).

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3700, 3701, 3701.5 and 3702.10, Labor Code.

History: 1. New section filed 6-30-94; operative 6-30-94 (Register 94, No. 26).

2. Amendment of section heading and section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15482. Private Group Application.

(a) Each private group of employers desiring to procure a private group Certificate of Consent to Self Insure as provided in Section 15470 of these regulations shall submit to the Manager a complete Application For A Certifi-

cate Of Consent To Self Insure By A Group Of Employers for the group and a complete Application For An Affiliate Certificate Of Consent To Self Insure As A Member Of A Group Self Insurer for each of the initial core members of the group no less than 60 days before the requested effective date of self insurance. Applications shall be made on:

(1) Form A4-3 (Rev. 1/94) for a private group seeking a group Certificate of Consent to Self Insure;

(2) Form A4-3M (Rev. 1/94) for each member of a group seeking an Affiliate Certificate of Consent to Self Insure. The Application for an Affiliate Certificate of Consent to Self Insure shall be completed as provided in Section 15482.1 of these regulations.

(b) A complete application to self insure for a private group of employers shall be submitted with complete applications for each initial proposed core members of the group and shall include the attachments requested in the application form itself, and, as applicable, the following:

(1) A current financial statement, together with all schedules and notes, for each proposed initial core member. Qualifying financial information for a private group member or applicant may be included in the consolidated financial statement of its parent company or owner if the parent or owner executes an Agreement of Assumption and Guarantee of Workers' Compensation Liabilities pursuant to Section 15211.2 of these regulations.

(2) A duly executed Resolution by the Board of Trustees of the group applicant authorizing execution of the application to become a group self insurer and empowering the Group Administrator and other employees, officers, or Trustees of the group self insurer applicant to sign the application form and other necessary documents on behalf of the group self insurer applicant;

(3) A duly executed Resolution by the Board of Trustees of the group self insurer applicant authorizing the execution of an Agreement of Assumption and Guarantee For Workers' Compensation Liabilities on behalf of the proposed group members and any future members of the group self insurer granted an Affiliate Certificate;

(4) An Agreement of Assumption and Guarantee of Workers' Compensation Liabilities

For Group Members ((Form A4-3G (Rev. 1/94)) listing each initial proposed group member and executed by the applicant group self insurer as required in Section 15483 of these regulations;

(5) An original Certificate of Status from the California Secretary of State or other appropriate registration documents showing that the group applicant is appropriately licensed or registered to do business in California, with such documents dated within 90 days of the date of receipt of the application by the Manager;

(6) A written evaluation of the proposed qualifying core group members' injury and illness prevention programs or copy of a DOSH evaluation report as specified in Section 15486.1 of these regulations;

(7) An original, duly executed Indemnity Agreement and Power of Attorney of Joint and Several Liability between the group self insurer applicant and each proposed member pursuant to Section 15479 of these regulations.

(8) Payment of the required application fee(s) as required by Section 15491 of these regulations.

(9) A copy of the Initial Feasibility Study Report as required in Section 15471 of these regulations.

(10) A duly executed Agreement and Undertaking for Security Deposit as required by Section 15486.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3702, 3702.2, 3702.5 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15482.1. Private Group Member Application.

(a) A complete group member application to self insure on a (Form A4-3M (Rev. 1/94)) by each member of a group self insurer shall include all the attachments requested in the application form itself, and, as applicable, the following:

(1) A current financial statement together with all schedules and notes if the applicant group member will be considered a core group member as defined in Section 15201(p) of these regulations. For applications for non-core members of a group self insurer that has qualified financially to self insure pursuant to Section

15472, no financial statement need be submitted with the application. However, the Board of Trustees, or the Group Administrator if authorized by the group bylaws, shall evaluate potential new members by reviewing their financial statements, tax returns, credit reports, or other appropriate documentation as specified in the bylaws of the group self insurer.

(2) A duly executed Resolution authorizing completion of the application to become self insured as a member of the group self insurer;

(3) A duly executed Indemnity Agreement and Power of Attorney (Form A4-8 (Rev. 1/94)), as required by Section 15479 of these regulations;

(b) Notwithstanding subsection (a)(1), at the discretion of the Manager, an employer with projected contributions of 25% or more of the group self insurer's projected total contributions for the coming program year shall be required to submit a financial statement to the Manager.

(c) A separate application shall be submitted for any new or separate subsidiary or affiliate of an affiliate group self insurer in order for it to be considered for consent to self insure.

(d) A new application may be required whenever an existing affiliate group self insurer reincorporates, merges, or otherwise changes ownership.

Note: Authority cited: Sections 54, 55, 59 and 3702.10, Labor Code. Reference: Sections 3700, 3700(b), 3701, 3702, 3702.5 and 6401.7(a), Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15482.2. Interim Certificates to Group Members.

(a) 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 Interim Certificate and the filing fee as provided in Section 15491(a)(3). The Interim Certificate of Consent to Self Insure will be issued for a period not to exceed 180 days. 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 good cause by the Interim Self Insurer.

(b) To qualify for issuance of an Interim Certificate to its group members, the existing private group self insurer must demonstrate the following:

(1) The core members of the group self insurer must document that they meet the financial requirements as set forth in Section 15472(a);

(2) The private group self insurer holding the Master Certificate of Consent to Self Insure must be a group self insurer in good standing, and shall not be prohibited from adding new members pursuant to Section 15477(b)(5).

(c) A Request for an Interim Certificate for Group Member (Form A4-7 (11-08)) on behalf of the new group member shall be submitted by the Group Administrator to the Manager. The request shall be in writing and shall include the following information regarding the proposed new group member:

(1) The proposed group member's full legal name, state of incorporation, and Federal Tax Identification Number;

(2) The requested effective date of the Interim Certificate;

(3) The annual payroll of the proposed group member during the last 12-months through at least the last quarter, an estimate of the payroll for the next 12 month period, and an estimate of the proposed group member's annual group contributions to the group self insurer;

(4) The proposed member's NAICS code, experience modification, and a description of the type of business it conducts.

(5) A signed statement from the Group Administrator certifying that the proposed group member meets the homogeneity and underwriting requirements of the group self insurer and that the group self insurer shall be financially responsible to pay all workers' compensation claims arising out of the period of time of the Interim Certificate.

(d) Upon receipt of a written request for an Interim Certificate from a private group self insurer that meets the requirements of this section, the Manager shall issue the Interim Certificate within 14 days. If the request is incomplete or does not comply with this section, the Group

Administrator for the group self insurer will be notified within 14 days of receipt of the request.

(e) Before an Interim Certificate may be replaced with a Certificate of Consent to Self Insure with no expiration date, the Interim Self Insurer must submit within 180 days of the effective date of the Interim Certificate of Consent a complete and accurate Application Form as provided in Section 15482.1.

(f) Each group member issued an Interim Certificate of Consent to Self Insure shall subject to the following provisions:

(1) If an Interim Certificate is revoked before the expiration date or allowed to expire without issuance of a permanent Affiliate 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 group self insurer 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 any Notice of Intent to Revoke the Certificate issued by the Manager, whichever comes first. The employer shall remain liable for payment of contributions and assessments as required by the group self insurer for the employer's period of coverage as a member of the group self insurer.

(2) The Manager shall notify the Labor Commissioner if any employer granted membership in a private group self insurer under an Interim Certificate of Consent to Self Insure 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.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3702.5 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15483. Agreement of Assumption and Guarantee of Group Member's Liabilities.

(a) Each group self insurer shall provide an Agreement of Assumption and Guarantee of

Liabilities of Workers' Compensation Liabilities For Group Members for each group member, or a single Agreement of Assumption and Guarantee of Liabilities of Workers' Compensation Liabilities For Group Members listing all group members, executed by the group self insurer or Group Administrator on its behalf if authorized in the group self insurer's bylaws. If the group self insurer does not execute an Agreement of Assumption and Guarantee of Liabilities of Workers' Compensation Liabilities For Group Members for any proposed group member, the Director shall deny the application to self insure of the proposed group member, or, if an Interim Certificate of Consent to Self Insure has been issued to a group member and the group self insurer declines to execute an Agreement of Assumption and Guarantee of Liabilities of Workers' Compensation Liabilities For Group Members for that group member, it shall be cause for revocation of the Affiliate Certificate of Consent to Self Insure of the group member.

(b) In addition, each group member that is a subsidiary or affiliate or is otherwise controlled or owned by another entity shall provide an Agreement of Assumption and Guarantee of Liabilities executed by the holding company, ultimate parent company, controlling general partners, owner, or owners having controlling ownership as required for subsidiaries and affiliates of individual private self insurers by Section 15211.2 of these regulations. If the holding company, ultimate parent company, controlling general partnership, or owner having controlling ownership of the group member declines to execute an Agreement of Assumption and Guarantee of Liabilities, the Director may deny the application of the proposed group member. If a group member is acquired by another entity while the group member is self insured and that new holding company, ultimate parent company, controlling general partnership, or owner having controlling ownership declines to execute an Agreement of Assumption and Guarantee of Liabilities, it shall be deemed cause for revocation of the group member's Affiliate Certificate of Consent to Self Insure.

(c) The Agreement of Assumption and Guarantee of Liabilities shall be written upon a form provided by the Manager (Form A4-3G (Rev. 1/94)). The form is available on the website of the Office of Self Insurance Plans at <http://sip.dir.ca.gov/>.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3550, 3700, 3701, 3701.5, 3702, 3702.10 and 3705, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15484. Continuing Financial Capacity of Groups Self Insurers.

(a) Each private group self insurer shall submit annually the group's current certified, independently audited financial statement complete with all notes and schedules to the Manager. The financial statement shall be prepared according to Generally Accepted Auditing Principles (GAAP) and shall be submitted by July 1 following the end of the program year. If the group self insurer is unable to submit a current certified, independently audited financial statement at that time, the group self insurer or Group Administrator shall advise the Manager and the reasons therefore in writing and immediately submit its un-audited financial statement to the Manager. The group self insurer shall then obtain a current certified, independently audited financial statement within sixty (60) days and submit it to the Manager.

(b) The group self insurer's financial statement for each year shall include exhibits indicating specific amounts collected as group member contributions and earned from investments, as well as specific amounts for the year reported for the following administrative costs:

- (1) Fees and commissions paid to the Group Administrator;
- (2) Commissions paid to brokers;
- (3) Fees paid to the third part administrator;
- (4) Premium paid for excess insurance;
- (5) Premium paid for fidelity and errors and omissions coverage
- (6) Fees paid for surety bonds, letters of credit, or any other security deposit related cost
- (7) Fees paid to actuaries;
- (8) Fees paid to accountants;
- (9) Regulatory costs
- (10) Taxes
- (11) Other expenses.

(c) Each group self insurer shall ensure that group members maintain their suitability for group self insurer membership as follows:

- (1) Annually obtaining current certified, independently audited financial statements or reviewed financial statements together with all

schedules and notes showing that the core members of the group self insurer meet in aggregate the financial requirements provided in Section 15472(a) of these regulations;

(2) For each other group member, the group self insurer may annually determine the group member's suitability for membership in the group self insurer by review of a tax return, credit report, or other appropriate documentation as specified in the bylaws of the group self insurer.

(d) The Group Administrator shall submit to the Manager 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.

(e) Each private group self insurer shall demonstrate sufficient income from annual member contributions and/or assessments to fund:

(1) The group self insurer's actuarially projected claim liabilities for each program year at the 80% actuarial confidence level, or at a lesser actuarial confidence level if authorized by the Manager pursuant to Section 15477(a)(2);

(2) The expected administrative expenses needed to meet the group self insurer's day to day obligations; and

(3) The continued posting of the required security deposit.

(f) The Group Administrator shall immediately advise the Manager in writing if the group self insurer's core members do not meet in aggregate the financial requirements set forth in Section 15472(a) of these regulations.

(g) A group self insurer's solvency is presumed impaired if any of the following occurs:

(1) There is a marked reduction in financial strength as evidenced by the findings in the annual audit by the independent certified public accountant;

(2) The group self insurer fails to submit a financial statement pursuant to subsection (a) of this section;

(3) The Group Administrator fails to submit documentation as provided by subsection (d) to substantiate that core members of the meet financial requirement as set forth in subsection (c)(1) and Section 15472(a);

(4) The contribution rates, rating plan, or contribution fails to generate enough funds to cover the costs of projected claims and admin-

istrative costs for the group self insurer as required by subsection (e) of this Section.

(h) Demonstration of impaired solvency of the group self insurer as described in subsection (g) of this section is good cause for increased security deposit or involuntary revocation of a Certificate of Consent to Self Insure, Interim Certificate of Consent to Self Insure, and/or Affiliate Certificate of Consent to Self Insure.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3702 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15485. Resolution to Authorize Self Insurance for a Group Self Insurer or Group Member.

(a) The resolution to authorize self insurance of workers' compensation required as part of the application for a Certificate of Consent to Self Insure by any group member applicant shall be adopted by the board of directors of each corporation, the general partners of an applicant partnership or joint venture, the managing member of a limited liability corporation, the owner of an applicant sole proprietorship, or the Board of Trustees of an applicant group self insurer. The resolution to authorize self insurance shall include the following:

(1) A statement identifying the applicant by corporate or other legal name, the state of registration, and the date that the resolution was adopted;

(2) Identification by title of appointed officers or other authorized employees who have the authority to sign the application, execute any and all documents required for the application and do subsequent acts as required to maintain self insurance approval.

(b) A group self insurer resolution shall be executed by the group self insurer applicant's Board of Trustees and included as part of the application. A model group self insurer resolution, is available at <http://sip.dir.ca.gov/>.

(c) If a group member or group self insurer reincorporates, merges, or changes its identity, a new resolution shall be submitted to the Manager within 30 days to ratify the maintenance of the self insured's responsibility under the successor's identity. The Manager may extend the period of time for good cause. Good cause is

determined within the sole discretion of the Manager.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3702, 3702.2, 3702.5 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15486. Agreement and Undertaking for Director to Utilize Security Deposit to Pay Benefits Due.

(a) Each group self insurer applicant shall execute an Agreement and Undertaking For Security Deposit (Form A4-GAU (Rev. 1-94)) as part of the application process.

(b) All security deposits shall be posted in accordance with the provisions of the Agreement and Undertaking, and shall permit the Director of Industrial Relations to order the security deposit to be utilized to pay benefits due pursuant to Labor Code Section 3701.5.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3701, 3701.5 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15486.1. Group Self Insurer Injury and Illness Prevention Program.

(a) As part of the application process, a group self insurer applicant for a Certificate of Consent to Self Insure shall provide one of the following:

(1) A written independent evaluation of each core applicant employer's injury and illness prevention program as set forth in Labor Code Section 6401.7. The evaluation shall be completed by an independent, licensed, California Professional Engineer, a Certified Safety Professional certified by the Board of Certified Safety Professionals, and/or a Certified Industrial Hygienist. The evaluation preparer shall disclose to the Manager in the evaluation report if any of the following are true:

(A) The preparer or the preparer's firm has had any business dealings with the applicant group self insurer, any of the applicant members being evaluated, or any applicant member's owner over the two years preceding the evaluation;

(B) The preparer is or has been employed by the present or prior insurance carrier or insurance broker of any applicant member being evaluated at any time during the five years preceding the evaluation; or

(C) The preparer or preparer's firm has been employed by the applicant or its parent in a safety and health or accident prevention capacity at any time during the two years preceding the evaluation.

(2) A copy of a written report of inspection and evaluation of the core applicant employer's injury and illness prevention program conducted by the Division of Occupational Safety and Health (DOSH) pursuant to Labor Code Sections 6314.5. The Division of Occupational Safety and Health inspection shall have been conducted within 120 days of the date of the application to become self insured.

(b) An evaluation report conducted pursuant to subsection (a) that shows the applicant member for a Certificate of Consent to Self Insure to be without an effective injury and illness prevention program shall be good cause for denial of the group member application for self insurance without prejudice to reapplication at a later date when the employer has submitted an evaluation report showing the applicant member to have an effective injury and illness prevention program.

(c) The applicant core group member must abate all serious violations found in any report prepared as provided by this section. Written verification of abatement must be provided to the Office of Self Insurance Plans by the report preparer to document such abatement. Failure to document abatement of any serious violations shall be good cause for denial of the application.

(d) Each private group self insurer shall institute an effective injury and illness prevention program among its membership. Each new and existing member of the group self insurer shall adopt and maintain an effective injury and illness prevention program.

(e) The Board of Trustees shall direct the Group Administrator to ensure ongoing risk control and safety support to group members. Ongoing risk control and safety support shall be under the general direction of a California Professional Engineer, a Certified Safety Professional, and/or a Certified Industrial Hygienist. The California Professional Engineer, Certified Safety Professional, or Certified Industrial Hy-

gienist shall report the impact of safety and risk control activities to the Board of Trustees no less frequently than annually, and shall solicit continuing support and direction from the Board of Trustees.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3702, 3702.10, 6314.5, 6319 and 6401.7, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15487. Delayed Start-Up of a Group Self Insurer or Group Member Participation in Group Self Insurance.

(a) The approval by the Director to grant a Certificate of Consent to Self Insure to a group self insurer and to any group member shall be initially valid for six months after the date of approval by the Director. If the group self insurer or any group member has not initiated its self insurance program within the initial six month period, the approval to grant the Certificate of Consent to Self Insure shall be void. If so, the group self insurer or group member shall not be issued a Certificate of Consent to Self Insure unless the applicant files a new application.

(b) Notwithstanding subsection (a), the Manager may extend the approval for a new group self insurer or group member for an additional three months upon a showing of good cause.

(c) If a group self insurer applicant or group member applicant fails to initiate a self insurance program within three months of notification of approval by the Director, the Manager may require the applicant to provide updated loss information and may recalculate the required security deposit amount.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15488. Initial Issuance of the Certificate of Consent to Self Insure and Notice to Employees of Self Insured Status.

(a) No group self insurer applicant or affiliate group self insure applicant may commence

self insurance until the applicant has posted the required security deposit with the Department of Industrial Relations through the Office of Self Insurance Plans and has submitted proof of specific excess insurance pursuant to Section 15478 of these regulations.

(b) The group member shall prominently display the original or a copy of the Certificate of Consent to Self Insure at the group member's place of business in California.

(c) Notice to employees of workers' compensation coverage as required by Labor Code Section 3550 shall be accomplished by display of a copy of the group member's Affiliate Certificate of Consent to Self Insure accompanied by a notice stating the name of the person(s) or administrative agency responsible for claims adjustment.

(d) If a private group self insurer or affiliate group member is required to provide evidence of its approved self insured status to prove compliance with Labor Code Section 3700, the Manager shall provide to the Group Administrator certification of self insurance to be distributed by the Group Administrator for this purpose. 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/>. Beginning April 1, 2009, there is a ten dollar (\$10) fee for signed certification of self insured status.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3702, 3702.10 and 3550, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15489. Reporting Group Charter Amendments.

The Group Administrator and/or Board of Trustees of any group self insurer shall notify the Manager in writing and provide copies 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. Notification shall be made within 30 days of the change.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3702, 3702.10 and 3550, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15489.1. Change in Status.

(a) The group self insurer and/or group member shall notify the Manager in writing within 30 days of any of the following:

(1) Any amendment to an affiliate group member employer's charter, articles or agreement of incorporation, association, or co-partnership which changes its identity, business structure, or ownership in a material manner from the status as it existed at the time of issuance of its Certificate of Consent to Self Insure;

(2) If the group self insurer or any group member proposes to cease doing business entirely, proposes to cease doing business in California, or proposes to dispose of, by sale or otherwise, the controlling interest of the business for which the Certificate of Consent to Self Insure or Affiliate Certificate of Consent to Self Insure was issued.

(b) If any group self insurer or group member desires to retain its self insured status following any amendment to the articles, charter, or agreement of incorporation, association, or co-partnership which changes its identity or business structure or ownership, the group self insurer or Group Administrator shall provide to the Manager the following information:

(1) A written description of the event(s) and the date it occurred;

(2) Copies of Certificates of Status or other appropriate registration documents filed with the Secretary of State in which the self insurer is incorporated concerning the change of the self insurer's status; and

(3) Written notice indicating that the group self insurer and/or group member will continue to provide financial statements or other financial documentation pursuant to Section 15484;

(c) If a group self insurer or group member reincorporates, merges, or changes its identity, a new resolution shall be submitted to the Manager in accordance with Section 15485 of these regulations.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3702, 3702.3, 3702.10 and 3703, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15490. Validity of Certificate to Group Self Insurer or Group Member.

(a) A Certificate of Consent to Self Insure shall be valid only to the private corporation, partnership, company, subsidiary, affiliate entity, limited liability corporation, group self insurer, or other group member to which the Certificate of Consent to Self Insure, Interim Certificate, or Affiliate Certificate of Consent to Self Insure was issued. No subsidiary or affiliate of an affiliate group self insurer shall be deemed self insured as a member of the group self insurer unless it has been issued an Interim Certificate of Consent to Self Insure pursuant to Section 15482.2 or has applied for and been approved for an Affiliate Certificate of Consent to Self Insure as a member of the group.

(b) Except as provided in Labor Code Section 3701.7, the Manager shall not issue a group member Interim or Affiliate Certificate of Consent to Self Insure with an effective date earlier than the date the approval of the group member by the Board of Directors of the group self insurer.

(c) Once the self insurance program of a group self insurer or a member of a group self insurer has been initiated after approval by the Director, the certificate issued shall be valid until revoked by order of the Director.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3701, 3701.5 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15490.1. Reinstatement of a Certificate or Affiliate Certificate of Consent to Self Insure.

(a) A group self insurer or group member that because of a legal change in business or corporate structure or in its legal name has had its self insurance privilege terminated may have its Certificate of Consent to Self Insure reinstated without lapse, provided that the group self insurer or group member can re-qualify for self insurance.

(b) To request reinstatement of a Certificate or of an Affiliate Certificate of Consent to Self

Insure following a change in status by the group self insurer or a group member, the group self insurer or Group Administrator shall submit to the Manager a written statement describing the nature of the change. The Manager may request any documents necessary to verify the change in status which the group self insurer or Group Administrator shall provide. The group self insurer also shall provide to the Manager a statement signed by the Group Administrator that the group self insurer's Assumption and Guarantee of all workers' compensation liabilities will include any additional self insured liabilities incurred after a group member's change in status, or, if indicated, a new Assumption and Guarantee Agreement regarding the affected group member.

(c) Upon satisfactory compliance with subsection (b) the Manager may prepare and issue an order reflecting the change in status of the group self insurer and/or group members and reinstating its Certificate of Consent to Self Insure.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3702 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15491. Group Self Insurer and Group Member Application Filing Fees.

(a) Each group self insurer and/or group member making application for a Certificate of Consent to Self Insure or requesting an Interim Certificate of Consent to Self Insure shall pay a non-refundable filing fee at the time of filing the application or requesting the Interim Certificate on the following basis:

(1) A filing fee to accompany a new group self insurer application shall be \$1,000 for the group application and an additional \$500 for each group member application submitted with the group self insurer's application;

(2) For each additional group member's application, the filing fee shall be \$500 if no Interim Certificate has previously been issued to the applicant or \$400 if an Interim Certificate has been issued and is in effect at the time the application is submitted;

(3) For each Request for an Interim Certificate submitted pursuant to Section 15482.1 of these regulations, the filing fee shall be \$100.

(b) Any subsequent re-filing of an application by an existing group self insurer or group member following a merger, acquisition, or reincorporation shall be considered a new group self insurer or group member application and each such new filing shall be subject to a filing fee pursuant to subsections (a)(1) through (a)(3) of this section.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3702.5 and 3702.10, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15496. Group Self Insurer's Security Deposit.

(a) Each group self insurer shall post and maintain a security deposit with the Director upon approval of its Certificate of Consent to Self Insure. The security deposit amount shall be in accordance with the provisions of this section, and, once a Self Insurer's Annual Report has been filed, no less than as determined pursuant to Labor Code Section 3701 and subsections (a)(1) through (a)(3) of this section, calculated as:

(1) 135 percent of the group self insurer's estimated future liabilities for the payment of compensation for known claims, and;

(2) An amount posted in advance for liabilities of the current year, consisting of the average annual estimated future liability over the past five (5) years reported on the Self Insurer's Annual Report, and;

(3) 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.

(b) Upon approval for a Certificate of Consent to Self Insure, the group self insurer, in the manner provided in subsection (e), shall post an initial security deposit in an amount no less than the greater of the following:

(1) The statutory minimum amount pursuant to Labor Code Section 3701(b);

(2) No less than 60% of one year ultimate losses based on the actuarial report submitted with the application for the group self insurer;

(3) A higher amount approved by the Director.

(c) If the group self insurer initially posts a security deposit of 60% of one year's projected

ultimate losses in accordance with subsection (b)(2), the group self insurer shall ensure that the amount posted is no less than 135% of one year's projected ultimate losses after one year of self insurance by increasing its security deposit by an amount no less than 25% of one year's projected ultimate losses in three equal installments. The installments shall be at intervals of 120 days or less, with the first installment being posted no later than 120 days after the effective date of self insurance.

(d) Notwithstanding subsection (c), each new affiliate member of the group self insurer issued an Interim Certificate or an Affiliate Certificate of Consent to Self Insure whose exposure was not contemplated in the calculation of the initial security 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 contributions. The increase in security 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.

(e) The group self insurer's security deposit shall be posted in one of the following manners:

(1) A surety bond executed on State issued bond and rider forms pursuant to Section 15212 of these regulations;

(2) An irrevocable letter of credit issued by a bank, credit union, savings institution or other financial institution pursuant to Section 15215 of these regulations;

(3) Approved securities in the form of government issued or corporate issued securities, meeting the requirements of Section 15213 of these regulations;

(4) Cash in trust deposited pursuant to requirements of Section 15214 of these regulations; or

(5) Any combination of one or more of the methods described in subsections (g)(1) through (g)(4) of this section.

(f) Failure to maintain the required amount of security deposit or to post an acceptable form of deposit as set forth in this Article shall be good cause for assessment of civil penalties pursuant to Labor Code Section 3702.9(a) and/or revocation of the Certificate of Consent

to Self Insure pursuant to Labor Code Section 3702, and Section 15423 of these regulations.

(g) A group self insurer or group member 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.

Note: Authority cited: Sections 54, 55, 3701.8 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3701.8, 3702, 3702.3, 3702.6, 3702.10, 3740, 3741, 3742, 3743, 3744 and 3745, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15497. Adjustments in the Amount of a Group Self Insurer's Security Deposit.

(a) Each group self insurer's security deposit requirement pursuant to Labor Code Section 3701 shall be reviewed by the Manager at least annually following receipt of the private group's Self Insurer's Annual Report. If following the receipt of the group self insurer's annual report an increase in security deposit is required, the increase shall be calculated pursuant to Labor Code Section 3701 and Section 15496(a) of these regulations and shall be posted no later than May 1 of that year.

(b) 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, 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.

(c) No group self insurer shall reduce its security deposit based on calculations pursuant to Section 15496(a) without prior written authorization from the Manager.

(d) For good cause, the Manager may require a group self insurer to increase its security deposit at any time. Good cause includes, but is not limited to, increases in group membership, increases in losses as indicated in Self Insurer's Annual Report or by audit over losses projected in actuarial reports, or failure of the group self

insurer to maintain total assets greater than its total liabilities.

(e) In the event that a security deposit increase is required and upon sending by the Manager to the group self insurer a letter demanding the increase, a perfected security interest in the group self insurer's assets to the extent of any unsecured portion of the group self insurer's incurred liabilities shall be created in favor of the Director pursuant to Labor Code Section 3701(j).

Note: Authority cited: Sections 54, 55, 3701.8 and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3701.7, 3701.8, 3702, 3702.3, 3702.6, 3702.10, 3740, 3741, 3742, 6319(f) and 6401.7, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15497.1. Security Deposit Adjustment upon Revocation of Group Self Insurer or Group Member Certificates.

(a) In the event of the revocation of a Certificate of Consent to Self Insure of a group self insurer or Affiliate Certificate of Consent to Self Insure of a group member, whether voluntarily or involuntarily, the Manager shall determine the need for a special revocation audit of the claims of the group self insurer and/or group member and the need for a deposit adjustment to secure future liabilities of the revoked group self insurer pursuant to Labor Code Section 3701 and Sections 15301 and 15497 of these regulations.

(b) The amount of security deposit and/or the deposit rate required by the Manager in conjunction with the revocation of the group self insurer's Certificate of Consent to Self Insure may be at an amount or rate above the minimum required by Labor Code Section 3701.

Note: Authority cited: Sections 54, 55, 3701.8 and 3702.10, Labor Code. Reference: Sections 59, 129, 3700, 3701, 3701.5, 3701.8, 3702, 3702.3, 3702.6, 3702.8 and 3744, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15498. Insurance Coverage.

(a) 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 issued by an admitted carrier. Complete insurance coverage of a group member's workers' compensation liabilities under a standard workers' compensation insurance policy shall be good cause for revocation of the group member's Affiliate Certificate of Consent to Self Insure. Complete insurance coverage for all members of a group self insurer or a number of group members sufficient to reduce the size of the group self insurer to the extent that it no longer meets net worth and/or financial requirements to operate as a group self insurer shall be good cause for revocation of the group self insurer's Certificate of Consent to Self Insure.

(b) Each group self insurer shall provide the Manager with information regarding any standard workers' compensation insurance policies, specific excess workers' compensation insurance coverage, and/or any aggregate excess (stop loss) workers' compensation insurance coverage obtained for the group self insurer or any group.

(c) 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, including any binders or endorsements, and copies of insurer loss runs related to the group self insurer or any group member upon request of the Manager.

(d) 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.

(e) A group self insurer or group member may sell off any or all of its workers' compensation liabilities through the purchase of a special excess workers' compensation insurance policy or policies pursuant to Labor Code Section 3702.8(c).

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 59, 129, 3700, 3701, 3701.5, 3702, 3702.8, 3740, 3743 and 3744, Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15499. Allocation of the Security Deposit for a Group Self Insurer.

(a) The liabilities of each member of a group self insurer for its period of self insurance shall be included within the security deposit of the group self insurer.

(b) Each security deposit posted by a group self insurer, regardless of type of deposit, shall be applicable to the liabilities of all members of the group self insurer and shall be amended, if necessary, to include all new members added to the group self insurer.

(c) No portion of the overall security deposit for a group self insurer may be allocated or limited to any specific affiliate or subsidiary under the Master Certificate of the group self insurer.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 129, 3700, 3700(b), 3701, 3702, 3702.5, 3702.6, 3702.8, 3703, 3704, 3705 and 3744, Labor Code; and Section 189, Corporations Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15499.5. Appeals of Increases in Security Deposits Based on Impaired Group Self Insurer Financial Condition.

(a) In the event the Manager has required an increase in security deposit based upon the impaired financial status of the group self insurer, and if the group self insurer seeks to appeal the Manager's decision, upon receipt of the written appeal the Manager shall order a detailed, independent third party financial and/or actuarial evaluation of the group self insurer by a group self insurance risk and/or actuarial consultant in order to evaluate the group self insurer's financial status. The cost of the third party financial evaluation report shall be paid by the group self insurer.

(b) Upon receipt of the evaluation report, the appeal will be considered by the Manager, and if not resolved between the Manager and the group self insurer, addressed pursuant to Labor Code Section 3701.5(g) and Article 11 of these regulations.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code. Reference: Sections 3701 and 3701.5(g), Labor Code.

History: 1. New section filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

**SUBCHAPTER 2.06
WORKERS' COMPENSATION—
ADMINISTRATION REVOLVING
FUND ASSESSMENT, UNINSURED
EMPLOYERS BENEFITS TRUST
FUND ASSESSMENT,
SUBSEQUENT INJURIES BENEFITS
TRUST FUND ASSESSMENTS,
OCCUPATIONAL SAFETY AND
HEALTH FUND ASSESSMENT,
FRAUD SURCHARGE AND CAL-
OSHA TARGETED INSPECTION
ASSESSMENT**

**ARTICLE 1
Definitions**

§15600. Definitions.

(a) Assessable Premium. The premium to which the assessment and/or surcharge is to be applied is the premium the insured is charged after all rating adjustments (experience rating, schedule rating, premium discounts, expense constants, retrospective rating, etc.) except for adjustments resulting from the application of deductible plans or the return of policyholder dividends.

(b) Assessment. Includes those assessments levied upon insured and self-insured employers to establish and maintain the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, the Occupational Safety and Health Fund, and the Subsequent Injuries Benefits Employers Trust Fund.

(c) Base Year. For purposes of calculating the self-insured employer assessment factors, that time period as provided by the Office of Self-Insurance Plans pursuant to section 15602. For public self-insured employers, the base year is a fiscal year basis. For private self-insured employers, the base year is a calendar year basis.

(d) Director. The Director of the Department of Industrial Relations.

(e) Expected total current year premium. Total direct workers' compensation premium of all insurers as reported to the Department of Insurance's designated licensed rating organization for the period of January 1 through June 30 of the year immediately preceding the assessment, and adjusted by the Department of Insurance's designated licensed rating organization, to a full year basis.

(f) Indemnity. The payments made by a self-insured employer directly to injured employees or their dependents as compensation pursuant to Labor Code divisions 4 and 4.5 including vocational rehabilitation maintenance and salary continuation payments pursuant to Labor Code sections 4800 and 4850.

(g) Inception date. The inception date of a workers' compensation insurance policy is the normal anniversary rating date of a workers' compensation insurance policy as defined in the California Workers' Compensation Insurance Manual published by the Workers' Compensation Insurance Rating Bureau.

(h) Insured employer. Any employer, including any agency or division of the State of California, who secures workers' compensation insurance coverage under provisions of subdivision (a) of Labor Code section 3700.

(i) Insurer. Any person, including the State Compensation Insurance Fund, authorized to transact workers' compensation insurance in California.

(j) Occupational Safety and Health Fund. The Occupational Safety and Health Fund established pursuant to the provisions of Labor Code section 62.5.

(k) Occupational Safety and Health Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Occupational Safety and Health Fund.

(l) Payroll Remuneration subject to workers' compensation insurance premium for insured employers and that remuneration to employees of a self-insured employer which would be subject to premium charges if the employer were an insured employer.

(m) Revolving Fund. The Workers' Compensation Administration Revolving Fund established pursuant to the provisions of Labor Code section 62.5.

(n) Revolving Fund Assessment. The user fee assessment levied upon insured and self-

insured employers to establish and maintain the Workers' Compensation Administration Revolving Fund.

(o) Self-insured employer. Any employer who is authorized by the Director to self-insure its workers' compensation liability under subdivisions (b) or (c) of Labor Code section 3700. A self-insured employer shall include the State of California. For the limited purposes of the Targeted Inspection Assessment, the term "self-insured employer" shall not include the State of California or a public agency employer.

(p) Subsequent Injuries Fund. The Subsequent Injuries Benefits Trust Fund established pursuant to the provisions of Labor Code section 62.5.

(q) Subsequent Injuries Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Subsequent Injuries Benefits Trust Fund.

(r) Surcharge. Surcharge means the "State Fraud Investigation and Prosecution Surcharge" assessed under authority of Labor Code Section 62.6.

(s) Targeted Inspection Assessment. The user fee assessment levied upon self-insured employers to establish and maintain the Cal-OSHA Targeted Inspection and Consultation Fund established pursuant to the provisions of Labor Code section 62.7.

(t) Uninsured Employers Fund. The Uninsured Employers Benefits Trust Fund established pursuant to the provisions of Labor Code section 62.5.

(u) Uninsured Employers Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Uninsured Employers Benefits Trust Fund.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 51, 62.5, 62.6, 3700 and 3701, Labor Code; Section 1872.83, Insurance Code.

History: 1. New section filed 4-18-90 as an emergency; operative 4-18-90 (Register 90, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8-16-90.

2. Certificate of Compliance as to 4-18-90 order including amendment adding subsections (c) and (k) and renumbering existing subsections transmitted to OAL 8-14-90 and filed 9-13-90 (Register 90, No. 43).

3. Amendment of article heading, amendment of subsections (a), (b) and (g), new subsection (l), and

amendment of Note filed 1-15-93 as an emergency; operative 1-15-93 (Register 93, No. 3). A Certificate of Compliance must be transmitted to OAL 5-17-93 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-15-93 order including repealer of subsection (b), subsection relettering, and amendment of newly designated subsection (f) transmitted to OAL 5-10-93 and filed 6-16-93 (Register 93, No. 25).

5. Amendment of subchapter heading and subsection (b), new subsection (e) and subsection redesignation, amendment of subsections (f) and (l), new subsection (m) and amendment of Note filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 9-6-94 order including amendment of subsection (a), new subsection (j), subsection relettering and amendment of subsection (k) transmitted to OAL 12-30-94 and filed 2-15-95 (Register 95, No. 7).

7. Amendment of subsection (a), new subsection (d), repealer of subsection (n), subsection relettering and amendment of Note filed 11-14-95 as an emergency; operative 12-1-95 (Register 95, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-30-96 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 11-14-95 order transmitted to OAL 3-29-96 and filed 5-8-96 (Register 96, No. 19).

9. New subsection (a), repealer of subsection (m), and subsection relettering filed 11-10-97; operative 11-10-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 46).

10. Change without regulatory effect amending subchapter heading and subsections (a) and (b), repealing subsections (k) and (l), relettering subsections and amending Note filed 12-15-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 51).

11. Amendment of subchapter heading, amendment of subsections (a) and (b), new subsections (k) and (l), subsection relettering, and amendment of Note filed 1-14-2000 as an emergency; operative 1-14-2000 (Register 2000, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-15-2000 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 1-14-2000 order transmitted to OAL 5-9-2000 and filed 6-15-2000 (Register 2000, No. 24).

13. Amendment of subchapter heading and subsections (b), (c) and (k), new subsections (n), (o) and (q)-(s) and subsection relettering filed 12-18-2003; operative 12-18-2003. Submitted to OAL for printing only (Register 2003, No. 51).

14. Amendment of subchapter heading and subsection (b), new subsections (j)-(k) and subsection relettering filed 11-12-2008; operative 11-12-2008. Submitted to OAL for printing only (Register 2008, No. 46).

ARTICLE 2

Determination of Assessments and/or Surcharge

§15601. Determination of Revolving Fund, Subsequent Injuries Fund, Occupational Safety and Health Fund, and Uninsured Employers Fund Total Assessment.

On or before November 1 of each year, the Director shall, in accordance with Labor Code Section 62.5:

(a) Determine the total amount of funds appropriated for the Division of Workers' Compensation;

(b) Determine the aggregate amount of the assessment for the Subsequent Injuries Fund;

(c) Determine the aggregate amount of the assessment for the Occupational Safety and Health Fund; and

(d) Determine the aggregate amount of the assessment for the Uninsured Employers Fund.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code. Reference: Section 62.5, Labor Code.

History: 1. New section filed 4-18-90 as an emergency; operative 4-18-90 (Register 90, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8-16-90.

2. Certificate of Compliance as to 4-18-90 order transmitted to OAL 8-14-90 and filed 9-13-90 (Register 90, No. 43).

3. New article 2 heading, amendment of section heading, amendment of subsection (a) and repealer of subsection (b) filed 1-15-93 as an emergency; operative 1-15-93 (Register 93, No. 3). A Certificate of Compliance must be transmitted to OAL 5-17-93 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-15-93 order transmitted to OAL 5-10-93 and filed 6-16-93 (Register 93, No. 25).

5. Amendment of article heading, section and Note filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 9-6-94 order including amendment of Note transmitted to OAL 12-30-94 and filed 2-15-95 (Register 95, No. 7).
7. Change without regulatory effect repealing section filed 12-15-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 51).
8. New section filed 1-14-2000 as an emergency; operative 1-14-2000 (Register 2000, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-15-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-14-2000 order transmitted to OAL 5-9-2000 and filed 6-15-2000 (Register 2000, No. 24).
10. Amendment of section heading and section filed 12-18-2003; operative 12-18-2003. Submitted to OAL for printing only (Register 2003, No. 51).
11. Amendment of section heading and subsection (b), new subsection (c) and subsection relettering filed 11-12-2008; operative 11-12-2008. Submitted to OAL for printing only (Register 2008, No. 46).

§15601.7. Determination of Self Insured Employers Subject to the Targeted Inspection Assessment.

On or before September 1 of each year, the Manager of Self-Insurance Plans shall identify for the Director each Private Self Insurer subject to the Targeted Inspection Assessment as determined below.

(a) The Targeted Inspection Assessment shall apply to each Self Insurer in each grouping set forth in subsection (b) that has a current 1-year average number of indemnity claims per 100 employees as calculated in subsection (e) below, that is equal to or in excess of 125 percent of the 3 year base figure determined for each grouping in subsection (d) of this section.

(b) The Manager shall categorize all private self insurers into groups for the purpose of calculating the Targeted Inspection Assessment. All private self insurers shall be categorized into groups by the first two digits of their North American Industry Classification System Code (NAICS Code) as reported on Page 1 of the Self Insurer's Annual Report for the reporting period immediately prior to the current budget year. For purposes of such categorization, each private group self insurer shall be considered as a single entity. The Manager may correct the NAICS Code reported for cause or where the Manager believes an error was made by the self insurer in designating their NAICS Code on the Annual Report. The Manager may also substitute the proper NAICS Code for the Standard Industrial

Classification Code (SIC Code) if the SIC Code was reported rather than the NAICS Code.

(c) For each NAICS Code grouping set forth in subsection (a), the Manager shall calculate the historical average number of indemnity claims per 100 employees from the Consolidated Liabilities page of the full year Self Insurer's Annual Reports submitted by the members in each NAICS Code group for the 3 year reporting period immediately prior to the current 1-year period used to calculate the individual self insurer's indemnity claims per 100 employees.

(d) The Manager shall calculate a figure that will be 125 percent of each NAICS Code grouping's 3 year historical average number of indemnity claims per 100 employees.

(e) For each private self insurer, the Manager shall calculate an individual 1-year number of indemnity claims per 100 employees, using information reported by each self insurer on its last full year Self Insurer's Annual Report submitted for the reporting period immediately prior to the current budget year. In this calculation, the manager shall divide the total number of indemnity claims reported in the most recent claim year by the total number of California employees reported, with the result multiplied by 100. Any self insurer with less than 100 total employees shall be considered to have 100 employees for purposes of this calculation.

Note: Authority cited: Sections 54, 55, 62.7 and 62.9, Labor Code. Reference: Sections 62.7 and 62.9, Labor Code.

History: 1. New section filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 9-6-94 order including amendment of first paragraph and subsections (a), (d), and (e), repealer of subsections (b)-(b)(3), and new subsection (b) transmitted to OAL 12-30-94 and filed 2-15-95 (Register 95, No. 7).

3. Amendment of section and Note filed 11-10-97; operative 11-10-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 46).

4. Amendment of subsection (b) filed 12-18-2003; operative 12-18-2003. Submitted to OAL for printing only (Register 2003, No. 51).

5. Amendment of subsections (a)-(c) filed 3-2-2009; operative 3-2-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 10).

§15602. Allocation of Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge Among Insured and Self-Insured Employers.

(a) Not later than November 1 of each year, the Director shall determine the proportional payroll allocation factors to use to determine the total insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge, and the total self-insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge as follows:

(1) The aggregate payroll of all insured employers shall be determined from payroll information provided by the Department of Insurance's designated licensed rating organization for the most recent period available.

(2) The aggregate payroll of all self-insured employers shall be determined from payroll information provided by the Office of Self-Insurance Plans of the Department of Industrial Relations excluding payroll of insured employees of the State of California for the most recent base year available.

(3) The total payroll information shall then be determined by combining the most recent insured employer payroll with the most recent self-insured employer payroll.

(4) The insured employer proportional payroll allocation factor shall be determined by dividing the insured employer payroll by the total combined payroll.

(5) The self-insured employer proportional payroll allocation factor shall be determined by dividing the self-insured employer payroll by the total combined payroll. The self-insured employer payroll shall not include that portion of the State of California's payroll which was covered by a policy of insurance.

(b) The total insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge shall be determined by multiplying each respective as-

essment and/or surcharge by the insured employer proportional payroll allocation factor.

(c) The total self-insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge shall be determined by multiplying each respective assessment and/or surcharge by the self-insured employer proportional payroll allocation factor.

Note: Authority cited: Sections 54, 55, 62.5 and 62.6, Labor Code. Reference: Sections 62.5 and 62.6, Labor Code.

History: 1. New section filed 4-18-90 as an emergency; operative 4-18-90 (Register 90, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8-16-90.

2. Certificate of Compliance as to 4-18-90 order including amendment to subsection (a) transmitted to OAL 8-14-90 and filed 9-13-90 (Register 90, No. 43).

3. Amendment of section heading, section and Note filed 1-15-93 as an emergency; operative 1-15-93 (Register 93, No. 3). A Certificate of Compliance must be transmitted to OAL 5-17-93 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-15-93 order including amendment of subsection (a)(2) transmitted to OAL 5-10-93 and filed 6-16-93 (Register 93, No. 25).

5. Amendment of subsections (a)(1) and (3) and Note filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 9-6-94 order including amendment of section heading, subsections (a)-(a)(2), (b), (c) and Note transmitted to OAL 12-30-94 and filed 2-15-95 (Register 95, No. 7).

7. Change without regulatory effect amending section heading, section and Note filed 12-15-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 51).

8. Amendment of section heading, section and Note filed 1-14-2000 as an emergency; operative 1-14-2000 (Register 2000, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-15-2000 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1-14-2000 order transmitted to OAL 5-9-2000 and filed 6-15-2000 (Register 2000, No. 24).

10. Amendment of section heading and section filed 12-18-2003; operative 12-18-2003. Submitted to OAL for printing only (Register 2003, No. 51).

11. Amendment of section heading and subsections (a), (b) and (c) filed 11-12-2008; operative 11-12-2008. Submitted to OAL for printing only (Register 2008, No. 46).

§15603. Determination of Insured and Self-Insured Employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge Factors.

(a) The insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge factors shall be determined by dividing the total amount of each respective insured employer assessment and the total amount of the insured employer surcharge, as the case may be, by the expected total current year premium, as determined by the Department of Insurance's designated licensed rating organization.

(b) The self-insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge factors shall be determined by dividing the total amount of each respective self-insured employer assessment or surcharge, as the case may be, by the total amount of workers' compensation indemnity paid under California law by all self-insured employers during the most recent base year available, as determined by the Office of Self-Insurance Plans.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code. Reference: Sections 62.5 and 62.6, Labor Code.

History: 1. New section filed 4-18-90 as an emergency; operative 4-18-90 (Register 90, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8-16-90.

2. Certificate of Compliance as to 4-18-90 order including amendment to subsection (b) transmitted to OAL 8-14-90 and filed 9-13-90 (Register 90, No. 43).

3. Amendment of section and Note filed 1-15-93 as an emergency; operative 1-15-93 (Register 93, No. 3). A Certificate of Compliance must be transmitted to OAL 5-17-93 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-15-93 order including amendment of section (a)(2) transmitted to OAL 5-10-93 and filed 6-16-93 (Register 93, No. 25).

5. Amendment of section heading and text filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 9-6-94 order transmitted to OAL 12-30-94 and filed 2-15-95 (Register 95, No. 7).

7. Amendment of subsection (a) filed 11-14-95 as an emergency; operative 12-1-95 (Register 95, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-30-96 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 11-14-95 order transmitted to OAL 3-29-96 and filed 5-8-96 (Register 96, No. 19).

9. Change without regulatory effect amending section heading, section and Note filed 12-15-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 51).

10. Amendment of section heading, section and Note filed 1-14-2000 as an emergency; operative 1-14-2000 (Register 2000, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-15-2000 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 1-14-2000 order transmitted to OAL 5-9-2000 and filed 6-15-2000 (Register 2000, No. 24).

12. Amendment of section heading and section filed 12-18-2003; operative 12-18-2003. Submitted to OAL for printing only (Register 2003, No. 51).

13. Amendment of section heading and section filed 11-12-2008; operative 11-12-2008. Submitted to OAL for printing; only (Register 2008, No. 46).

§15604. Surplus in Funding.

(a) In the event of an unexpended surplus in the Workers' Compensation Administration Revolving Fund balance for a fiscal year, the balance shall be carried forward and credited to the subsequent year's Revolving Fund assessment.

(b) In the event of an unexpended surplus in the Subsequent Injuries Fund balance for a fiscal year, the balance shall be carried forward and credited to the subsequent year's Subsequent Injuries Fund Assessment.

(c) In the event of an unexpended surplus in the Occupational Safety and Health Fund balance for a fiscal year, the balance shall be carried forward and credited to the subsequent

year's Occupational Safety and Health Assessment.

(d) In the event of an unexpended surplus in the Uninsured Employers Fund balance for a fiscal year, the balance shall be carried forward and credited to the subsequent year's Uninsured Employers Fund Assessment.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code. Reference: Section 62.5, Labor Code.

History: 1. Renumbering of former section 15604 to section 15605 and new section 15604 filed 1-15-93 as an emergency; operative 1-15-93 (Register 93, No. 3). A Certificate of Compliance must be transmitted to OAL 5-17-93 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 1-15-93 order transmitted to OAL 5-10-93 and filed 6-16-93 (Register 93, No. 25).

3. Change without regulatory effect repealing section filed 12-15-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 51).

4. New section filed 1-14-2000 as an emergency; operative 1-14-2000 (Register 2000, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-15-2000 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 1-14-2000 order transmitted to OAL 5-9-2000 and filed 6-15-2000 (Register 2000, No. 24).

6. Amendment filed 12-18-2003; operative 12-18-2003. Submitted to OAL for printing only (Register 2003, No. 51).

7. New subsection (c) and subsection relettering filed 11-12-2008; operative 11-12-2008. Submitted to OAL for printing only (Register 2008, No. 46).

ARTICLE 3

Collection of Assessments and/or Surcharges

§15605. Collection of the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge from Self-Insured Employers.

(a) The Director designates the Manager of Self-Insurance Plans to collect the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge from self-insured employers on the Director's behalf.

(b) No later than December 1 of each year, the Manager of Self-Insurance Plans shall bill each self-insured employer for the amount of the individual self-insured employer's Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge. The billing shall identify each assessment and/or surcharge separately and shall include the calculations utilized to determine each assessment factor. Each individual assessment and/or surcharge shall be determined by multiplying the self-insured employer assessment factor by the total amount of worker's compensation indemnity paid and reported by each self-insured employer on its Self-Insurer's Annual Report during the base year, as determined by the Office of Self-Insurance Plans. The Self-Insurer's Annual Report shall include all indemnity payments as defined in section 15600(e).

(c) The amount of any assessment and/or surcharge shall be paid to the Office of Self-Insurance Plans within 30 days of the billing. Upon the request of any Joint Powers Authority, the Manager may agree to bill the Joint Powers Authority directly for the total amount of each assessment and/or surcharge owed by its public agency members.

(d) In the event the Manager collects funds in excess of the total self-insured employer assessment in the (1) Revolving Fund Assessment; (2) Subsequent Injuries Fund Assessment; (3) Occupational Safety and Health Fund Assessment; (4) Uninsured Employers Fund Assessment; and/or (5) Fraud Surcharge, such excess funds shall be paid over to the Director to be held in a trust account and credited to the next year's respective assessments and/or surcharge on self-insured employers.

(e) Should the Manager determine that any self-insured employer has understated or overstated its total payroll or indemnity paid on the self-insured employer's annual report, the Manager may issue a corrected billing.

(f) If an employer has paid the assessments and/or surcharge as an insured employer, and during the year of such assessments and/or surcharge is granted a certificate of consent to self-insure, the newly self-insured employer is not required to pay an additional assessments and/or surcharge as a self-insured employer for the current assessments and/or surcharge year. Such an employer shall submit to the Manager a

copy of the assessments and/or surcharge billing paid as insured employer in lieu of payment as a self-insured employer.

(g) A self-insured employer that does not have a self-insurers' annual report on file with the Office of Self-Insurance Plans which covers the base year of the assessments and/or surcharge, and that did not pay the assessments and/or surcharge for the base year as an insured employer, shall pay the assessments and/or surcharge through the Office of Self-Insurance Plans.

(1) To enable the Manager to determine such self-insured employer's liability for the assessments and/or surcharge, each such self-insured employer shall file a report prescribed by the Manager, setting forth such self-insured employer's total annual payroll for the base year, and the total workers' compensation premium paid for each calendar quarter of the preceding year.

(2) The Manager shall bill the self-insured employer by applying the self-insured employer assessment factors to the last annual premium paid by the self-insured employer until the self-insured employer's experience as a self-insured employer exceeds two complete calendar years for private self-insured employers or two complete fiscal years for public self-insured employers.

(h) A self-insured employer that ceases to be self-insured and ceases to operate as a functioning employer with no legal requirement to secure the payment of compensation, but continues to have open workers' compensation claims arising from the period of self-insurance, shall continue to be liable for assessments and/or surcharge for a period of 3 calendar years following the termination, revocation, or surrender of the employer's certificate of consent to self-insure. The Manager shall bill the former self-insured employer in accordance with this Section.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 62.5 and 62.6, Labor Code; and Section 1872.83, Insurance Code.

History: 1. New section filed 4-18-90 as an emergency; operative 4-18-90 (Register 90, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8-16-90.

2. Certificate of Compliance; as to 4-18-90 order including amendment to subsections (b), (c) and (e)

and adding subsection (f), (g) and (h) transmitted to OAL 8-14-90 and filed 9-13-90 (Register 90, No. 43).

3. Renumbering of former section 15605 to section 15606 and renumbering of former section 15604 to section 15605 and amendment of section heading, section, and Note filed 1-15-93 as an emergency; operative 1-15-93 (Register 93, No. 3). A Certificate of Compliance must be transmitted to OAL 5-17-93 or emergency language will be repealed by operation of law on the following day.

4. Editorial correction restoring inadvertently omitted article heading (Register 93, No. 25).

5. Certificate of Compliance as to 1-15-93 order including amendment of subsection (F) transmitted to OAL 5-10-93 and filed 6-16-93 (Register 93, No. 25).

6. Amendment of article heading, section heading, subsections (a), (e), (f) and (h) and Note filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 9-6-94 order including amendment of subsections (a)-(c) transmitted to OAL 12-30-94 and filed 2-15-95 (Register 95, No. 7).

8. Amendment of subsection (f) filed 11-14-95 as an emergency; operative 12-1-95 (Register 95, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-30-96 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 11-14-95 order transmitted to OAL 3-29-96 and filed 5-8-96 (Register 96, No. 19).

10. Change without regulatory effect amending section heading, section and Note filed 12-15-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 51).

11. Amendment of section heading, section and Note filed 1-14-2000 as an emergency; operative 1-14-2000 (Register 2000, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-15-2000 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 1-14-2000 order transmitted to OAL 5-9-2000 and filed 6-15-2000 (Register 2000, No. 24).

13. Amendment of section heading and section filed 12-18-2003; operative 12-18-2003. Submitted to OAL for printing only (Register 2003, No. 51).

14. Amendment of section heading and subsections (a), (b) and (d) filed 11-12-2008; operative 11-12-2008. Submitted to OAL for printing only (Register 2008, No. 46).

§15606. Collection of Advances Against Insured Employers.

(a) Not later than December 1 of each year, the Director shall notify each workers' compen-

sation insurer, of the amounts due from the insurer on behalf of its policyholders for, respectively, the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, Occupational Safety and Health Fund Assessment, and the Fraud Surcharge levied pursuant to the authority of Labor Code Sections 62.5 and 62.6 and these regulations. The notice shall include a bill that sets forth separately the total amounts of the assessments and the surcharge.

(b) The Insurer advances against the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge amounts shall be calculated by multiplying the insurer's California direct written workers' compensation premium as reported in the most recent year's financial statement on file with the Insurance Commissioner, multiplied by the ratio of the expected total current year premium to the total direct written workers' compensation premium of all insurers as reported in the latest year's annual financial statements on file with the Insurance Commissioner by the respective factors determined pursuant to subsection (a) of Section 15603 of these regulations.

(c) Where the amount of the assessments or surcharge owed is less than \$5.00 the Director may elect not to bill the insurer therefor.

(d) Each insurer shall pay to the Director one half of the amounts billed under subsection (a) on behalf of its insured employers on or before the following January 1. Each insurer shall pay the balance of the assessments and surcharge to the Director on the following April 1.

(e) Upon agreement of the affected insurers, the Director may elect to consolidate in one billing the assessments and surcharge of all insured employers that are insured by insurers under the same management, direction and control.

(f) In the event the Director collects advances from insurers in excess of the total assessments and surcharge due from insured employers in the (1) Revolving Fund Assessment; (2) Subsequent Injuries Fund Assessment; (3) Occupational Safety and Health Fund Assessment; (4) Uninsured Employers Fund Assessment; and/or (5) Fraud Surcharge, the excess funds shall be held by the Director in a trust

account and credited to the subsequent year's total respective assessments and surcharge on insured employers.

(g) Commencing with the assessment payment due April 1, 1993, the insurer shall submit a summary report on a form provided by the Director, which includes the following information: (1) the total amount of assessments and surcharges billed insured employers by the insurer; (2) the respective factors used by the insurer in assessing and surcharging insured employers.

(h) The summary report due April 1, 1993 shall include the information specified in this subsection for all workers' compensation insurance policies with an inception date between August 1, 1990 and December 31, 1991. Commencing April 1, 1994, the summary report shall include the information specified in this subsection for all workers' compensation insurance policies with an inception date in the next preceding calendar years.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 62.5 and 62.6, Labor Code; and Section 1872.83, Insurance Code.

History: 1. New section filed 4-18-90 as an emergency; operative 4-18-90 (Register 90, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8-16-90.

2. Certificate of Compliance as to 4-18-90 order including amendment to subsection (a), (d) and (e) transmitted to OAL 8-14-90 and filed 9-13-90 (Register 90, No. 43).

3. Renumbering of former section 15606 to 15607 and renumbering of former section 15605 to section 15606 and amendment of section and Note filed 1-15-93 as an emergency; operative 1-15-93 (Register 93, No. 3). A Certificate of Compliance must be transmitted to OAL 5-17-93 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-15-93 order including amendment of subsection (a) and repealer of subsection (e)(3) transmitted to OAL 5-10-93 and filed 6-16-93 (Register 93, No. 25).

5. Amendment of subsections (a)-(d) and Note filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 9-6-94 order including amendment of section heading, repealer of subsections (a)-(e) and new subsections (a)-(i) trans-

mitted to OAL 12-30-94 and filed 2-15-95 (Register 95, No. 7).

7. Amendment of subsections (a)-(b), repealer of subsection (c), subsection relettering and amendment of Note filed 11-14-95 as an emergency; operative 12-1-95 (Register 95, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-30-96 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 11-14-95 order transmitted to OAL 3-29-96 and filed 5-8-96 (Register 96, No. 19).

9. Change without regulatory effect amending section and Note filed 12-15-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 51).

10. Amendment of section and Note filed 1-14-2000 as an emergency; operative 1-14-2000 (Register 2000, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-15-2000 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 1-14-2000 order transmitted to OAL 5-9-2000 and filed 6-15-2000 (Register 2000, No. 24).

12. Amendment of subsections (a), (b) and (f) filed 12-18-2003; operative 12-18-2003. Submitted to OAL for printing only (Register 2003, No. 51).

13. Amendment of section heading and subsections (a), (b) and (f) filed 11-12-2008; operative 11-12-2008. Submitted to OAL for printing only (Register 2008, No. 46).

§15607. Collection of Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge from Insured Employers.

(a) Every insurer shall collect the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge required by this article and Labor Code Sections 62.5 and 62.6, respectively, from each employer insured by it by applying a separate charge to all workers' compensation insurance policies issued by such insurer with an inception date in the year beginning January 1 after the determinations required by Sections 15601 and 15601.5 of these regulations. The amount of the assessment and surcharge shall be determined by multiplying the insured employer's estimated annual assessable premium by the assessment factors determined by the Director pursuant to

subsection (a) of section 15603. The assessment factors in effect on the inception date of the policy shall be used to calculate the separate charges relative to that policy, including any additional or return premium.

(b) The respective amounts of the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud surcharge shall each be rounded to the nearest whole dollar, and be respectively shown in the policy as "Workers' Compensation Administration Revolving Fund Assessment (amount)," "Subsequent Injuries Benefits Trust Fund Assessment (amount)," "Occupational Safety and Health Fund Assessment (amount)," "Uninsured Employers Benefits Trust Fund Assessment (amount)," and "State Fraud Surcharge (amount)".

(c) Commencing with policies effective on and after January 1, 1993, the insured employer's separate charges calculated under subsection (a) above shall be collected in full with the initial payment of assessable premium. If additional premium becomes due under the policy, the final amount of the separate charges shall be adjusted with the final premium bill for the policy. In the case of a retrospective rated policy, the respective assessment and/or surcharge should be applied to the policy premium at issuance, with recalculation at audit, and application of the factors to any retrospective adjustment premium.

(d) Notwithstanding the requirements of this Section, an insurer may elect not to bill an insured employer for the assessments and surcharge for the additional premium due under the policy if the amount of the additional assessments or surcharge does not exceed \$10.00. In the event a return premium is due the employer, the insurer shall return a pro rata share of assessments and surcharge previously paid by the employer unless the assessments and surcharge overpayment does not exceed \$10.00.

(e) A self-insurer whose certificate has been revoked during the base year or during the calendar year prior to the current assessments and/or surcharge billing by the Manager shall be exempt from payment of the assessments and/or surcharge as a self-insurer.

(f) If an employer has paid the assessments and/or surcharge as a self-insured employer, and during the year of such assessment and/or sur-

charge obtains a policy of workers' compensation insurance, the newly insured employer is not required to make assessments and/or surcharge payments as an insured employer for that year's assessments and/or surcharge. Such an employer shall submit to the insurer a copy of the assessments and/or surcharge billing paid as a self-insured employer, in lieu of payment as an insured employer.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 62.5 and 62.6, Labor Code; and Section 1872.83, Insurance Code.

History: 1. New section filed 4-18-90 as an emergency; operative 4-18-90 (Register 90, No. 18). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 8-16-90.

2. Certificate of Compliance as to 4-18-90 order including amendment to subsections (a), (b), and (c) and adding subsection (d) transmitted to OAL 8-14-90 and filed 9-13-90 (Register 90, No. 43).

3. Renumbering of former section 15607 to 15608 and renumbering of former section 15606 to section 15607 and amendment of section heading, section, and Note filed 1-15-93 as an emergency; operative 1-15-93 (Register 93, No. 3). A Certificate of Compliance must be transmitted to OAL 5-17-93 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-15-93 order including amendment of subsections (b) and (d) transmitted to OAL 5-10-93 and filed 6-16-93 (Register 93, No. 25).

5. Amendment of subsections (a), (b), (d) and Note filed 9-6-94 as an emergency; operative 9-6-94 (Register 94, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-4-95 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 9-6-94 order including amendment of section heading, subsections (a), (b), and (d), and Note transmitted to OAL 12-30-94 and filed 2-15-95 (Register 95, No. 7).

7. Amendment of subsections (a) and (d), and new subsections (e)-(f) filed 11-14-95 as an emergency; operative 12-1-95 (Register 95, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-30-96 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 11-14-95 order transmitted to OAL 3-29-96 and filed 5-8-96 (Register 96, No. 19).

9. Amendment of subsections (a), (c) and (d) filed 11-10-97; operative 11-10-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 46).

10. Change without regulatory effect amending section heading, section and Note filed 12-15-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 51).

11. Amendment of section heading, section and Note filed 1-14-2000 as an emergency; operative 1-14-2000 (Register 2000, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-15-2000 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 1-14-2000 order transmitted to OAL 5-9-2000 and filed 6-15-2000 (Register 2000, No. 24).

13. Amendment of section heading and section filed 12-18-2003; operative 12-18-2003. Submitted to OAL for printing only (Register 2003, No. 51).

14. Amendment of section heading and subsections (a) and (b) filed 11-12-2008; operative 11-12-2008. Submitted to OAL for printing only (Register 2008, No. 46).

§15611. Collection of Interim Assessments.

(a) Notwithstanding the provisions of this subchapter, if the Director determines that there are insufficient funds to support the Workers' Compensation Administration Revolving Fund, the Subsequent Injuries Fund, the Occupational Safety and Health Fund, or the Uninsured Employers Fund for fiscal year 2003-2004, or any fiscal year thereafter, the Director may collect a single interim assessment for these respective funds, in an amount determined by the Director, to provide sufficient funding for these funds.

(b) Any assessment collected under this Section shall not reduce the amount to be collected in the subsequent year's assessments, except as provided by Section 15608 of these regulations.

(c) Any assessment collected under this Section shall be included on the next annual report required under Section 15606(g) of these regulations.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code. Reference: Section 62.5, Labor Code.

History: 1. New section filed 12-18-2003; operative 12-18-2003. Submitted to OAL for printing only (Register 2003, No. 51).

2. Amendment of subsection (a) filed 11-12-2008; operative 11-12-2008. Submitted to OAL for printing only (Register 2008, No. 46).

PROVISIONS Of The UNITED STATES CODE

TITLE 33 NAVIGATION AND NAVIGABLE WATERS

CHAPTER 18 LONGSHORE AND HARBOR WORKERS' COMPENSATION

§902. Definitions.

When used in this Act—

(1) The term “person” means individual, partnership, corporation, or association.

(2) The term “injury” means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

(3) The term “employee” means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include—

(A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;

(B) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;

(C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);

(D) individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are tem-

porarily doing business on the premises of an employer described in paragraph (4), and (iii) are not engaged in work normally performed by employees of that employer under this Act;

(E) aquaculture workers;

(F) individuals employed to build any recreational vessel under sixty-five feet in length, or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel;

(G) a master or member of a crew of any vessel; or

(H) any person engaged by a master to load or unload or repair any small vessel under eighteen tons net;

if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law.

(4) The term “employer” means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

(5) The term “carrier” means any person or fund authorized under section 32 [33 USCS

§ 932] to insure under this Act and includes self-insurers.

(6) The term “Secretary” means the Secretary of Labor.

(7) The term “deputy commissioner” means the deputy commissioner having jurisdiction in respect of an injury or death.

(8) The term “State” includes a Territory and the District of Columbia.

(9) The term “United States” when used in a geographical sense means the several States and Territories and the District of Columbia, including the territorial waters thereof.

(10) “Disability” means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment; but such term shall mean permanent impairment, determined (to the extent covered thereby) under the guides to the evaluation of permanent impairment promulgated and modified from time to time by the American Medical Association, in the case of an individual whose claim is described in section 10(d)(2) [33 USCS § 910(d)(2)];

(11) “Death” as a basis for a right to compensation means only death resulting from an injury.

(12) “Compensation” means the money allowance payable to an employee or to his dependents as provided for in this Act, and includes funeral benefits provided therein.

(13) The term “wages” means the money rate at which the service rendered by an employee is compensated by an employer under the contract of hiring in force at the time of the injury, including the reasonable value of any advantage which is received from the employer and included for purposes of any withholding of tax under subtitle C of the Internal Revenue Code of 1954 [1986] [26 USCS §§ 3101 et seq.] (relating to employment taxes). The term wages does not include fringe benefits, including (but not limited to) employer payments for or contributions to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit plan for the employee’s or dependent’s benefit, or any other employee’s dependent entitlement.

(14) “Child” shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a

stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. “Grandchild” means a child as above defined of a child as above defined. “Brother” and “sister” include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. “Child”, “grandchild”, “brother”, and “sister” include only a person who is under eighteen years of age, or who, though eighteen years of age or over, is (1) wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or (2) a student as defined in paragraph (19) [(18)] of this section.

(15) The term “parent” includes step-parents and parents by adoption, parents-in-law, and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(16) The terms “widow or widower” includes only the decedent’s wife or husband living with or dependent for support upon him or her at the time of his or her death; or living apart for justifiable cause or by reason of his or her desertion at such time.

(17) The terms “adoption” or “adopted” mean legal adoption prior to the time of the injury.

(18) The term “student” means a person regularly pursuing a full-time course of study or training at an institution which is—

(A) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof,

(B) a school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body,

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited, or

(D) an additional type of educational or training institution as defined by the Secretary,

but not after he reaches the age of twenty-three or has completed four years of education beyond the high school level, except that, where his twenty-third birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed five months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed to be a student under this Act during a period of service in the Armed Forces of the United States.

(19) The term “national average weekly wage” means the national average weekly earnings of production or nonsupervisory workers on private nonagricultural payrolls.

(20) The term “Board” shall mean the Benefits Review Board.

(21) Unless the context requires otherwise, the term “vessel” means any vessel upon which or in connection with which any person entitled to benefits under this Act suffers injury or death arising out of or in the course of his employment, and said vessel’s owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member.

(22) The singular includes the plural and the masculine includes the feminine and neuter.

(March 4, 1927, ch 509, §2, 44 Stat. 1424; June 25, 1938, ch 685, §1, 52 Stat. 1164; Oct. 27, 1972, P.L. 92-576, §§2(a)(b) 3, 5(b), 15(c), 18(b), 20(c), 86 Stat. 1251, 1262; Sept. 28, 1984, P.L. 98-426, §§2, 5(a)(2), 27(a)(1), 98 Stat. 1639, 1641, 1654; Feb. 17, 2009, P.L. 111-5, Div A, Title VIII, §803, 123 Stat. 187.)

