

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Industrial Relations**

**Regulatory Action:**

**Title 8, California Code of Regulations**

**Adopt sections:**

**Amend sections: 15203.2(d)**

**Repeal sections:**

**DECISION OF DISAPPROVAL OF  
REGULATORY ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2016-1028-02**

**OAL Matter Type: Regular (S)**

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**SUMMARY OF RULEMAKING ACTION**

In this rulemaking action, the Department of Industrial Relations, Office of Self-Insured Plans amends numerous sections in Title 8 of the California Code of Regulations (CCR), as well as a number of forms incorporated therein by reference, so as to streamline regulations for self-insured plans. The action establishes an online platform for the submission of annual reports, eliminates certain financial and reporting requirements, simplifies or replaces application and reporting forms, and simplifies requirements for the application and renewal processes.

**DECISION**

OAL disapproved proposed amendments to subdivision (d) of section 15203.2 of Title 8 of the CCR in the above-described rulemaking action for failure to comply with the clarity standard of the Administrative Procedure Act (APA), pursuant to Government Code sections 11349(c) and 11349.1(a)(3).

**DISCUSSION**

Any regulation amended or adopted by a state agency through its exercise of quasi-legislative power delegated to it by statute to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from the APA. (Gov. Code, secs. 11340.5 and 11346.) OAL reviews regulatory actions for compliance with the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In its review, OAL may not substitute its judgment for

that of the rulemaking agency with regard to the substantive content of the regulation. OAL review is an independent executive branch check on the exercise of rulemaking powers by executive branch agencies and is intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that required procedures are followed in order to provide a meaningful opportunity for public comment on regulations before they become effective.

### **Clarity.**

In enacting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. (Gov. Code, sec.11340(b).) Government Code section 11349.1(a)(3) requires that OAL review all regulations for compliance with the clarity standard. Government Code section 11349(c) defines "clarity" to mean "...written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them."

The Department proposed the following amendments to Title 8 CCR section 15203.2(d):

(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. Each private employer applicant for a Certificate of Consent to Self-Insure shall meet the following minimum conditions: (1) three calendar years in business in a legally authorized business form (e.g. corporation, partnership, proprietorship, non-profit, etc.); (2) have three years of audited financial statements prepared by an independent certified public accountant; and (3) on the date of application to self-insure, have an acceptable credit rating for each of three full calendar years prior to the date of application as defined in Section 15220.1, or receive a waiver from the Chief and directly post collateral as required by Section 15210(d).

The proposed amendments to section 15203.2(d) fail to satisfy the clarity standard of the APA for three reasons. First, the term "acceptable credit rating" is undefined. An entity subject to the regulation could not determine from the language of the regulation whether its credit rating was acceptable to the Department for purposes of self-insurance. Moreover, section 15220.1 does not define what an acceptable credit rating is but only specifies the information required of a private employer by the Department for purposes of determining an employer's credit rating. Second, the standards or criteria which the Chief will use in determining whether to grant an employer a waiver of the requirement of an acceptable credit rating are not specified. An entity would not know from reading the regulation how to obtain a waiver or on what basis a waiver would be granted or denied. Third, "collateral" is not required by Section 15210(d). That section requires a "security deposit," which is a distinguishable term from "collateral." Use of the term "collateral" while cross referencing section 15210(d) creates an internal inconsistency and a clarity problem for the implementation of section 15203.2(d).

**CONCLUSION**

For the foregoing reasons, OAL disapproved the proposed amendments of section 15203.2(d) in the above-referenced rulemaking action. Pursuant to Government Code section 11349.4(a), the Department may resubmit a revised section 15203.2(d) within 120 days of its receipt of this Decision of Disapproval. Prior to that, the Department shall make all substantial regulatory text changes, which are sufficiently related to the original text, available for at least 15 days for public comment pursuant to Government Code sections 11346.8 and Title 1 CCR section 44. OAL reserves the right to review the Department's resubmitted regulation and rulemaking record for compliance with all substantive and procedural requirements of the APA.

Date: December 21, 2016



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