

**SUMMARY OF AND RESPONSE TO WRITTEN COMMENTS
RECEIVED DURING THE 45-DAY NOTICE PERIOD**

This section responds to the written comments submitted during the 45-day comment period ending January 24, 2006. The responses provided are intended as an *addition* to the related text included within the Initial Statement of Reasons.

- Each separate comment/response is numbered; the number has been indicated next to the corresponding text in the written comment as a cross-reference.
- General comments are addressed before comments to specific text.
- Comments to multiple sections are addressed after the general comments and before the specific comments.
- Verbatim comments are used where a summary would be time consuming to prepare or would not save space.
- Summary comments include those where (1) many comments addressed the same general subject, (2) an electronic copy was not available, or (3) the comment was in an electronic form that could not be copied.
- Verbatim comments are enclosed within quotation marks; summary comments are enclosed within brackets.
- Generally, repetitive comments are grouped, however, some comments are repeated where additional issues are presented.
- In grouped comments, where verbatim text is used, the cited text is from the first source listed; the other sources listed made similar comments.

Twenty-two written comments were provided by or on behalf of trade associations and licensees. Several of the comments have been adopted in their entirety in other comments. The following table identifies the source of each written comment, the code assigned to each source, whether the written comment was adopted by another comment, the specific sections commented upon, if any, and the date of the comment.

EXHIBIT “A”

Code	Written Comment by:	Adopted by:	Specific Sections	Date
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ACE	ACE USA Group of Companies		.2, 7, 8, 9, 10, 13, 14	1/24//06
ACIC	Association of California Insurance Companies and Property Casualty Insurers Association of America	ACE	2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 24	1/24//06
ACLI	American Council of Life Insurers and Association of Calif. Life and Health Ins. Companies	Pacific, Swiss	2303, 1, 2, 3, 4, 7, 8, 9, 10, 11, 13, 15	1/24//06
AIA	American Insurance Association	ACE	2, 7, 8, 10, 13, 14, 15, 16, 19	1/24//06
Allianz	Allianz group of companies Fireman's Fund Insurance Company		13, 14, 18, 24	1/24//06
AmRe	American Re-Insurance Company			01/23/06
AFGI	Association of Financial Guaranty Insurers		2	1/24//06
Everest	Everest Reinsurance Company		10, 13, 14, 15, 20	01/23/06
Farmers	Farmers Insurance Exchange		4, 5, 8, 12, 15, 17, 19	01/23/06
Guy	Guy Carpenter		2, 8, 10, 13, 14, 15, 17	1/24//06
Liberty	Liberty Mutual			01/23/06
Lloyd's	Underwriters at Lloyd's, London		5	01/23/06
O'Connor	Phillip R. O'Connor, Ph.D	AmRe, RAA		1/24//06
PADIC	Pacific Assoc. of Domestic Ins. Cos. and Natl. Assoc. of Mutual Ins. Cos.			01/23/06
Pacific	Pacific Life Insurance Company			1/24//06
PIF	Personal Insurance Federation of California		4, 5, 8, 12, 15, 17, 19, 24	01/23/06
RAA	Reinsurance Association of America	ACE, AmRe, Guy, Swiss, Towers	2, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 24	1/24//06
State	State National Companies		15	1/24//06
Swiss	Swiss Re Holding Corporation		12, 13, 14, 15, 19, 20, 24	1/24//06
Towers	Towers Perrin		15, 17	01/23/06
XL	XL America, Inc.		2, 3, 4, 5, 13, 14, 15	01/23/06

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		GENERAL COMMENTS	
All comments.		<p>Comment No. 1</p> <p>[Descriptive statement of the entity making the comment and nature of its business.]</p>	<p>Except to acknowledge that the comment was made by a knowledgeable member or representative of the regulated industry, the Commissioner elects not to provide a more descriptive summary or to further respond since the statement is not an objection to the procedures followed nor an objection or suggestion to the proposed regulatory action.</p>
ACE (6) AmRe (1) Guy (1) Pacific (1) RAA Swiss (2) Towers (1)		<p>Comment No. 2</p> <p>[The Comment adopts the Comment made by another.]</p>	<p>Except to note that adopted comments are noted in the preceding table, the Commissioner elects not to respond since the statement is not an objection to the procedures followed nor an objection or suggestion to the proposed regulatory action.</p>
ACIC (2-6; 25-26) The ACIC comments discussed the same subjects listed in the cited verbatim comment more fully throughout the cited pages.		<p>Comment No. 3</p> <p>“It does not appear from the Notice that the Commissioner has complied with Gov’t Code § 11346.2. Specifically, subsections (b), (1), (2), (3) and (4) since nowhere has the Commissioner provided any,</p> <p style="padding-left: 40px;">(1) ...rationale for the determination by the [CDOI] that each adoption, amendment, or appeal is reasonably necessary to carry out the</p>	<p>The Commissioner disagrees. The comment fails to reference specific regulations, precluding a specific response here, however, full responses have been provided <i>infra</i> where such comments are made with respect to a specific regulation.</p> <p>The specific purpose of each regulation and the rationale for the Commissioner’s determination that each regulation is reasonably necessary to carry out the purpose for which it is proposed is set forth in the Initial Statement of Reasons (“ISR”). Implementation of the</p>

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<p>The cited text is from page 2 of the ACIC comment and is a summary of its comments on the topics.</p> <p>Similar comments: State (2) RAA (69-75)</p>		<p>purpose for what it is proposed.</p> <p>(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the [CDOI] relies in proposing the adoption, amendment, or repeal of a regulation.</p> <p>(3) (A) A description of reasonable alternatives to the regulation and the agency’s reasons for rejecting those alternatives...</p> <p>(B) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency’s reasons for rejecting those alternatives.</p> <p>(C) Facts, evidence, documents, testimony, or other evidence on which the [CDOI] relies to support an initial determination that the action will not have a significant adverse economic impact on business.”</p>	<p>regulations is necessary for the efficient administration and enforcement of the Code.</p> <p>The Government Code does not require that an agency must rely on technical, theoretical or empirical studies or reports in proposing regulations. It is expected that an agency’s professional staff have the expertise and experience to propose regulations. The only requirement is that if the agency relies on evidence such as studies or reports, that information must be disclosed. On July 3, 2006, the Commissioner issued a Notice of Addition to Rulemaking File that identified several official reports and other documents added to the Rulemaking File. No comments were received in response to the July 3, 2006 notice. (See also the response to Comment No. 54.)</p> <p>The only alternative to the proposed regulations suggested by the comments was the adoption of the NAIC Model Regulation on Credit for Reinsurance. However, the suggestion was not a true “alternative” in that the proposed regulations already incorporate virtually all provisions of the NAIC Model Regulation on Credit for Reinsurance and the Life and Health Reinsurance Agreements Model Regulation (“the Model Regulation”). However, implicit in the suggestion was a request to withdraw all regulations that covered topics not included in the Model Regulation, such as licensing standards, contract provisions and oversight of reinsurance transactions. The Commissioner declines</p>

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			<p>the suggestion because the subject provisions are necessary to implement sections of the Insurance Code that are not covered by the Model Regulation.</p> <p>In response to comments, significant revisions have been made to the initial text, including revisions that limit the scope of the regulations and reduce the number of affected insurers. The Commissioner has determined that no reasonable alternative exists that would be as effective in carrying out the purpose for which the regulations are proposed, or would be less burdensome to affected persons, than the revised regulations. This determination is supported by the written statements of non-opposition to the revised text received from the RAA, ACIC and other major trade associations and insurers, and the absence of objections to the revisions to the regulations.</p> <p>The only small businesses that the proposed regulations will affect are licensed reinsurance intermediaries. The requirement for examination of licensed intermediaries every three years was deleted and replaced with a requirement that an intermediary shall submit financial information upon request. The revision will significantly reduce any adverse economic impact of the regulations upon intermediaries by eliminating the triennial examination expense. The Commissioner has identified no reasonable alternatives to the revised regulations, nor have any such alternatives otherwise been identified and brought to the attention of the</p>

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			<p>Department, that would further lessen any impact on small business.</p> <p>The Commissioner’s initial determination stated in the ISR was that the proposed regulations <i>may</i> have an adverse economic impact on business. After reviewing those provisions that may have caused an adverse economic impact, the Commissioner determined that any potential adverse impact would not be significant. No contrary evidence was provided in the comments. However, with the revision of the regulations, those provisions which might have caused any degree of adverse economic impact have been deleted. Moreover, as noted above, the RAA, ACIC and other major trade associations and insurers have provided written statements of non-opposition to the revised text.</p>
ACE (1-4) ACLI (2-3) AIA (3-4) ACIC (1, 6-9, 24-25) AFGI (Exhibit) Guy (2) Liberty Lloyd’s (1) O’Connor (3-4)		<p>Comment No. 4</p> <p>[We are alarmed at the extensive extraterritorial scope of the proposed rule. By attempting to regulate all licensed insurers in the state as if they are domestic insurers, the Department has exceeded its authority.]</p> <p>[ACE: Each state has already enacted laws that regulate the financial condition of their domestic insurers; the CDI proposal to disregard some of those rules, for example, by denying credit to non-California approved security, violates the Full Faith and Credit Clause of the U.S. Constitution.]</p>	<p>The Commissioner disagrees. Except in very few instances, California law applies equally to all licensed insurers whether the insurer is a domestic insurer (domiciled in California) or a foreign insurer (licensed in California but domiciled elsewhere). The comments implicitly assert that foreign insurers should be regulated only by their home states. However, a foreign insurer cannot reasonably expect to do business in California and not be subject to laws established for the protection of California citizens and businesses.</p> <p>The proposed regulations establish requirements for the</p>

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PADIC Pacific PIF (1) RAA (69-74) Swiss (2) Towers (2-3)		Towers (2): “It is not within the constitutional authority of California to impose its requirements on reinsurance transactions that occur entirely outside of California even if some of the business affected may cover California risks. <i>See Connecticut General Life Ins. Co. v. Johnson</i> , 303 U.S. 77, 58 S. Ct. 436 (1938).”	<p>financial statements that must be filed in California by all licensed insurers pursuant to CIC §900. Licensed insurers may freely enter any reinsurance agreements they choose. However, when a licensed insurer takes credit for reinsurance on its financial statement filed in California (e.g., reducing the liabilities carried on its books), the financial statement must be completed in the manner prescribed. This would include, for example, not claiming statement credit for a reinsurance agreement that does not have an “entire agreement” clause as required by §2303.13(b).</p> <p>Similarly, the regulations establish certain minimum standards for financial stability, e.g., requiring adequate surplus and retaining some percentage of risk on policies written. The Commissioner has determined that minimum standards are necessary to protect California policyholders and creditors.</p> <p>The application of California financial standards and other requirements to an insurer doing business in California is not an “extraterritorial” application of California law. The case of <i>Rhode Island Ins. Co. V. Downey</i> (1949) 95 Cal.App. 2d 220, 212 P.2d 965, 973, 980-81 was cited in the Initial Statement of Reasons (“ISR”), with respect to the discussion of CIC §1011(c), implemented in §2303.15. The court affirmed the seizure of a Rhode Island insurer by the California Insurance Commissioner for a violation of CIC §1011(c). In rejecting the “extraterritorial” claim made</p>

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			<p>by the insurer (that it was not subject to California financial requirements different from its home state requirements), the <i>Rhode Island</i> court responded, at page 242, citing <i>Robertson v. California</i>, 328 U.S. 440 (66 S.Ct. 1160, 90 L.Ed. 1366:</p> <p style="padding-left: 40px;">“...(If appellant's contentions were accepted and foreign insurers were to be held free to disregard California's reserve requirements and then to clothe their agents or others acting for them with their immunity, not only would the state be made helpless to protect her people against the grossest forms of unregulated or loosely regulated foreign insurance, but the result would be inevitably to break down also the system for control of purely local insurance business. In short, the result would be ultimately to force all of the states to accept the lowest standard for conducting the business permitted by one of them.....”</p> <p>In response to the claim that California was projecting its laws into other states by establishing minimal reserve requirements for insurers transacting in California (i.e., the “extraterritorial” application of California law), the Supreme Court stated also stated:</p> <p style="padding-left: 40px;">“The contention is obviously without merit. Nothing which California requires touches or affects anything the [insurer] may do or wish to</p>

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			<p style="text-align: center;">do in [its home state] or elsewhere than in California.”</p> <p><i>Robertson</i>, at 461.</p> <p>No colorable argument has been made that the Code sections implemented by the regulations may not be applied to foreign insurers. The only case cited by the comments was <i>Connecticut General</i>. However, the question in <i>Connecticut General</i> was whether California could assess a premium tax on premium paid on a reinsurance agreement entered and performed outside its borders, where the underlying risks were located within California. The Court held that since no act in the formation, performance or discharge of the contract occurred in California, the prerequisites for taxation had not been met. The case has no relevance to the scope of the Commissioner’s authority to regulate the financial statements foreign insurers are required to file in California or the financial stability and condition of foreign insurers doing business in California. Decided eleven years after <i>Connecticut General</i>, the <i>Rhode Island</i> opinion discussed above did not even mention <i>Connecticut General</i>.</p> <p>Similarly, while the commerce and equal protection clauses were raised in the “extraterritorial” arguments dismissed in <i>Robertson</i>, the Full Faith and Credit Clause violation asserted by ACE was not discussed in the cited</p>

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			cases nor supported by argument in the ACE comment.
ACLI (4) Pacific (2) The subject of extraterritorial application of the regulations was addressed in the above comment. The subject is addressed again because the comments raise additional issues.		<p>Comment No. 5</p> <p>[A multi-state life insurance insolvency is quite complex and requires the ongoing support and cooperation of the insolvent's reinsurers. This proposal shows insufficient attention to the practical effects of the proposal's expansive extraterritoriality. Interstate coordination is essential in resolving a life insurer insolvency.]</p>	To the extent that this comment is a general summary of specific comments, the Commissioner refers to his responses to the specific comments. The comment does not indicate which parts of the regulations may impact the administration of a multi-state receivership. The Commissioner agrees that multi-state receiverships are complex matters that require receivers to comply with differing state laws regarding guaranty fund coverage, claims, defenses, priorities, preferences, liens, and other matters. Such receiverships (and single state receiverships) require a receiver to address all the myriad combinations and permutations that exist in reinsurance contracts as well as the differing positions taken by reinsurers. While simplifying the <i>administration</i> of insurer insolvency is a desirable goal, it is not the goal of financial regulation. The administration of receiverships in compliance with various states' laws is governed by insolvency laws, which are not within the scope of the statutes interpreted and implemented in the proposed regulations.
ACIC (2)		<p>Comment No. 6</p> <p>"[I]n responding to Gov't Code §11346.2(3), the Commissioner must state why the NAIC Model Acts and Regulations adopted in other accredited</p>	The Commissioner disagrees with the comment. The comment suggests the NAIC Models as an alternative to the proposed regulations. The comment fails to recognize that California has already adopted the NAIC Models. California enacted the NAIC Model Act on

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		jurisdictions are inadequate for California. "	Credit for Reinsurance (“Model Act”) in 1996, codified at CIC §922.1, <i>et seq.</i> As explained more fully in the ISR, the Department issued Bulletin 97-5 in 1997, pursuant to the express authority of CIC §922.8 that, with few exceptions, followed the Model Regulation almost verbatim. Sections 2303.3 through 2303.11 of the proposed regulations are based on the Bulletin (and thus on the NAIC model regulations), without significant substantive revision.
ACE (1, 3) ACLI (2-3) AIA (1-4) ACIC (1, 9, 24-26) AFGI (2, Exhibit) Everest (1, 5) Farmers’ (3) Guy (1-2) Liberty Pacific (1) PIF RAA (75-77) Swiss (3, 6) State (2-3) Towers (3)		Comment No. 7 [The regulations deviate from the NAIC Model Regulation on Credit for Reinsurance, which will cause foreign insurers to be subject to regulations that conflict with the laws of their home states.]	<p>The Commissioner disagrees with the comments. The initial industry opposition to the proposed regulations was based in part on a lack of knowledge of California law and certain NAIC Accounting Guidance requirements, as well as lack of familiarity with existing Department procedures and practices, including Bulletin 97-5 discussed in the above response.</p> <p>Additionally, the comments tend to analyze each proposed regulation from a “worst case scenario” perspective. For example, in alleging “conflicts” with other state requirements, some comments described at length the confusion, burdens and increased costs and delays that would be associated with resolving conflicts between California and other state regulators, without first determining whether the proposed regulations would in fact create conflicts with the requirements of other states.</p> <p>Although the comments repeatedly assert that the</p>

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XL (1, 2, 4)			<p>proposed regulations are in conflict with the laws of other states, no examples of conflicts were provided. The reason that none were provided is that there are no conflicts; rather, the comments confuse <i>different</i> or <i>additional</i> requirements with <i>conflicting</i> requirements.</p> <p>The Commissioner acknowledges that the proposed regulations include requirements that are different than or additional to requirements applied in other states. For example, all states follow the NAIC Accounting Guidance requirement that a reinsurance agreement “shall constitute” the entire agreement between the parties. However, in §2303.13(b) the proposed regulations require the reinsurance agreement to expressly state that it is the “entire agreement” between the parties. The California requirement is consistent with and is not in conflict with the requirements of the other states. There could only be a “conflict” if other states had rules that an agreement <i>could not include</i> an “entire agreement” provision. Of course, no state has such a rule.</p> <p>The California requirement for an entire agreement clause will, however, provide greater certainty that the agreement does in fact constitute the entire agreement between the parties. The California requirement is intended to stop the recently discovered practice secretly used by a few major insurers of entering “side agreements” that materially altered the reinsurance</p>

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			<p>agreements reviewed by regulators. Having an “entire agreement” provision within the reinsurance agreement will make it much less likely that parties will enter such secret side agreements.</p> <p>With very few substantive exceptions (relating to domestic insurers), the proposed regulations adopt the Model Regulation. There is no substantive deviation from the Model Regulation as respects foreign insurers. However, the regulations also address matters not covered by the Model Regulation, such as the “entire agreement” clause discussed above, as well as oversight of reinsurance transactions.</p>
ACIC (5, 42)		<p>Comment No. 8</p> <p>“In addition, the legislative history for the 1996 amendments to California Insurance Code (“IC”) §922.3 and the repeal and additions of IC §§922.1, 922.2 and 922.4 - 922.8 inclusive establish that not only is there no Necessity for the Proposed Regulations, but that in fact the Proposed Regulations are contrary to the legislative intent for the enactment of these sections. The enactment of these code sections was to amend California law, “. . . regarding the allowance of credit for liabilities ceded to reinsurers, to conform to NAIC model regulations.” Sen. Com. On Insurance, Senate Third Reading, analysis of Sen. Bill 1485 (2005-2006 Reg. Sess.)</p>	<p>The Commissioner disagrees with the comment. As explained in the ISR and in prior responses to comments, those provisions in the proposed regulations that concern topics covered by the Model Regulation or the NAIC Accounting Guidance follow or are taken verbatim from those documents, except in a few instances specifically noted in the Notice of Proposed Action (“the Notice”) and the ISR. The few variances in the proposed regulations from the Model Regulation reflect the fact that the NAIC models represent the interests and concerns of the several states and the insurance industry. The NAIC models are not intended to expressly meet the requirements of the California Insurance Code and they are not drafted to meet the specific practices and conditions of the California</p>

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		<p>amended Aug. 27, 1996, available at http://www.leginfo.gov. (Emphasis added). ... (T)he Proposed Regulations are completely contrary to the stated purpose of SB 1485 and will result in California taking a giant leap backward. If these Proposed Regulations are issued, California will be in the same position it was in 1996; it will not be in conformity with the NAIC and it is quite likely that the availability of reinsurance will be reduced. If the Commissioner wishes to make the changes sought in the Proposed Regulations, it should do so by legislation, not by regulation. There can be no Necessity for these Proposed Regulations because they are completely contrary to the reasons behind the enactment of the sections of the Insurance Code they are attempting to change.”</p>	<p>insurance market. Laws and regulations that may be adequate in other accredited jurisdictions may differ from California laws and may not provide the level of protection the Commissioner has determined is necessary for California policyholders.</p> <p>The NAIC Models are <i>proposals</i> for statutes and regulations that states are encouraged to adopt for uniformity among the states. The Models may be modified as the adopting authority believes necessary. Substantial adoption of the Model Act is required for NAIC accreditation. All states except New York are accredited. California’s credit for reinsurance statutes (CIC §§ 922.1 et seq.) enacted in 1996 varies from the Model Act only slightly. Similarly, those sections of the proposed regulations relating to credit for reinsurance vary from the Model Regulation only slightly.</p> <p>The reference to the legislative intent with regard to the 1996 revision is incomplete, in that SB 1485 did not exactly follow the NAIC Model Act as one would surmise from the comment. As noted in the ACIC comment on page 5, the California legislation included <i>modifications</i> to the NAIC Model. The primary modification, CIC §922.6 relating to credit for reinsurance of foreign insurers, was later adopted by the NAIC to include as an optional provision in the Model Act. That statute, CIC §922.6, is the basis for most of</p>

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			<p>the “extraterritorial” complaints, in that most other states have not adopted the optional Model provision relating to foreign insurers.</p> <p>As stated previously, in the only comments received in response to the revised text, ACIC and other major trade associations and insurers stated their non-opposition to the regulations as revised.</p>
<p>ACIC (2-3)</p> <p>Similar comment: RAA (9, 70-71)</p>		<p>Comment No. 9</p> <p>“(T)here appears to be an inconsistency in the Commissioner’s explanation of this section [Economic Impact on Businesses and the Ability of California Businesses to Compete]. In the first paragraph of this section the Commissioner states:</p> <p style="padding-left: 40px;">The Commissioner has made an initial determination that the Proposed Regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Affected businesses are licensed insurers and licensed reinsurance intermediaries.</p> <p>However, four paragraphs later the opposite is stated:</p> <p style="padding-left: 40px;">The Commissioner has carefully considered the adverse economic impact on licensed insurers</p>	<p>The Commissioner disagrees with the comment. There is no inconsistency. The Commissioner’s initial determination was that the proposed regulations <i>may</i> have an adverse economic impact. After reviewing those provisions which may have caused an adverse economic impact, the Commissioner determined that any potential adverse impact would not be significant. Moreover, with the revision of the regulations, those provisions which might have caused any degree of adverse impact have been deleted. In fact, in the only comments received in response to the revised text, ACIC and other major trade associations and insurers stated their non-opposition to the regulations as revised.</p>

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		<p>that may occur by adoption of the Proposed Regulations, and has no evidence to demonstrate that the adverse economic impact will be significant.</p> <p>It is therefore not clear what the Commissioner has actually concluded. Since the Commissioner has not provided any evidence in the form of “technical, theoretical, and empirical study, report, or similar document” as required under Gov’t Code §11346.2(b) (“Evidence”) in the Rulemaking File, it is not possible for anyone to determine the Commissioner’s actual conclusion concerning the economic impact of these regulations.”</p>	
ACE (1-2, 5) AIA (1-2) Allianz (1) AmRe (2) ACIC (3-4) Everest (1, 5) Farmers’ (3) Guy (1) Liberty O’Connor (1, 3-4) PADIC (2-3) RAA (74-77)		<p>Comment No. 10</p> <p>[The regulations will increase the cost of doing business for ceding insurers and reinsurers, will lead to increased reinsurance costs, will cause the flight of reinsurance capacity (capital) from California, and could possibly lead to insolvencies.]</p> <p>[The regulations create a regulatory environment that makes it difficult for insurers and reinsurers to do business in California.]</p> <p>[We are very concerned that the Proposed Regulations will have significant harmful effects on the California insurance and reinsurance markets and the consumer.</p>	<p>The Commissioner disagrees with the comments, and incorporates his response to Comment No. 7, which responds more fully to the erroneous assumptions evident in the comments (that the proposed regulations deviate significantly from the NAIC models).</p> <p>None of the comments asserting increased costs were supported by empirical cost or other data. For example, no data was provided regarding the costs currently incurred by ceding insurers to draft and issue contracts, the costs of creating and using standardized forms, and the effect of contract drafting costs in reinsurance pricing (e.g., whether it's <i>de minimis</i>, substantial, and whether passed through or absorbed.)</p>

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Swiss (3-4) State (1-2) Towers (2-3) XL (1)		<p>We urge that they not be adopted.]</p> <p>[RAA and O’Connor: The California Earthquake Authority (“CEA”) will be adversely impacted by the proposed regulations.]</p>	<p>Similarly, assuming <i>arguendo</i> that the cost of complying with the regulations is not <i>de minimis</i> and actually is reflected in reinsurance pricing, no evidence was provided regarding the effect of such costs on capacity; i.e., there is no evidence as to how reinsurance capital moves toward or away from markets based on pricing increases. As to the latter point, although the comments asserted that the regulations could cause reinsurance capital to become less available, no explanations were provided to support such theories and no supporting data, experience or information were provided that could be analyzed and considered by the Commissioner.</p> <p>The CEA has made no comments to the proposed regulations and there are no provisions in the regulations that would impact CEA any more than any other domestic insurer.</p> <p>The Commissioner acknowledged in the Initial Statement of Reasons (“ISR”) that there would possibly be some minimal level of increased costs and/or reduced capacity caused by the offset provisions of the regulations applicable to the reinsurance contracts of domestic insurers (wherein reinsurers would be denied the right to reduce their claims payments to a liquidator by the amount of any unpaid premium due from the insolvent insurer). However, in response to the comments, those provisions have been deleted. No provisions remain in the revised text that would cause</p>

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			<p>increased costs to insurers or reinsurers except for perhaps initial costs to educate staff on the requirements of the regulations.</p> <p>Significant revisions were made in response to the comments and no adverse comments were received to the revised text. In fact the only written comments received to the revised text were from major trade associations and insurers stating their non-opposition to the revised regulations.</p>
<p>ACIC (3)</p> <p>Similar comments: State (2) PADIC (3)</p>		<p>Comment No. 11</p> <p>“The Commissioner has ignored an entire category of increased costs. The Proposed Regulations require a substantial number of new filings with the CDOI. It is very questionable whether the present staff of the CDOI will be able to handle such an increased work load. Thus, inherent in the Proposed Regulations is that there be an increase in staff at the CDOI to enable it to simply review and process the volume of new information it is requiring be filed with the CDOI within a reasonable time frame.”</p>	<p>The Commissioner disagrees with the comment. There are no new filings required by the regulations that would require additional staff. The regulations apply uniform rules to those filings presently handled by the Department.</p>
<p>ACIC (6)</p>		<p>Comment No. 12</p> <p>“The Commissioner provides no Evidence in the Rulemaking file nor even a simple explanation to support the statement “. . . that the Proposed</p>	<p>The Commissioner disagrees with the comment. The cited text is not a “regulation” to which the cited “necessity” requirements apply. The Commissioner has stated his best estimate of the number of consultants that may be hired to provide advice and staff training to</p>

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		Regulations may create employment opportunities for ten or less consultants to provide advise and staff training with respect to compliance.” The Commissioner has not satisfied his obligations as required by Gov’t Code §11349(a) and CCR §10.”	licensees regarding compliance as not more than ten.
ACIC (3)		<p>Comment No. 13</p> <p>“ Additionally, as noted by the Commissioner there will be a “. . . significant statewide adverse economic impact...including the ability of California businesses to compete with businesses in other states.” Gov’t Code §11346.5(a)(7). “</p>	The comment misstates the Commissioner, who did NOT state there would be a significant adverse economic impact. The Commissioner stated in the Notice only that the regulations “ <i>may</i> ” have a significant adverse impact. Moreover, with the revision of the regulations, those provisions that might have caused any degree of adverse impact have been deleted.
ACE (1-2, 5) Everest (5) Towers (3)		<p>Comment No. 14</p> <p>[We are unclear as to California’s authority to initiate conservation or license revocation proceedings against foreign insurers. What will the Department do if a foreign licensed insurer is not allowed to take Schedule F credit for one or more reinsurance transactions or its reinsurance arrangements are “materially deficient”? Will California really begin insolvency proceedings against a company that is considered solvent by its home state regulator?]</p>	<p>The Commissioner has considered the comment and agrees that the questions are valid. In response to the comment, the regulations were revised to add a provision in §2303.19 which explains how a variance is to be reported and sets forth the possible regulatory action that may follow.</p> <p>As explained above, CIC §1011 subjects all licensees to conservation or liquidation proceedings in California. In the event that the Commissioner determines that the reinsurance arrangements of a foreign insurer are materially deficient, or that it is insolvent by application of California credit for reinsurance requirements, the Commissioner may seek appointment as an ancillary</p>

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			<p>conservator. As Conservator, the Commissioner could control the insurer’s operations in California or prevent it from conducting business in California. However, if a foreign insurer is insolvent in California but not insolvent by the rules of its home state, there are remedies available to the Commissioner other than conservation.</p> <p>Section 2303.19(e) provides that if there is a variance between the credit claimed in California by a volume insurer and the credit claimed in its home state, the variance shall be reported on forms provided by the Department in its annual statement instructions, and that the Department “may consider the variance in all evaluations of the financial strength of the volume insurer, including, but not limited to, whether to restrict the insurer's writing of new business in California.”</p>
ACE (2)		<p>Comment No. 15</p> <p>“We believe that the CDI needs to explain how this type of regulation will impact foreign licensed insurers' standing with rating agencies and the financial markets... And, whose state does the rating agencies and financial markets follow - California or the state of domicile?”</p>	<p>An insurer's standing with rating agencies is generally an important indicator of its financial condition. The Department often approves reinsurance arrangements and capital restructuring for the purpose of assisting a licensee to maintain or improve its financial strength ratings by insurer rating agencies. Such agencies are sophisticated in their analysis of an insurer's financial statements and presumably they will inquire with and have explained by the insurer the reasons for any statement credit denial by California.</p> <p>The Commissioner does not know whether rating</p>

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			<p>agencies would account for and/or explain the differences in the credit claimed in California and the home state by notes to the ratings, whether they would agree that the statement filed with the domiciliary regulator presents an accurate financial statement, or would take some other course of action. The Commissioner believes that significant variances in the credit for reinsurance claimed by an insurer in its home state and in California will be exceedingly rare.</p>
ACE (2) ACLI (3) Guy (2) AIA (3)		<p>Comment No. 16</p> <p>[The newly created definitions of “volume insurer” and “material reinsurance agreement” create compliance problems in determining when insurers or agreements are subject to the requirements. The regulations are confusing in that some provisions apply to domestic insurers, others to foreign insurers and others to all licensed insurers.]</p>	<p>The Commissioner has considered the comments and in response has (1) revised the definition of “volume insurer” in a manner that will reduce the number of affected insurers and simplify threshold determinations; (2) deleted the proposals and definition relating to a “material reinsurance agreement;” and (3) consolidated certain provisions relating to foreign insurers for clarity.</p> <p>As discussed in the response to Comment No. 70, the Commissioner modified the definition of "volume insurer" to conform it to the definition of "commercially domiciled insurer" specified in CIC §1215.13(a) of the Holding Company Act (“the HCA”). The term "commercially domiciled" is not used in these regulations because it pertains only to insurers that are subject to Insurance Code §§1215, <i>et seq.</i>. The mathematical criteria defining a "commercially domiciled insurer," and now a "volume insurer," are familiar to insurers and reinsurers and are easily applied. Hence, while "volume insurer" is a new term,</p>

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			it now conforms to a well-understood and often performed calculation in the insurance industry.
ACLI (1) AIA (1) ACIC (1) Farmers (3) PIF (1) State (1) Towers (1-2)		<p>Comment No. 17</p> <p>[A recurring theme underlying our comments is that we are not aware of any specific problems the Proposed Regulations purport to address. The California insurance market place is in fine shape with ample availability of insurance products at competitive prices and is not in need of further regulation. The Rulemaking File lacks sufficient evidence to support the necessity for the proposed regulations. The proposed regulations appear to be a solution in search of a problem.]</p>	<p>The Commissioner disagrees with the comment. The ISR explained the rationale for and necessity of each proposed regulation. As set forth in the ISR, reinsurance transactions are governed by various sections of the California Insurance Code, Bulletin 97-5 (issued pursuant to the express authority in CIC §922.8), and the NAIC Accounting Guidance, as made applicable to licensees pursuant to CIC §923. The regulations supersede Bulletin 97-5 (as to future transactions only), address reinsurance matters for which the Commissioner has determined additional or different treatment is needed than provided for in part by Bulletin 97-5, and specify the manner in which the Commissioner will review and treat reinsurance matters pursuant to the various Code Sections. The specific problems and issues that the regulations address are described in the part of the ISR that discusses each regulation section. The regulations provide clarity and guidance as to the Commissioner's practices and procedures in the review and approval of reinsurance transactions.</p> <p>Additional evidence and documents relied upon in adopting the proposed regulations were added to the Rulemaking File by proper notice on July 3, 2006. No comments were received with respect to the additional</p>

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			items.
<p>ACIC (6)</p> <p>Similar comments: ACE (2), ACLI (5) Everest (1), RAA (69-74), Swiss (1-4), Towers (1-4)</p>		<p>Comment No. 18</p> <p>“Inappropriate limitations on freedom of contract The Proposed Regulations significantly limit a cedent’s ability to obtain credit for its reinsurance agreements. This is entirely inappropriate, as the parties to a reinsurance agreement are of relative equal bargaining strength and knowledge. In a market moving toward consistency across state lines by means of model laws, regulations and guidance, the Proposed Regulations are a step backward by imposing unique California requirements on reinsurance agreements, and appear to contravene the Legislature’s purpose in the enactment of IC 922.4 to 922.6 (“SB 1485 would help make California reinsurance laws compatible with those of 40 other states, so that uniform reinsurance contracts can be used on a multi-state basis” (citation omitted). The Proposed Regulations will limit the availability of reinsurance for companies writing primary coverage in California, thereby limiting the choices of California consumers. Reinsurance will become more costly to those insurers subject to the Proposed Regulations, and this cost necessarily will be passed on to California consumers. Further, there is no statutory support under any of the authority cited for these actions.”</p>	<p>The Commissioner disagrees with the comment. Insurance is not an unregulated market where insurers can conduct business without oversight and standards. For the protection of the public certain minimum standards must be applied and enforced. The proposed regulations follow the NAIC models for purposes of uniformity, except in very few instances where the Commissioner has determined that greater protections are required to protect California policyholders than the protections afforded by the NAIC models.</p> <p>The authority for each proposed regulation is set forth in the ISR and the regulation text references.</p> <p>Moreover, with the revision of the regulations, those provisions which might have caused any degree of adverse impact upon the cost and availability of reinsurance have been deleted. In fact, in the only comments received in response to the revised text, ACIC and other major trade associations and insurers stated their non-opposition to the regulations as revised.</p>

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ACIC (6-7)		<p>Comment No. 19</p> <p>“Harmful effects on foreign insurers licensed in California</p> <p>For foreign insurers licensed in California, especially those falling under the definition of “volume insurer,” there will be additional financial and accounting burdens that no other jurisdiction imposes. Also, there are no assurances that complying with the Proposed Regulations will not result in disallowance of credit or other problems with a company’s domiciliary jurisdiction or jurisdictions in which it is licensed. There is no Clarity as to whether these requirements will require a foreign insurer licensed in California to have separate reinsurance agreements, intermediary agreements, or letters of credit (“LOCs”) for California business; or, if it is even possible, the insurer could try to have all of its reinsurance agreements modified to meet the California standards, however, this assumes no conflict with other states’ laws or regulations and the willingness of those not subject to California regulations to agree to those regulations. Alternatively, a primary insurer could decide to allocate its capital to states other than California and avoid California regulation entirely, thereby reducing market capacity and consumer choice in California. Assuming that a foreign insurer continues to write in California, its costs of doing business in California will be increased further because it will have to continually monitor its</p>	<p>The Commissioner disagrees with the comment. The comment is not specific in that it fails to identify any “additional financial and accounting burdens”, or to identify any actual conflict with the requirements of another state. There is no hint of a requirement in the regulations that licensees will be required to enter separate agreements for California business, either to comply with a California requirement or to avoid a conflict with the requirements of its state of domicile. (As explained above, there are no conflicts with the requirements of other states.)</p> <p>The definition of “volume insurer” has been revised to conform to the definition of a “commercially domiciled” insurer, a calculation routinely performed by insurers and familiar to all licenses.</p> <p>The regulations set standards for financial statements filed in California and requirements to ensure the financial stability of insurers licensed in California. The fact that the business covered by a reinsurance contract may not be located in California is not relevant; the contract may have a significant financial impact on the licensee’s operations and would be a matter of proper concern to the Commissioner and within his authority to regulate. [See <i>Rhode Island Ins. Co. V. Downey</i> (1949) 95 Cal.App. 2d 220, 212 P.2d 965, 973, 980-81, and the response to the Towers comment (which challenged the application of California law to a foreign insurer) at the</p>

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		<p>premium writings and losses in California to determine if it becomes a “volume insurer.” Finally, sections of the Proposed Regulations appear to apply to any reinsurance contract entered into by a foreign insurer licensed in California, even if it involves ceding reinsurance of non-California direct business to a reinsurer that has no contacts with California. This is an enormously overbroad application of California regulatory oversight, and is beyond the CDOI’s Authority.”</p>	<p>end of the General Comments.]</p> <p>The comments are speculative and “worst case scenarios” without providing specific examples of problems. Moreover, with the revision of the regulations, those provisions which might have caused any degree of concern with regard to the issues raised in the comment have been deleted. In fact, in the only comments received in response to the revised text, the ACIC, RAA and other major trade associations and insurers stated their non-opposition to the regulations as revised.</p>
<p>ACIC (7)</p> <p>Similar comments: AIA 1-(2) Farmers (3) Guy (1) PIF (1)</p>		<p>Comment No. 20</p> <p>“Effect on insurers domiciled in California</p> <p>There may also be a more serious negative effect upon California domestic insurers wishing to write in other states. California domestics will be at a competitive disadvantage in other states because the financial statements of California domestics will reflect lack of credit for reinsurance caused by the Proposed Regulations, while non-California domestics will receive credit for contracts that do not satisfy the Proposed Regulations. California domestics will be viewed less favorably, not only in the insurance marketplace as a vehicle for coverages, but also in the capital markets, as their financial statements will place them in a less favorable position when compared with</p>	<p>The Commissioner disagrees with the comment. The proposed regulations will not cause domestic insurers to lose statement credit allowed under the NAIC Accounting Guidance, except in the instance where the Commissioner has determined that the reinsurance recoverables are not likely to be collected. The only significant variance with the Model Regulation relates to requirements for letters of credit provided as collateral to domestic insurers, and domestic insurers have reported no problems in obtaining letters of credit with the added protections required by the regulations.</p> <p>Since the variances with the Model Regulation are minimal and there are no conflicts with the requirements of other states, there is no basis for the claims that the regulations will place California insurers at a</p>

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		<p>foreign insurers. An effect of this is the potential for increasing the solvency risk for California domestics which is precisely what the Commissioner states the Proposed Regulations are designed to prevent. Additionally, there could be retaliatory actions by other states upon California domestics based on the application of California provisions on those states’ domestic insurers that are licensed in California or have significant California business.”</p>	<p>competitive disadvantage or that they will be subject to retaliatory treatment by other states. Again, the comments are speculative and “worst case scenarios” without providing specific examples of problems.</p> <p>Moreover, with the revision of the regulations, those provisions which might have caused concern with regard to the issues raised in the comment have been deleted. In fact, in the only comments received in response to the revised text, ACIC and other major trade associations and insurers stated their non-opposition to the regulations as revised.</p>
ACIC (7-8, 25)		<p>Comment No. 21</p> <p>“Potential for additional “desk drawer” rules.</p> <p>A current concern of those dealing with reinsurance transactions and their regulation is the CDOI’s continuing its use of unpublished or “desk drawer” rules. The Proposed Regulations allow the CDOI a great deal of discretion in requiring filing of additional documentation, and also in making determinations regarding issues that may arise. In addition to the possibility that the Commissioner will implement more “desk drawer” rules to explain and implement much of what is required by the Proposed Regulations, the Proposed Regulations will require the Commissioner to issue additional regulations in violation of Gov’t Code §11340.1. Gov’t Code</p>	<p>The Commissioner disagrees with the comment. Initially it must be noted that the comment is illogical; adopting regulations <i>narrows</i> discretion and the opportunity for “desk drawer” rules. One of the purposes of the proposed regulations is to promulgate as regulations the procedures that the Department has developed over time in its review of reinsurance agreements that are presently filed pursuant to the requirements of CIC §§ 700(c), 717(d), 1011(c) and 1215.5(b)(3). Discretion is reserved to handle specific issues on a case-by-case basis, in that in some situations it may not possible to foresee all issues that may arise. Again, the comments are speculative and “worst case scenarios” without providing specific examples of instances where “desk drawer” rules of general application may arise.</p>

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		§11340.1 states “it shall be the intent of the Legislature that the intent of the [OAL] review shall be to <u>reduce</u> the number of administrative regulations and to <u>improve</u> the quality of those regulations which are adopted.” (Emphasis added).”	
ACIC (8, 25-26) Similar comment: ACE (5)		<p>Comment No. 22</p> <p>“Extra workload for the CDOI, and potential additional delays</p> <p>The Associations are also concerned that the sheer volume of submissions for approval and new documentation that the Proposed Regulations require be filed with the CDOI will likely overwhelm the CDOI staff resulting in massive delays in review time and be problematic for insurers wishing to write in California. Disapprovals will also likely occur (especially early on in the process). Moreover, delays in receipt of approvals will delay market entry (unless an insurer is willing to risk operating without credit for reinsurance). The result will be that the CDOI will have to increase its employees to cope with this increased volume of information resulting in an increase tax burden on the California taxpayer. Further, these additional reviews by the CDOI are not just limited to the accounting treatment of reinsurance, because Proposed Regulation §2303.17 envisions review of intermediaries receiving funds related to a reinsurance agreement. The volume of intermediary</p>	<p>The Commissioner disagrees with and rejects the comment. There no filings required by the regulations that would require additional staff Generally the regulations merely apply uniform rules to those filings presently handled by the Department. In fact, the filings may reduce in number, in that certain exceptions are made in the filing requirements of the proposed regulations that have not been allowed in the past. Independent contractors will likely handle the few intermediary examinations expected.</p> <p>With respect to the question of the consequences to a foreign insurer of its reinsurance not meeting California requirements, new Subdivision (e) has been added to §2303.19 to specify that the usual consequence would be a limitation on the insurer’s writings in California – not an ancillary receivership proceeding.</p> <p>The Department has been reviewing filings for the reinsurance transactions specified in the regulations for decades and applying the same credit for reinsurance requirements (pursuant to Bulletin 97-5) since 1997 –</p>

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		<p>submissions for approval will also delay market entry, to the detriment of the California consumer. Given the ability in the Proposed Regulations for the Commissioner to scrutinize reinsurance, a question arises as to just what the Commissioner is going to do if a foreign insurer’s reinsurance was found unacceptable. Would there be ancillary proceedings and a finding of insolvency? How would that impact the California Insurance Guaranty Association? For California domestics, has the Commissioner determined what impact there is going to be should reinsurers fail to agree to or charge more for reinsurance agreements containing the requirements in the Proposed Regulations? Clearly, the reduction in surplus for California domestics could result in an increase of companies approaching insolvency if not becoming outright insolvent.”</p>	<p>all without the problems suggested in the comment. Again, the comments are speculative and “worst case scenarios” without providing specific examples of actual issues.</p>
<p>ACIC (8) This subject was raised in Comment No. 7, but is addressed again because the comment raises additional issues.</p>		<p>Comment No. 23 “Lack of regulatory uniformity will increase cost of doing business in California The Proposed Regulations are inconsistent with the general business practices insurers and reinsurers follow -- and that regulators use to regulate them -- in the rest of the United States. The general practice follows the NAIC’s Model Law and Regulation on Credit for Reinsurance, basic elements of the NAIC accreditation process that California has strongly supported. Indeed, when the amendments to IC §922</p>	<p>The Commissioner disagrees with the comment. The inconsistency with other state regulation is overstated in the comment. As explained in the ISR, those provisions in the proposed regulations that are covered by the Model Regulation or the NAIC Accounting Guidance follow or are taken verbatim from those documents, except in a few instances specifically noted in the Notice and the ISR. The few variances in the proposed regulations from the NAIC models reflect the fact that the NAIC models are <i>proposals</i> that represent the interests and concerns of the several states and the insurance industry. The NAIC models are not intended</p>

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		<p>were enacted in 1996, the legislature specifically stated that it was doing so to “conform California law to that of 40 other states based on NAIC model regulations.” (Sen. Com. On Insurance, Senate Third Reading, analysis of Sen. Bill 1485 (2005-2006 Reg. Sess.) amended Aug. 27, 1996, available at http://www.leginfo.gov). California chaired the NAIC working group that developed the codified Accounting Manual, which guidance in several areas the Proposed Regulations reject. In an era in which increased consistency and regulatory modernization are urgently needed, the Proposed Regulations move in the opposite direction.”</p>	<p>to expressly meet the requirements of the California Insurance Code and they are not drafted to meet the specific practices and conditions of the California insurance market. Laws and regulations that may be adequate in other accredited jurisdictions may differ from California laws and may not provide the level of protection the Commissioner has determined necessary for California policyholders.</p> <p>The reference to the legislative intent with regard to the 1996 revision is incomplete, in that SB 1485 did not exactly follow the NAIC Model Act as one would surmise from the comment. As noted in the ACIC comment on page 5, the California legislation included <i>modifications</i> to the NAIC Model. The primary modification, CIC §922.6 relating to credit for reinsurance of foreign insurers, was later adopted by the NAIC to include as an optional provision in the Model Act. That statute, CIC §922.6, is the basis for most of the “extraterritorial” complaints, in that most other states have not adopted the optional Model Act provision relating to foreign insurers.</p>
ACIC (9, 25)		<p>Comment No. 24</p> <p>“The California Insurance Guaranty Association might have to pay claims for an insurer that remains actively doing business in all other jurisdictions</p>	<p>The Commissioner disagrees with the comment. Again, the comment is speculative and “worst case scenario” to the extreme. As set forth in the revision to §2303.19, new Subdivision (e) sets forth the likely consequences of a denial of statement credit claimed by a foreign insurer which has been allowed by its home</p>

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		<p>The Proposed Regulations could result in the interesting problem of actually being the cause for future California insurance insolvencies. Also, because the Proposed Regulations do not recognize certain reinsurance cessions, while other NAIC accredited jurisdictions will recognize the same cessions, the company maybe deemed insolvent in California but continue to conduct business elsewhere. If there is an ancillary California proceeding, the California Insurance Guaranty Association might be obligated to pay the claims for that insurer while it continues to do business elsewhere.”</p>	<p>state-- as a limitation of its writings in California – not an ancillary receivership proceeding. However, even if the Commissioner should initiate an ancillary receivership proceeding, the proceeding would be one of conservation and not liquidation, since there would be no liquidation in the home state, and therefore there would be no involvement of the California Insurance Guaranty Association.</p>
ACIC (9)		<p>Comment No. 25</p> <p>“Drafting considerations In a number of places, the Proposed Regulations use language similar to, but not precisely consistent with, statutory or other commonly used wording. The inference therefore is that a different meaning is intended. If the Proposed Regulations are adopted, the Associations urge that in compliance with Gov’t Code § 11349 commonly understood language be incorporated.”</p>	<p>The Commissioner disagrees with the comment, in that he is not aware of such instances and the comment does not identify a particular instance as an example.</p>
ACIC (9) This subject was raised in Comments No. 7 and 23, but is		<p>Comment No. 26</p> <p>“Conflicts with the NAIC Credit for Reinsurance Models The Proposed Regulations conflict with the NAIC</p>	<p>The Commissioner disagrees with and the comment. The comment is incorrect on every point it attempts to make.</p>

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addressed again because it raises additional issues.		<p>Model in a number of places. For example, the Proposed Regulations classify reinsurers as one of the following: admitted, accredited or unauthorized. Although credit may be taken for reinsurance ceded to a reinsurer that is admitted (Proposed Regulation §2303.3) or accredited (Proposed Regulation §2303.4), credit cannot be taken for reinsurance ceded to an “unauthorized reinsurer,” which is defined as “...a reinsurer that is not licensed nor accredited in this state, and without an approved (multiple beneficiary) trust.” [See Proposed Regulation §2303.2(y)] Therefore, even if a reinsurer is licensed in at least one other state that is accredited by the NAIC, credit for reinsurance cannot be taken. This is in direct conflict with both the NAIC Model Law and Regulation on Credit for Reinsurance, IC §922.6 and the purpose and intent behind the amendment of these sections in 1996.</p> <p>“A result of these conflicts is that the Proposed Regulations are not in compliance with Gov’t Code §11346.3(a) that require the CDOI when promulgating Proposed Regulations to adhere to a list of requirements “...to the extent that these requirements do not conflict with other state or federal laws.” The Commissioner appears to completely ignore this concept.”</p>	<p>Initially, it must be noted that the NAIC Model Law and Model Regulation are neither law nor regulation, and thus, there can be no “conflict” between California laws or regulations and the NAIC Models. The NAIC Models are <i>proposals</i> for statutes and regulations that states are encouraged to adopt for uniformity among the states. The Models may be modified as the adopting authority believes necessary. Substantial adoption of the Model Act is required for NAIC accreditation. All states except New York are accredited. California’s credit for reinsurance statutes (CIC §§ 922.1 et seq.) enacted in 1996 varies from the Model Act only slightly. Similarly, the provisions of the proposed regulations relating to credit for reinsurance vary from the Model Regulation only slightly.</p> <p>It is apparent that the Commenter is unclear on the concepts set forth in the Model Act and the California Insurance Code as respects credit for reinsurance to an unlicensed or unaccredited reinsurer, when it states:</p> <p style="padding-left: 40px;">“...(C)redit cannot be taken for reinsurance ceded to an “unauthorized reinsurer.... Therefore, even if a reinsurer is licensed in at least one other state that is accredited by the NAIC, credit for reinsurance cannot be taken. This is in direct conflict with both the NAIC Model Law and Regulation on Credit for Reinsurance, IC §922.6 and the purpose and</p>

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			<p style="text-align: right;">intent behind the amendment of these sections in 1996.”</p> <p>The above statement is evidence of failure to read the Insurance Code and the Model Act. The Insurance Code does not allow a domestic insurer to claim credit for reinsurance unless the reinsurer meets the requirements of CIC §922.4 (licensed in California, accredited in California, or maintains an approved multi-beneficiary trust), or unless the reinsurer provides sufficient security meeting the requirements of CIC §922.5. The requirement for reinsurer licensing or accreditation or security to enable the ceding insurer to claim statement credit is <i>fundamental</i> to the NAIC Model Act and Model Regulation. No state allows a domestic insurer to claim statement credit for a cession to an unlicensed or unaccredited reinsurer just because the reinsurer is domiciled in an NAIC accredited state. Every state follows the Model Law and requires unlicensed or unaccredited insurers to provide security in the form of a multi-beneficiary trust or a letter of credit, funds held agreement or single beneficiary trust agreement in order to permit a domestic ceding insurer to claim statement credit for the cession.</p>
ACIC (43) Similar comment:		Comment No. 27 “Additionally, pursuant to IC §922.8 (d) all Authority that the Commissioner may have had to “adopt regulations implementing the provisions” of the Credit	The Commissioner disagrees with the comment. The Commissioner acknowledges that CIC §922.8(d) requires the adoption of regulations “no later than December 31, 2001”, however, the statute does not

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RAA (67)		for Reinsurance law expired on December 31, 2001”.	<p>withdraw his <i>authority</i> and obligation to adopt regulations after that date. Moreover, the statute <i>directs</i> the Commissioner to adopt regulations.</p> <p>The argument that the Commissioner is without authority to adopt regulations is akin to arguing that the Legislature could not adopt a budget when it fails to meet its constitutional deadline, or that the Commissioner is estopped to enforce a law by his conduct. As explained in <i>Caminetti v. State Mutual Life Ins. Co.</i>, 52 Cal.App.2d 321, 125 P.2d 165, at 325-6,</p> <p style="padding-left: 40px;">“To govern themselves, the people act through their instrumentality which we call the State of California. The State of California functions through persons who are for the time being its officers. The failure of any of these persons to enforce any law may never estop the people to enforce that law either then or at any future time. It would be as logical to argue that the people may not proceed to convict a defendant of burglary because the sheriff perhaps saw him and failed to stop him or arrest him for another burglary committed the night before.”</p> <p>Failure to meet the deadline could subject the Commissioner to a mandamus proceeding, but the failure could not reasonably be construed to withdraw his authority to adopt regulations.</p>

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ACIC (43-46)		<p>Comment No. 28</p> <p>[Definitions of terms used in ACIC comment.]</p>	<p>Except with respect to the matter addressed in Comment No. 27, the Commissioner chooses not to respond to the definitions provided, in that they address terms used in the ACIC comment and not the regulations, and thus are not specifically directed to the proposed regulations or the procedures followed to adopt them.</p>
ACIC (45-46)		<p>Comment No. 29</p> <p>[List of items in the Rulemaking File on January 11, 2006.]</p>	<p>The Commissioner disagrees that the list is complete. On May 1, 2006 ACIC provided a written acknowledgment (included in the Rulemaking File) of an inadvertent omission in its preparation of the list. Additional documents were added to the Rulemaking File by proper notice on July 3, 2006.</p>
ACLI (2-3)		<p>Comment No. 30</p> <p>[Overview of life reinsurance and existing regulation omitted.]</p>	<p>The Commissioner acknowledges that there have been few problems involving life reinsurance. Therefore, in response to the ACLI comments, the sections relating to life reinsurance were significantly revised. In its written comments to the revised text, ACLI withdrew its January 24, 2006 comments made to unchanged text and states that it does not oppose the new or revised text.</p>
<p>Everest (7)</p> <p>The issue of increased costs</p>		<p>Comment No. 31</p> <p>"On Tuesday, November 15, 2005, Commissioner Garamendi held a National Catastrophe Insurance Summit to discuss the creation of a national catastrophe</p>	<p>The Commissioner disagrees with the comment. For the reasons stated above, the Commissioner disagrees that the regulations will adversely impact the California insurance market in any manner. No evidence has</p>

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<p>was addressed in Comment No. 10, however, the topic is repeated here, because the comment raises different concerns.</p> <p>Similar comment: RAA (71-73)</p>		<p>insurance program. A national catastrophe program will certainly require the infusion of additional reinsurance capacity into catastrophe exposed zones like California. The pursuit of this important goal of the Department will be adversely impacted if the Proposed Regulations are adopted. We believe that the Proposed Regulations will unnecessarily increase costs to insurers and reinsurers, create additional barriers to entry into the California insurance market, and potentially increase the cost of reinsurance to insurers licensed in California. Likely consequences of the Proposed Regulations include higher premiums to California consumers and the establishment of financially weaker California only insurers."</p>	<p>been provided that the regulations will have any impact upon a national catastrophe insurance program. Moreover, with the revision of the regulations, those provisions which might have caused any degree of concern with respect to the issues raised in the comment have been deleted. In fact, in the only comments received in response to the revised text, the major trade associations and insurers stated their non-opposition to the regulations as revised.</p>
<p>O'Connor (2)</p>		<p>Comment No. 32</p> <p>“(T)he financial markets are highly liquid and capital is nearly infinitely mobile and cannot be captured or held in California. Capital will migrate to other markets if California is unattractive and the cost of capital will rise if risk increases. California has needs for reinsurance that is special to some degree given the massive development that rests atop known, active earthquake faults.”</p> <p>“(W)hile each state has exclusive authority over the regulation of the business of insurance within its own borders, the realities of the market place have</p>	<p>The Commissioner disagrees that the regulations will make the California market unattractive to insurers, or that they significantly depart from the NAIC models and incorporates his responses to Comments No. 7 and 10.</p> <p>The comment does not provide any analytical basis for assuming that capital will migrate from California, nor does it quantify the amount of migration that could occur, the segments of the market that could be affected, the lines of business that could be affected, nor any other facts which the Commissioner could review or hypotheses that the Commissioner could test.</p> <p>The credit for reinsurance sections of the regulations are</p>

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		<p>prompted extensive cooperation among the states to coordinate and balance their regulatory approaches through the National Association of Insurance Commissioners (NAIC). The NAIC has promulgated, and most states have adopted, model reinsurance and model receivership laws and regulations. Single state rules that depart in some appreciable manner from the models can be expected to have consequences that are difficult to anticipate and estimate."</p> <p>"...(T)o the extent that there are specific outcomes being sought by California with respect to reinsurance, then choosing far-reaching and broad-based rules can be expected to have more in the way of unintended consequences that would more narrowly targeted rules. The broad-based nature of the proposed changes makes any specific estimate of economic impact a futile exercise. However, the direction of the impact can be reliably postulated since the theory is clear. Therefore, in this case, well established theory and our understanding of the operation of the market are the best evidence."</p>	<p>based in large part on Bulletin 97-5 and the Model Regulation. The Bulletin has been in effect since December 1997 and therefore, migration of reinsurance capital from California would not occur as a result of credit for reinsurance issues, in that there are no significantly different requirements placed upon insurers by the credit for reinsurance provisions of the regulations.</p> <p>Moreover, in response to the comments, the regulations have been revised and the provisions that caused the greatest concern to the industry (primarily the limitations on set-offs and other contract requirements) have either been deleted or significantly revised. In fact, in the only comments received in response to the revised text, the major trade associations and insurers stated their non-opposition to the regulations as revised.</p>
O'Connor (3)		<p>Comment No. 33</p> <p>"...(T)he rules make the provision of reinsurance to a primary insurer domiciled or licensed in California more risky in that there will be greater exposure imposed on the reinsurer than in other states that have adopted the relevant NAIC models. There can be no</p>	<p>The Commissioner disagrees with the comment and incorporates his responses to Comments Nos. 7 and 10. The comment does not provided any factual or theoretical basis for statements that the cost of reinsurance will increase. The comment offers no basis for its statement that " ... there will be greater exposure imposed on the reinsurer ... " The statement that "there</p>

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		<p>other results than that reinsurance for primary insurers in California will be more expensive on a comparative basis. Only the market will ultimately inform us of the actual cost of these regulations. However, in light of California’s special needs with respect to a ready and reasonably priced supply of reinsurance in order to better spread the catastrophe risk inherent in the state, it cannot be a desirable policy to take steps that have the certain result of limiting supply and raising prices. California cannot sequester capital for primary insurance of its domestic carriers let alone the capital of foreign primary insurers and of reinsurers operating in a volatile and vigorous international market.”</p>	<p>can be no other results than that reinsurance ... will be more expensive" is supposition that is not supported by any facts or theoretical framework.</p> <p>Since the only industry comments received in response to the revised text expressly state non-opposition to the regulations, the concerns of the commenter appear to have been addressed.</p>
O’Connor (3-4)		<p>Comment No. 34</p> <p>"...California seeks to give extra-territorial scope to its reinsurance rules by requiring foreign insurers to comply with the same rules as apply to domestic companies or to re-state their financial condition without credit for non-complying reinsurance. Putting aside the damage this approach may do to interstate cooperation and the NAIC process, ... an adventure into extra-territoriality reach will likely have a two-pronged adverse impact. First, some foreign primary carriers may simply decline to do business in California, further limiting customer choice. Others may find ways to devise reinsurance arrangements that may comply with the letter of the rule but may well not meet the substantive objective of the rule.</p>	<p>The Commissioner disagrees with the comment and incorporates his responses to Comments 4, 7 and 10. As explained in the response to Comment No. 4, there is no “extraterritorial” reach to the regulations. Again, the commenter provides no factual basis or theoretical analysis for his comments. Reinsurance is one factor in determining whether to write insurance; the comment does not offer any basis for concluding that the possible effects of these reinsurance regulations will make transacting business in California unprofitable or otherwise undesirable. The possibility that persons will attempt to evade the regulations always exists, but that cannot be a basis for choosing not to regulate (arguably, the remedy would be to require greater reporting and scrutiny, something that the commenter might oppose.) Finally, the Commissioner is unwilling to permit thinly</p>

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		<p>Second, some national insurers may respond by setting up California-only subsidiaries that will comply with the rule, but in so doing will be more thinly capitalized than the parent or affiliate national level insurers. The recent history of catastrophe events in this country strongly suggests the importance for states subject to such events maintaining markets in which strongly capitalized national companies feel confident operating. California should not adopt rules that would have the unintended impact of encouraging insurers to avoid regulatory risk by limiting the extent to which they are prepared to accept insurance risk in the state."</p>	<p>capitalized reinsurers to accept risks that they cannot support.</p> <p>Since the only industry comments received in response to the revised text expressly state non-opposition to the regulations, the concerns of the commenter appear to have been addressed.</p>
O'Connor (4)		<p>Comment No. 35</p> <p>"The better course of action would be for the Commissioner to recognize that his first instinct, as stated in the Economic Impact section of the proposed rules, that there would be significant adverse economic results from the rules was on the mark. Revisit the proposed rules and retool them so as to remove the features that too radically depart from the relevant NAIC models and bring them more into line with the models. Then, if over time, the rules do not achieve satisfactory results than they can be reviewed and changed. But importantly, the risk of adverse consequences can be avoided."</p>	<p>The Commissioner disagrees with the comment. The Commissioner stated only that the proposed regulations “may” have an adverse economic impact, not “would” have an adverse impact. Moreover, the regulations have not at any time “radically” departed from the relevant NAIC models. However, in response to comments, the regulations have been significantly revised and, as noted previously, there is no longer industry opposition to the revised text.</p>

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PADIC (2)		<p>Comment No. 36</p> <p>“While the NAIC has adopted a model regulation for reinsurance regulation, there are a growing number of experts, both within and outside the insurance industry, that question the necessity of such regulation. Historically, regulations are created and adopted to resolve a particular problem within the insurance industry or to deal with a potential problem. Yet there does not appear to be any evidence that insurance company insolvencies are on the increase, or at least to the extent that would warrant the adoption of these regulations.”</p>	<p>The Commissioner disagrees with the comment. The Department effectively adopted the Model Regulation by issuance of Bulletin 97-5 in 1997. The sections of these regulations relating to financial statement credit for reinsurance are based on Bulletin 97-5 and the Model Regulation. However, the regulations cover subjects not covered by NAIC models, such as risk transfer and reinsurance oversight.</p> <p>Contrary to PADIC’s assertion, the Commissioner is not aware of a “growing number of experts” that believe that regulation of reinsurance is unnecessary or that the Model Regulation is not a valuable guide as to the reasonable regulation of the reinsurance industry. The Commissioner notes that in contrast to PADIC’s belief that regulations are not needed for reinsurance matters, most comments submitted regarding these regulations propose adherence to the Model Regulations, not the elimination of regulation. The Commissioner notes that Insurance Code §922.1 <i>et seq.</i> provide for regulation of reinsurance in California and Insurance Code §922.8 specifically provides for adoption of both a bulletin (Bulletin 97-5) and regulations. Accepting <i>arguendo</i> that PADIC’s assertion is true that “historically, regulations are ... adopted to resolve a particular problem ... ,” the adoption of §922.1 <i>et seq.</i> reflects the Legislature’s determination that reinsurance must be subject to certain controls as set forth in those statutes (and in appropriate regulations) in order to prevent</p>

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			practices or circumstances that could lead to insolvencies.
<p>PADIC (2)</p> <p>This topic was addressed in Comment 17 and repeated here because it makes additional arguments.</p>		<p>Comment No. 37</p> <p>“Insolvencies occur on occasion and some of them may be related, in whole or in part to reinsurance transactions. However, there is no evidence to support the conclusion that any reinsurance carriers engage in any business practices that would lead to insolvency problems and pose a meaningful risk to the primary insurance market. Yet these regulations appear to be developed to resolve a problem that does not exist. The California insurance market place is in fine shape ... Further, there are current administrative mechanisms in place within the California Division of Insurance (CDI) to prevent and detect insolvencies that could adversely impact the insurance consumer.”</p>	<p>The Commissioner disagrees with the comment and incorporates his response to Comment No. 17. The Commissioner also incorporates his response set forth above regarding the authority and basis for adoption of regulations regarding reinsurance transactions. The Commissioner notes that Bulletin 97-5 has been in effect since December 1997 and to that extent has affected reinsurance transactions and has assisted in preventing insurance insolvencies. The Commissioner’s oversight of reinsurance, his enforcement of Insurance Code provisions regarding reinsurance and his enforcement of Bulletin 97-5 have lent to the “fine shape” of the California insurance marketplace.</p> <p>As noted in the comment, the Commissioner has examination and enforcement powers under the Insurance Code that are used to detect and prevent insolvencies. (The Commissioner notes that one power that can be used to prevent an insolvency is conservation of an insurer.) These regulations are in aid of the Commissioner’s powers and they provide guidance to the insurance industry as to matters that will assist in preventing insolvencies. The regulations are intended to prevent the need to exercise the Commissioner’s powers to conserve or rehabilitate an insurer, or take other serious administrative action.</p>

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			The Commissioner notes that two insolvencies occurring within the past five years in California resulted from the non-payment of reinsurance by affiliated reinsurers (the Commissioner was appointed as liquidator of Sable Insurance Company and Frontier Pacific Insurance Company.)
PADIC (2) The issue of increased costs was addressed in Comment No. 10, however, the topic is repeated here, because the comment raises different issues.		Comment No. 38 “ ... the proposed regulations offer no discernable or appreciable benefit to the insurance consumer that would merit imposing new administrative burdens on insurance companies and reinsurance carriers. Since insurance overhead costs will have to increase to cover the expenses associated with complying with these new regulations, insurance carriers will be forced to increase insurance rates and/or decrease the level of customer services afforded to insurance consumers in order to fund these new administrative responsibilities.”	The Commissioner disagrees with the comment and incorporates his response to Comment No. 10. The regulations benefit insurance consumers and the public by assisting in the prevention of insurance insolvencies and the attendant harsh effects of such insolvencies on insureds, claimants, and the public. The comment does not provide a factual or analytic basis for the assertion that insurance overhead costs will increase, nor that the incremental cost increases will be appreciable, nor that incremental cost increases will not be subject to market forces and will be passed through in rates.
PADIC (2-3) This topic was addressed in Comment No. 10 but is repeated here		Comment No. 39 “Increased regulation of the reinsurance industry in California has the potential of creating reinsurance capacity limitations. These limitations would be felt most strongly by the small, domestic companies. With greater regulation, especially unnecessary regulation,	The Commissioner disagrees with the comment and incorporates his response to Comment No. 10. This comment does not provide any factual or analytic basis for the supposition that capacity limitations will be caused by the regulations. Moreover, in response to the comments, the regulations have been revised and the provisions that caused the greatest concern to the

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because the comment raises additional issues.		reinsurers will be forced to reconsider whether it is a good business decision to participate in the California market and may focus their efforts elsewhere. If reinsurance carriers start to leave the California insurance market, this will adversely impact the competitive nature of the reinsurance market, which will have the net effect of limiting the reinsurance capacity of the industry; will limit the variety, accessibility and cost of insurance products currently available in the market place; and will limit the number of policies available for certain insurance products.”	industry (primarily the limitations on set-offs and other contract requirements) have either been deleted or significantly revised. In fact, in the only comments received in response to the revised text, the major trade associations and insurers stated their non-opposition to the regulations as revised.
PADIC (3) The issue of adverse impact upon catastrophe reinsurance was addressed in Comment 31; however, the topic is repeated here, because the comment raises different concerns. Similar		Comment No. 40 "The irony here is that the potential decrease in reinsurance capacity that these regulations may create will make it that much more difficult for the commissioner to move forward with his National Catastrophe Program in California. While there will be a strong need for increased catastrophe capacity, this potential capacity may be eliminated because of these proposed regulations."	The Commissioner disagrees with the comment and incorporates his response to Comment No. 31. There is no factual or analytic basis for this comment. The regulations address all lines of business and would have no special impact on catastrophe insurance coverage. Furthermore, most property and casualty insurance in California excludes earthquake coverage, which is California's most common catastrophe risk. A national catastrophe program would be tailored to provide specific coverage, insurance contract requirements, reinsurance requirements, and forms. No such program exists at this time and there is no reasonable basis to speculate that if such a program comes into existence, it will be in conflict with these regulations. And, of course, the regulations could be amended as necessary.

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comment: Everest			
PADIC (3) RAA (73) Related issues were discussed in Comments 31 and 40, but is repeated here because the comments raise different concerns.		<p>Comment No. 41</p> <p>PADIC: "In light of the new financial responsibilities imposed on insurance carriers as a result of the Terrorism Risk Insurance Extension Act of 2005 (TRIEA) and the widespread natural disaster claims that the insurance industry has had to deal with this past year, it is imprudent to impose new regulations that could limit an insurance carrier’s reinsurance options. As recent terrorism and natural disaster events have taught us, the professional relationship between the insurance industry and reinsurance industry must be vibrant with competition in order to afford consumers the insurance protection they need to address these ever growing insurance realities. Thus, any regulation, especially one that offers no documented benefit to the insurance consumer like the ones presently proposed by the CDI, should be opposed as being an unreasonable impediment to market competition in the reinsurance industry."</p> <p>[RAA: The workers’ compensation market has been adversely affected by recent changes in the deposit laws subjecting a reinsurer to the possibility of duplicate liability. Workers’ compensation is dependent upon reinsurance. Adoption of the proposed regulations will only compound the</p>	<p>The Commissioner disagrees with the comments and incorporates his prior responses to Comments Nos. 10, 31 and 40. The PADIC comment offers no factual or analytic support for its contentions that reinsurance options will be limited if the regulations are adopted. The Commissioner notes that contrary to the implied assertion in the comment, reinsurers reported healthy surpluses at the end of 2005, despite a record hurricane season.</p> <p>The Commissioner is familiar with the RAA’s assertion that present law subjects a reinsurer to duplicate liability on workers’ compensation business and disagrees, however, the “duplicate liability” argument is beyond the scope of these regulations. Notwithstanding, it must be noted that to alleviate the industry’s concerns in this area, the Department adopted 10 CCR §2509.21 that was approved by OAL (06-0525-02 S) on July 10, 2006. Moreover, since the RAA has submitted a written statement of its non-opposition to the revised text, its concern with respect to the availability of reinsurance for workers’ compensation business has apparently been resolved.</p>

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		problems in this politically sensitive line of business.]	
PADIC (4) Similar comment: ACIC (42)		<p>Comment No. 42</p> <p>"... PADIC and NAMIC ... recommend that the California Department of Insurance, rather than adopt these proposed regulations, agree to hold a workshop on these proposed regulations. A workshop would provide all interested parties an opportunity to study and develop specific information regarding the capacity and cost issues generated by these regulations and their impact on the California market place."</p> <p>[The proposed regulations should be withdrawn and additional workshops held.]</p>	<p>The Commissioner declines the suggestion. A workshop was held in September 2004; many informal workshops were held in 2005, and a public hearing was held in January 2006. All were well attended by most trade associations and major insurers.</p>
PADIC (4 and Exhibit)		<p>Comment No. 43</p> <p>“PADIC and NAMIC have attached a list of questions that relate to the alleged necessity of the proposed regulations, the desired CDI objectives of the regulations, and the purported benefits to the insurance consumer of implementing these regulations that should be addressed by the CDI before the department moves forward with these regulations.”</p> <p>[Questions 1 through 5 ask for information regarding the process used by the Department to develop the regulations. Question 6 asks for information regarding the causation of insurer insolvencies in</p>	<p>The Commissioner declines to specifically respond to each question posed in that they are not comments specifically directed at the rulemaking procedures followed, or objections or suggestions with respect to the regulations that could be accepted or declined.</p> <p>Implicit in the list of questions, and specifically questions 1 through 5, is that the regulations have been haphazardly proposed. PADIC overlooks the extensive experience of CDI professional staff in reinsurance matters, including several who are acknowledged experts in the field, and the many hundreds of hours of CDI staff time spent in meetings and the exchange of</p>

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		<p>California. Question 7 relates to the reasons insurers have been denied admission to California. Question 8 asks the purpose of the Department of Insurance “vis-à-vis the market for reinsurance in California.” Question 9 asks for the justification for material differences between regulation of reinsurance in California and other states and the justification for material difference between the NAIC Model Regulation on Credit for Reinsurance and the subject regulations. Question 10 asks for justification for the “extraterritorial” application of the regulation. Questions 11 and 12 seek information regarding the Department’s intent with respect to attestation and risk transfer data to be collected by the NAIC. Questions 13 and 14 seek information regarding knowledge the Department may have regarding the inability of any reinsurer to meets its reinsurance obligations.]</p>	<p>written communications with industry representatives in 2004 and 2005 (as well as the public workshop held in September, 2004) to develop the regulations prior to filing the Notice of Proposed Action with OAL in November of 2005. Also overlooked is the extensive explanations given in the ISR for each regulation.</p> <p>Questions 6, 7, 8, 11, 12, 13, and 14 relate to matters that are beyond the scope of the regulations. The attestation requirement implicitly raised in questions 11 and 12 was deleted from the revised regulations (it was formerly in §2303.16).</p> <p>Question 9 is based on a false premise (that there are material differences between the proposed credit for reinsurance requirements in California and the requirements set forth in the Model Regulation and used by other states). Question 10 is also based on a false premise (that there is an “extraterritorial” application of the regulations). Both topics are discussed at length elsewhere in this document.</p>
RAA (2-6) Swiss (2-3) ACLI (1)		<p>Comment No. 44 [General narrative on reinsurance.]</p>	<p>The Commissioner does not choose to respond since the comment is not specifically directed to the proposed regulations or the procedures followed to adopt them and there is no disagreement on the importance of reinsurance to the regulated industry. (General narratives on reinsurance are included in the Introduction to the ISR and the Informative Digest.)</p>

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RAA (6-8)		<p>Comment No. 45</p> <p>[Recitation of prior history with the Department relating to reinsurance.]</p>	The Commissioner disagrees with the some of the characterizations of the prior history, however, does not choose to respond since the comments are not specifically directed to the proposed regulations or the procedures followed to adopt them.
RAA (footnote, p. 5 reference to Exhibit A)		<p>Comment No. 46</p> <p>[Chart by RAA entitled “Compendium of Reinsurance Laws and Regulations” outlining the adoption of credit for reinsurance regulations in the U.S.]</p>	The Commissioner does not choose to respond since the exhibit is not specifically directed to the proposed regulations or the procedures followed to adopt them.
RAA (footnote, p. 7 reference to Exhibit B)		<p>Comment No. 47</p> <p>[Opposition statement dated September 27, 2004 to the Department’s 2004 discussion draft of the proposed regulations for the 2004 Workshop; comments dated June 24, 2005 relating to regulation text then under consideration.]</p>	The Commissioner does not choose to respond to comments made to the 2004 discussion version of the regulations or comments to revisions of the 2004 proposed regulations because the comments either are not relevant or are duplicative of other RAA comments responded to elsewhere in this document. Where text in the discussion version was not included in the regulation text filed with OAL on November 21, 2005, the comments are not relevant. Where text in the discussion version has been retained or revised, the comments are duplicative of the RAA’s January 24, 2006 comments, responded to elsewhere herein.
RAA (footnote, p. 7 reference to		<p>Comment No. 48</p>	The Commissioner does not choose to respond to the comparison documents relating to the June 2005 version

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Exhibit C)		[Documents comparing a June 2005 version of the proposed regulations to the NAIC Model Regulation on Credit for Reinsurance and sections of the NAIC Accounting Guidance.]	of the proposed regulations since the exhibits are not specifically directed to the proposed regulations or the procedures followed to adopt them. The proposed regulations cover topics not included within the Model Regulation, such as contract requirements and reinsurance oversight. On topics covered by the Model Regulation, the few deviations in the proposed regulations are clearly noted in the Notice and ISR
RAA (footnote, p. 53, reference to Exhibits D and E)		<p>Comment No. 49</p> <p>[Testimony of Debra J. Hall and Bruce A. Bunner, on behalf of the RAA, dated May 30, 1995, in opposition to Proposed Rule RH 335.]</p>	The Commissioner does not choose to respond since the exhibits are not specifically directed to the proposed regulations or the procedures followed to adopt them. The subject 1995 proposed regulations were withdrawn and related primarily to set-offs. The statutes to have been implemented by those regulations were significantly revised in 1996. Provisions relating to set offs included in the Initial Text have been deleted from the revised text.
RAA (8-11)		<p>Comment No. 50</p> <p>[General statement of law governing authority to adopt regulations, including regulations must be consistent with and not in conflict with statutes; regulations must be within scope of authority conferred by enabling statute; and the insurance commissioner is a creature of statute with only the powers delineated therein.]</p>	The RAA failed to also note the cases cited as authority by the Commissioner, <i>CalFarm Insurance Company v. Deukmejian</i> , 48 Cal. 3d 805 (1989) and <i>20th Century Insurance Company v. Garamendi</i> , 8 Cal. 4 th 216 (1994), which, <i>inter alia</i> , describe the inherent authority of the Commissioner to implement a statutory scheme through regulation, even where the statutes do not give express authority to promulgate regulations.

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RAA (11-13)		<p>Comment No. 51</p> <p>General statement of law relating to the scope of the Department’s authority over reinsurance agreements, as follows:</p> <ul style="list-style-type: none"> • CIC 717(d) requires reinsurance arrangements not to be found “materially deficient” by the Commissioner; • CIC 922.1 through 922.9 state the requirements to claim statement credit for reinsurance, with 922.2, 922.4 and 922.5 applying to domestics, 922.6 applying to foreign, and 922.3 applying to both. • CIC 922.6 provides that credit “shall be allowed” if the cession meets the requirements of CIC 922.6(a), and, pursuant to CIC 922.6(b) may be disallowed after a finding by the commissioner that either the condition of the reinsurer or the collateral or other security provided does not satisfy the credit for reinsurance requirements applicable to domestic insurers.] 	<p>The RAA omits several key statutes and misrepresents another.</p> <ul style="list-style-type: none"> • CIC 923 requires compliance with the NAIC Accounting Guidance, which include specific requirements for reinsurance agreements. • The RAA misrepresents CIC §922.6, by failing to note the <i>conditions precedent</i> contained within that statute. Statement credit may be disallowed a foreign ceding insurer if the agreement does not meet the risk transfer requirements of CIC §922.3 or the NAIC Accounting Guidance requirements of CIC §923. • The RAA misrepresents CIC §922.6 by failing to note that subdivision (b) takes precedent over subdivision (a), in that subdivision (b) begins by stating, “Notwithstanding subdivision (a).” • CIC 1011(c) permits the Commissioner to seize and conserve any licensed insurer if the insurer has reinsured substantially all of its business without obtaining the Commissioner’s prior consent. • CIC 1215.5(b)(3) requires licensees entering certain reinsurance transactions with affiliates to file the agreement with the Commissioner, at least 30 days prior to execution, for his review and determination whether to object to the agreement.

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<p>RAA (28) The quoted language is from the RAA comment to 2303.5, however, it relates to the entirety of the regulations.</p> <p>Similar comment: AIA (2)</p>		<p>Comment No. 52</p> <p>“We note that the Department’s continued imposition of standards that are more onerous and different from the rest of the United States harms the California insurance industry and California consumers. Many cedents and reinsurers affected by this regulation are entities that do business on a national and international basis. It is difficult for insurers and their reinsurers to deal with different contract requirements between the states and this is only exacerbated when the contract requirements are inconsistent. Attempting to apply California law on an extraterritorial basis adversely affects contracts which have no connection whatsoever to California.”</p>	<p>The Commissioner disagrees with the comment and incorporates his responses to Comment No. 4 (“extraterritorial”) and Comment No. 10 (conflicts with other state requirements).</p> <p>The California insurance market is the largest in the United States. Very few other states have the same resources to actively provide oversight of insurers operating in their jurisdictions. As the RAA notes on page 45 of its comment, “reinsurance contracts are not typically reviewed by regulators.” The proposed regulations establish minimum reinsurance standards for insurers that wish to participate in the California market. The legislature has not limited the Commissioner’s oversight authority to domestic insurers, recognizing that the Commissioner must ensure that all companies operating in California are financially sound in order to avoid harm to California policyholders and creditors.</p>
<p>ACLI (1) ACIC ACE (2) AFGI (2) Everest (1) Liberty Lloyd’s (1) PIF (1) RAA (13, 75)</p>		<p>Comment No. 53</p> <p>[General challenge to authority, necessity, clarity and consistency, without discussion of specific regulations.]</p>	<p>The Commissioner disagrees; however, the comment is not sufficiently specific to fully respond. The ISR set forth the authority and necessity for each regulation proposed. In response to comments, the regulations have been significantly revised, including revisions to address several clarity issues. A further response will be provided where the challenge is raised with respect to a specific regulation.</p>

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State (1-2) Swiss (2-3) Towers (2) XL (1)			
ACLI (1) ACE (5) ACIC (24, 42) AIA (2) Allianz (1) PIF (1) RAA (74-75) State (1) Swiss (6)		<p>Comment No. 54</p> <p>[General challenge to lack of evidence in the Rulemaking File to support the necessity of the regulations.]</p>	<p>The Commissioner disagrees. The ISR set forth the necessity for each proposed regulations. The Rulemaking File contains copies of the relevant NAIC models, which are required to be adopted in substance by each NAIC accredited state. CIC §922.8 requires the adoption of regulations; the requirements from the NAIC models would be determined as “reasonably necessary” to implement the related statutes.</p> <p>The comments overlook the extensive experience of CDI professional staff in reinsurance matters, including several who are acknowledged experts in the field, and the many hundreds of hours of CDI staff time spent in meetings and the exchange of written communications with industry representatives in 2004 and 2005 (as well as the public workshop held in September, 2004) to develop the regulations prior to filing the Notice of Proposed Action with OAL in November of 2005.</p> <p>The Government Code does not require that an agency must rely on technical, theoretical or empirical studies or reports in proposing regulations. It is expected that an agency’s professional staff have the expertise and experience to propose regulations. The only requirement is that if the agency relies on evidence such</p>

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			as studies or reports, that information must be disclosed. On July 3, 2006, the Commissioner issued a Notice of Addition to Rulemaking File that identified several official reports and other documents added to the Rulemaking File. No comments were received in response to the July 3, 2006 notice.
		COMMENTS TO MULTIPLE SECTIONS	
ACLI (5) Allianz (1)	2303 2303.1	Comment No. 55 [ACLI: General challenge to Commissioner’s authority to prescribe contract terms.] [Allianz: CDI should confirm that these regulations do not apply to facultative reinsurance.]	The Commissioner’s authority to prescribe contract terms is set forth below in the response to specific challenges made to specific regulations. In response to comments, facultative reinsurance has been exempted from the contract provision requirements of §2303.13 and §2303.14 for the reasons explained in the Final Statement of Reasons, however, it remains subject to all other provisions of the regulations.
RAA (13) XL (3-4)	2303.3 through 2303.9	Comment No. 56 [An overriding deficiency of the Regulation is that it attempts to regulate reinsurance transactions of foreign insurers pursuant to Section 922.2, 922.4 and 922.5, when by their express terms, these provisions apply only to domestic ceding insurers.]	The Commissioner disagrees. As will be explained in the responses to Comments Nos. 57 through 51, this comment is based on an incomplete and erroneous analysis of the statutes and the regulations.
RAA (13-14; 36-39)	2303.3 through 2303.10	Comment No. 57 “The Legislature has established that California will	The Commissioner disagrees. The comment is an incorrect statement of California law, based upon a misreading of CIC §922.6. The deference CIC

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Similar comments: ACIC (25) ACE (4-5) Swiss (2) XL (3-4) Towers (2)		<p>rely on and give deference to the determinations of other NAIC accredited states with respect to credit for reinsurance on financial statements of their domestic companies.”</p> <p>“Specifically, Insurance Code section 922.6 states:</p> <p style="padding-left: 40px;">(a) Unless credit for reinsurance or deduction from liability is disallowed pursuant to Section 922.3 or 923, credit for reinsurance or deduction from liability shall be allowed a foreign ceding insurer to the extent credit has been allowed by the ceding insurer’s state of domicile if either:</p> <p style="padding-left: 80px;">(1) The state of domicile is accredited by the NAIC.</p> <p style="padding-left: 80px;">(2) Credit or deduction from liability would be allowed under this statute if the foreign ceding insurer were domiciled in this state.</p> <p style="padding-left: 40px;">(b) Notwithstanding subdivision (a), credit for reinsurance or deduction from liability may be disallowed upon a finding by the commissioner that either the condition of the reinsurer, or the collateral or other security provided by the reinsurer, does not satisfy the credit for reinsurance requirements applicable to ceding insurers domiciled in this state.”</p>	<p>§922.6(a)(1) gives to a determination by an NAIC accredited state is <i>conditional</i>. The comment overlooks that subdivision (a) begins with the word “unless” and that subdivision (b) begins with the words “notwithstanding subdivision (a).”</p> <p>A reading of each word in CIC §922.6 makes clear that it permits the denial of statement credit claimed by a foreign ceding insurer (notwithstanding that credit has been approved by the NAIC accredited home state) if the Commissioner makes a finding that any of the following apply:</p> <ul style="list-style-type: none"> • The cession does not meet the risk transfer requirements of CIC §922.3. • The cession does not meet the NAIC Accounting Guidance requirements of CIC §923. • Either the condition of the reinsurer or the collateral provided does not satisfy the credit for reinsurance requirements applicable to domestic insurers. <p>Assuming that the transaction meets the risk transfer requirements of CIC §922.3 and the NAIC Accounting Guidance requirements of CIC §923, CIC §922.6(b) permits the Commissioner to deny credit claimed by a foreign insurer if a domestic insurer could not claim credit for the same cession -- either because the reinsurer doesn’t satisfy California requirements to claim statement credit, or because the collateral does not satisfy California requirements -- notwithstanding that</p>

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			the home state may have permitted statement credit. CIC §922.6(b) effectively “levels the playing field” for domestic insurers so that they are not at a competitive disadvantage with insurers domiciled in states with less rigorous standards or oversight.
RAA (14-15; 36-39) Similar comments: ACE (4-5) ACIC (24-25) Everest (5) Towers (2)	2303.3 through 2303.10	<p>Comment No. 58</p> <p>“The proposed regulations numbered sections 2303.3, 2303.4, 2303.5, 2303.6, 2303.7, 2303.8, and 2303.9 parallel and are clearly designed to implement the provisions of Insurance Code section 922.4, which addresses credit allowed domestic ceding insurers for reinsurance ceded.”</p> <p>“The Department tries to apply proposed regulations 2303.3, 2303.4, 2303.5, 2303.6, 2303.7, 2303.8 and 2303.9 to foreign insurers by means of the limited exceptions to 922.6(a) set forth in section 922.6(b). However, on its face, section 922.6(b) states that credit for reinsurance or deduction from liability may be disallowed if the commissioner makes a finding that (1) the condition of the reinsurer does not satisfy the credit for reinsurance requirements applicable to ceding insurers domiciled in this state, or (2) the collateral or other security provided by the reinsurer does not satisfy the credit for reinsurance requirements applicable to ceding insurers domiciled in this state. <i>The section 922.6(b) exceptions do not grant the commissioner authority to promulgate</i></p>	<p>The Commissioner disagrees with the comment. Only Sections 2303.3 through 2303.6 “parallel” the provisions of CIC §922.4 and are discussed here. The remaining sections cited by the RAA implement CIC §922.5, and are discussed in the next comment/response.</p> <p>The Code follows the organization of the NAIC Model Law on Credit for Reinsurance, placing requirements for domestic and foreign insurers in separate sections. CIC §§922.2, 922.4, and 922.5 relate to domestic insurers. CIC §922.6 relates to foreign insurers.</p> <p>Subdivision (b) of CIC §922.6 is not a “limited exception to 922.6(a)” as claimed by the RAA. Subdivision (b) provides as follows:</p> <p style="padding-left: 40px;">(b) Notwithstanding subdivision (a), credit for reinsurance or deduction from liability may be disallowed upon a finding by the commissioner that either the condition of the reinsurer, or the collateral or other security provided by the reinsurer, does not satisfy the credit for reinsurance requirements applicable to ceding</p>

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		<p><i>regulations that would bring all foreign insurers under the provisions of section 922.4.”</i></p> <p>“The Department’s interpretation of the exceptions set forth in section 922.6(b) would result in the exceptions swallowing the general rule set forth in section 922.6(a)(1) and the Legislature’s express limitation of 922.4 to domestic insurers, which is contrary to the intent of the Legislature in adopting these sections and the standard rules of statutory interpretation. If section 922.6(b) were to be interpreted to allow the Department to subject foreign insurers to all the rules applicable to California insurers without regard to whether the foreign insurers were allowed credit in states of domicile accredited by the NAIC, section 922.6(a)(1) would essentially be rendered meaningless. [Citations to statutory construction omitted.]”</p>	<p>insurers domiciled in this state</p> <p>The language used in (b) -- “Notwithstanding subdivision (a)” – establishes that subdivision (b) is exactly the opposite of a “limited exception” to subdivision (a).</p> <p>Subdivision (a) simply gives the Commissioner the authority not to review statement credit claimed by a foreign insurer, since credit is allowed unless the Commissioner elects to review the claim and makes an adverse finding. If the Commissioner reviews the claim to make certain that the cession meets the requirements applicable to domestic insurers, the Commissioner necessarily must follow the same statement credit requirements applicable to domestics – as found in CIC §§922.4 and 922.5 and the implementing regulations.</p> <p>In reviewing the statement credit claimed by a foreign insurer, if collateral is not provided for the cession, CIC §922.6(b) provides that a foreign insurer may be disallowed credit for reinsurance (notwithstanding that credit has been permitted by the NAIC accredited home state), if the condition of the assuming insurer does not meet the credit for reinsurance requirements applicable to <i>domestic</i> insurers. Therefore, in every case that credit would be permitted a domestic insurer for a cession to an insurer where no collateral is provided, that credit must also be permitted a foreign insurer for a cession to that same insurer (assuming</p>

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			<p>compliance with CIC §§922.3 and 923).</p> <p>In summary, if the assuming insurer is licensed in California, it would by definition meet the requirements of CIC 922.6(b) since credit would be allowed a domestic insurer for a cession to that insurer. Similarly, if the assuming insurer is accredited in California, or maintains an approved U.S. trust, it would also by definition meet the requirements of CIC §922.6(b), since the accreditation and approved U.S. trust would allow credit claimed by a domestic insurer.</p> <p>Since the Code permits both domestic insurers and foreign insurers to claim statement credit for cessions to licensed insurers, accredited insurers or insurers maintaining approved U.S. trusts, albeit pursuant to two different Code Sections (992.4 and 922.6(b)), the regulations permit all licensed insurers (both domestic and foreign) to claim such credit. Section 2303.3 permits all licensed insurers to claim statement credit for cessions to other licensed insurers. Section 2303.4 permits all licensed insurers to claim statement credit for cessions to accredited insurers. Section 2303.5 permits all licensed insurers to claim statement credit for cessions to an insurer that maintains an approved U.S. trust. Organizing the regulations in this manner is reasonably necessary to provide a clearer statement of the law and to simplify both compliance and enforcement.</p>

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			<p>The RAA’s fundamental complaint regarding §§2303.3 through 2303.5 is that those sections allow statement credit to both foreign and domestic insurers. The RAA believes those sections should be limited to domestic insurers, and that all matters relating to credit for foreign insurers should be included in §2303.10, which relates exclusively to foreign insurers. However, the Commissioner has chosen a different manner of organizing the regulations, for the reasons explained above. Credit is allowed domestic insurers in §§2303.3 through 2303.5 pursuant to the express requirements of CIC §922.4. Credit is allowed foreign insurers in those same sections pursuant to the implicit requirements of CIC 922.6(b) as explained above.</p>
RAA (14) ACIC (25) ACLI (15, 18, 22) AIA (3-4) Guy (2) Everest (5) Towers (2)	2303.7(i) 2303.8 (h) 2303.9(c)	<p>Comment No. 59</p> <p>[The subdivisions improperly apply the collateral requirements of 922.5 to foreign insurers; the statute is applicable only to domestic insurers. It is not clear which rules apply to domestic insurers and which apply to foreign insurers.]</p> <p>[ACLI: the Commissioner’s proposed review of a “transaction” is beyond the scope of his authority and the term “in substance” is ambiguous.]</p>	<p>The Commissioner disagrees, however, has deleted the subdivisions in response to the comments.</p> <p>Each of the regulation sections relating to the collateral permitted by CIC §922.5 establishing requirements for a domestic insurer to secure statement credit [§§2303.7, 2303.8, and 2303.9] contained a subdivision that stated,</p> <p style="padding-left: 40px;">“Credit on a financial statement of a foreign insurer shall be allowed for reinsurance ceded to an unauthorized reinsurer and secured by [respectively, funds withheld, trust, letter of credit], to the extent that credit is allowed by the foreign insurer’s state of domicile, unless the Commissioner has made a determination</p>

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			<p style="text-align: right;">pursuant to Section 2303.10(d) of this article that the transaction does not meet in substance, the requirements of this section.”</p> <p>The comments do not consider the effect of the language used in CIC §922.6(b) that allows the Commissioner to deny statement credit claimed by a foreign insurer if the Commissioner determines that the collateral securing the reinsurance “does not satisfy the credit for reinsurance requirements applicable to insurers domiciled in this state.” The statutory language <i>requires</i> the application of the California collateral requirements to foreign insurers <i>if</i> the Commissioner elects to analyze the claim for statement credit pursuant to CIC §922.6(b).</p> <p>Because the comments indicate a misunderstanding of the reference to foreign insurers in §§2303.7, 2303.8 and 2303.9, the subdivisions were deleted and the collateral requirements applicable to foreign insurers were moved to §2303.10, which relates exclusively to foreign insurers. No objections were received to the revisions.</p>
RAA (16-17; 36-39) Similar comments:	2303.3 through 2303.10	Comment No. 60 [Citing legislative analysis of 922.6 explaining that the statute permits the Commissioner to focus attention on domestic insurers and rely on other states to monitor their domestic insurers, and 922.6(b)	The Commissioner agrees that CIC §922.6 allows the Department to focus its resources on domestic insurers, but disagrees with the remainder of the comment. CIC §922.6(a)(1), as implemented by §2303.10, gives the Commissioner the authority to accept without

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ACE (4-5) XL (3-4)		<p>provides that the Commissioner “can still act if he or she makes findings that there is a hazard to policyholders.”]</p> <p>“The intent of the Legislature in enacting section 922.6(a)(1) was to shift the primary responsibility for determining whether foreign insurers should receive credit for reinsurance to the accredited domicile state of the foreign insurer. The exceptions in section 922.6(b) were only to be applied on a case-by-case basis if there was concern about a particular reinsurer’s condition, collateral or security. It is contrary to the intent of the Legislature for the Department to attempt to impose the regulations applicable to California insurers on all foreign insurers using the exceptions set forth in section 922.6(b). [Citations on statutory construction omitted.]”</p>	<p>independent review the claim for statement credit by a foreign insurer to the extent allowed by its home state. There is nothing in the regulations to <i>require</i> an independent review of credit claimed by a foreign insurer, or that is contrary to a case-by-case application of CIC §922.6(b). The regulations merely provide the <i>standards</i> to be followed if the Commissioner, pursuant to CIC §922.6(b), elects to review a claim for statement credit made by a foreign insurer to make certain that the cession meets the requirements applicable to domestic insurers. The standards that must be followed pursuant to the requirements of CIC §922.6(b) are the same statement credit standards applicable to domestic insurers – as set forth in CIC §§922.4 and 922.5 and the implementing regulations.</p> <p>The finding actually required by CIC §922.6(b) to deny statement credit is not that “there is a hazard to policyholders” as claimed by the RAA, but rather that “either the condition of the reinsurer, or the collateral or other security provided by the reinsurer, does not satisfy the credit for reinsurance requirements applicable to ceding insurers domiciled in this state.”</p>
RAA (17-18; 36-39) Similar comments:	2303.3 through 2303.5	Comment No. 61 “Because section 922.4 of the Insurance Code expressly applies only to domestic ceding insurers and not to foreign ceding insurers, and because blanket application of these regulations to foreign ceding	The Commissioner disagrees with the comment. The regulations do not render 922.6(a)(1) a nullity. The Department routinely relies on that statute in its review of the financial statements of foreign insurers. Any diminishment in the importance of CIC §922.6(a)(1) is the result of the legislature’s adoption of CIC §922.6(b)

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ACIC (18) Everest (5)		insurers would render section 922.6(a)(1) a nullity (sic). The provision of the Regulations applicable to foreign insurers that has been proposed by the Department are not consistent with the scope of the authority granted to the commissioner pursuant to Insurance Code sections 922.4 and 922.6 and, therefore, violate of the Administrative Procedures Act (Gov’t Code §§11342.1, 11349(d)).”	and beginning subdivision (b) with the words “Notwithstanding subdivision (a).” The importation of the statement credit requirements of CIC §§922.4 and 922.5 into CIC §922.6(b) was made by the legislature in permitting denial of statement credit if the reinsurance does not “satisfy the credit for reinsurance requirements applicable to ceding insurers domiciled in this state.”
ACIC (18-20) The ACIC comments to the scope of authority under CIC 922.8 were virtually identical in each section; the cited text is from the ACIC comment to §2303.6 on page 19.	2303.5 through 2303.8	Comment No. 62 [The Commissioner’s authority under CIC §922.8 is limited to adopting regulations covering the subjects listed in CIC §922.8(a)(1) through (6).] "It is unclear on what basis this definition [“jurisdiction”] is being advanced. Nothing in IC §§922.4(d) or 922.8 allows the Commissioner to create this definition. ... IC §922.8 specifically states that the Commissioner is only allowed to create definitions “. . . for trust funds established and maintained pursuant to Section 922.5.” ... and subsection (3) of IC §922.8 limits the Commissioner to create “the definition of “liabilities” as used in Section 922.4 and 922.5.” The Commissioner has no Authority for this section.”	The Commissioner disagrees with the comment, which is an incorrect statement of the law. CIC §922.8 states that the Commissioner may issue a bulletin ... “setting forth reasonable requirements for the allowance of reinsurance as an asset or deduction from liability ... <i>including</i> ...[emphasis added]” (a) definition of liabilities ... (and) definitions ... for trust funds...” The word "including" is not a word of limitation; it only indicates specific matters that are to be covered by the bulletin. CIC § 922.8(d) provides that “The commissioner shall adopt regulations implementing the provisions of this law, that shall supersede the bulletin authorized by this section.” There is no limitation stated in CIC §922.8 on the scope of the regulations to be adopted.
ACE (5) ACIC (24-25) AFGI (Exhibit)	2303.3 – 2303.10	Comment No. 63 [If California denies statement credit permitted by a home state, it is unclear whether a foreign insurer	The Commissioner has considered the comment and agrees that the concern is valid. In response to the comment, the regulations were revised to include a provision in 2303.19(e) explaining how a variance is to

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Everest (5) RAA (37)		would be required to file a separate Schedule F (a report of reinsurance), incurring significant additional costs. The consequences of filing a Schedule F showing insolvency or an RBC level requiring regulatory action is also not clear.]	be reported, and setting forth the possible regulatory action that may follow.
ACIC (11, 20) ACLI (6-21) RAA (28-30, 32, 34-35)	2303.3(a) 2303.4(a) 2303.5(a) 2303.7(a) 2303.8(a) 2303.9(a)	Comment No. 64 [There is no authority in CIC §§ 922.4 or 922.5 to condition statement credit on compliance with 2303.11 –2303.13.] [ACLI included in its objections to §2303.3 through §2303.5 and §2303.7 through §2303.9 the specific requirements of §§2303.11 and 2303.13. The ACLI comments with respect to specific provisions of 2303.11 and 2303.13 will be summarized in those sections.}]	The Commissioner disagrees with the comment. CIC §§922.4 and 922.5 state conditions for statement credit, but they are not the only statutes setting conditions for statement credit. Additional requirements for statement credit are included in CIC §§922.2(a)(2), 922.3, 922.6 and 923. Sections 2303.3 through 2303.9 of the regulations make specific the requirements of CIC §§ 922.4 and 922.5. However, they also condition statement credit on compliance with the requirements of CIC §§ 922.2(a)(2), 922.3, 922.6 and 923, as implemented by §§2303.11, 2303.12 and 1203.13 of the regulations. CIC §922.3 applies to all licensees and provides that “notwithstanding any other provision of law” credit for reinsurance shall not be allowed without transfer of risk. This statute is implemented in §2303.11 for life and disability insurers, §2303.12 for property and casualty insurers, and §2303.13(b) of the revised text for all licensees. CIC §922.2(a)(2) permits statement credit for a domestic insurer only if the reinsurance contract

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			<p>contains an insolvency clause. This statute is implemented in §2303.13(d) of the revised text.</p> <p>CIC §922.6(a) permits a foreign insurer to claim statement credit only if the requirements of CIC §923 are met. CIC §923 incorporates by reference the NAIC Accounting Guidance, which conditions statement credit on the agreement including an insolvency clause (<i>see</i> SSAP 62:8(a)). The requirements of these statutes are implemented in §2303.13(d) of the revised text.</p> <p>Therefore, §§2303.3 through 2303.5 and §§2303.7 through 2303.9, all condition statement credit on also meeting the applicable requirements of §§2303.11 through 2303.13.</p> <p>The initial text has been revised to condition statement credit claimed pursuant to §2303.10 on compliance with the applicable requirements of §2303.11 through §2303.13 for the reasons given above.</p>
ACE (5-6)	2303.13 2303.14	<p>Comment No. 65</p> <p>[Lacks clarity re consequences of conflict with foreign insurer’s state of domicile. Expands reach of 922.2 to foreign insurers. No need to include requirements from SSAP, since insurers are required to comply with those in any event.]</p>	<p>The Commissioner disagrees in part with the comment. As explained above, none of the comments have identified a single instance of conflict with the requirements of a foreign insurer’s state of domicile. There is no expansion of 922.2 to foreign insurers, and ACE did not identify the particular regulation it interprets as such an expansion. However, with respect to the SSAP requirements, in response to comments the regulations that duplicated SSAP requirements have</p>

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			been deleted.
<p>ACIC (10-12, 16, 18, 20, 23-24, 26-28, 31-32, 34, 37-42)</p> <p>The comments were virtually identical; the cited text is from the ACIC comment to §2303.3 on page 12.</p>	<p>2303.2 through 2303.17; 2303.19 and 2303.24</p>	<p>Comment No. 66</p> <p>“The basis for which the Commissioner is relying upon the following Authorities is not clear from the Notice or the Proposed Regulations (the fact that certain Authorities may not be cited does not mean that there is any agreement that the Authorities not cited substantiate the Commissioner’s basis for the regulation, it just means that a possible logic can be discerned from that specific Authority): IC §§ 720, 730, 736, 739.9, 922.8, 923, 924, 1011.5, 1215.8 and 1781.12. Additionally, it is not clear why there are cites to the <i>CalFarm</i> and <i>20th Century</i> cases since those cases specifically deal with Proposition 103 issues and by their own language are limited to those situations.”</p>	<p>The Commissioner disagrees with the comment. The cited authorities either expressly or implicitly allow the adoption of the proposed regulations, which incorporate requirements from various statutes. The regulations are a comprehensive set of inter-related requirements covering many topics, including financial statement credit for reinsurance, contract provisions, acceptable reinsurance transactions, surplus requirements, licensing standards, examinations and oversight, all of which incorporate the referenced statutes. Although <i>CalFarm</i> and <i>20th Century</i> involved regulations relating to Proposition 103, the scope of the Commissioner’s authority to adopt regulations as set forth in those cases was general, and not limited to Proposition 103 regulations. However, the Authorities have been narrowed in the revised text.</p>
<p>ACIC (10-12, 16, 18, 20, 23-24, 26-28, 31-32, 34, 37-42)</p> <p>The comments were virtually identical; the cited text is</p>	<p>2303.2 through 2303.17; 2303.19 and 2303.24</p>	<p>Comment No. 67</p> <p>“Finally, it is confusing, unclear and it lacks Clarity how the following sections cited as Reference are made specific by adopting these regulations; IC §§19, 35, 533, 700, 701, 704, 704.7, 717, 730, 733, 736, 739.10, 900, 922.1, 922.2, 922.3, 922.4, 922.5, 922.6, 922.7, 922.8, 922.9, 923, 924, 925, 925.2, 925.4, 1011, 1011.5, 1031, 1215.5(b)(3), 1215.5(f), 1781.10 and 12921. In fact, as discussed below, the references</p>	<p>The Commissioner disagrees with the comment. The clarity standard pertains to the text of the regulations itself, and not to California Code sections appearing in the reference and authority notes. The regulations are complex because they relate to a complex subject matter, but they do not lack clarity. The regulations are a comprehensive set of inter-related requirements covering many topics, including financial statement credit for reinsurance, contract provisions, acceptable</p>

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from the ACIC comment to 2303.3 on page 12.		to several of these sections are without Authority and make the Proposed Regulations Inconsistent. Additionally, the references to the same sections for both Authority and Reference seems circular and creates additional confusion and additional lack of Clarity. These sections are IC §§730, 736, 922.8, 924, 1011.5 and 12921.”	reinsurance transactions, surplus requirements, licensing standards, examinations and oversight, all of which incorporate the referenced statutes. However, the References have been narrowed in the revised text.
		COMMENTS TO SPECIFIC SECTIONS	
	2303.2	Definitions	
ACE (3) ACIC (9) ACLI (5) AIA (8) RAA (18)	2303.2 (q)	Comment No. 68 [The threshold used in the definition of “material reinsurance agreement” is arbitrary, difficult to calculate and creates a standard that is “virtually impossible” for the industry to meet.]	Certain regulations were made applicable only to “material reinsurance agreements” in order to reduce the compliance burden on licensees and the enforcement burden on the Department. No alternatives for the definition were suggested by the comments. The Commissioner has considered the comments and in response has deleted the definition. Although the regulations will now apply to all agreements, compliance and enforcement is simplified.

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AIA (8) RAA (21) XL (2)	2303.2 (r)	Comment No. 69 [The definition of “materially deficient” is vague, ambiguous, arbitrary and without lawful authority.]	The definition of “materially deficient” as used in CIC §717(d) to evaluate the reinsurance arrangements of licensees was intended to provide a general standard for compliance and enforcement. The definition could not be made more precise without limiting the scope of the statute. No alternatives for the definition were suggested by the comments. The Commissioner has considered the comments and in response has deleted the definition.
ACE (3) ACIC (10) ACLI (5) AIA (4) AFGI (2) Guy (2) Pacific (1) RAA (23) Swiss (3-4) XL (2)	2303.2 (w)	Comment No. 70 [The definition of “volume insurer” creates a new class of insurer, and attempts to regulate foreign insurers meeting the definition in the same manner as California regulates domestic insurers or commercially domiciled insurers, and is beyond the Department’s authority. It is difficult to understand which regulations apply to volume insurers.] [AIA, XL: Definition should be same as for “commercially domiciled” in Code Section 1215.13.]	(The definition has been renumbered from “z” to “w”.) The Commissioner disagrees in part. With respect to the challenge to his authority to regulate foreign insurers, the Commissioner incorporates his response to Comment No. 4. In response to complaints that the definition was too broad and presented uncertainties, the definition of “volume insurer” has been revised. As suggested by some of the comments, the definition was revised to use the same threshold calculation as applicable to commercially domiciled insurers in CIC §1215.13 – a calculation familiar to all licensees. The revised definition further reduces the number of insurers that will be subject to certain regulations, simplifying compliance and enforcement. The argument that the Commissioner does not have the authority to create a subset of foreign insurers that are subject to specific California regulations is without merit. Most comments indicate a lack of understanding that the statutes implemented by use of the definition are

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			<p>statutes not limited in application to insurers domiciled in California – the statutes apply to all licensed insurers.</p> <p>A "foreign insurer" is defined in §2303.2 as a licensed insurer that is domiciled in a state other than California. A "licensed insurer" is defined in §2303.2 as one that has been issued a certificate of authority by the Commissioner. Foreign insurers, because they are California licensed insurers, are required to comply with the requirements of the Insurance Code and all regulations implementing the Insurance Code. (<i>See</i> CIC §§700(a) and (c).) The Commissioner could, for example, apply the contract requirements of §§2303.13 through 2303.15 to all foreign insurers.</p> <p>However, to limit the compliance burden on licensees and the enforcement burden on the Department, the Commissioner has elected to limit the application of the contract requirements in §§2303.13 and 2303.14 to those insurers with a significant volume of California business that he has termed and defined as “volume insurers.”</p> <p>Nothing in the Insurance Code prohibits the Commissioner from allocating Department resources in an efficient manner by limiting Department review of the reinsurance arrangements of foreign ceding insurers to those insurers with a significant volume of business in California. (<i>See, e.g., Painting & Drywall Work Preservation Fund, Inc. v. Aubry</i> (1988) 206</p>

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			<p>Cal.App.3d 682, 253 Cal.Rptr. 776 (“mandamus cannot be applied to control discretion as to a matter lawfully entrusted to a governmental agency” at p. 687).)</p> <p>Deficient reinsurance arrangements of "volume" foreign insurers and the potential for financial stress related thereto are likely to create problems for more California insureds than would deficient arrangements of foreign insurers that conduct less business in California.</p> <p>It should be noted that nothing in the regulations prevents the Commissioner from examining the reinsurance arrangements of non-volume foreign reinsurers as necessary pursuant to the examination authority of CIC §730.</p>
	2303.3	Credit for Reinsurance Ceded to Admitted Insurer	
ACIC (11)	2303.3	<p>Comment No. 71</p> <p>“The Proposed Regulations are not clear concerning the actions the CDOI will take should one of the tests set out in this section be met. Would a ceding company instantly lose credit for reinsurance and potentially be instantly insolvent?”</p>	<p>The Commissioner disagrees that the consequences of not meeting the requirements of the section is not clear. Credit is permitted if requirements are met. Credit is not permitted if requirements are not met.</p> <p>The section combines the requirements of various Code sections specifying conditions to claim statement credit. Failure of a condition would preclude the claiming of statement credit. If the loss of statement credit would result in a technical insolvency, the Commissioner has broad statutory powers to act, which are not within the</p>

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			<p>scope of these regulations.</p> <p>However, in response to this and other comments, new subdivision (e) has been added to §2303.19 to make clear that the usual consequence of a denial of statement credit where the credit was allowed in the foreign insurer’s home state would be a limitation of the insurer’s writings in California – not an ancillary receivership proceeding.</p>
ACIC (11)	2303.3	<p>Comment No. 72</p> <p>[Lacks clarity in that the section fails to define “hazardous financial condition”.]</p>	<p>The Commissioner disagrees with the comment. The term "hazardous financial condition" is a term used in CIC §922.4(a) (and elsewhere in the Insurance Code) but not defined in the Code. In case law, “hazardous” with respect to an insurer’s financial condition has been defined as presenting a risk of loss to an insurer’s policyholders. (See <i>Caminetti v. Guaranty Union Life Insurance Company</i>, 52 Cal. App. 2d. 330, 333, 126 P.2d 159 (1942).)</p> <p>A hazardous financial condition can encompass or include many different financial circumstances that may lead to, pose, threaten, or create a risk of insolvency, or a risk of being unable to conduct business, or a risk of being unable to timely or adequately fulfill its obligations (including its obligation to pay claims) or other risks to its policyholders, creditors and the public. In performing his statutory duties to oversee the insurance industry, the Commissioner cannot anticipate</p>

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			every type of financial condition that may arise for every type of insurer transacting any type of insurance business in California. Accordingly, the Commissioner has elected not to provide a definition for "hazardous financial condition.”
ACIC (11)	2303.3	<p>Comment No. 73</p> <p>[Lacks clarity in whether subparagraph (1) applies to alien reinsurers.]</p>	The Commissioner disagrees with the comment. By its language, the entire section applies only to insurers licensed in California. Therefore the section would not apply to alien insurers (which are not domiciled in the United States and generally are not licensed in any state) unless the alien insurer is licensed in California.
ACIC (11)	2303.3	<p>Comment No. 74</p> <p>"This section does not satisfy the Clarity standard. We suggest that the section be revised to state that credit for reinsurance shall be allowed pursuant to California’s equivalent of the Credit for Reinsurance Model Law, and the remainder of the section be stricken. [See Proposed Regulations §§2303.12 and 2303.13 (infra)] "</p>	The Commissioner rejects this undeveloped suggestion. The section is based on CIC §922.4(a) and is clear. The corresponding sentence from the Model Regulation is inadequate, in that it does not include all of the conditions for statement credit required by the Code. The corresponding sentence in the Model Regulation relates only to CIC §922.4(a). The Model Regulation does not include the additional conditions for statement credit set forth in CIC §922.2(a) [the insolvency clause], CIC §922.3 [risk transfer] and CIC §923 [NAIC Accounting Guidance]. The remainder of the section relating to reporting of regulatory actions has been moved to §2303.18.

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ACIC (12)	2303.3	<p>Comment No. 75</p> <p>[The section is duplicative of Code Section 922.4(a).]</p>	The Commissioner disagrees with the comment. Several statutes set conditions for statement credit. The regulation incorporates requirements from all the relevant statutes, including 922.4(a).
ACIC (12)	2303.3	<p>Comment No. 76</p> <p>“This section does not comply with §11346.2(b)(3) and CCR §10(b) since the Rulemaking file does not contain any Evidence or discussion as to whether the NAIC alternatives were considered and if so why they were rejected. Also, because of this, the Commissioner has not met his burden of showing the Necessity for the Proposed Regulations.”</p>	The Commissioner disagrees with the comment. The ISR explains that this section is based upon the Model Regulation and that it expands upon the Model Regulation for purposes of efficiency in enforcement and compliance with California law. The regulation is necessary because CIC §922.8 requires it.
Everett (5)	2303.3	<p>Comment No. 77</p> <p>[A licensee might not be aware that its reinsurer is subject to a confidential order or oversight, precluding a claim for statement credit.]</p>	CIC §922.4(a) does not permit statement credit for a cession to a reinsurer that is the subject of a regulatory order or oversight on the basis of a hazardous financial condition. At such time that the licensee becomes aware of such an order or oversight, it should not claim statement credit for the cession. (The subject provision has been moved to §2303.16.)
	2303.4	<p>Credit for Reinsurance Ceded to Accredited Reinsurer</p>	
ACIC (12-16)	2303.4	<p>Comment No. 78</p> <p>[ACIC first comments on subdivisions (b), (c) and (d) of Section 2303.4 on pages 12 and 13 of its statement, and then commences “specific” comments on the</p>	Responses are provided in Comments No. 79 through 95.

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		same subdivisions on pages 14 through 16, repeating some comments, expanding on others. Duplicate comments have been omitted, and comments on the same subject are grouped together.]	
ACIC (12)	2303.4	Comment No. 79 “This section places some onerous reporting burdens on reinsurers for which we question the Commissioner’s Authority and Necessity, and there is no Evidence to support these actions in the Rulemaking File. Additionally, as discussed below, there is a lack of Clarity because it is not clear what it is the CDOI is actually requesting in this section. “	The Commissioner disagrees. On page 4 of its comment, ACIC urges adoption of the Model Regulation. However, it is apparent that ACIC is not familiar with the Model Regulation, in that, with a few minor exceptions noted in the ISR and below, the reporting requirements it complains of are included in the Model Regulation. Moreover, the requirements are included in Bulletin 97-5, issued in 1997, and have been followed by insurers since that time without difficulty or complaint.
ACIC (17)	2303.4	Comment No. 80 "It also seems .. the Commissioner is attempting to ... hold Accredited Reinsurers to the same standards and requirements as California domestic insurers. To the extent that this section does hold Accredited Reinsurers to the same standards as California domestic insurers, it exceeds the Commissioner’s Authority as set out in IC §§922.4 and 922.8."	The Commissioner disagrees. The comment fails to note the specific requirements it construes as being the “same standards as California domestic insurers”. The requirements in §2303.4 comply with the provisions of CIC §922.4(b) regarding accredited reinsurers and with a few minor exceptions, with the Model Regulation.
ACIC (13)	2303.4 (a)	Comment No. 81 “The first sentence should be revised to state that credit for reinsurance should be granted pursuant to California’s equivalent of the Credit for Reinsurance	The Commissioner rejects this undeveloped suggestion. The corresponding sentence from the Model Regulation is inadequate, in that it does not include all of the conditions for statement credit required by the Code.

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		Model Law. The remainder of this paragraph should be stricken.”	The corresponding sentence in the Model Regulation relates only to CIC §922.4(b). The Model Regulation does not include the additional conditions for statement credit set forth in CIC §922.2(a) [the insolvency clause], CIC §922.3 [risk transfer] and CIC §923 [NAIC Accounting Guidance]. The remainder of the section relating to reporting of regulatory actions has been moved to §2303.18.
ACIC (14)	2303.4 (b)	Comment No. 82 [Omit all requirements except those listed in 922.4(b)(1)(A) through (E), and meet the requirements of 922.4(b)(1)(G).]	The Commissioner declines this suggestion for various reasons, including that it fails to conform to the Model Regulation, omits the statement required by 922.4(b)(1)(F), and fails to require sufficient financial information to permit the Department to make an informed assessment of the insurer’s financial status.
ACIC (12-14) Farmers (1) and PIF (2) make similar arguments, but quoted language is from ACIC comments	2303.4 (b)(1)(B)	Comment No. 83 “Quarterly reporting of California cedents (or deletions from that list). Why is it necessary?”	On page 4 of its comment, ACIC urges adoption of the Model Regulation. ACIC is obviously not familiar with the Model Regulation in that quarterly reporting of domestic ceding insurers is required of accredited reinsurers by the Model Regulation and Bulletin 97-5 (the requirement is included in the AR-1 forms), and is necessary so that current information is always on file for cessions to unlicensed insurers.
ACIC (12-14)	2303.4 (b)(1)(B)	Comment No. 84 “Of what value is it that the CDOI has a list of domestic insurers who have a reinsurance program with the reinsurer, but has not requested the same information from say, a foreign or a commercially	The Commissioner disagrees with the comment. This comment was included by ACIC in its comments to 2303.4(b)(2), but it relates to the requirement that an accredited reinsurer must provide a list of its domestic ceding insurers. This Model Regulation and Bulletin 97-

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		domiciled insurers? This lacks Consistency.”	5 requirement seeks information to more efficiently monitor cessions by domestics to unlicensed insurers.
ACIC (12-14) PIF (2)	2303.4 (b)(1)(B)	Comment No. 85 [Requiring a list of cedents exceeds the Commissioner’s authority in that 922.4(b)(1)(E) allows the Commissioner only to request “financial information”.]	The Commissioner disagrees with the comment. A list of insurers ceding business to an accredited reinsurer is within the reasonable scope of “financial information” in that it identifies the source of the insurer’s business. Moreover, the requirement to provide a list of cedants is included in the Model Regulation, and would, therefore, be within the reasonable scope of the regulations authorized by CIC §922.8.
ACIC (14-15)	2303.4 (b)(1)(B)	Comment No. 86 [The regulation is inconsistent in that the Code says that credit shall be granted “unequivocally” for a cession to an accredited reinsurer, and the regulation conditions the grant upon the quarterly filing of a list of cedants.]	The Commissioner disagrees with the comment, which is an incorrect statement of the law. CIC § 922.4(b)(1)(E) provides that the Commissioner may request additional financial information from an accredited reinsurer, and a current list of the source of the insurer’s business is within the scope of reasonable financial information. CIC § 922.8 requires the Commissioner to adopt regulations to implement the statutes. Moreover, it is reasonable to include in the regulations those requirements included in the Model Regulation such as the subject requirement. ACIC’s statement that CIC §922.4(b) requires statement credit to be “unequivocally” granted for a cession to an accredited reinsurer is additional evidence of the necessity for the Reinsurance Oversight Regulations, in

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			that ACIC fails to note that statement credit for a cession to an accredited reinsurer is also conditioned upon compliance with the mandatory requirements of CIC §§922.2, 922.3 and 923. Therefore, statement credit could not be claimed for a cession to an accredited reinsurer if, for example, the agreement does not include the insolvency clause required by CIC §922.2(a)(2), or the agreement did not transfer risk to the reinsurer, as required by CIC §922.3.
ACIC(12)	2303.4 (b)(2)	Comment No. 87 “The reinsurer must submit to the jurisdiction of any California court for the adjudication of any issues related to the underlying transaction.”	An objection or suggestion is not apparent from the comment. However, submitting to the jurisdiction of the accrediting state is a requirement of the Model Regulation (and Bulletin 97-5) and is necessary to provide a convenient forum to a ceding domestic insurer for dispute resolution and to the Commissioner for regulatory proceedings.
ACIC (13, 15)	2303.4 (b)(4)	Comment No. 88 “The statement of disclosing any orders or proceedings relating to anyone with 10% or more of an interest in the reinsurer of any revocation, suspension, regulatory action is an undue burden on the reinsurer.” [The requirement is duplicative of the statute.]	The Commissioner disagrees with the comment. The <i>statute</i> places the disclosure burden, not the regulation. The disclosure statement required by CIC §922.4(b)(1)(F) is to be provided by any person with a controlling interest in the insurer. A 10% ownership interest is a standard presumption of control. See, e.g., CIC §§1215(b) and 1668.5(b). The regulation includes all filing requirements for accreditation, including those expressly required by the statute, so that a

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			comprehensive list of materials to be submitted is available to applicants and Department analysts for ease of reference.
ACIC (13)	2303.4 (b)(4)	Comment No. 89 “Additionally, the scope of the disclosure is unreasonable. For example, even confidential actions are to be revealed, thereby superseding the confidentiality of agreements with other states.”	The Commissioner disagrees with the comment. ACIC has failed to read the subject regulation. Disclosure of confidential information is required only if permitted by the state regulator initiating the confidential proceeding.
ACIC(13, 15)	2303.4 (b)(5)(A)	Comment No. 90 “Filing of most recent examination report (presumably this refers to financial reports although it might refer to market conduct reports) with an “as of” date not more than 3 years prior to submission may not in all cases be possible, as such examinations may not have been performed within that time.” [Statute provides for annual filing of annual statement; requiring applicant to submit annual statements for three preceding years is beyond authority.]	The Commissioner disagrees with the comment. ACIC has confused the 3 year requirement of §2303.4(b)(5)(A), which relates to annual statements, with the 5 year requirement of §2303.4.(b)(5)(B), which applies to examination reports. An applicant for accreditation is required to file an examination report with an “as of” date of not more than FIVE years, which is the outside time period for home states to conduct such examinations. With respect to annual statements, the initial application for accreditation requires the three preceding years of annual statements. Once accredited, the insurer need only file the statement annually, as prepared. A review of the performance of an insurer for three prior years is necessary for proper financial evaluation of an accreditation application and is reasonably within the scope of the additional financial information permitted by the statute.
ACIC (13, 16)	2303.4	Comment No. 91	The Commissioner disagrees with the comment. A

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	(b)(5)(E)	<p>“Certificate of good standing from domicile - Some states may not issue these to reinsurers.”</p> <p>[Most states do not require <i>certified</i> copies of certificates of authority, as it increases costs and is just another administrative burden.]</p>	<p>certificate of good standing is routinely provided by every state and is assurance that the insurer is in compliance with the laws of its home state. This requirement was included in Bulletin 97-5. Those reinsurers accredited pursuant to Bulletin 97-5 routinely provide such certificates. Certified copies of official documents are necessary to establish authenticity.</p>
ACIC (13, 15)	2303.4 (b)(5)(H)	<p>Comment No. 92 “News releases - We wonder what the value of this is and how this enormous amount of information that is going to be filed with the CDOI is going to be read, reviewed and analyzed by the CDOI’s staff giving present staffing limitations.”</p> <p>[News releases are not “financial information” and are beyond the scope of information the Commissioner is authorized to obtain.]</p>	<p>The Commissioner disagrees with the comment. As explained in the ISR, the Commissioner has determined that the “news release” information is reasonably necessary to assess the financial condition of the insurer. Although requesting copies of all news releases issued by or on behalf of the insurer may result in the provision of some information not relevant to the insurer’s financial condition, the requirement to provide copies of all releases avoids the possibility of selective submission.</p>
ACIC (13)	2303.4 (c)(2)	<p>Comment No. 93 “Current list of California domestic insurers from which business is assumed - This seems to duplicate item 1.B.”</p>	<p>The Commissioner disagrees with the comment. Section 2303.4(b) stated the requirements to become an accredited reinsurer. Section 2303.4(c) states the requirements to maintain eligibility.</p>
ACIC (13)	2303.4 (d)	<p>Comment No. 94 “While this Proposed Regulation states in subsection (d) that the costs and expenses incurred by the CDOI to review a reinsurer’s accreditation are to be borne by</p>	<p>The Commissioner disagrees with the comment. CIC §922.4(b)(4) requires the Department to charge to and collect from the insurer all costs and expenses incurred for the initial and subsequent accreditation reviews. Where the Code does not set a fee for a Department</p>

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		<p>the requesting reinsurer it is not clear how this is actually going to be done, e.g. by flat fee, by an hourly charge, is the CDOI going to charge for photocopies and telephone charges? By not setting that out here, the CDOI is going to be required to either create “desk drawer” rules for these charges or issue subsequent regulations on how this is going to be accomplished. Either way, the Proposed Regulations violate the Clarity standard and Gov’t Code §11340.1(a) which requires any adopted regulation to result in a reduction of ‘ . . . the number of administrative regulations . . . ’”</p>	<p>review, as is the case here, the Department must necessarily bill the insurer for costs incurred, including an hourly charge for the hours recorded, following the procedures established by the Department for billing insurers for examinations pursuant to CIC §736. The Department has been following this procedure for accredited reinsurers since the adoption of Bulletin 97-5 in 1997, without complaint.</p>
<p>ACIC (13) Farmers (1) and PIF (2) make similar arguments, but quoted language is from ACIC comments</p>	<p>2303.4 (d)</p>	<p>Comment No. 95 “In addition, such costs will be passed on to California consumers by those insurers writing in California. These costs are clearly not costs incurred to obtain reinsurance for other jurisdictions so there is no justification for citizens in other states being required to pay these charges. The Proposed Regulations will result in increased costs to California businesses and individuals, something that does not appear to have been taken into account in the Commissioner’s preparation of these Proposed Regulations. If it has, we specifically request that we be provided with all of the information reviewed and relied upon, an explanation of why these materials are not included in the Rulemaking File and an explanation why the alternatives contained in the NAIC Model Credit For Reinsurance Regulation are not adequate as required</p>	<p>The Commissioner disagrees with the comment. CIC § 922.4(b)(4) <i>requires</i> the Department to charge to and collect from insurer all costs and expenses incurred for the initial and subsequent accreditation reviews.</p> <p>There are no alternatives to the accreditation process in the Model Regulation; in fact, the process adopted in §2303.4 <i>is</i> the Model Regulation process.</p> <p>Since the Department has been billing accredited reinsurers for accreditation reviews since the adoption of Bulletin 97-5 in 1997 without complaint from applicants, the additional costs to California businesses and individuals appear not to be significant.</p>

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		by Gov’t Code §11346.2(b)(3) and CCR §10(b).”	
	2303.5	Credit for Reinsurance Secured by an Approved U.S. Trust	
ACIC (17)	2303.5	<p>Comment No. 96</p> <p>"Although this section apparently recognizes the role of the “Oversight State” (the state where the trust is domiciled or where primary regulatory oversight is performed), it still requires imposition of California requirements, both statutory and regulatory. The provisions are quite detailed, very restrictive, and far surpass the requirements of IC §922.4. Moreover, these provisions conflict with NAIC provisions, and thus would require ceding insurers to have trust provisions that are inconsistent with those of their domiciliary states. This provision seems to require something that it is not clear can be done: separate and different reinsurance agreements for California from those used in other jurisdictions. We believe that this section should be redrafted in its entirety to track the NAIC requirements. "</p>	<p>The Commissioner disagrees with the comment. ACIC subsequently provides specific comments encompassing this general objection. The specific comments and the Commissioner's response are set forth <i>infra</i>. The comment that §2303.5 conflicts with "NAIC provisions" is incorrect; as noted below in the response to specific comments (as well as in the Notice and ISR and the response to Comment No. 7), the regulations vary from the substantive requirements of the Model Regulation in only a very few instances.</p>
ACIC (17)	2303.5	<p>Comment No. 97</p> <p>"... this Proposed Regulation suffers from all of the infirmities of Proposed Regulation §2303.4. We incorporate by reference all of the detailed comments contained in our response to Proposed Regulation §2303.4 ... "</p>	<p>The Commissioner incorporates his responses to the incorporated comments.</p>

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RAA (26-27)	2303.5	<p>Comment No. 98</p> <p>“Section 922.4(c)(2) provides that before credit will be allowed, the form of the trust must have been approved by either (1) the commissioner of the state where the trust is domiciled or (2) the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust. This approach reflects the Legislature’s recognition of the important role served by the domiciliary regulator.”</p>	<p>The Commissioner disagrees with the comment. The RAA summary of the law is incomplete, leaving out the language in CIC §922.4(c)(2) which gives the <i>Commissioner</i> the final authority over the form of a trust to be used in California, as follows:</p> <p style="padding-left: 40px;">(2) Credit for reinsurance shall not be granted under this subdivision unless the form of the trust and any amendments to the trust have been approved by either:</p> <p style="padding-left: 80px;">(A) The commissioner of the state where the trust is domiciled.</p> <p style="padding-left: 80px;">(B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.</p> <p style="padding-left: 40px;">The trust and any trust amendments shall also be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. Notwithstanding the foregoing, nothing in this paragraph shall prevent the commissioner from disapproving the form of the trust if it is not in compliance with this state's laws and regulations. (Emphasis added.)</p>
RAA (27) Similar	2303.5	<p>Comment No. 99</p> <p>“Multiple beneficiary trusts are an established means</p>	<p>The Commissioner disagrees with the comment. The NAIC Model Law on Credit for Reinsurance permits each state to determine the <i>sufficiency</i> of a multiple</p>

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comments: ACIC (17), Farmers (1-2), PIF (2)		of securing all of the U.S. liabilities of a single reinsurer or a group of reinsurers. Reinsurers utilizing these trusts seek to have them accepted in all states in which they do business. If each state seeks to independently regulate these trusts, it becomes unworkable. California’s adoption of the Model Law language for credit for reinsurance for trusts acknowledges this.”	<p>beneficiary trust used in the state (see Model Law (2)(D)(1), which corresponds to CIC 922.4(c)(1)). <i>The Code and the proposed regulations are near verbatim copies of the NAIC models as respects the requirements for acceptance of such trusts in California.</i></p> <p>Bulletin 97-5 included requirements for multiple beneficiary trusts that were almost verbatim from the Model Regulation; the Bulletin requirements are followed in the proposed regulations. As explained in the ISR, the provisions that are additional to the Bulletin 97-5 requirements relate to statute requirements that were not included in the Bulletin.</p> <p>The Department has applied the Bulletin requirements to the multiple beneficiary trusts used in California since 1997 without complaint from the insurers maintaining the trusts. With the exception of a limitation on the amount of a letter of credit, the asset requirements are identical to the Model Regulation and Bulletin 97-5.</p>
RAA (27)	2303.5	<p>Comment No. 100</p> <p>“Insurance Code section 922.4(c) explicitly defers to the commissioner with regulatory oversight of the trust to regulate the trust and there is no authority for the Department to attempt to regulate the trust as it does in proposed regulation 2303.5(a), (b), (c), and</p>	<p>The Commissioner rejects the comment as an incorrect statement of California law. CIC §922.4(c) sets out in great detail the eligibility requirements for a multiple beneficiary trust, including the authority of the Commissioner to review both the sufficiency of the trust and the form of the trust. In the entirety of the extensive text of CIC 922.4(c), only two mentions are</p>

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		(d).”	<p>made to another commissioner with regulatory oversight. Neither mention gives “deference” to the other commissioner. The first reference is found in CIC §922.4(c)(2), which provides:</p> <p style="padding-left: 40px;">Credit for reinsurance shall not be granted under this subdivision unless the form of the trust and any amendments to the trust have been approved by either:</p> <p style="padding-left: 80px;">(A) The commissioner of the state where the trust is domiciled.</p> <p style="padding-left: 80px;">(B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.</p> <p style="padding-left: 40px;">The trust and any trust amendments shall also be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. Notwithstanding the foregoing, nothing in this paragraph shall prevent the commissioner from disapproving the form of the trust if it is not in compliance with this state's laws and regulations. (Emphasis added.)</p> <p>The above statute merely states that the form of the trust shall have been approved by the commissioner of the oversight state, and permits the Commissioner to disapprove the form of the trust notwithstanding the</p>

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			<p>other commissioner’s approval. There is no “deference” given to the commissioner of the oversight state.</p> <p>The second mention of the commissioner of the oversight state is contained in CIC 922.4(c)(4)(B)(v):</p> <p style="padding-left: 40px;">The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the group.</p> <p>Again, no “deference” is given to the other state commissioner regarding the sufficiency or form of the trust. The Code provides that those determinations are to be made by the <i>California</i> Commissioner for trusts approved for use in California.</p> <p>The role of the commissioner of the oversight state is described in CIC§922.4(f). That section lists the provisions that must be included within the trust agreement concerning distribution of assets from the trust. The proposed regulations contain no requirements concerning the distribution of assets from</p>

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			the trust, except to state in §2303.5(c) that the form of the trust shall not be approved if it does not contain the provisions required by CIC §922.4(f).
ACIC (18)	2303.5 (a)	<p>Comment No. 101</p> <p>[Code Section 922.(c)(4) sets out three categories of assuming insurers with separate requirements, yet the Commissioner applies same rules to all three.]</p>	The Commissioner disagrees with the comment. The Code sets different financial thresholds for different categories of assuming insurers, however, the Code does not differentiate among the categories with respect to the matters covered by the regulations.
RAA (27) Similar comment: ACIC (18)	2303.5 (b)	<p>Comment No. 102</p> <p>“...(T)he proposed regulation attempts to subject these trusts to the full spectrum of oversight by the California Department including: requiring an assuming insurer seeking approval of a U.S. trust to file an application with the Department which must include, among other things: an independent audit report; an actuarial opinion; copies of all documents submitted to the oversight state; a current list of its California domestic ceding insurers and an undertaking that it will update this list on a quarterly basis; and any other documents requested by the commissioner. There is no statutory authority for the Department to even require an application for approval of a trust, much less this voluminous information. “</p>	<p>The Commissioner disagrees with the comment and incorporates his above responses regarding his oversight authority in this area. The Code places upon the Commissioner the responsibility to review the trust to determine its sufficiency to meet the insurer’s obligations in California. CIC 922.4(c)(1) provides as follows:</p> <p style="text-align: center;">To enable the commissioner to determine the sufficiency of the trust fund the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers or any other form required by the NAIC.</p> <p>Additionally, CIC §922.4(c)(2)(E) requires:</p>

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			<p>No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire within the next 18 months.</p> <p>The Commissioner’s responsibility to determine the sufficiency of the trust would necessarily include a determination of whether the assets in the trust are of a quality to meet statutory requirements for insurer assets and whether the amount of the assets are sufficient to cover the insurer’s liabilities. The amount of the insurer’s liabilities cannot be established without an independent audit report and actuarial opinion.</p> <p>The information required by §2303.5 is reasonably necessary to permit the Commissioner to make a determination of the sufficiency of the quality and amount of the assets held in trust and the amount of the insurer’s liabilities. The requirement to provide such information is authorized by CIC §922.8.</p>
ACIC (18)	2303.5 (b)	Comment No. 103 "Subsection (b) exceeds the Commissioner’s Authority. IC §922.4(c) (4) specifically sets out what	The Commissioner disagrees with the comment. The Commissioner incorporates his response to the preceding comment. Moreover, there is no limitation in

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		is required for an assuming insurer seeking approval of a U.S. Trust. The requirements ... in this section exceed the Commissioner’s Authority because they are not contained in the statute.	the statute on the Commissioner’s authority to request information he determines necessary to evaluate the sufficiency of the trust.
RAA (27)	2303.5 (b)	Comment No. 104 “No other state requests this quarterly list of insurers.”	The Commissioner disagrees with the comment. If no other state requests a quarterly list of ceding insurers, the other states are not following the Model Regulation. The Model Regulation requires the filing of a form that requires the insurer to provide a report of its ceding insurers, and to update the list quarterly. [See Model Regulation (7)(B)(3)(a)(iii) form AR-1, item 4.] This requirement was included in Bulletin 97-5. Insurers with approved U.S. trusts, without objection, have filed the list quarterly with the Department.
Lloyd’s (2)	2303.5 (b)(2)	Comment No. 105 [Requests deletion of requirement for a certified copy of the trust document and a certified copy of the home state approval of the form of the trust, in that New York does not issue certified copies.]	The Commissioner declines the request. Certified copies of documents are the accepted means state departments of insurance verify the authenticity of documents, and are issued upon request.
Lloyd’s (2)	2303.5 (c) (3)	Comment No. 106 [Requests change in liability standard to gross negligence instead of negligence, asserting that Lloyd’s trustee bank, Citibank, and most trustee banks insist upon a gross negligence standard of liability. Acknowledges Model Regulation requires negligence	The Commissioner declines the request and disagrees that most trustee banks insist upon a gross negligence standard. The effect of the request would be that the insurer would be liable for a loss to the trust caused by the trustee bank’s negligence, and the trustee bank would be held liable only for a loss caused by its <i>gross</i> negligence.

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		standard.]	<p>There are no public policy reasons to except a trustee bank from the fundamental notion that each person should be held liable for his own conduct. Such exceptions are rare in the law and involve a weighing of the benefits to be obtained by freeing a person from liability for his conduct. For example, some states have “Good Samaritan” statutes that hold a person harmless when giving aid to an accident victim, for the purpose of encouraging such assistance. There are no similarly compelling societal benefits to be gained by releasing a trustee bank from liability for its own negligence.</p> <p>All of the current California approved trusts use the negligence standard required by Bulletin 97-5 and the Model Regulation, including a trust that another insurer maintains with Citibank as the trustee.</p>
ACIC (19)	2303.5 (c) (3)	<p>Comment No. 107</p> <p>[Requiring a trustee to be held liable for its own negligence exceeds authority, and “will certainly have a chilling effect upon the ability to obtain trustees and correspondingly will result in increased fees by those that are willing to so serve.”]</p>	<p>The Commissioner disagrees with the comment. CIC §922.4(c)(2) gives the Commissioner express authority to approve the form of the trust and CIC § 922.8 requires the Commissioner to adopt implementing regulations. The liability of a trustee is a fundamental element in the form of a trust; moreover, the Model Regulation requires that a trustee is to be held liable for its own negligence, as does Bulletin 97-5 which follows the Model Regulation. As noted in the preceding comment, all of the current California approved trusts use the negligence standard required by Bulletin 97-5</p>

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			and the Model Regulation with no reported increase in trustee fees on account of the liability standard.
ACIC (18)	2303.5 (c) and (d)	Comment No. 108 "Subsections (c) and (d) do not meet the Nonduplication standards since they are just repetitive of ... IC §922.4."	The Commissioner disagrees with the comment. Section 2303.5(c) includes requirements that a letter of credit held as a trust asset must meet the requirements of subpart (f) of this section, and it includes the standard of liability for a trustee; these requirements are not duplicative of the statutory language in Insurance Code §922.4. Section 2303.5(d) includes provisions that specify a time frame for assessing a trust's sufficiency, and specify the assets that may be included as trust assets; these requirements are not duplicative of CIC §922.4.
Lloyd's (2-3)	2303.5 (d) and (e)	Comment No. 109 [Requests revision to provide that timing of required deposit increase is deferred to home state, and that deference is given to home state with regard to assets in the trust account.]	The Commissioner declines the request. When trust assets are inadequate to meet liabilities, the trust is out of compliance with the Code. The requirement to bring the trust up to the required amount within 45 days of the end of the quarter is reasonable. The regulation provides a procedure to obtain an extension beyond the 45 days to fund a trust increase. Except for a limitation on the amount of a letter of credit, the asset requirements in the regulation are identical to the Model Regulation and Bulletin 97-5.
RAA (27-28)	2303.5	Comment No. 110	The Commissioner disagrees with the comment. The

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<p>ACIC (18) made similar comments, but the cited text is from the RAA comment.</p>	<p>(e) and (f)</p>	<p>“(T)he Department has no authority to require in proposed regulation 2303.5(f) that only 20% of the assets in the trust can be held in a letter of credit. Reinsurers that use a trust to write business in the U.S. only establish one trust. Therefore, California is directly imposing its 20% limitation on LOCs on all the other states and is attempting is to create a national standard for these multi-beneficiary trusts. The ISOR attempts to justify these onerous requirements by stating that they are necessary for the commissioner to determine whether the form of the trust meets statutory requirements or whether the trust has sufficient assets. Not only does this unsubstantiated statement not meet the Department’s burden of demonstrating that this provision is necessary, particularly in light of the objectionable extraterritorial reach of the regulation, but there is absolutely no legal basis for the Department to regulate the trust assets.”</p>	<p>Commissioner’s authority to approve the form of the trust and to determine the sufficiency of the trust is discussed above. Moreover, the “onerous requirements” complained of are requirements from the Model Regulation. Section 7(E) of the Model Regulation includes requirements and limitations for assets held in the trust. These requirements and limitations were included verbatim in Bulletin 97-5 in Section 6(c), and are included verbatim in §2303.7(e) of the proposed regulations.</p> <p>The 20% limitation on a letter of credit held as an asset is reasonable and consistent with other limitations within the Model Regulation. To minimize risk and to ensure diversification of the assets held in the trust account, the Model Regulation, Bulletin and proposed regulations all place identical asset limitations as follows (paragraph citations to §2303.5(e) of the proposed regulations):</p> <p style="margin-left: 40px;">4. An investment made pursuant to the provisions of paragraphs (e)(1), (e)(2) or (e)(3) of this section shall be subject to the following additional limitations:</p> <p style="margin-left: 80px;">A. An investment in or loan upon the obligations of any <u>one</u> institution, other than an institution that issues mortgage-related</p>

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			<p>securities, shall not exceed five percent (5 %) of the assets of the trust;</p> <p>B. An investment in any one mortgage-related security shall not exceed five percent (5 %) of the assets of the trust;</p> <p>C. The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25 %) of the assets of the trust; and</p> <p>D. Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under subparagraphs (e)(2)(A) and (e)(2)(C) of this section, but shall not exceed two percent (2%) of the assets of the trust;</p> <p>...</p> <p>10. An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent (1 %) of the assets of the trust;</p>

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			<p>11. Investments in an investment company qualifying under subparagraph (e)(9)(A) of this section shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investments in such investment companies shall not exceed twenty-five percent (25 %) of the assets in the trust. Investments in an investment company qualifying under subparagraph (e)(9)(B) of this section shall not exceed five percent (5 %) of the assets in the trust;</p> <p>12. The aggregate investment in equity interests permitted under paragraphs (e)(6) and (e)(7) and subparagraph (e)(9)(B) of this section shall not exceed ten percent (10%) of the assets in the trust;</p> <p>13. Investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments; and</p> <p>14. No more than twenty percent (20%) of the total of the investments in the trust</p>

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			<p>may be the foreign investments authorized under subparagraph (e)(1)(E), paragraph (e)(3), subparagraph (e)(6)(B) or paragraph (e)(7) of this section, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies.</p> <p>At the time Bulletin 97-5 was adopted, the Model Regulation did not allow letters of credit to be included as trust assets. The Model has since been revised to permit them, however, the Model provides no guidelines for limitations upon the amount. To be consistent with the Model’s limitation requirements for other assets (in order to minimize risk and ensure diversity), a limitation amount is necessary. The Commissioner has determined that a 20% limitation is at the top of a safe range for this type of an asset. Note that limitations on other assets range from 1% to 25%, with most in the lower range.</p> <p>It is unlikely that another state has placed a limitation on the amount of trust assets that may be held in the form of a letter of credit. None of the comments have cited another state’s requirements to establish a conflict. Therefore it is unlikely that the 20% limitation would be in <i>conflict</i> with the requirements of another state. The limitation would mean only that in California, in determining the sufficiency of the trust, assets in the</p>

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			form of a letter of credit will not be recognized for amounts exceeding 20% of the trust assets. Such a determination would reduce the total of assets considered to be in the trust for purposes of evaluating its sufficiency in California, but the determination would have no effect whatsoever upon the evaluation of the assets in the trust in other jurisdictions.
Lloyd’s (3)	2303.5(f)	Comment No. 111 [Request revision to permit letters of credit allowed by the home state, and to change the liability standard for failure to make a draw on a letter of credit before it expires to gross negligence instead of negligence.]	Letters of credit permitted by the home state are acceptable under the regulations, up to a limit of 20% of a trust’s assets. Otherwise, the request is declined for the reasons stated above – that 20% of the trust assets is a reasonable limitation on a letter of credit, and a trustee should be held liable for its own negligence.
Lloyd’s (3)	2303.5(g)	Comment No. 112 [Request revision to require that trust amount need only meet the liabilities, instead of the gross liabilities, considering the discussions at the NAIC to change the requirement to liabilities instead of gross liabilities.]	The Commissioner declines the request. The current Model Regulation requires the trust to be funded in an amount equal to an insurer’s gross liabilities. When the Model Regulation is changed, the Department will amend the regulation accordingly. The discussions at the NAIC to change the requirement have been underway for many years, and the states have not yet reached agreement on the proposed change.
Lloyd’s (3)	2303.5(i)	Comment No. 113 [Request automatic filing procedure be changed to filing upon request of Commissioner.]	The Commissioner declines the request. The automatic filing procedure has been used since the issuance of Bulletin 97-5 in 1997 and has worked well. Filing upon request of the Commissioner would be an added burden upon the Department to issue the requests, and could

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			result in an inadvertent oversight to issue a request, resulting in a lack of current information to evaluate the sufficiency of a trust.
	2303.7	Credit for Reinsurance Secured by a Single Beneficiary Trust	
ACIC (19)	2303.7	<p style="text-align: center;">Comment No. 114</p> <p>[The section contains California specific provisions requiring separate agreements for California. “The entire section should be revised so that it tracks the language of the Model Law and Regulation.”]</p>	The Commissioner disagrees with the comment. This section applies to the security provided by an unauthorized reinsurer to a domestic insurer to guarantee its obligations under the reinsurance agreement. As noted in the ISR, except for an optional provision in the trust agreement and a jurisdictional provision in the reinsurance agreement, §2303.7 does not deviate from the substantive provisions of the Model Regulation. The assertion that insurers will have to create separate agreements for California is speculative at best.
ACIC (19) AIA (3, 9)	2303.7	<p style="text-align: center;">Comment No. 115</p> <p>[The requirement for California jurisdiction of the reinsurance agreement interferes with the business decisions of parties to the agreement.]</p>	The Commissioner has considered the comment and in response has deleted the California jurisdiction requirement.
ACIC (19-20) ACLI (15)	2303.7 (e) and (f)	<p style="text-align: center;">Comment No. 116</p> <p>[Subdivisions attempt to prescribe provisions for the</p>	The Commissioner disagrees with the comment. The comments indicate a failure to read the Model Regulation; the subject requirements are substantively

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		<p>reinsurance agreement, a contract between two sophisticated private entities. The subdivisions are inconsistent with CIC §922.5(a)(2), which concerns trusts, not reinsurance agreements. The statute provides no authority for the Commissioner to state requirements for reinsurance agreements. The Commissioner has provided no evidence in the Rulemaking File to use viable alternatives, such as the NAIC Model Regulations.]</p>	<p>identical to requirements in the Model Regulation (with an exception concerning an optional provision in the trust account and a jurisdiction requirement in the reinsurance agreement, explained in the ISR).</p> <p>CIC § 922.5(a)(2) states requirements for collateral in the form of a trust that is “satisfactory to the commissioner.” CIC § 922.8 requires the Commissioner to adopt regulations to implement the credit for reinsurance statutes. Reasonable requirements would include those provisions of the Model Regulation included in §2303.7 that the Commissioner has determined are necessary to make a trust “satisfactory.”</p>
	2303.8	Credit for Reinsurance Secured by a Letter of Credit	
RAA (30-32) ACIC (20-23)	2303.8	<p>Comment No. 117</p> <p>[The Commissioner has no authority to adopt requirements in addition to those required in the statute.]</p>	<p>The Commissioner disagrees with the comment. CIC §922.5(b) provides that credit for reinsurance shall be allowed “to the extent that security is provided in the form of letters of credit, satisfactory to the commissioner.” Note that the <i>letter of credit</i> itself must be “satisfactory to the commissioner” – and not merely the form of the letter of credit.</p> <p>CIC §922.8 authorizes the Commissioner to adopt regulations to implement CIC §922.5(b), which would include regulations specifying those requirements the Commissioner deems necessary for a “satisfactory” letter of credit. If the requirements for a letter of credit</p>

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			<p>were limited to those few included in the statute, there would be no reason to state that a letter of credit must <i>also</i> be “satisfactory to the commissioner.”</p> <p>As discussed <i>infra</i>, the requirements include those from the Model Regulation and additional requirements the Commissioner has determined necessary for the protection of the ceding insurer, its policyholders and creditors.</p>
RAA (32-33) Farmers (2) Guy (2) PIF (2) (The cited text is from the RAA comment.)	2303.8	<p>Comment No. 118</p> <p>“Certain elements of proposed rule 2303.8 ignore common business practices regarding LOCs and may make it more difficult for domestic insurers to obtain LOCs with no corresponding demonstrated benefit to the public. For example, proposed rule 2303.8(c)(6) requires that letters of credit securing cessions from California licensed insurers must contain a 60-day evergreen cancellation provision. The requirement for all other states, however, is 30 days.”</p> <p>[The requirement is in conflict with the requirements of other states and does not conform to the NAIC Model Regulation.]</p>	<p>The Commissioner disagrees with the comment. As explained in detail in the ISR, the additional safeguards for a letter of credit such as the 60-day notice requirement provide greater protection to the domestic ceding insurer and thus to its policyholders and creditors than the protections afforded by the Model Regulation and those adopted by other states. The 60-day notice requirement is not in “conflict” with the requirements of other states. The other states require a notice period of <i>not less</i> than 30 days, and therefore the 60-day notice period would not be a conflict. Moreover, considering that California is the largest insurance market in the United States, after adoption of the requirement by California, a 60-day notice period may become the “common business practice.”</p>
RAA (32-33) ACIC (21) AIA (8)	2303.8	<p>Comment No. 119</p> <p>“Similarly, proposed rule 2303.8 provides that the letter of credit shall state it is subject to and governed</p>	<p>The Commissioner has considered the comment and although he disagrees, has deleted the requirement. Initially it must be noted that this comment is illogical. As stated by the RAA, the Model Regulation requires</p>

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The cited text is from the RAA comment.		<p>by the laws of California. There is no authority in California law to impose this condition. <i>The Model Regulation, which has been adopted by a majority of the states, requires that a LOC be governed by the cedent's state of domicile.</i> California ceding companies will be at a competitive disadvantage in obtaining LOCs that comply with these unique California requirements. “ (Emphasis added by CDI.)</p> <p>[AIA: Requiring California jurisdiction will make it more difficult for California domestic insurers to obtain letters of credit.]</p>	<p>that letters of credit be governed by the ceding insurer’s state of domicile. The subject regulation applies only to a domestic ceding insurer -- whose state of domicile is California. The regulation required California law, as provided by the Model Regulation.</p> <p>Notwithstanding the fact that the subject regulation followed the Model Regulation, the section has been revised to delete the California law requirement (formerly 2303.8(c)(7)), in response to comments that requiring California jurisdiction will make it more difficult for domestic insurers to obtain letters of credit.</p> <p>Upon further consideration, the Commissioner has determined that the California jurisdiction requirement would be a benefit primarily in a liquidation proceeding to reduce costs to the liquidation estate in the enforcement of collections on a letter of credit. However, since the benefit is remote (primarily beneficial in liquidation proceedings and even there, the need for an enforcement action would be rare), it is outweighed by the possible adverse consequences of reducing the availability of letters of credit to domestic insurers.</p>
ACIC (22)	2303.8	<p>Comment No. 120</p> <p>[The statute provides no authority for the Commissioner to state requirements for reinsurance</p>	<p>The Commissioner disagrees with the comment. CIC § 922.8 requires the Commissioner to adopt regulations to implement the credit for reinsurance statutes. CIC § 922.5(b) states requirements for collateral in the form of</p>

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		agreements.]	a letter of credit that is “satisfactory to the commissioner.” For reasons more fully explained in the ISR, the Commissioner has determined that certain requirements relating to the letter of credit must be set forth in the reinsurance agreement, rather than the letter of credit, in that they relate to obligations of the reinsurer and conditions for use of the security, and do not concern the bank issuing the letter of credit. Moreover, the requirements are identical to the requirements in the Model Regulation for agreements secured by a letter of credit.
	2303.9	Credit for Reinsurance Secured by Funds Withheld	
RAA (33-34) ACLI (21)	2303.9	Comment No. 121 [There is no authority to preclude funds held in an escrow or trust account. The provision lacks clarity and is in conflict with §2303.11(c)(7) which requires funds held to be placed in a trust or escrow account. There is no authority to define funds as “unencumbered funds.”]	The Commissioner has considered the comment and has revised the section to allow funds held to be deposited in a trust or escrow account, if the deposit agreement includes terms that give exclusive control of the account to the ceding insurer. The Commissioner rejects the comments as respects unencumbered funds. CIC § 922.5(a) requires the security held to meet the requirements for general investments or admitted assets, which means they must be unencumbered by other legal claims. Moreover, the “unencumbered” requirement is used in the Model Regulation.
	2303.10	Credit for Reinsurance of Foreign Insurers	
ACLI (22-23) ACIC (24-26)	2303.10 (a)	Comment No. 122	The Commissioner has considered the comment and revised the subdivision. Initially, the subdivision

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AIA (3) RAA (37)		[Subdivision lacks clarity.]	required foreign insurers to comply with all accounting requirements except those expressly made applicable only to domestic insurers. The subdivision has been revised to specifically identify the requirements applicable to foreign insurers. No objections were received to the revision.
ACIC (25-26)	2303.10 (d)	Comment No. 123 [No authority to require information from reinsurer.]	(This requirement has been relabeled as (e) in the revised regulations.) The Commissioner disagrees with the comment. The subject information is requested from the ceding foreign insurer making the claim for statement credit, not the unauthorized reinsurer (over which the Commissioner has no jurisdiction). In an investigation of a claim for statement credit initiated by the Commissioner pursuant to the authority of CIC § 922.6(b), information about the reinsurer or collateral is necessary so that the Commissioner can make a determination of whether the reinsurer or the collateral satisfies the “credit for reinsurance requirements applicable to ceding insurers domiciled in this state.”
RAA (39) ACLI (15, 18, 22-23)	2303.10	Comment No. 124 [The requirement that a claim for statement credit examined pursuant to CIC §922.6(b) must “in substance” meet the credit for reinsurance requirements applicable to ceding insurers domiciled in California is not clear as to what will be required to	The Commissioner declines to revise the text. The requirement to meet a legal standard “in substance” is commonly used to allow flexibility in the application of the standard. (See, e.g., CIC § 922.2(a).) Without use of the term, statement credit of foreign insurers examined pursuant to CIC §922.6(b) would be required to meet each and every California requirement for statement

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		meet that standard.]	credit, a result certainly less desirable to those making the comments than any uncertainty caused by use of the term “in substance.”
	2303.11	Transfer of Risk - Life & Disability	
ACLI (6-7, 9-10, 12-13, 15-16, 19-20, 23-24) Pacific (1) RAA (39)	2303.11 (c)(8)	<p>Comment No. 125</p> <p>[Challenges authority for 30 day payment requirement and requests change to 90 days to conform to existing practice for life and disability business.]</p> <p>[ACLI included the above objection in its comments to §§2303.3 through 2303.5 and §§2303.7 through 2303.9, in that compliance with this section is a condition for statement credit allowed under those sections.]</p> <p>[RAA: Adopts ACLI comments on §2303.11 and asserts that the section unnecessarily and without authority deviates from the NAIC accounting requirements.]</p>	<p>The Commissioner has considered the ACLI and Pacific comments and in response the payment requirement was changed to 90 days to conform to existing practice for life and disability business.</p> <p>With respect to the RAA comments, because it is an organization specializing in property and casualty insurance, it failed to note that §2303.11 is a near verbatim copy of the NAIC Model Regulation on Life and Health Reinsurance that is also included in Bulletin 97-5. The ACLI, a trade association of life and health insurers, is familiar with the risk transfer requirements for life and health insurers and posed no objections to the section except as noted in this comment and the next.</p>
ACLI (24-25)	2303.11 (i)	<p>Comment No. 126</p> <p>[Challenges authority to review other agreements in evaluating risk transfer. Subdivision lacks clarity in defining standard for review of reinsurance agreements, and specifically the requirement for</p>	<p>The subdivision has been relabeled as (k). The Commissioner has considered the comment and rejects it in part. It is necessary to review the other agreements to ensure that another agreement does not negate the risk transfer required by CIC §922.3. The requirement is reasonably necessary to enforce CIC §922.3 and is</p>

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		“timely reimbursement.”]	authorized by CIC §922.8. However, in response to the comment the provision was revised to narrow the scope of other agreements to be reviewed, and to omit the language the comment viewed as establishing additional risk transfer requirements (e.g., “timely reimbursement”). No objections were received to the revised text, and ACLI has submitted a written statement that it does not oppose the regulations as revised.
	2303.12	Transfer of Risk – Property & Casualty	
ACIC (26-27) AFGI (Exhibit) Farmers (2) PIF (2-3) RAA (40-45) Swiss (3) XL (4)	2303.12	Comment No. 127 [The section is confusing in that it appears to create a different standard for evaluating risk transfer than that contained in SSAP 62 of the NAIC Accounting Guidance. It should be revised to apply only the NAIC requirements. There is no evidence to support the requirement to review all contracts between the ceding insurer and reinsurer and their respective affiliates.]	The Commissioner has considered the comment and in response has revised the section to make clear that the risk transfer requirements of the NAIC Accounting Guidance are to be followed in evaluating risk transfer. The requirement to review all agreements between the parties and their affiliates is included in the NAIC Accounting Guidance, in SSAP 62-11. No comments were received to the revised text.
	2303.13	Contract Requirements for Statement Credit	
Guy (2-3)	2803.13	Comment No. 128 “Section 2303.13 applies to the reinsurance agreements of volume insurers. Since a volume insurer includes an insurer that assumes more than 50% of its total premium, it would apply to all reinsurers wherever domiciled and, therefore, the	The Commissioner disagrees with the comment. (The implicit complaint that California is inappropriately applying requirements to foreign insurers is an issue (“extraterritorial”) discussed in the response to Comment No. 4.) This section does not subject a transaction to prior

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		<p>“material reinsurance agreements” of such reinsurers would be subject to California contract requirements. Further, the regulation does not indicate whether it applies to “material reinsurance agreements” where such reinsurer is the cedent (a retrocessional agreement) or when the reinsurer assumes such business. Accordingly, a reinsurer could confront a situation in which it enters into a “material reinsurance agreement” with a cedent or retrocessionaire which is neither domiciled nor licensed in California which covers business that does not originate in California. In such a case, the Proposed Regulation would require specific wording in the reinsurance contract and would subject the transaction to the prior approval of the California Commissioner just because the reinsurer has a California license. This is an improper and unnecessary intrusion of California into the regulatory domain of the parties’ domiciliary regulators.”</p> <p>[Agreements may be negotiated before an insurer knew it met the requirements to be considered a “volume insurer.”]</p>	<p>approval; it only states requirements for specified contracts. The contract provisions are required to be included only in the agreements of a domestic or volume insurer ceding business and only if statement credit is claimed for the cession. Therefore, §2303.13 does not apply to the contracts of a reinsurer assuming business from a non-licensed insurer, and would not apply to a contract covering business assumed from a licensed insurer that is not a domestic or volume insurer or any contract where statement credit is not claimed.</p> <p>In response to comments, this entire section has been significantly revised. As noted previously, in response to comments the definition of “material reinsurance agreement” has been deleted and the definition of “volume insurer” has been revised. Also, a new subdivision has been added to both §2303.13 and §2303.14 with respect to the timing of when an insurer would be considered a volume insurer and subject to the requirements of those sections. No objections were received regarding the revisions.</p>
ACIC (28-29) AIA (7) RAA (45-48) Swiss (4-5)	2303.13 (a)(1) and (a)(2)	Comment No. 129 [The Commissioner does not have authority to prescribe terms for reinsurance agreements. The disclosure requirements for the entire contract provision are confusing and deviate from NAIC	The Commissioner disagrees with the comments except as noted. The specific disclosure requirement in former subdivision (a)(1) was deleted, and the requirement that the agreement state that it is the entire contract between the parties in former subdivision (a)(2) was revised and made more specific and renumbered as subdivision (b).

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		requirements. Compliance will be difficult, in that an insurer may not have their systems organized in a manner to reflect related agreements. The requirement is unworkable in that companies would have to amend their agreement each time a “special acceptance” was agreed upon.]	An “entire contract” provision is necessary in a reinsurance agreement to ensure there are no separate contracts that may negate risk transfer. The subdivision implements CIC §922.3 pursuant to the authority of CIC §922.8. A new subdivision §2303.15(n) has been added to confirm that a “special acceptances” is not a separate contract requiring a formal amendment. No objections were received to the revision.
ACE (6) ACIC (30-31) ACLI (25-26) Allianz (1) Pacific (1) RAA (49) Swiss (4-5)	2303.13 (a) (3) (a) (4)	Comment No. 130 [It is unnecessary to include SSAP 62 requirements when insurers are already subject to SSAP 62 requirements. The contract requirements are not consistent with the NAIC Accounting Guidance. The Commissioner lacks authority to impose a payment requirement of less than the 90 days allowed by the NAIC.]	The Commissioner disagrees that he lacks authority, however, has deleted the paragraphs.
ACE (5) ACIC (30)	2303.13 (a) (5)	Comment No. 131 [The subdivision lacks clarity. The Commissioner is without authority to require compliance with the NAIC Accounting Guidance and initiate license revocation or conservation proceedings for non-compliance.]	(The subdivision has been relabeled as (e).) The Commissioner disagrees with the comment. CIC §923 requires all licensed insurers to comply with the NAIC Accounting Guidance. Any licensee, whether domestic or foreign, would be subject to a license revocation proceeding under CIC §701 or a conservation proceeding under CIC § 1011 upon a factual and legal basis to initiate such a proceeding. The regulations do not propose the initiation of such proceedings for non-compliance; however, licensees are warned that non-compliance may result in the initiation of such proceedings (see, e.g., §2303.14(a)).

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ACIC (30-31) ACLI (7-18, 20-21, 26-28) Everest (1-4) Guy (3) O’Connor (3) Pacific (2) RAA (49-56) Swiss (4-5) XL (4-5)	2303.13 (b) and (c)	Comment No. 132 [The contract requirements for the insolvency clause and offset provisions are contrary to established business practices, would significantly disrupt the California insurance market, are contrary to law and exceed the Commissioner’s authority.]	The Commissioner disagrees, however, in response to the comments has deleted the subdivisions. The insolvency clause requirement has been revised and moved to new subdivision (d). No objections were received to the revision.
ACLI (28)	2303.13 (d)	Comment No. 133 [Provisions for agreements not subject to requirements of subdivision (a) lack clarity as they relate to material reinsurance agreements and volume insurers.]	Subdivision deleted; it was unnecessary after revisions to the “volume insurer definition” and deletion of the “material reinsurance agreement” definition.
	2303.14	Form of Agreements	
ACLI (28-29)		Comment No. 134 “ Proposed Section 2303.14 purports to create additional standards for reinsurance agreements that would, in effect, apply to all life licensees’ reinsurance agreements. The Initial Statement of Reasons advises that Code Section 717(d) authorizes the Commissioner to create these standards. We disagree.	The Commissioner disagrees with the comment. The comment is based on an incomplete and erroneous analysis of applicable law. CIC §717 requires the Commissioner to consider the qualifications of every applicant for a license or amended license in ten subject areas, including the applicant’s financial stability, reinsurance <i>arrangements</i> and hazard to policyholders or creditors. The Commissioner must deny the application if he finds that any of the matters considered

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		<p>Code Section 717 directs the Commissioner to review applicants for a new or renewed certificate of authority and lists factors that he must consider in that review. It directs him to issue a certificate to the applicant “unless the commissioner shall have made a finding, or findings, that the applicant is materially deficient in respect to one or more of the [factors].” Among the factors is (d), “reinsurance arrangements.” Code Sections 922.1 through 923 contain California’s standards for reinsurance, as prescribed by the Legislature. It is those legislatively prescribed standards that the Commissioner must use in evaluating an applicant’s reinsurance. Reading Code Section 717 to allow the Commissioner to create standards for reinsurance beyond those legislated in Code Sections 922.1 though 923 creates inconsistency. Further, Code Sections 922.1 through 923 regulates credit for reinsurance agreements, not the text of the agreements themselves. The only exception to that statement is Code Section 922.3, which regulates the text of agreements to assure that the agreement’s indemnification is not illusory. The Legislature did not further address the text of reinsurance agreements in Code Sections 922.1 through 923. It is inconsistent with those Code Sections, governing reinsurance in California, for the Commissioner to create and impose additional requirements.”</p>	<p>are “materially deficient.”</p> <p>An evaluation of reinsurance <i>arrangements</i> would necessarily include an evaluation of each reinsurance contract (most insurers have many reinsurance contracts), the reinsurers for each contract and any collateral provided, and the amount of risk retained by the applicant. The reinsurance arrangements would directly impact the applicant’s financial stability, which would in turn directly impact the risk of hazard to policyholders and creditors. Once licensed, CIC §700(c) requires an insurer to continue to meet the licensing standards of CIC §717. The term, “materially deficient” is not defined. CIC §720 authorizes regulations to implement the licensing standards.</p> <p>CIC §922.1 <i>et seq.</i>, relates to credit on financial statements for reinsurance. Credit is allowed if risk is transferred and if the reinsurer meets specified requirements or the security provided meets specified requirements. The comment argues that if credit is allowed for the reinsurance, that must be the end of the Department’s inquiry into the reinsurance <i>arrangements</i> of a licensee.</p> <p>There is no such limitation in the credit for reinsurance statutes. Moreover, the comment fails to consider that contract terms have a direct impact upon an insurer’s financial stability and could create a hazard to policyholders or creditors. For example, if by the terms</p>

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			<p>of an agreement a reinsurer could terminate a contract without prior notice, a ceding company could be placed into immediate financial hazard. The loss of reinsurance would impact its financial ratios and perhaps require it to stop writing new business until it obtained replacement reinsurance. If significant losses developed while it was without reinsurance, the company could quickly become insolvent. This issue is discussed in the Declaration of Robert Loo, at paragraph 7.</p> <p>Finally, the comment fails to consider that a licensee’s reinsurance <i>arrangements</i> could create financial instability and hazard to its policyholders and creditors, notwithstanding that credit was permitted for the reinsurance by CIC §922.1, <i>et seq.</i> A licensee whose primary business is earthquake coverage must have carefully crafted reinsurance contracts with at least several strong reinsurers to avoid insolvency in the event of a major earthquake. Similarly, a company whose primary business is commercial liability must retain some level of risk to ensure proper underwriting and pricing. If it could reinsure all or most of its risk and earn its income primarily from ceding commissions, it would have every incentive to under-price its products and issue policies without regard to the nature of the business of its insureds, creating a risk of insolvency for its reinsurer and leave it without assets to pay claims unrecoverable from the reinsurer. This issue is discussed in the Declaration of Robert Loo, at paragraph</p>

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			10. The requirements of CIC §922.1 <i>et seq.</i> are limitations upon licensees, not the Commissioner. Credit for reinsurance is denied a licensee unless those requirements are met. CIC §922.1 <i>et seq.</i> does not in any manner limit the oversight authority of the Commissioner or free him of the responsibility to enforce CIC §§700(c) and 717(d).
Guy (3)	2303.14	<p>Comment No. 135</p> <p>[An insurer may negotiate an agreement at a time that it is not a volume insurer and not include provisions applicable to volume insurers, but not execute the agreement until a time after it becomes a volume insurer. It may be impossible for a volume insurer to incorporate required provisions.]</p>	The Commissioner has considered the comment and in response has added subdivision (c) to this section to address the timing issue of when contract provisions are required. No objections were received to the revision.
ACIC (32-34) ACLI (28-29) AIA (8) Allianz (1-2) Everest (2-4) Pacific (1-2) RAA (57-60) Swiss (5) XL (6-7)	2303.14 (a)(1) through (a)(7)	<p>Comment No. 136</p> <p>[The contract requirements lack clarity, bear no relationship to “material deficiency,” may create an overly harsh result, are contrary to existing business practices, and exceed the Commissioner’s authority.]</p>	The Commissioner disagrees, however, has deleted the paragraphs.

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ACIC (32-34) ACLI (28-29) AFGI (Exhibit) Pacific (1-2) RAA (60) Swiss (5) XL (6-7)	2303.14 (b)(1) through (b)(3) and (b)(6) (c) and (d)	Comment No. 137 [The contract requirements lack clarity and exceed the Commissioner’s authority. The escrow provisions are burdensome and not necessary, and contrary to established practices.]	The Commissioner disagrees, however, has deleted the paragraphs 1, 2, 3 and 6 in subdivision (b) and deleted subdivisions (c) and (d).. The insolvency clause requirement was revised and moved to §2303.13, and no objections were received regarding the revision.
ACIC (33) AFGI (Exhibit) RAA (60)	2303.14 (b)(4)	Comment No. 138 [The early termination provision is confusing and exceeds the Commissioner’s authority.]	(The paragraph has been relabeled as §2303.14(b)(1).) The Commissioner disagrees with the comment. As explained more fully in the ISR, and in the Declaration of Robert Loo, the Commissioner has determined that contracts without this provision are deficient for purposes of evaluating reinsurance arrangements under the material deficiency standard established by CIC §717(d). “Material deficiency” is not defined in the Code. CIC § 720 authorizes regulations to implement CIC § 717. The subject regulation establishes one criterion to be included in the evaluation. The early termination provision has been revised for purposes of clarity, and no comments were received regarding the revision.
ACIC (33) RAA (61)	2303.14 (b)(5)	Comment No. 139 [The Commissioner has no authority to require an intermediary credit risk provision in a contract. The intermediary is the agent of the ceding insurer, and the proposed regulation attempts to alter fundamental	Renumbered as 2303.14(b)(2). The Commissioner disagrees with the comment. As explained more fully in the ISR and the Declaration of Robert Loo, the Commissioner has determined that contracts without this provision are deficient for purposes of evaluating reinsurance arrangements under the material deficiency

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		principal-agent law.]	standard established by CIC §717(d), where the contract requires payments between the parties to be transmitted through an intermediary. “Material deficiency” is not defined in CIC §717. CIC §720 authorizes regulations to implement CIC §717. The subject regulation establishes one criterion to be included in the evaluation. The credit risk requirement is included in the NAIC Financial Examiner’s Handbook, has been adopted by regulation in several states, including New York, and is included by most intermediaries in the contracts they negotiate. The parties can avoid this requirement by agreeing to make payments directly to one another rather than through the intermediary.
	2303.15	Oversight of Reinsurance Transactions	
ACIC (35) RAA (62) made similar comments but the cited text is from the ACIC comment.	2303.15 (a)	Comment No. 140 "Section (a) sets out holding company standards by which an insurer’s surplus is determined to be adequate, and it then attempts to apply those standards to all insurers. There is no logic for these actions, the Commissioner does not have the Authority to do this and has provided no Evidence in the Rulemaking File to explain the Necessity for this section."	The Commissioner has considered the comment and rejects it. CIC §717 requires that a licensed insurer must have capital and surplus in amounts that the Commissioner has determined are not materially deficient. As noted in the comment, the text of subdivision (a) is taken from CIC §1215.5(f), which sets forth the Legislature's determination of a non-exhaustive list of factors for review by the Commissioner in determining whether a licensee’s policyholder surplus is "reasonable in relation the insurer's outstanding liabilities and adequate to its financial needs." The Commissioner has determined they are factors appropriate for use in the determination of the adequacy of the surplus of all insurers, not just those within a

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			<p>holding company system. The Commissioner has adopted the factors for use in determining whether a licensee’s surplus is materially deficient.</p> <p>In response to comments such as those by the RAA that the subdivision fails to provide standards, subdivision (a) has been revised to expressly list the factors from the statute which are to be applied to all licensees for the evaluation of surplus in determining whether a licensee meets licensing requirements. The subdivision is necessary to inform licensees of the standards used by the Department in applying the requirements of CIC §§ 717 and 700(c). The regulation is authorized by CIC § 720. No objections were received to the revision.</p>
<p>ACIC (35)</p> <p>Similar comments: Guy (3) RAA (61-62)</p>	<p>2303.15 (c)</p>	<p>Comment No. 141</p> <p>“Subsection (c) defines the sale of substantially the entire property or business of licensed insurers, as 75% of total premium or liabilities. The Commissioner lacks Authority and has provided no Evidence to support this regulation. Additionally, the Rulemaking File does not contain any justification, or support as required in Gov’t Code §§11346.1(b) (3), 11359.1(a) and CCR §10(b) for such a low percentage.”</p>	<p>This subdivision has been relabeled as (d). The Commissioner disagrees with the comment. CIC §1011(c) uses the undefined term “substantially its entire property or business” as a threshold for one of the acts which provides grounds for the Commissioner to seize or conserve a licensee. The regulation is necessary to provide a definition for the term. The Commissioner has implied authority to define the term in order to carry out the provisions of the statute.</p> <p>CIC §1011(c) is included in the liquidation statutes, in a section that lists conduct of a licensee that warrants seizure or conservation. The proscribed conduct includes acts that could cause financial hazard to the licensee, its policyholders and creditors, or acts that</p>

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			<p>indicate that a financial hazard may be present. In this context, “hazard” is defined as “exposure to the chance of loss or injury, and “hazardous” as involving risk of loss. (See <i>Caminetti v. Guaranty Union Life Insurance Company</i>, 52 Cal. App. 2d. 330, 333, 126 P.2d 159 (1942).) The proscribed acts listed in CIC §1011(c) include a licensee’s failure to permit examination of its books or affairs, an officer’s failure to be examined under oath, a licensee’s violation of its charter or any law of the state, and a licensee’s entering a transaction which merges, consolidates or reinsures “substantially its entire property or business” with that of another without first obtaining the Commissioner’s consent.</p> <p>The Commissioner’s seizure of a solvent company was upheld in <i>Caminett v. GuarantyUnion, supra</i>, where the grounds for seizure were excessive compensation to officers and employees creating a future risk of loss to the company’s policyholders. The court stated, at page 333,</p> <p style="padding-left: 40px;">“If the management of the insurance company so conducts its business that there is loss, or risk of loss to the policyholders, it becomes the duty of the Insurance Commissioner to take possession of the company’s assets and to conduct its business as conservator.”</p> <p>In <i>Rhode Island Ins. Co. V. Downey</i> (1949) 95 Cal.App. 2d 220, 212 P.2d 965, 973, 980-81, the court upheld the</p>

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			<p>seizure of a Rhode Island insurer by the California Insurance Commissioner for a violation of CIC §1011(c). The licensee had entered a reinsurance transaction without obtaining the Commissioner’s prior consent, although the insurer’s home state regulator had approved the transaction. The Commissioner asserted that the transaction impaired the insurer’s capital. The court did not summarize the transaction, however, it appears the licensee assumed an amount of business that would equal less than 25% of its business. The court did not question or evaluate the applicability of CIC §1011(c) (i.e., whether the transaction involved “substantially the entire ... business” of the licensee), stating, at page 246, “We are concerned with the effect on the finances of the company of the commitments made in the agreement.”</p> <p>The only rationale for the Legislature to include a reinsurance transaction in the list of conduct warranting seizure or conservation is that a significant reinsurance transaction has the <i>potential</i> to place a licensee in a hazardous financial condition or to render it insolvent, causing great harm to policyholders and creditors.</p> <p>The rationale for establishing 75% or more of premium or liabilities as the threshold requiring prior consent under CIC §1011(c) is explained in the ISR, as well as in the Declaration of Robert Loo at paragraph 12. In summary, a transaction involving 75% or more of a company’s business is an amount that has the potential</p>

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			to cause insolvency or financial hazard should the transaction fail for any reason to materialize as expected or have terms that could adversely impact the company’s capital, surplus or operations. The Commissioner’s prior consent to such a transaction will ensure that it meets those legal and financial requirements established for the purpose of protecting the solvency of the licensee and its policyholders and creditors.
ACLI (29-30)	2303.15 (d)	Comment No. 142 “Proposed subsection 2303.15 (d) is not necessary. Code Section 1011(c) empowers the Commissioner to take over a licensed insurer under certain circumstances. One circumstance that empowers him is if a licensed insurer transfers “substantially all of its property or business” without his consent. The Initial Statement of Reasons asserts in discussing proposed subsection 2303.15(c) that his authority under Code Section 1011(c) to take over a licensee is unfettered and his discretion, total. Code Section 1011(c) does not require a licensee to obtain prior approval. Instead it operates to shift the risk of not doing so to the licensee – if the licensee does not get prior approval, then the Commissioner may use that failure to obtain prior approval as grounds to seek an order from a court of competent jurisdiction to take over the company. If the licensee does get prior approval, then the Commissioner cannot use the	The subdivision has been relabeled (e). The Commissioner has considered the comment and in response has revised the Subdivision. The comment is correct regarding its analysis of CIC §1011(c) as placing the risk on the licensee for entering a transaction without obtaining the Commissioner’s prior consent. The subdivision has been revised to state the possible <i>consequences</i> of entering a transaction within the scope of CIC §1011(c) without obtaining the Commissioner’s prior consent. The necessity for prior consent to such transactions is explained in detail in the ISR and in the above response to the prior comment. No objections were received to the revision.

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		<p>“substantial transfer” as grounds for such an order. Accordingly, the risk to the insurer under Code Section 1011(c) and its case law is considerable if it does not obtain prior approval. Therefore there is no need to require prior approval of transactions defined in proposed subsection 2303.15(c). Instead the Commissioner should by rule advise insurers of the standards that should govern ‘substantial transactions.’”</p>	
ACLI (29-30)	2303.15 (d)	<p>Comment No. 143</p> <p>“Prior approvals are entirely unnecessary in the current life insurance environment. Risk management standards have become much more sophisticated in the last few years, as financial institutions, analysts, and supervisors have developed risk-based capital, stochastic testing, and other risk and capital evaluation tools. The results are shared with the NAIC, which analyzes them and reports to state insurance departments. Life insurers of all sizes now use these tools for prudent capital management and planning, and they share that information with investors and ratings analysts. Requiring prior approval is no longer necessary as a means of gathering information. Disclosure standards have also become much more sophisticated and rigorous, as have disclosures in the NAIC’s Annual Statement, including Schedule S. Those Annual Statements must now be audited. Many more life insurers are</p>	<p>This subdivision has been relabeled as subdivision (e). The Commissioner has considered the comment and rejects it.</p> <p>The comment assumes that all life reinsurance agreements meet legal and financial statutory requirements. That is not the case. Although less problematic than property and casualty insurance, the Commissioner has determined that life reinsurance warrants active oversight to ensure compliance with those legal and financial requirements established to protect the solvency of the licensee and to avoid loss and hardship to its policyholders and creditors. The example in paragraph 14 of the Declaration of Arlene Joyce concerned a reinsurance agreement of a foreign insurer covering life business where the “security” provided did not meet statutory requirements for security, and was “security” in name but not in fact. The agreement provided no protection to the ceding insurer and its policyholders had the unauthorized</p>

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		<p>publicly traded and must report in generally accepted accounting principles to investors and the Securities and Exchange Commission. With all these sources of financial reports and information, requiring prior approval is unnecessary because the Commissioner does not lack that information. There is no evidence in the record that the Commissioner has no access to financial information about licensees and their substantial transactions.</p> <p>Prudent regulation should allow faster responses to economic, market, and competitive conditions than can be accomplished under a prior approval regime. The life industry continues to consolidate, and many life insurers now have non-US affiliates. Their capital is globally managed. Stakeholders – policyholders and shareholders alike – expect life insurers to manage that capital and their risks effectively and efficiently. Indeed, life insurers are competing with other financial institutions for capital on the basis of the effectiveness and efficiency of their risk and capital management, as well as their regulation. The effect of retaining the requirement for prior approvals would be to substitute the Department’s judgment for both the insurer’s management’s judgment and that of domiciliary insurance regulators in other accredited states. Requiring prior approval of “significant” transactions slows, even impedes, the process of managing risks and capital effectively and efficiently. It is no longer prudent regulation under</p>	<p>reinsurer failed to meet its obligations, which is the entire point of the security requirement.</p>

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		California law.	
ACLI (30)	2303.15 (d)	<p>Comment No. 144</p> <p>Proposed subsection 2303.15(d) lacks clarity. Affected persons are not advised of the standards that the Commissioner would use to evaluate the transactions.</p>	<p>This Subdivision has been relabeled as Subdivision (e). The Commissioner has considered the comment and rejects it. The standards used for review of transactions are those required by statute and regulation (e.g., risk transfer, surplus requirements, risk retention), as well as the requirements of the NAIC Accounting Guidance made applicable to all licensees by reference in CIC §923.</p>
<p>ACIC (35)</p> <p>AIA (7) and Swiss (5) made similar comments, but the cited text is from the ACIC comment.</p>	2303.15 (d) and (e)	<p>Comment No. 145</p> <p>“Subsection (d) requires the consent prior to such transaction of the Commissioner for domestic and volume insurers. The Commissioner does not have the Authority ... especially as applied to a “volume insurer,” ... The Commissioner appears to be attempting extraterritorial application of California’s liquidation statute ... the same comments apply to the Commissioner’s attempt to apply this subsection to a foreign insurer (non-“volume insurer”) licensed to do business in California (as is the possibility in subsection (e)). Also, the wording in (e) could result in a foreign insurer never knowing whether or not the CDOI could come back and direct the company to obtain consent from the CDOI and, thus, is lacking in Clarity.”</p>	<p>Subdivision (d) has been relabeled as Subdivision (e). The Commissioner has considered the comment and rejects it. As discussed at length in the prior responses, there is no “extraterritorial” application of California laws to foreign insurers in this subdivision or these regulations. The comment fails to recognize that CIC §1011(c) applies to all licensees, whether foreign or domestic. A foreign insurer cannot expect to do business in California and not be subject to its laws.</p> <p>CIC §1011(c) provides that the Commissioner may seize or conserve any licensee that enters a reinsurance transaction involving substantially all of its assets without obtaining the Commissioner’s prior consent. The Commissioner incorporates his prior responses with respect to his authority under CIC §1011. The Commissioner has implied authority to adopt regulations to carry out the provisions of the statute,</p>

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			<p>and the subdivision creates reasonable standards for enforcement. For greater clarity, this subdivision has been revised to expressly state that a licensee that enters such a transaction without obtaining the Commissioner’s prior consent is subject to a proceeding under CIC §1011.</p> <p>Former Subdivision (d) was initially made applicable only to domestic insurers and volume insurers, with former subdivision (e) applicable to the remaining insurers. The comment expresses concern about potential ambiguity in the application of the two subdivisions. Therefore, to cure any possible ambiguity, former subdivision (e) has been deleted, and former subdivision (d) has been revised to apply to all licensees (not just domestic insurers and volume insurers) and relabeled Subdivision (e).</p>
AIA (7) Everest (6) Farmers (2) PIF (3-4)	2303.15 (d) and (h)	Comment No. 146 [The requirement for prior California review of the transactions of foreign insurers may result in conflicting determinations with home state regulators. Affiliate transactions should be exempt because they are reviewed by the home state or are reviewed by the California Department pursuant to CIC §1215.5(b)(3) of the Holding Company Act.]	The Commissioner has considered the comment and in response has added Subdivision (k) to provide for coordination with home state regulators. Also in response with respect to affiliate transactions, subdivision (e) [relating to 75%+ transactions] has been revised to provide that certain affiliate transactions are subject to a limited filing requirement with a deemer provision, and subdivision (g) [relating to 50%+ transactions] has been revised to exempt the affiliate transactions of certain foreign insurers.

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			<p>It is important to note that where an agreement is already subject to review pursuant to CIC §1215.5(b)(3) of the Holding Company Act (“the HCA”), that the regulations do not impose a separate or additional filing requirement. Instead, the regulations require additional review standards (material deficiency and financial hazard pursuant to CIC §§717 and 1011(c)). Under the HCA, the principle standard for review of affiliate transactions is whether the transaction is fair and reasonable.</p>
<p>ACIC (35) ACLI (30), AIA (7), Farmers (2), State and PIF (3-4) made similar comments, however, the cited text is from the ACIC comment.</p>	<p>2303.15 (f)</p>	<p>Comment No. 147</p> <p>“Subsection (f) applies to bulk reinsurance contracts of all licensed insurers and imposes a business necessity test for subsection (c) transactions. Additionally, this subsection attempts to require, on a prospective basis, consent for cessions of more than 90% of an insurer’s total premium except for inter-company pools. The request for the consent needs to set forth a demonstrated need for the consent. There is no Authority for such a requirement. Additionally, there is no indication what the Commissioner will consider as a “demonstrated need” thus causing at least two additional problems. First, it lacks Clarity since the entities that are affected by the regulation will not know what is intended nor required by the Commissioner for the exception. Second, because of the lack of Clarity, this subsection also violates Gov’t Code §11340.1, because it will likely result in either</p>	<p>This subdivision has been relabeled as subdivision (b). The Commissioner has considered the comments and has revised the subdivision. The application of the “demonstrated business necessity” standard has been limited in scope from all transactions within the scope of 1011(c) to those transactions in which the ceding insurer will retain less than 10% of the direct written premium for a line of business. The business necessity standard is applied on a case by case basis and would take into account so many factors that a list of factors would necessarily limit eligibility for the exception and therefore a list of factors has not been provided. The requirement that consent to cessions of more than 90% be only for a limited contract term has been deleted.</p> <p>Former subdivision (f) has been further revised to apply only to domestic and volume ceding insurers; to state that the sanction for retaining less than 10% of the direct written premium for a line of business may be grounds</p>

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		<p>the promulgation of “desk drawer” rules or additional regulations in order to clarify what satisfies the need requirement.”</p> <p>[State: Requiring a direct writer to retain a percentage of business it writes will not solve all the problems generally associated with cessions of 100%, and interferes with the business plan of companies such as State which has successfully ceded 100% of its specialty business since 1979 without loss to its policyholders.]</p>	<p>for finding that the ceding insurer’s reinsurance arrangements are materially deficient for purposes of CIC §717(d); and to establish the procedure to obtain the Commissioner’s consent to a lesser retention. No objections were received to the revisions.</p> <p>The rationale and necessity for a retention requirement is explained in the ISR and in the Declaration of Robert Loo at paragraph 10. The subdivision is a criterion for “material deficiency” as used in CIC §717 and is authorized by CIC §720.</p>
<p>State (2)</p> <p>The subject of a minimum retention requirement the regulations was addressed in the above comment. The subject is addressed again because the comment raises additional issues.</p>	<p>2303.15 (f)</p>	<p>Comment No. 148</p> <p>“There exist specialty insurance products in California, as well as nationwide, that serve unique markets and insurance buyers. Many of these niche products are administered by licensed individuals that have developed the specialized products and underwriting expertise to serve these markets. These products are not supported by larger, traditional insurers due to cost considerations or they serve risks that don’t meet underwriting requirements. The producers are forced to seek coverage through alternative market groups and professional reinsurers. Requiring the policy issuing company to retain a minimum level of risk both diminishes the already limited market of such companies willing to write such risks and adds a redundant layer of costs onto the product by requiring both the primary company and</p>	<p>This subdivision has been revised and relabeled as subdivision (b). The Commissioner disagrees with the comment. Preliminarily, the Commissioner notes that while §2303.15(b) requires a ceding insurer to retain 10% of the direct premium per line, it also provides that the Commissioner may permit a lesser retention " ... upon demonstrated business necessity." As stated in the Declaration of Robert Loo, requiring a ceding insurer to retain 10% of its risk assures that, among other matters, the ceding insurer has a minimum financial stake in the insurance that it is issuing and, accordingly, an interest in its underwriting and pricing. The Commissioner believes that the benefit of sound underwriting, pricing and attention to the insurance business, as opposed to the business of being an insurance producer (agent or broker) -- and, contrary, to State's contention, having ceding insurers and reinsurers that are familiar with the products they sell and reinsure -- exceeds any potential</p>

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		<p>reinsurer to incur costs, which ultimately are forced to be passed to the buyer, related to becoming knowledgeable of such specialty risks. ... State National would agree with the notion that acting as a primary company and not retaining any underwriting risk, offers unique challenges to such an insurer. ... However, the notion that requiring the primary company retain a portion of the underwriting risk can not be relied upon to cure all such problems. ... Clearly, the primary company should take an active role in how their insurance policies are distributed to the public, that they are compliant to all statutory and regulatory requirements, and that there exists a proper level of capitalization of the participating parties, which may include reinsurers, to pay all policyholder obligations. Also primary to such arrangements is the necessity to gain a complete understanding of the parties in the contractual arrangement as to their respective responsibilities. Again, these issues are not completely mitigated by requiring the primary company to retain a level of underwriting risk. ... "</p>	burden of additional expense.
<p>ACIC (35-36) AIA (7), PIF (3-4) and XL (7-8) made similar comments but</p>	<p>2303.15 (g)</p>	<p>Comment No. 149 “Subsection (g) applies to cessions of 100% of total premium to an “inter-company pool” and states that consent to such cessions will only be approved if there is at least a 10% retrocession and the ceding insurer (foreign or domestic) maintain surplus at a level to</p>	<p>Former subdivision (g) has been relabeled as subdivision (f). The Commissioner disagrees with the comment As set forth in the ISR and further explained in the Declaration of Robert Loo at paragraphs 10 and 11, a retrocession back to the ceding insurer of an amount equal to at least 10% of the direct writings ceded to the pool is necessary to ensure that the ceding</p>

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the cited text is from ACIC.		<p>cover direct writings. The Commissioner lacks Authority to impose these requirements. Additionally, this subsection lacks Clarity, Necessity, Consistency and logic. ... it is not clear when the 10% referred to in subparagraph (1) is to be calculated, (see subsection (f) of this Proposed Regulation where that subsection at least specifically states when the calculation is to occur). In addition, “inter-company pool” is not defined, and even the Commissioner appears not to understand the term. We understand that the CDOI is currently imposing (per “desk drawer” rule) the 10% retrocessional requirement even where 100% of total premium is being ceded to one company rather than a “pool” of companies. The Commissioner has not provided in the Rulemaking File any justification or Evidence as required by Gov’t Code §§11346.2(b) (3), 11349(a) or CCR §10(b) for this requirement, and thus it must fail.</p> <p>“Additionally, this requirement is not consistent with SSAP No. 62 or the applications of these principles with any other jurisdictions and therefore must also fail for lack of Consistency.</p> <p>“From a practical standpoint, it is possible that this section would apply to companies ceding, within a holding company structure, 100% of the premium to a single company. There is no Authority for the CDOI to override this business decision and require affiliates to retain 10% of the premium.”</p>	<p>insurer fulfills its functions as a licensed insurance company, as opposed to being a “front” for the reinsurer, acting as a mere agent or broker to solicit business; and the requirement to maintain sufficient surplus is necessary to ensure that the ceding insurer can meet its direct obligations to policyholders in the event that the inter-company pool is unable to meet its obligations to the ceding insurer. The requirements are necessary to ensure that the reinsurance arrangements are not materially deficient for purposes of CIC §717. The subdivision is reasonably necessary to implement CIC §717, and is authorized by CIC §720.</p> <p>No inconsistency with SSAP 62 was explained in the comment, and the Commissioner asserts there is no inconsistency. Moreover, SSAP 62, which is incorporated by reference in CIC §923, is not controlling, in that it is applicable only to the extent that it does not conflict with the Insurance Code or implementing regulations. Any purported lack of consistency with other jurisdictions is not relevant; however, even if relevant, no inconsistency was demonstrated in the comment and the Commissioner is not aware of any lack of consistency</p> <p>The timing of the 10% retrocession calculation is clear; it is made at the same time that the 100% is ceded.</p> <p>The term “inter-company pool” is understood in the</p>

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		[XL: Affiliate transactions are already subject to review under the Holding Company Act, i.e., CIC §1215.5(b)(3).]	insurance industry and refers to a pooling of insurance risks by companies that are part of an insurance company holding system, no matter the number of companies in the pool, whether two or more.
XL (8) Similar comments: Everest 6) AIA (7)	2303.15 (g)	<p>Comment No. 150</p> <p>“The attempt ... to regulate intercompany pools of foreign insurers exceeds the CA DOI’s statutory authority absent a licensed insurer’s having satisfied the definition of a commercially domiciled insurer as provided at California Code §1215.13.... Furthermore, intercompany pools are by definition agreements among affiliates and, as such, are subject to existing regulatory oversight pursuant to ... a state’s insurance holding company act. The insurance holding company act was promulgated as a model law by the NAIC and has been enacted by all fifty states. ... The Proposed Regulation seeks to regulate intercompany pools beyond ... the statutory authority ... [and] seeks to impose an unnecessary regulatory burden on insurers and reinsurers who operate as part of an intercompany pool ... At a time when regulatory uniformity is being sought across the United States, California seeks to act contrary to the regulatory and public policy goals of the NAIC, other states and the regulatory community generally.”</p> <p>[Everest: There is already an adequate mechanism for the Department to review inter-affiliate reinsurance agreements and they should be exempt from the</p>	<p>Former Subdivision (g) has been relabeled as Subdivision (f). The Commissioner has considered the comment and rejects it. There is no limitation in the HCA (CIC §1215.1, <i>et seq.</i>) to preclude the review of inter-company pooling agreements for material deficiency under CIC §§700(c) and 717(d) or the credit for reinsurance statutes (CIC §§922.1, <i>et seq.</i>)</p> <p>The reasons for not exempting HCA reinsurance transactions from the regulations is that affiliate transactions, like agreements between non-affiliated companies, are reflected on the ceding insurer’s financial statements when the ceding insurer claims statement credit for the reinsurance and reduces the liabilities it reports on its financial statements. (If the other members of the inter-company pool are licensed in California, then the retrocession will be reflected in their financial statements also.)</p> <p>The concerns prompting required contract provisions, e.g., that it constitutes the entire agreement in order to establish risk transfer, are not reduced by virtue of the fact that the assuming insurer is an affiliate. Because affiliates are commonly controlled and generally have common management, the ceding insurer might be</p>

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		requirements of proposed Section 2303.15.]	<p>subject to less than arm’s length, commercially acceptable practices if the insurer group or other members of the inter-company pool are under financial stress.</p> <p>As set forth in the ISR, in the case of cessions to an affiliate, the Commissioner must evaluate the financial strength of the group. If the Commissioner determines that the nature of a transaction and the condition of the group may pose an undue risk of financial hazard or insolvency to the ceding insurer, it is reasonable to require security for the cession. That risk exists regardless that the reinsurer is an affiliate.</p> <p>It is important to note that where an agreement is already subject to review pursuant to CIC §1215.5(b)(3) of the HCA that the regulations do not impose a separate filing requirement. However, the regulations make clear that the standard of review includes material deficiency and financial hazard pursuant to pursuant to §§CIC §717 and §1011(c). Under the HCA, the principle standard for review is whether the transaction is fair and reasonable.</p>
ACIC (36) Swiss (5) The cited text is from the ACIC	2303.15 (h)	Comment No. 151 “Subsection (h) prohibits (without prior permission of the CDOI) cessions or assumptions of 50% or more of a domestic or volume insurer’s total premium or	This subdivision has been relabeled as subdivision (g). The Commissioner disagrees with and rejects the comment, except with respect to the request for a deemer. Because of the scope of the matters to be reviewed, the Commissioner has determined that the

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<p>comment.</p> <p>ACLI (30) inexplicably repeats the identical comment to subdivision (h) as it made for subdivision (d), without noting that (h) is a different requirement.</p> <p>Everest (7) made similar comments but referred to the Subdivision as (e) instead of (h).</p>		<p>liabilities when ceded or assumed under one or more agreements with one party. ... Interestingly, the cited code section -- IC §1215.5 (b) (3) -- references a “commercially domiciled” insurer rather than the volume insurer referenced in subsections (h) and (i). The CDOI does not have the Authority to do what it is attempting to do in section (h).”</p> <p>[Everest: The Subdivision should contain a 30 day deemer, the same as the Holding Company Act.]</p>	<p>requested 30 day deemer provision would not provide sufficient time for review, however, in response to the request, has provided for a 90 day deemer in the revised text.</p> <p>The reasons for scrutiny of cessions of 50% or more of an insurer’s total premiums or liabilities are fully explained in the ISR and in the Declaration of Robert Loo at paragraph 12. In summary, a transaction involving 50% or more of a company’s business is an amount that has the potential to cause insolvency or financial hazard should the transaction fail for any reason to materialize as expected. The Commissioner’s prior review and determination that the transaction is not objectionable for purposes of CIC §717(d) will ensure that the transaction meets those legal and financial requirements established for the purpose of protecting the solvency of the licensee to avoid loss and hardship to its policyholders and creditors. The subdivision is reasonably necessary to implement CIC §717, and is authorized by CIC §720. Moreover, all examinations of licensees are authorized by CIC §730.</p> <p>The subdivision has been modified to provide that except as specifically provided therein, it applies to all licensed insurers, instead of only to domestic and volume insurers. The Commissioner determined that the subdivision should apply to all licensed insurers because the regulatory concerns that are identified in the</p>

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			<p>ISR may occur in connection with any cession of more than 50% of premiums or liabilities. The prior limitation to domestic and volume insurers was intended to conserve the Commissioner’s staff resources, which the Commissioner has now determined will not be severely impacted by extending the requirement to all licensed insurers.</p> <p>Filings made pursuant to CIC §1215.5(b)(3) of the HCA and CIC §1011.5 were made exempt from this examination requirement, which is intended to cover transactions not otherwise subject to prior review.</p>
Everest (6-7)	2303.15 (h)	<p>Comment No. 152</p> <p>[Reinsurance on workers’ compensation (“WC”) business should be exempt from this filing requirement since all WC obligations are required to be collateralized pursuant to CIC §11691, et seq.]</p>	<p>This subdivision has been relabeled as subdivision (g). The Commissioner declines the suggestion. The comment assumes that the required collateral is sufficient for the WC business, which has not been the case in any of the insolvencies of California WC companies. Moreover, collateral does not address all regulatory concerns such as risk transfer, contract requirements, retention of a percentage of lines of business written, and retention of sufficient surplus.</p>
<p>ACIC (36)</p> <p>Similar comments: RAA (62-63) Swiss (5)</p>	2303.15 (j)	<p>Comment No. 153</p> <p>“Subsection (j) would require conditions ... for the posting of collateral by the reinsurer where the loss of credit for reinsurance would have an adverse impact on the domestic or volume insurer. It has long been</p>	<p>This subdivision has been relabeled as subdivision (i). The Commissioner disagrees with the comment.</p> <p>The subdivision has been revised to provide greater clarity that it applies only to cessions for which security (e.g., a letter of credit or a single beneficiary trust) was</p>

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		<p>the position of the Associations that current NAIC credit for reinsurance provisions suffice, and that the conditioning of the posting of collateral based on deteriorating financial positions does not protect the ceding company. Once the conditions listed in the Proposed Regulation occur, it will be too late to obtain collateral.”</p> <p>[RAA: The Commissioner lacks authority for this regulation. Such clauses are bad public policy in that they may force a reinsurer into receivership and may place the ceding insurer in a preferential position that may be voidable in the receivership proceeding.]</p>	<p>not provided for transactions that involve 50% or more of the ceding insurer’s business. The subdivision was further modified to delete the specific financial markers which may require posting of collateral in order to allow the Commissioner greater flexibility in determining on a case by case basis the provisions necessary to protect the ceding insurer. No objections were received to the revisions.</p> <p>The necessity for this subdivision is set forth in the ISR and in the Declaration of Robert Loo at paragraph 13. The Commissioner disagrees with the RAA that it is bad public policy to include provisions within the reinsurance agreement to require the reinsurer to provide security covering its obligations under specified circumstances. Including protection provisions in the reinsurance agreement expands the reinsurance opportunities for ceding insurers, allowing consent to transactions that might otherwise not be satisfactory. The timing of the providing of the collateral would be established in the agreement at a point where it would not be “too late to obtain the collateral”</p> <p>The provisions will ensure that the transaction meets those legal and financial requirements established for the purpose of protecting the solvency of the ceding insurer to avoid loss and hardship to its policyholders and creditors. The subdivision is reasonably necessary to implement CIC §717, and is authorized by CIC §720.</p>

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ACIC (36) Guy (3-4) Towers made similar comments. PIF (4) and Farmers’ (3) included comments to this provision in their comments to 2303.17)	2303.15 (k)	<p>Comment No. 154</p> <p>[ACIC: The subdivision is inappropriate and the Commissioner lacks Authority to implement it. “ See comments to §2303.17.”]</p> <p>[Guy: Requirement for prior examination of an intermediary before permitting payments to be transmitted through the intermediary raises an unwarranted presumption that an intermediary’s handling of funds pose a risk to the state’s policyholders. This is an unjustified presumption given the complete absence in recent history of any failures of intermediaries that have had an adverse impact on insurer solvency.]</p> <p>[Towers: The requirements will work to establish a triennial examination procedure, with no showing of necessity. There have been no intermediary defaults for at least 30 years, therefore examinations of intermediaries are not necessary.]</p> <p>[Farmers’ and PIF: There is no demonstrated necessity for this requirement.]</p>	<p>This subdivision has been relabeled as subdivision (j). The Commissioner disagrees with and generally rejects the comment. However, to address some of the concerns expressed by the comments, the subdivision has been revised to allow the intermediary to provide financial information in lieu of an examination report. As explained more fully in the ISR, where a significant amount of a ceding insurer’s assets are transferred through an intermediary, on a case by case basis the Commissioner may determine that a review of the intermediary’s financial stability is necessary in order to minimize risk to the ceding insurer by a defaulting intermediary.</p> <p>The Commissioner’s determination that the transfer of payments through the intermediary poses no undue risk to the ceding insurer and is thus not objectionable for purposes of CIC §717(d) will protect the solvency of the ceding insurer and avoid hardship and loss to its policyholders and creditors. The subdivision is reasonably necessary to implement CIC §717, and is authorized by CIC §720.</p>
ACIC (36)	2303.15	Comment No. 155	This subdivision has been relabeled (m). The Commissioner has considered the comment and in

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	(I)	<p>“...(W)e ... question the Commissioner’s Authority to implement this prior approval requirement. There is a 30-day requirement of approval prior to execution, yet not even a “deemer” provision for approval. Effectively, this provision will keep companies from amending reinsurance agreements and conducting business. Additionally, given the CDOI’s present staffing issues, there is a strong likelihood that this process will substantially delay the ability of a company to amend a reinsurance agreement ... putting companies subject to this subsection at a competitive disadvantage to companies that are not subject to this subsection. Finally, the Commissioner has not provided in the Rulemaking File any justification or Evidence as required by Gov’t Code §§11346.2(b) (3), 11349(a) and CCR §10(b) for this requirement.”</p>	<p>response has revised the Subdivision to provide a “deemer.” The Subdivision now provides that a new application or filing with respect to an amendment to an agreement that has been reviewed by the Department is not required if, within 30 days after filing a copy of the proposed amendment, the Commissioner has not advised the parties to submit an application or notice. The subdivision preserves the Commissioner’s right to object to the amendment upon a subsequent amendment or renewal. The subdivision was also amended to provide that it also applies to agreements to which the Commissioner did not object. For clarity, the subdivision defines and uses the term “non-objection.” As explained in the ISR, the subdivision is reasonably necessary to prevent parties from changing the terms of an agreement after the Commissioner has provided consent, perhaps adding a provision that would have resulted in an objection had the provision been included in the initial agreement under review.</p> <p>The Commissioner’s prior review and determination that the amendment is not objectionable for purposes of CIC §717(d) will ensure that the transaction meets those legal and financial requirements established for the purpose of protecting the solvency of the licensee and its policyholders and creditors. The subdivision is reasonably necessary to implement CIC §717, and is authorized by CIC §720.</p>

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ACIC (36)	2303.15 (m)	Comment No. 156 “Similarly, subsection (m) requires a company that is sold as a shell or where there is a significant change in operations to make filings with the CDOI. We incorporate herein the same comments made with respect to subsection (l).”	This subdivision has been relabeled (q). The Commissioner disagrees with the comment. As explained more fully in the ISR, when a company is sold as a shell, none of the documents required to be on file for a licensee are correct, in that the documents filed with the Department relate to the former ownership and operations. The Commissioner’s review of the required documents for the licensee’s new ownership and operations will make certain the licensee meets the licensing requirements of CIC §§717 and 700(c). The subdivision is reasonably necessary to implement CIC §717, and is authorized by CIC §720.
ACIC (36-37)	2303.15 (n)	Comment No. 157 “We do not see the value or need to have subsection (n). The Commissioner has all the regulatory authority necessary over a company that fails to meet any commitment, regardless of any board resolution or other document. Further, by adding this subsection the Commissioner is potentially bringing the Clarity of the subsection into question. The last sentence of this subsection states that “The form of the commitment shall in any event be sufficient to legally bind the insurer.” By implication ... does that mean that those subsections that require the insurer to do an act do not have to be legally binding on the insurer? ... This	This subdivision has been relabeled as subdivision (q). The Commissioner disagrees with the implicit complaint that the subdivision is not necessary and disagrees. However, in response to the comment, the Commissioner has revised the subdivision to delete the phrase that the “form of this commitment shall be sufficient to legally bind the insurer.” All actions required by these regulations are to be legally binding on the insurers undertaking the actions. As set forth in the ISR, the requirement for a resolution by the insurer’s board or the persons specified in subparts (1) and (2) provides assurance that the licensee has legally bound itself and understands that it has done so.

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		sentence causes the entire subsection to lack Clarity and the Commissioner has not provided any justification or Evidence to support the implementation of this subsection as required by Gov’t Code §§11346.2(b) (3), 11349(a) and CCR §10(b).”	The requirement that commitments made by licensees are legally binding is reasonably necessary for the effective enforcement and implementation of CIC §§ 717 and 700(c), and is authorized by CIC §720.
	2303.16	Attestation Requirements	Replaced by a section entitled “List of Volume Insurers”.
ACIC (37-38) AIA (4-5) RAA (63)	2303.16	Comment No. 158 [The Commissioner has provided no evidence supporting the necessity of an attestation requirement in addition to the attestation required by the NAIC.]	The Commissioner has considered the comment and has deleted the attestation requirement.
	2303.17	Reinsurance Intermediaries	Heading changed to “Examination of Reinsurance Intermediaries”
ACIC (38) Similar comments: RAA (63-64) Towers PIF (4) and Farmers’ (3) included comments labeled “2303.17”	2303.17	Comment No. 159 “The purpose of this section is unclear and ... without any authority granted to it by the legislature. ... It also appears that additional requirements have been added including the financial statements provided to clients in the last three years, each audit report within three years, and if not audited, unaudited balance sheets, income statements and cash flows within the last 120 days. ... this will overload the CDOI’s staff and create additional delay and costs, ... the CDOI already has the power to examine licensed intermediaries when it deems it necessary There is a new requirement of attestation by an office under	The Commissioner disagrees with the comments. As noted in the comments, the Commissioner has authority to examine a reinsurance intermediary (CIC §1781.10). The Commissioner also has authority to adopt implementing regulations (CIC §1781.12). The section prescribes reasonable procedures to be followed for such examinations. The requirement for verification of un-audited financial statements is necessary to ensure that the financial statements are accurate. It is important to note that the section does not prescribe the timing of examinations; it merely establishes the procedures to be followed when an examination is undertaken.

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which actually related to 2303.15(k) and are noted there.		<p>penalty of perjury in subsection (b). This section should be deleted in its entirety.”</p> <p>[RAA/Tower: The companies hiring the intermediaries can make a determination of the intermediary’s financial condition; the free market already works more than adequately; there is no evidence to support the need for examinations.]</p> <p>[Towers: There have been no intermediary defaults for at least 30 years, therefore examinations of intermediaries are not necessary.]</p>	
Guy (4) Similar comment: Towers (6)	2303.17 (a)(2)	<p>Comment No. 160</p> <p>“The Proposed Regulation requires an intermediary to provide copies of any internal and external audit reports. The internal audit function allows a company to police itself and should not be disclosed.”</p>	The Commissioner has considered the comment and in response has deleted the requirement to provide copies of internal audit reports.
Guy (4) Towers (6) made similar comments but the text is from Guy.	2303.17 (e)	<p>Comment No. 161</p> <p>“Section 2303.17 provides that any information submitted as part of an examination will be maintained as confidential to the same extent as is provided by California Insurance Code §735.5. Since this Code section explicitly applies to information of insurers and makes no references to the financial information of the intermediary itself, we are not</p>	The Commissioner disagrees with the comment. A regulation requiring confidential treatment of information received during an intermediary examination would provide sufficient authority to resist a Public Records Act request, especially where the same confidential treatment is required for information received during the examination of an insurer. The regulation is necessary to ensure full cooperation with the examination, and is reasonably necessary to

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		confident that the Department would be able to resist any requests for confidential information made pursuant to the California Public Records Act.	implement the examination authority of CIC §1781.10.
	2303.18	Commissioner’s Discretion	
Allianz (2)	2303.18	<p>Comment No. 162</p> <p>“We are seriously concerned about the lack of detail as to how the Commissioner would apply discretion in construing the proposed regulations. For example, Section 2303.12 permits the Commissioner to deny statement credit, but fails to provide the circumstances or rationale that would prompt him to take this action.”</p>	<p>The section has been renumbered as §2303.20. The Commissioner disagrees with the comment. The discretion allowed the Commissioner by this section is whether to require strict compliance with a specific regulation in a given case, not how to construe a regulation. The section prescribes the basic standards for granting an exception.</p> <p>The comment regarding §2303.12 is not clear. That section states requirements for risk transfer. If an agreement does not transfer risk to the reinsurer, statement credit may not be claimed. The Commissioner could not use the authority of this section to grant an exception and permit statement credit where risk is not transferred, as such an exception would violate CIC §922.3.</p>
	2303.19	Denial of Statement Credit and Non-Admission of Assets	
ACIC (38-39) Similar comments: AIA (6)	2303.19 (b)	<p>Comment No. 163</p> <p>“Although the CDOI recognizes that a domestic insurer may follow the NAIC Accounting Guidance when reporting recoverables aged more than 90 days</p>	The Commissioner disagrees with the comment. The ISR fully sets out the justification and authority for this subdivision. In summary, CIC §923 allows the Commissioner to deviate from the NAIC Accounting Guidance (which includes the SSAP) and require

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RAA (65) Swiss (6)		<p>as required by SSAP and Gov’t Code §2643.5, the CDOI would permit itself to expressly declare such recoverables to be nonadmitted assets. This renders reliance by domestics upon compliance with the NAIC Accounting Guidance illusory. The Commissioner has offered neither justification nor Evidence for this action ... The Commissioner has no Authority for this subsection. Further, such requirements violate CCR §2643.5 and IC §923 that require the use of SSAP in these situations. ...”</p> <p>[RAA/Swiss: The Subdivision is not necessary; the NAIC rules are adequate; the Subdivision will create a competitive disadvantage for domestic insurers.]</p>	<p>Annual Statements and other financial reports to be reported by insurers in a form that will elicit a “true exhibit of their condition.” A deviation from the NAIC requirements so that overdue reinsurance receivables are not counted as assets if the Commissioner believes collection unlikely or subject to extended delay is reasonably necessary to ensure that the financial report is a “true exhibit” of the insurer’s financial condition. Moreover, a denial of overdue reinsurance as an asset (which has the same effect as denying credit for the reinsurance) is also justifiable on the grounds of failure in risk transfer pursuant to CIC §922.3, in that late payment of reinsurance violates the timely payment requirement for risk transfer.</p> <p>With respect to the claim that the requirement will create a competitive disadvantage for domestic insurers, the provision allows an affected insurer to follow the NAIC reporting requirements in order to preserve its competitive edge, unless the Commissioner expressly requires the financial report to reflect the receivables as non-admitted assets in order to correct a significantly false representation of the insurer’s financial status. This issue is addressed more fully in the ISR.</p> <p>Note: ACIC’s reference to CCR Section 2643.5 is inexplicable, since that Section relates to rates for property and casualty insurance subject to regulation under 1988's Proposition 103. Section 2643.5 provides that "equity" is to be measured by Statutory Accounting</p>

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			Principles (“SAP”) , rather than Generally Accepted Accounting Principles (“GAAP”). The cited Section has no relevance to the subject provision, except to parallel the conservative treatment of overdue reinsurance receivables as provided for in 2303.19(b). The NAIC rule permitting questionable reinsurance recoverables to be reported as assets is more akin to GAAP accounting used by general businesses, than the conservative SAP accounting required of insurers.
AFGI (Exhibit)	2303.19 (b)	Comment No. 164 [This treatment is inconsistent with the standards for accounting for overdue recoverables set forth in Schedule F of the Annual Statement.]	The Commissioner disagrees. The subject provision <i>modifies</i> those accounting requirements pursuant to the authority of CIC §923, which allows the Commissioner to revise the NAIC accounting requirements as he determines necessary, and the subject regulation is therefore not inconsistent.
AIA (6)	2303.19 (b)	Comment No. 165 [Subdivision (b) is ambiguous. The first sentence could be interpreted to suggest that 100% of the overdue amount must be non-admitted. The second sentence implies that the NAIC provisions will apply, creating an ambiguity with the first sentence. Additionally, by referring to domestic insurers in the second sentence, it may imply that the first sentence would apply to foreign insurers.]	The Commissioner disagrees. The comment attempts to create ambiguity where there is none. The first sentence of the subdivision does not “suggest” that 100% of overdue reinsurance “must” be non-admitted; it <i>states</i> that 100% “may” be non-admitted. The subdivision has only two sentences, both of which refer only to domestic insurers, and therefore, there is no basis for an interpretation that any part of the subdivision could apply to foreign insurers.
AFGI (Exhibit)	2303.19	Comment No. 166	The Commissioner notes that the subdivision contains no such requirement. The comments inexplicably

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Farmers’ (3) PIF (4)	(b)	[If one reinsurance recoverable is overdue from a reinsurer, why must all recoverables from that reinsurer be non-admitted?] [Farmers and PIF: “The current version of the regulation ... is perfectly adequate.”]	reference a discussion proposal circulated by the Department in 2004 on this subject that was not included in the proposed regulations filed with OAL. It is interesting that the comments find the “current” version of this particular regulation “perfectly adequate.”
	2303.20	Sanctions for Non-payment of Reinsurance	
ACIC (39-40) Everest (4-5) RAA (66-67) Swiss (6)	2303.20	Comment No. 167 [The Commissioner lacks authority to impose requirements that are in contravention of appropriate judicial and/or arbitral remedies.]	The Commissioner disagrees that he lacks authority or that the requirements were in “contravention” of judicial or arbitration remedies, however, has deleted the text of the section in its entirety.
	2303.24	Effective Date	
ACIC (40-42) Allianz (2) PIF (4-5) RAA (67-68) Swiss (6)	2303.24	Comment No. 168 [The proposed regulations should be made applicable only to agreements executed after the effective date of the regulations. The provisions regarding application to amended agreements are ambiguous.]	The Commissioner has considered the comments and in response has revised the section to apply on a prospective basis only (to new or renewal agreements). Compliance with the regulations will not be required for existing agreements or amendments thereto, which agreements shall remain subject to the requirements of Bulletin 97-5.
RAA (67-68)	2303.24 (c)	Comment No. 169 “Proposed rule 2303.24(c) provides that licensees	The Commissioner disagrees with the comment. The argument that the Commissioner’s authority to adopt regulations has expired is addressed in the response to

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		<p>shall follow the requirements of Bulletin 97-5, issued pursuant to Insurance Code section 922.8, until the effective date of the Reinsurance Oversight Regulations and purports to incorporate it by reference. The regulations of the Office of Administrative Law provide that in promulgating regulations, an agency may “incorporate by reference” only if certain conditions are met. One of these conditions is that “material proposed for ‘incorporation by reference’ shall be reviewed in accordance with procedures and safeguards for a regulation published in the California Code of Regulations.” (2 Cal. Code of Regs. §20.)</p> <p>First, the authority for Bulletin 97-5 has expired. Even if it has not, the Department has not followed the procedures and safeguards required by the APA with respect to the provisions of Bulletin 97-5. For example, the Department did not include a description of the provisions in the ISOR as required by the APA. (Gov. Code §11346.2(b).)</p> <p>In order to incorporate Bulletin 97-5 by reference into the Reinsurance Oversight Regulations, the Department would need to include in the ISOR a statement of the specific purpose of the adoption of each of the provisions contained in the bulletin and the rationale for the determination by the Department that each adoption is reasonably necessary to carry out the purpose for which it is proposed. (2 Cal. Code of</p>	<p>Comment No. 27 and incorporated by reference.</p> <p>Bulletin 97-5 has been properly incorporated by reference, meeting all requirements for incorporation. Moreover, by the terms of CIC §922.8, it remains in effect for all agreements not subject to the proposed regulations.</p> <p>Bulletin 97-5 was issued pursuant to CIC §922.8(a) which provides in relevant part that “(t)he commissioner ... may issue a bulletin setting forth reasonable requirements for the allowance of reinsurance as an asset or deduction from liability consistent with Sections 922.4 to 922.6, inclusive ...” Subdivision (e) provides that “(t)he bulletin authorized by this section shall have the same force and effect, and may be enforced by the commissioner to the same extent and degree, as regulations issued by the commissioner until the time that the commissioner issues additional or amended regulations pursuant to subdivision (d).” Subdivision (d) provides that “(t)he commissioner shall adopt regulations implementing the provisions of this law, that shall supersede the bulletin authorized by this section...”</p> <p>The proposed regulations are prospective only, and therefore supersede the Bulletin only as they relate to new or renewal agreements. Subdivision (c) provides that the Bulletin shall remain in force and effect until superseded. Therefore, as respects existing agreements,</p>

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		<p>Regs. §20; Gov. Code §11346.2(b)(1).) The Department would also need to comply with the other provisions of the APA with respect to the provisions of the bulletin. (See Gov. Code §§11346-11349.9.)</p> <p>The failure of the Department to follow the APA with respect to the incorporation of reference of Bulletin 97-5 means that proposed rule 2303.24(c) cannot be adopted as a duly promulgated regulation under the APA.”</p>	<p>the statute authorizes continuing application of the requirements of the Bulletin. Moreover, unless the Bulletin remains in effect for existing agreements, either no requirements will be applicable to existing agreements or the regulations would have to be amended to apply to all agreements, new and existing, which would cause hardship to those insurers which would lose statement credit because they would be unable to renegotiate agreements for compliance.</p> <p>However, even assuming that CIC §922.8 cannot be interpreted as suggested above, all requirements for incorporating the Bulletin have been met. The Bulletin is familiar to all licensees, who have been subject to its provisions since 1997. The Bulletin is published on the Department’s public website. Incorporation of the Bulletin by reference was duly noted in the Notice. As explained in both the Notice and the ISR, the contents of the Bulletin relate to §§2303.3 through 2303.11 of the Reinsurance Oversight Regulations, and except as specifically noted in the Notice and the ISR, the requirements of the Bulletin are the requirements of the Regulations. (The discussion in the ISR for the few new or different requirements relate to new or different requirements in the <i>regulations</i>.) Each requirement of the Bulletin has therefore been included in the discussion for each related regulation. The comment fails to identify even one requirement of the Bulletin that has not been fully addressed in the Notice and the ISR in the manner required for the adoption of</p>

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			regulations.
	2303.25	Approved Forms	
RAA (69)	2303.25	<p>Comment No. 170</p> <p>“Proposed rule 2303.25 sets forth forms consistent with the proposed regulations. To the extent that these forms contain provisions that are inconsistent with the Department’s statutory authority or are otherwise improper as outlined above, the forms are similarly objectionable.”</p>	The Commissioner disagrees that the forms are inconsistent with his statutory authority. No specific form or provision is identified for evaluation or response. No revisions were necessary to the forms as a result of the revisions to the text.
ACIC (16)	2303.25 (a) and (b)	<p>Comment No. 171</p> <p>[The AR-1 form used in the Model Regulation should be used. The proposed forms require the insurer to appoint an agent for service of process and also appoint the Commissioner to receive service. The requirement lacks clarity.]</p>	The Commissioner declines the suggestion and disagrees that the requirement lacks clarity. The AR-1 form used in Bulletin 97-5 is the same form as used in the Model Regulation. However, that form does not provide for the appointment of an agent for service of process; it provides only for service upon the Commissioner. As explained in the ISR, the insurer will more quickly receive actual notice of process where service is made upon a professional agent, than that with service made upon a bureaucracy the size of the Department.