

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION**

**INITIAL STATEMENT OF REASONS**

**Subject Matter of Regulations:  
Electronic document filing and lien filing fee rules**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
SECTIONS 10205 et seq.**

Amend section 10205	Definitions
Amend section 10205.12	Form and Size Requirements for Filed Documents
Adopt section 10206	Electronic Document Filing; Electronic Adjudication Management System (EAMS) Reference Guide and Instructional Manual for E-Form Filers; Incorporation
Adopt section 10206. 1	Electronic Document Filing; Electronic Adjudication Management System Business Rules for JET Filers; Incorporation.
Adopt section 10206.2.	Electronic Filing Exemption
Adopt section 10206.3	Time of Filing of Documents
Adopt section 10206.4.	Uniform Assigned Names
Adopt section 10206.5	Form and Size Requirements for Electronic Filed Documents
Adopt section 10206.14	DWC E-Forms and DWC Unstructured Forms
Adopt section 10206.15	DWC JET Forms
Adopt section 10207	Initial Lien Filing Fees
Adopt section 10208	Lien Activation Fees

**BACKGROUND TO REGULATORY PROCEEDING**

This Initial Statement of Reasons (“ISOR”) describes the purposes, rationales, and necessity of the Division of Workers’ Compensation’s (DWC) proposed regulations regarding electronic filing of documents and the lien filing fees which became effective as an emergency regulations on January 1, 2013. This ISOR fulfills the requirements of California’s Administrative Procedure Act. (See Government Code section 11340 et seq.)

Senate Bill (SB) 863 was signed into law by Governor Brown on September 18, 2012 to become effective January 1, 2013. SB 863 has created substantial changes to how liens are filed within the workers’ compensation. Specifically, any liens filed pursuant to Labor Code section 4903(b) or claims of costs must be filed electronically. Also, a fee of \$150 is now required prior to filing for most liens filed after Jan. 1, 2013, and a \$100 activation fee is required for most liens filed before then, but activated for a lien conference after Jan. 1, 2013. This activation fee is required to be paid at the time a lien claimant files a declaration of readiness or appears at a lien conference.

## **PROBLEMS ADDRESSED BY THIS RULEMAKING**

The regulations address the problems of meeting SB 863's new mandate for lien claimants to file their liens electronically and requirement to pay the lien filing fee or lien activation fee. Regulation sections 10205 through 10206.15 set forth the procedures for electronically filing documents in the Electronic Adjudication Management System (EAMS), DWC's computer based case management system. Regulation sections 10207 and 10208 address which liens are subject to the filing fees, and how and when to make the payments.

## **TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS**

- WCIRB Evaluation of the Cost Impact of Senate Bill 863 updated October 12, 2012.
- The California Commission on Health and Safety and Workers' Compensation Liens Report dated January 5, 2011.

## **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

There are two ways to electronically file.

- (1) E-forms are electronic forms that are filled out on a computer and filed over the Internet into EAMS. To file e-forms, the filer must sign up for a logon and password and participate in a mandatory training webinar.
- (2) In order to electronically file using JET File, a filer will have to either: (1) purchase software from an approved vendor, (2) use a third party filer, or (3) build a transmission process.

Electronic access is limited to those with a PC running Internet Explorer (IE), and Version IE-7 or a newer version is best.

## **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES**

The Administrative Director has not identified any effective alternative, or any equally effective and less burdensome alternative to the regulation at this time. The public is invited to submit such alternatives during the public comment process.

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE IMPACT DIRECTLY AFFECTING BUSINESS**

Some lien filers, including physicians, clinics, hospitals, pharmacies and other providers of medical and ancillary services to injured workers who have fee disputes with the workers' employers or insurers, will be impacted by the statutory requirement to pay a filing fee or an activation fee before pursuing a lien for the disputed amount. However,

lien claimants are entitled to an order or award of reimbursement of the lien filing fee or lien activation fee with interest if the conditions set forth in Labor Code section 4903.07 are met (a demand is made, the defendant fails to accept the demand, and the final award for the dispute is in favor of the lien claimant for equal or greater than the amount of the demand). Also, most of the impacted businesses will have access to alternative dispute resolution mechanisms for collection of medical payments for dates of services on or after January 1, 2013. Therefore, it is not anticipated that there will be a significant statewide adverse impact directly affecting business.

### **DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS (Gov. Code section 11346.2(b)(7))**

The proposed regulations do not duplicate or conflict with any federal regulations. There are no federal regulations that prescribe rules for electronic filing or lien fees at the workers' compensation trial level courts.

### **SUMMARY OF PROPOSED CHANGES**

#### **Section 10205 – Definitions**

**Specific Purpose of Section:** The purpose of this section is to define the following key terms: “cost,” “electronic filing,” “initial lien,” “section 4903(b) lien,” and amend the definitions for [to] ‘file’ and ‘party.’ The definitions of “cost,” “lien conference,” “mandatory settlement conference” and “party” have been amended after the adoption of the emergency regulations for clarity. The definition of “section 4903(b) lien” is amended to delete reference to “interpreters’ fees incurred in connection with medical treatment (Labor Code section 4600)” because those fees are subject to a petition for costs under Labor Code section 5811.

**Necessity:** It is necessary to define each of the key terms to ensure that the content and meaning of the regulations are clearly understood by the workers’ compensation community.

#### **Section 10205.12 Form and Size Requirements for Filed Documents**

**Specific Purpose of Section:** The purpose of amending this section was to correct the cross reference to the definition of “product deliver units” in subdivision (b)(4) to reflect the new lettering (section 10205(dd)).

**Necessity:** This was a nonsubstantive change to correct the subdivision reference.

#### **Section 10206 Electronic Document Filing; Electronic Adjudication Management System (EAMS) Reference Guide and Instructional Manual for E-Form Filers; Incorporation**

**Specific Purpose of Section:** The purpose of this section is inform the public how to electronically file documents using “e-forms.” The procedures are set forth in the Electronic Adjudication Management System (EAMS) Reference Guide and Instructional Manual for E-Form Filers (EAMS E-Form Filing Reference Guide). The guide’s date has been changed from January 1 to July 1, 2013 to allow for revisions that have been made and will be made during the certificate of compliance. The guide is incorporated by reference.

**Necessity:** Labor Code section 4903.05(b) requires any lien claim for expenses under section 4903(b) to be filed electronically. This section provides the procedures for one of the two methods that allows for electronic filing.

### **Section 10206.1 Electronic Document Filing; Electronic Adjudication Management System Business Rules for JET Filers; Incorporation.**

**Specific Purpose of Section:** The purpose of this section is to inform the public how to electronically file documents using the “JET” filing system. The JET File system was created to electronically process forms and minimize or eliminate the need for manual filing. JET Filing reduces the overall volume of processed paper. JET filers have three ways to use JET: (1) purchase or rent software from an approved vendor that lets allows them to JET file directly; (2) use a third party filer to transmit on their behalf; or (3) build their own transmission process using the technical specifications. The purpose of the JET File Business Rules and Technical Specifications is to provide JET filing specifications required for both EAMS and submitters’ systems. The document includes the JET File business rules and identifies the JET filing technical requirements. This document also contains detailed system design artifacts such as use cases and class diagrams. The document lists the JET file system requirements, the SFTP Bulk filing requirements and technical use cases, the EAMS JET file bulk business rules, xml layout specifications and schema definitions, error codes and messages, JET file system security, guidelines and standards, and appendices.

**Necessity:** Labor Code section 4903.05(b) requires any lien claim for expenses under section 4903(b) to be filed electronically. This section provides the procedures for one of the two methods that allows for electronic filing.

### **Section 10206.2 Electronic Filing Exemption**

**Specific Purpose of Section:** The purpose of this section is to exempt electronic filers from the two sections that set forth the rules pertaining to filing paper documents. The purpose of the section is also to provide an exemption from the electronic filing rules for any unrepresented injured employee, any unrepresented dependent of an injured employee, or any unrepresented uninsured employer.

**Necessity:** The section is necessary for clarity so that electronic filers understand that the two regulations (sections 10205.10 and 10205.12) that set forth the rules for filing paper documents into EAMS do not apply to electronic filing. Additionally, Labor Code

section 4903.05(b) only requires lien claim for expenses under section 4903(b) to be filed electronically. It does not apply to unrepresented injured employee, any unrepresented dependent of an injured employee, or any unrepresented uninsured employer.

### **Section 10206.3 Time of Filing of Documents**

**Specific Purpose of Section:** The purpose of this section is to set forth the rules regarding when an electronically filed document is deemed to have been filed and to require the filer to verify completion of filing.

**Necessity:** Because electronic filing can be made at any time, even after normal business hours, it is necessary to provide when a document received electronically after 5:00 pm of a court day (i.e., Monday through Friday, except designated State holidays) is deemed to be filed. It is necessary for the filer to verify completion of the filing to make sure that there was no error during the transmission.

### **Section 10206.4 Uniform Assigned Names**

**Specific Purpose of Section:** Electronic filers are required to use uniform assigned names (UANs) when they electronically file in EAMS. The purpose of the section is to inform electronic filers that the DWC Central Registration Unit will create and assign the UANs for claims administrators, representatives and lien claimant organizations. Additionally, the Central Registration Unit shall maintain the website list of uniform names and addresses of claims administrators' offices, representatives' offices, and lien claimant organization.

**Necessity:** Forms filed in the Electronic Adjudication Management System (EAMS) automatically create new workers' compensation case files or open existing case files. Part of this automated process involves associating the related parties to their cases. To ensure that parties are properly associated to cases in EAMS, a uniform naming convention was created for claims administrators, representatives, and lien claimant organizations by the DWC.

### **Section 10206.5 Form and Size Requirements for Electronic Filed Documents**

**Specific Purpose of Section:** The purpose of this section is to set forth the standards for filing an electronic document. The purpose of the section is also to set forth the requirements for service on the other parties.

**Necessity:** The standards set forth in the section must be followed in order to have a successful electronic filing and service on the parties.

### **Section 10206.14 DWC E-Forms and DWC Unstructured Forms**

**Specific Purpose of Section:** The purpose of this section is to provide the website address where the e-forms are located.

**Necessity:** One method of electronic filing is using e-forms. E-forms are electronic forms that are filled out on a computer and filed over the Internet into EAMS. This section is necessary so that the public knows where to access the e-forms.

### **Section 10206.15      DWC JET Forms**

**Specific Purpose of Section:** The purpose of this section is to inform the public how to access the JET File Business Rules and Technical Specifications. The JET File Business Rules and Technical Specifications sets forth how to electronically file using the JET File method.

**Necessity:** Electronic filers who chose to use the JET File method must follow the rules set forth in the JET File Business Rules and Technical Specifications in order to have successful electronic transmission.

### **Section 10207      Initial Lien Filing Fees**

**Specific Purpose of Section:** The purpose of the section is to describe which liens are subject to the \$150 lien filing fee. For those liens that require a filing fee, the purpose of the section is also to provide when to make the payment, how to make the payment, when to file confirmation of payment, and the consequence of not following the section's requirements. If a lien payment was previously made, the section sets forth how to provide confirmation of the payment. For lien claimants who are not required to pay a filing fee, the purpose of the section is to provide how to indicate the exempt status. If the employee has not filed an application, the section explains what the lien claimant must file.

**Necessity:** Unless exempt pursuant to Labor Code section 4903.06(b), prior to or at the filing of an initial lien pursuant to Labor Code section 4903(b), the lien claimant shall submit a filing fee in the amount of \$150 to the DWC, using a form approved by the appeals board. The section is necessary to implement the requirement to pay a lien filing fee, to clarify which liens are subject to the lien activation fee, and to inform the lien claimants of the procedures to follow in order to have their liens adjudicated.

### **Section 10208      Lien Activation Fees**

**Specific Purpose of Section:** The purpose of the section is to provide what liens are subject to the \$100 lien activation fee, when to make the payment, how to make the payment, and when to file confirmation of payment. If a lien payment was previously made, the section sets forth how to provide confirmation of the payment.

**Necessity:** This section is necessary to implement Labor Code section 4903.06's requirement to pay a \$100 lien activation fee, to clarify which liens are subject to the lien activation fee, and to inform the lien claimants of the procedures to follow in order to pay the activation fee.

## **ECONOMIC IMPACT ANALYSIS**

### **Creation or Elimination of Jobs within the State of California**

The Administrative Director has determined that a substantial number of hearing representative jobs will be eliminated. However, the reduced cost of workers' compensation will promote economic activity and employment generally, although few or no specific job creations will be directly attributable to this economic growth.

### **Creation of New or Elimination of Existing Businesses Within the State of California**

Most of the impacted businesses will have access to alternative dispute resolution mechanisms for collection of the correct medical payments in the future. Only those that thrive on "nuisance settlement" of liens will be eliminated. The reduction in workers' compensation costs will promote economic activity and business creation broadly, although no specific start-ups will be directly impacted.

### **Expansion of Business or Elimination of Existing Businesses Within the State of California**

Most of the impacted businesses will have access to alternative dispute resolution mechanisms for collection of the correct medical payments in the future. Only those that thrive on "nuisance settlement" of liens will be eliminated. The reduction in workers' compensation costs will promote economic activity and business creation broadly, although no specific start-ups will be directly impacted.

### **Benefits of the Regulations**

The benefits are the result of specific statutory requirements. Senate Bill 863 requires any liens filed pursuant to Labor Code section 4903(b) or claims of costs to be filed electronically. Also, a fee of \$150 is now required prior to filing for most liens filed after Jan. 1, 2013, and a \$100 activation fee is required for most liens filed before then, but activated for a lien conference after Jan. 1, 2013. The statewide benefit is to reduce system costs. Each lien adds an average of \$400 to \$1000 of loss adjustment expense to a workers' compensation claim, according to estimates by the Workers' Compensation Insurance Rating Bureau (WCIRB) and Commission on Health and Safety and Workers' Compensation (CHSWC), respectively. Collectively they add over \$256 million to \$640 million of frictional costs to the workers' compensation system. The reduction in liens, particularly nuisance liens that are not worth the payment of a \$150 filing fee, is expected to save California employers and insurers from \$106 million to \$743 million annually (including settlement costs). The requirement that most liens must be filed electronically will also reduce system costs.