

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

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations:
Disability Evaluation Unit Regulations**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 10150 through 10168**

Amended §10150	Authority
Proposed §10151	Filing Requirements.
Proposed §10150.1	Signature disputes and the signatures of consultants
Proposed §10150.2	Technical unavailability of EAMS
Proposed §10150.3	Disability Evaluation Unit File Retention.
Proposed §10150.4	Misfiled or misdirected documents
Amended §10160	Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee.
Amended §10160.1	Summary Rating Determinations, Report of Primary Treating Physician for Unrepresented Employee.
Amended §10160.5	Summary Rating Determinations, Represented Employees
Amended §10161	Forms.
Amended §10161.1	Reproduction of Forms.
Amended §10162	Summary Rating Determinations, Apportionment.
Amended §10164	Summary Rating Determinations, Reconsideration If Employee Is Unrepresented.
Amended §10165	Service of Summary Rating Determination and Notice of Options Following Permanent Disability Rating.
Amended §10166	Consultative Ratings Determinations.
Proposed §10166.1	Form (Request for Consultative Rating)
Amended §10167	Informal Ratings.
Repealed §10168	Records, Destruction of.

BACKGROUND TO REGULATORY PROCEEDING

This rulemaking amends the Disability Evaluation Unit (DEU) regulations to allow required documents to be filed with the Electronic Adjudication Management System (EAMS). In fiscal year 2004 to 2005, SB 1113 (chapter 208) authorized funds to establish EAMS within DWC. EAMS is a computer based document filing and management system that will simplify and improve the DWC case management process

to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users, and transform paper files into secure electronic files. EAMS will replace the current workers' compensation court technology and supporting infrastructure, thereby reducing the need for physical storage space at local DWC offices and the State Records Center. Regulations that implement EAMS for claims adjudication will be filed concurrently with the Office of Administrative Law.

Utilizing the applicable Permanent Disability Rating Schedule adopted by the Administrative Director under Labor Code section 4660, DEU calculates permanent disability ratings for injured workers based on an evaluating physician's medical descriptions of physical and mental impairment. See Labor Code section 4061(e). The permanent disability ratings issued by DEU are used by workers' compensation administrative law judges, injured workers, and insurance claims administrators to determine the appropriate permanent disability indemnity benefit under Labor Code section 4658. DEU prepares four types of ratings: (1) formal, done at the request of a workers' compensation administrative law judge in a litigated case; (2) summary, done on a non-litigated case for an unrepresented injured worker; (3) consultative, generally done on litigated cases at the request of an attorney or DWC information and assistance officer; and (4) informal, done on non-litigated cases at the request of a claims administrator or injured worker. California Code of Regulations, title 8, section 10150 et seq. A summary rating issued by DEU is subject to review and reconsideration by the Administrative Director. Labor Code section 4061(g).

SUMMARY OF THE PROPOSED REGULATIONS

The purpose of these amendments is to explain that the required documents will be filed in EAMS and to revise the submission procedures and forms so that the data provided on the forms can be scanned and routed to EAMS. This is implementing the first stage of EAMS (the internal go-live stage), which is to store the information electronically to allow for internal users to maintain and search for documents. At DWC internal go-live, external participants will continue to file on paper using new forms that employ optical character recognition (OCR). The OCR forms will be available online on the EAMS Web page. Forms and documents will be scanned into EAMS by DWC employees at district offices.

Amended §10150. Authority.

Specific Purpose of Section 10150:

The changes to this section are non-substantive only: changing the case of the term "administrative director."

Necessity:

The changes to this section are non-substantive only.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrator Director at this time.

Proposed §10151. Filing Requirements.

Specific Purpose of Section 10151:

The purpose of this proposed regulation is to define the “Electronic Adjudication Management System” or “EAMS” and inform the public that documents submitted to the Disability Evaluation Unit will be stored and maintained electronically instead of as paper files. The section also informs the public how the case number will be assigned, that the prefix will be “DEU,” that the documents will be scanned and that paper copies of the electronic documents will be destroyed. The documents must be filed as set forth in section 10232, which is a proposed Court Administrator regulation that describes form and size requirements for filed documents. (The Court Administrator regulations have been filed simultaneously with these regulations.) Documents must be served as described in the proposed Court Administrator regulation section 10218.

Necessity:

EAMS is a computer based system that will simplify and improve the DWC case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users, and transform paper files into secure electronic files, thereby reducing the need for physical storage space at local district offices and the State Records Center. EAMS will replace the current workers’ compensation court technology and supporting infrastructure. Thus, it is necessary for the public to file documents as described in order for the documents to be scanned into EAMS.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Proposed §10150.1 Signature disputes and the signatures of consultants

Specific Purpose of Section 10150.1:

The purpose of this proposed regulation is to set forth the manner by which to dispute the authenticity of a signature. The purpose is also to clarify that the electronic signature of a Division of Workers' Compensation consultant shall constitute an original signature for all purposes.

Necessity:

Because all documents will be scanned into EAMS, "original" documents and signatures will not be filed. Therefore, this section is necessary to provide a means by which to authenticate the validity of electronic signatures.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Proposed §10150.2 Technical unavailability of EAMS

Specific Purpose of Proposed Section 10150.2:

The purpose of this proposed regulation is to refer the public to the proposed Court Administrator's regulation that addresses what to do if there is a technical problem that prevents the filing of a document in EAMS.

Necessity:

This section is necessary to address untimely filings that are a result of a technical failure of EAMS or a technical problem in filing a document. Because there are strict due dates for the filing of pleadings and documents, the public must know what to do if it is unable to file a required document with EAMS.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Proposed §10150.3 Disability Evaluation Unit File Retention.

Specific Purpose of Proposed Section 10150.3:

The purpose of this proposed regulation is to inform the public how long the Disability Evaluation Unit will retain electronic and paper documents. The purpose is also to inform the public that the documents will only be maintained

electronically, and that paper documents that are converted into an electronic form may be destroyed.

Necessity:

This section is necessary so the public knows how long the electronic records will be stored. Because workers' compensation law allows for apportionment of prior injuries, the records pertaining to an injury could be relevant to cases filed in the future. By retaining the records for fifty years, the public will have access to relevant injury records. Files that are currently maintained as paper files will eventually be converted to electronic files in order to reduce storage of paper files.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Proposed §10150.4 Misfiled or misdirected documents

Specific Purpose of Proposed Section 10150.4:

The purpose of this proposed regulation is to address corrective measures for documents that are unreadable because of technical or scanning problems, or for documents that were misfiled. The regulation refers to the Court Administrator's regulation, proposed section 10223, which informs the public that the division will have the ability to perform document substitution on filed documents, to repair scanned documents, and to move documents to other case files. Section 10223 informs the public that a filer may substitute a document if it was unreadable or illegible. However, instead of a petition to substitute, as allowed under section 10223(b), this section permits a filer to file a request to substitute. The division may repair a document if the scanned image does not accurately reflect the original.

Necessity:

This section is necessary to address problems that may occur because of electronic filing with EAMS. This section is necessary because it is possible that the scanners may not be able to read the images on the original documents, and it is possible that the scanned documents may be directed into the wrong files.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**Amended §10160 Summary Rating Determinations, Comprehensive Medical
Evaluation of Unrepresented Employee.**

Specific Purpose of Proposed Section 10160:

The purpose of the amendment to subdivision (d)(4) is to require the use of the document cover sheet and the document separator sheet. These documents are defined in proposed court administrator regulations section 10210. The other changes to the section are non-substantive changes to the names of the forms. In subdivision (e), “will” is changed to “shall” for clarity.

Necessity:

A document cover sheet is required because it provides relevant data necessary to route the documents to the proper file (meta data). A document separator sheet is required between each set of documents because it alerts the scanner that the following pages are a new document and makes it possible for EAMS to index what is filed. EAMS is a computer based system that will simplify and improve the DWC case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users and transform paper files into secure electronic files, reducing the need for physical storage space at local district offices and the State Records Center. EAMS will replace the current workers’ compensation court technology and supporting infrastructure. Thus, it is necessary for the public to file documents as described in order for the documents to be scanned into EAMS.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**Amended §10160.1 Summary Rating Determinations, Report of Primary Treating
Physician for Unrepresented Employee.**

Specific Purpose of Proposed Section 10160.1:

The purpose of the amendment to subdivision (b) is to prevent the filing of primary treating physician reports that have already been filed in EAMS. As designed, any document already filed in EAMS will be obtainable, and duplicates should not be filed. The other changes to the subdivision (b) are non-substantive changes to the names of the forms and changing “sending” to “filing,” in order to be more precise. In subdivision (c), the purpose of the change is to clarify that the request form and copy of the physician report is first scanned into EAMS, and then served on the non-requesting party. Because a filed copy is sent to the non-requesting party, the acts cannot be done concurrently.

Necessity:

This section is amended due to the change in filing requirements for EAMS. Because all reports must be scanned into EAMS, the division does not want parties to file duplicate documents. A medical report only needs to be scanned into EAMS once in order to be referred to at any time. It is necessary to make the changes to subdivision (c) in order to clarify that first the request form and medical report are filed with DEU, and then a filed copy is served on the non-requesting party.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10160.5 Summary Rating Determinations, Represented Employees

Specific Purpose of Proposed Section 10160.5:

The purpose of the amendment to subdivisions (a) and (b) are non-substantive changes to the names of the forms and case changes. The purpose of the change to subdivision (c) is to change the word “send” to “file.” “File” is the more technically correct term. The word “simultaneously” is deleted and replaced with “immediately” because a since filed copy is sent to the other party, the acts cannot be done simultaneously.

Necessity:

This section is amended due to the change in filing requirements for EAMS. Because all reports must be scanned into EAMS, the division does not want parties to file duplicate documents. A medical report only needs to be scanned into EAMS once in order to be referred to at any time. It is necessary to make the changes to subdivision (c) in order to clarify that first the request form and medical report are filed with DEU, and then a filed copy is served on the non-requesting party.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10161 Forms.

Specific Purpose of Section 10161:

The purpose of this section is to list and provide the new forms that must be used for the Employee's Disability Questionnaire, the Request for Summary Determination of Qualified Medical Evaluator's Report, and Request for Summary Determination of Primary Treating Physician Report. The changes to the forms are in layout and spacing. The form layout and spacing is changed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Necessity:

It is necessary to change the format and spacing to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10161.1 Reproduction of Forms.

Specific Purpose of Amended Section 10161.1:

The purpose of the amendment to this regulation is to inform the public that it may reproduce a form as long as the content and layout are the same. The reason is because the forms are designed in a way to allow for the data to be scanned and then routed into EAMS. The form numbers have been deleted, as the names of the forms are listed.

Necessity:

EAMS is a computer based system that will simplify and improve the DWC case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users, and transform paper files into secure electronic files, thereby reducing the need for physical storage space at local DWC offices and the State Records Center. EAMS will replace the current workers' compensation court technology and supporting infrastructure. Thus, it is necessary for the public to use the forms as designed in order for the documents to be scanned and for the data to be routed into EAMS.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Court Administrator at this time.

Amended §10162 Summary Rating Determinations, Apportionment.

Specific Purpose of Section 10162:

The changes to this section are all non-substantive: adding subdivision numbers, changing “Workers’ Compensation Judge” to “workers’ compensation administrative law judge” and “will” to “shall.” The changes are made for clarity.

Necessity:

The changes are non-substantive changes pursuant to section 100.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10164 Summary Rating Determinations, Reconsideration If Employee Is Unrepresented.

Specific Purpose of Proposed Section 10164:

The purpose of the amendment to subdivision (a) is to prevent the filing the summary rating and the comprehensive medical evaluation, both of which will already reside in EAMS due to the underlying rating issued by DEU. Under EAMS, any document already filed will be obtainable, and duplicates should not be filed. The other changes to the section are non-substantive changes: case changes, and “must” to “shall.” The change of “Industrial Medical Council” to “Medical Unit” is also mandated by repeal of statute. Effective January 1, 2004, SB 228 repealed section 139 of the Labor Code, thereby eliminating the Industrial Medical Council. Its functions, and the authority to regulate (examine, appoint, reappoint and discipline) Qualified Medical Evaluators and to issue panel lists of three QMEs to parties in a workers’ compensation case, were transferred to the Administrative Director of the Division of Workers’ Compensation. (Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon

Necessity:

This section is amended due to the change in filing requirements for EAMS. Because all reports must be scanned into EAMS, the division does not want parties to file duplicate documents. A medical report only needs to be scanned into EAMS once in order to be referred to at any time. It is necessary to change “Industrial Medical Council” to “Medical Unit” because of the repeal of Labor Code section 139.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10165 Service of Summary Rating Determination and Notice of Options Following Permanent Disability Rating.

Specific Purpose of Proposed Section 10165:

The purpose of the amendment to this section is to correct the reference to Labor Code section 4061 from subdivision (h) to subdivision (e). (Labor Code section 4061 was amended in 2004.) The former term “Office of Benefit Determination” is changed to the current term “Disability Evaluation Unit.” These changes comply with the statutory language and add clarity. The purpose of changing the language regarding service to refer to the proposed court administrator’s regulation section 10218 is to be consistent with the service requirements for EAMS.

Necessity:

It is necessary to amend this section to comply with the changes to Labor Code section 4061 and the change in the term of “Office of Benefit Determination” to the current term “Disability Evaluation Unit.” It is necessary to refer to the proposed court administrator’s regulation section 10218 in order to be consistent with the service requirements for EAMS.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10166 Consultative Ratings Determinations.

Specific Purpose of Section 10166:

The sentence regarding “informal ratings” in subdivision (b) is deleted because the reference [section 10301(k)] no longer exists. This change and the other changes to this section are all non-substantive: changing “Workers’ Compensation Judge” to “workers’ compensation administrative law judge” and changing cases. The changes are made for clarity.

Necessity:

The changes are non-substantive changes pursuant to section 100.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Proposed §10166.1 Form (Request for Consultative Rating)

Specific Purpose of Section 10166.1:

The purpose of this section is to provide a form for a request for consultative rating. The form previously existed as an optional form. Its use will now be mandatory. The form layout and spacing is designed to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Necessity:

Section 10166 provides that DEU may prepare consultative rating determinations. This section provides the form to request the determination. The form is necessary because it provides the necessary information to DEU. It is necessary to set forth the format and spacing to allow data (for example, first name and last name) to be routed into EAMS when the form is scanned.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Amended §10167 Informal Ratings.

Specific Purpose of Section 10167:

The following sentence is deleted “The Disability Evaluation Unit may request the employee to submit to a medical examination as provided for under Labor Code Sections 4050, 4600, and 5703.5.” The purpose of deleting the sentence is to correct the reference: the Labor Code sections cited are not appropriate for an informal rating. The other changes to this section are all non-substantive: adding letters to the subdivisions and changing cases. The changes are made for clarity.

Necessity:

It is necessary to delete subdivision (b) because the Labor Code sections cited are not appropriate for an informal rating. The non-substantive changes are made for consistency and to clarify the section.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Repealed §10168 Records, Destruction of.

Specific Purpose of Repealed Section 10168:

The purpose of this repealed regulation was state the retention period for documents filed with the Disability Evaluation Unit. Newly proposed regulation section 10150.3 addresses this issue.

Necessity:

Newly proposed regulation section 10150.3 addresses this issue. The repealed section would conflict with the new section.

Consideration of Alternatives:

No more effective alternative to the proposed regulation, nor any equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

**TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES OR
DOCUMENTS RELIED UPON:**

None.

SPECIFIC TECHNOLOGIES OR EQUIPMENT REQUIRED:

None.

**FACTS RELIED UPON IN SUPPORT OF DIVISION'S INITIAL
DETERMINATION THAT THE REGULATIONS WILL NOT HAVE
A SIGNIFICANT ADVERSE IMPACT ON BUSINESS**

All revised and new forms will be posted on the DWC Web page and downloadable. The amendments to these regulations are either non-substantive or change procedures to allow for filing with EAMS. No new costs are imposed.