

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

**FINAL STATEMENT OF REASONS AND
UPDATED INFORMATIVE DIGEST**

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

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

The Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 133, 139.5, 4061, 4660, 5307.3, and 5307.4, proposes to adopt, amend and repeal regulations within Article 9, Subchapter 1.6, Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 10150, relating to the Disability Evaluation Unit.

| | |
|-------------------|--|
| Amended §10150 | Authority |
| 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 |
| Proposed §10151 | Filing Requirements. |
| Proposed §10152 | Electronic Filing Exemption |
| 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| Repealed §10168 | Records, Destruction of. |

UPDATED INFORMATIVE DIGEST

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code §11346.9(d), the Administrative Director hereby incorporates the Initial Statement of Reasons prepared in this matter. Unless a specific basis is stated for any modification to the regulations is initially proposed, the necessity for the amendments to existing regulations and adoption of new regulations as set forth in the Initial Statement of Reasons continue to apply to the regulations as adopted.

All modifications from the initially proposed text of the regulations are summarized below.

THE FOLLOWING SUBDIVISIONS WERE AMENDED FOLLOWING THE PUBLIC HEARING AND CIRCULATED FOR A 15-DAY COMMENT PERIOD:

Modifications to §10150.1. Signature Disputes and the Signatures of Consultants.

The title of this section was corrected for clerical error to change the letters “d,” “s,” and “c” in the words “disputes,” “signatures,” and “consultants” from lower case to higher case and to insert a period at the end of the title. The title of the section now reads: “§10150.1. Signature Disputes and the Signatures of Consultants.”

Modifications to §10150.2. Technical Unavailability of EAMS.

The title of this section was corrected for clerical error to change the letter “u” in the word “unavailability” from lower case to higher case and to insert a period at the end of the title. The title of the section now reads: “§10150.2. Technical Unavailability of EAMS.” The word “sections” was corrected to state “section.”

Modifications to §10150.3. Disability Evaluation Unit File Retention.

Subdivision (b) is amended. The sentence “If a paper case file has been converted to electronic form, the paper case file may be destroyed.” was moved to the end of the subdivision, and the words “no less than 30 business days after the parties have been informed of the conversion” are added to the sentence in response to comments requesting that the documents be retained for a period of time after the conversion in case there was a mistake or error.

Modifications to §10150.4. Misfiled or Misdirected Documents.

The title of this section was corrected for clerical error to change the letters “m” and “d” in the words “misdirected” and “documents” from lower case to higher case and to insert a period at the end of the title. The title of the section now reads: “§10150.4. Misfiled or Misdirected Documents.”

Letter “(a)” was added to the first subdivision. The extra “a” in the first sentence is deleted. The word “written” is added to modify “request” and the words “with the proposed documents for substitution appended” were added in response to a comment to clarify how the request to move or substitute a document is made.

Subdivision (b) was added to provide the remedies that may be taken if a document is not filed in compliance with proposed sections 10217, 10228 and 10232 of title 8 of the California Code of Regulations. The subdivision now states: “(b) If a document is not filed in compliance with sections 10217, 10228 and 10232 of title 8 of the California Code of Regulations and these regulations, the administrative director may in his or her discretion take the actions set forth in section 10222 of title 8 of the California Code of Regulations.”

Modifications to §10151. Filing Requirements.

This section was amended for clerical error. The entire section is moved after section 10150.4 where it follows chronologically.

Subdivision (b)(3) previously contained the words “properly filed electronic form or document or a.” These words have been removed as this set of regulations does not pertain to the electronic filing of forms and documents.

Proposed §10152. Electronic Filing Exemption.

This section was added to state:

“If a document is filed with EAMS as part of the electronic filing trial, that document does not need to be filed in compliance with sections 10228 and 10232 of title 8 of the California Code of Regulation.”

The purpose of the section is to exempt documents filed in the electronic filing trial from the rules pertain to the filing paper documents. This addition is necessary as some parties will be participating in an electronic filing trial. If documents are filed under the procedures necessary for electronic filing, there is no need for the documents to also be filed as paper documents.

Modifications to §10160.1. Summary Rating Determinations, Report of Primary Treating Physician for Unrepresented Employee.

Subdivision (a) was amended to correct the regulation citation. Section 9785.5 no longer exists. The correct regulation is section 9785.

Modifications to §10161. Forms.

DWC-AD form 100 (DEU)—Employee’s Disability Questionnaire was amended to reflect changes in the registration marks to aid scanning process.

The form was amended to create a text box to replace lines where written text was allowed.

DWC-AD form 101 (DEU)—Request for Summary Rating Determination of Qualified Medical Examiner was amended to reflect changes in the registration marks to aid scanning process.

DWC-AD form 102 (DEU)—Request for Summary Rating Determination of Primary Treating Physician Report was amended to reflect changes in the registration marks to aid scanning process.

The form was amended to create a text box to replace lines where written text was allowed.

Modifications to §10164. Summary Rating Determinations, Reconsideration if Employee is Unrepresented.

The title of this section was corrected for clerical error to change the two letters “I” in the words “If” and “Is” from higher case to lower case. The title of the section now reads: “§10164. Summary Rating Determinations, Reconsideration if Employee is Unrepresented.”

Modifications to §10166.1. Form (Request for Consultative Rating).

DWC-AD Form 104 (DEU) was amended to reflect changes in the registration marks to aid scanning process.

Modifications to §10167. Informal Ratings.

Subdivision (b) was amended to remove the words “on a form prescribed for that purpose by the administrative director” because the form is an internal form that is not required to be part of the rulemaking process.

NONSUBSTANTIVE CHANGES MADE AFTER THE CLOSE OF THE 15-DAY COMMENT PERIOD:

Modifications to §10151. Filing Requirements

The citation in subdivision (b)(2) was corrected. The subdivision incorrectly referred to section 10215 and has been corrected to state 10217. (This is the same cross reference that is found in the Retraining and Return to Work Regulations, section 10116(a)(3). Both of these sets refer to the filing requirements of the Rules of the Court Administrator.)

Modifications to §10161. Forms.

DWC-AD form 100 (DEU)—Employee's Disability Questionnaire was revised to reflect the new revision date: 10/2008. Some of the lines were lengthened and re-aligned.

DWC-AD form 101 (DEU)—Request for Summary Rating Determination of Qualified Medical Examiner was revised to reflect the new revision date: 10/2008. Some of the lines were lengthened and re-aligned. The registration marks were moved.

DWC-AD form 102 (DEU)—Request for Summary Rating Determination of Primary Treating Physician Report was revised to reflect the new revision date: 10/2008. Some of the lines were lengthened and re-aligned. The registration marks were moved.

Modifications to §10166.1. Form (Request for Consultative Rating).

DWC-AD Form 104 (DEU) was revised to reflect the new revision date: 10/2008. Some of the lines were lengthened and re-aligned.

LOCAL MANDATES DETERMINATION

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments do not apply to any local agency or school district.

CONSIDERATION OF ALTERNATIVES

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective as and less burdensome to affected private persons and businesses than the regulations that were adopted.

SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED

The comments of each organization or individual are addressed in the charts contained in the rulemaking binder.

The public comment periods were as follows:

- Initial 45-day comment period: May 30 through July 15, 2008.
- First 15-day comment period: August 6 through August 21, 2008.

-oOo-