

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION
LEGAL UNIT

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September 11, 2013

NOTIFICATION OF INTENT TO READOPT EMERGENCY REGULATIONS

Subject: Electronic document filing and lien filing fee rules

The Department of Industrial Relations, Division of Workers' Compensation (DWC) proposes to readopt the emergency regulations that were adopted effective January 1, 2013 (OAL File No. 2012-1219-01E) affecting and implementing electronic document filing and lien filing fee rules. The emergency regulations can be found at sections 10205, 10205.12, 10206, 10206.1, 10206.2, 10206.3, 10206.4, 10206.5, 10206.14, 10206.15, 10207, and 10208 in Subchapter 1.8.5 of Chapter 4.5, of Title 8 California Code of Regulations. The emergency action also incorporates by reference the Electronic Adjudication Management System (EAMS) Reference Guide and Instructional Manual for E-Form Filers (EAMS E-Form Filing Reference Guide), dated January 1, 2013, and the Electronic Adjudication Management System JET File Business Rules and Technical Specifications, Version 4.0, dated January 1, 2013.

Pursuant to California Code of Regulations, title 1, section 52(c), DWC is incorporating by reference the rulemaking file, OAL File No. 2012-1219-01E, filed with the Office of Administrative Law (OAL) on December 19, 2012, for the initial adoption of the emergency regulations.

Pursuant to California Code of Regulations, title 1, section 52(b)(1), DWC has made progress and proceeded with diligence to comply with Government Code section 11346.1(e). On February 8, 2013, the Notice of Proposed Action for the above-described regulations was published in the California Regulatory Notice Register. DWC correspondingly posted all required rulemaking materials on its website and mailed the notice to the DWC interested parties list. On March 26, 2013, DWC conducted an open, regulatory hearing on the proposed electronic document filing and lien filing fee regulations. Following the public hearing, DWC staff diligently reviewed extensive comments submitted during the 45-day public comment period, has been working with various stakeholders regarding issues related to on the electronic lien filing fees, continued to develop a web-based payment process with a vendor that accepts the electronic payments, and has considered potential substantive changes including a lien fee refund policy that will likely be incorporated during the regular rulemaking process. Additionally, on April 16, 2013, the Workers' Compensation Appeals Board (WCAB) issued notice of its public hearing to amend its regulations in light of SB 863, including definitions and procedures concerning liens and lien filing fee requirements. Because it is necessary that the terms and procedures regarding liens in the DWC regulations are

consistent with the regulations promulgated by the WCAB, DWC and the WCAB need to coordinate the two agencies' rulemakings. On August 27, 2013, DWC issued revised regulations for a 15-day comment period that closes on Sept. 11, 2013. The lien filing and activation fee requirements have been in effect since January 1, 2013. The increased volume of lien filing and activation fees electronically filed over the last several months has given DWC a unique opportunity to determine how the regulations implementing the requirement can be modified and improved. A readoption of the emergency regulations will provide the additional time necessary for DWC to complete the regular rulemaking process and Certificate of Completion.

Pursuant to California Code of Regulations, title 1, section 52(b)(2) there have been no changes in emergency circumstances since the original adoption of the emergency regulations.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulations action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for one hundred and eighty (180) days. Within the 180-day effective period, DWC will proceed with a regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during this rulemaking action.

Attached to this notice is the specific regulatory language now in place following DWC's emergency action and an updated version of the Finding of Emergency submitted to OAL in December 2012.

You may also review the regulatory language and Finding of Emergency on the DWC's website at the following address: <http://www.dir.ca.gov/dwc/dwcRulemaking.html>

If you have any questions regarding this proposed emergency action, please contact Maureen Gray at mgray@dir.ca.gov or (510) 286-0676.