

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

**NOTICE OF MODIFICATION OF TEXT OF
PROPOSED REGULATIONS**

Subject Matter of Regulations: Audit Regulations

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in the Administrative Director by Labor Code sections 59, 129, 129.5, 133, and 5307.3, proposes to modify the text of the following proposed amendments to Article 1 of Chapter 4.5, Subchapter 1.5, Division 1, of California Code of Regulations, title 8, sections 10100.2 through 10115.2, relating to Audit Regulations.

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| Amended section 10100.2 | Definitions. |
| Amended section 10101.1 | Claim File--Contents. |
| Amended section 10104 | Annual Report of Inventory |
| Amended section 10106.1 | Routine and Targeted Audit Subject Selection; Complaint Tracking; Appeal of Targeted Audit Selection |
| Amended section 10111.2 | Full Compliance Audit Penalty Schedules; Target Audit Penalty Schedule. |

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding this proposed modification. **Only comments concerning the proposed modification to the text of the regulation will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on Thursday, January 30, 2009.

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwrules@dir.ca.gov

Due to the inherent risks of non-delivery by facsimile transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text, the modified text with modifications clearly indicated and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

Deletions from the original codified regulatory text noticed for the 45-comment period are indicated by single strike-through, thus: ~~deleted language~~.

Additions to the original codified regulatory text noticed for the 45-comment period are indicated by single underlining, thus: deleted language.

Proposed Text Noticed for This 15-Day Comment Period on Modified Text:

Deletions from the proposed revisions noticed for the 45-day comment period are indicated by strike-through underlining: ~~deleted language~~

Additions to the regulatory text noticed for the 45-day comment period are indicated by double underlining: added language.

Newly proposed deletions from the original codified regulatory text noticed for the 45-comment period are indicated by double strike-through: ~~~~deleted language~~~~.

Newly proposed additions to the original codified regulatory text noticed for the 45-comment period are indicated by double underlining: added language.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 10100.2 Definitions

In subdivision (a), the definition of "adjusting location" is modified to substitute the phrase "local management " for "personnel assigned supervisory responsibility over claims administration". The latter phrase is essentially the definition of "local management" as set forth in proposed section 10100.2(ee).

Modifications to Section 10101.1 Claim File - Contents

Subdivision (p), as initially proposed, is now moved to the introductory paragraph of the regulation. The relocation of the paragraph clarifies that the contents of claim files may be in hard copy, electronic form, or some combination of hard copy and electronic form. Subdivision (c) is modified to clarify that the copy of correspondence in the claim file that is sent to the Division of Workers' Compensation must be either initiated or received by the claims administrator. Subdivision (k) and proposed subdivisions (l), (m), (n), and (o) are modified to delete the phrase "whether stored on paper or in electronic form", as this provision is redundant of the statement in the new introductory paragraph that claim files may be in either hard copy or electronic form. Proposed subdivision (o) is further modified by expressly including

correspondence as a type of document describing a telephone conversation relating to a claim that must be included in the claim file.

Modifications to Section 10104 Annual Report of Inventory

For the purpose of consistency, subdivision (d)(3) is modified to provide that the written notice advising the Administrative Director of a change in the information provided in the new Annual Report of Adjusting Locations must be sent to the manager of the Audit Unit within 45 calendar days after the effective date of the change. In subdivision (d)(4), the erroneous reference to subdivision (c)(1) is corrected to subdivision (d)(1).

Modifications to Section 10106.1 Routine and Targeted Audit Subject Selection; Complaint Tracking; Appeal of Targeted Audit Selection

In order to match the language of Labor Code section 129(b)(3) and for the purpose of clarity, the introductory paragraph to subdivision (c) is modified to provide that “Pursuant to Labor Code section 129(b), the Audit Unit may conduct a targeted profile audit review or full compliance audit of targeted audit subjects.”

Modifications to Section 10111.2 Full Compliance Audit Penalty Schedules; Target Audit Penalty Schedule.

Subdivision (a)(10) is modified in the first sentence by substituting the word “by” for the phrase “up to”. As now proposed, the subdivision provides that penalty amounts assessed pursuant to subdivision (a)(1) through (a)(9) will be increased by 100%, but will not exceed \$5000, except as provided by Labor Code section 129.5(c)(3), if the failure to pay or late payment was in violation of an award or order of the Workers’ Compensation Appeals Board, the Rehabilitation Unit, or the Administrative Director. The subdivision is further modified to provide that for an award or order that contains a unspecified lump sum, the increased penalty amount of 100% shall be determined based on the equivalent amount of unpaid indemnity as assessed under subdivision (a)(2), (a)(3), or (a)(4). Subdivision (b)(8)(B) and (b)(8)(C) are modified by deleting references to: benefit notices provided in California Code of Regulations, title 8, beginning with section 10133.50 (containing Notice of Potential Right to Supplemental Job Displacement Benefit and the Notice of Offer of Modified or Alternative Work); penalties assessed pursuant to section 10111.2(b)(27) (relating to penalties assessed for a materially incomplete or inaccurate supplemental job displacement benefit notice); and supplemental job displacement benefits. Although legal consequences exist for failing to send either the Notice of Potential Right to Supplemental Job Displacement Benefit or the Notice of Offer of Modified or Alternative Work, existing laws do not require that such notices be sent, let alone sent in a timely manner. Subdivision (b)(8)(D) is modified to include the benefit notice in California Code of Regulations, title 8, beginning with section 10117 (containing the Notice of Offer of Work). Subdivision (b)(8)(D) is further amended to provide that the penalty for materially inaccurate or incomplete benefit notices provided in California Code of Regulations, title 8, beginning with section 10133.50 is \$25, unless penalties are assessed pursuant to subdivision (b)(27) (see above).