

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION APPEALS BOARD

NOTICE OF PROPOSED RULEMAKING
RULES OF PRACTICE AND PROCEDURE

TITLE 8, CALIFORNIA CODE OF REGULATIONS, SECTIONS 10300 THROUGH 10999

NOTICE IS HEREBY GIVEN that the Workers' Compensation Appeals Board (WCAB) proposes to amend its Rules of Practice and Procedure (Rules),¹ as described below, after considering all comments, objections, and recommendations regarding the proposed action. *Although equal weight will be accorded to oral and written comments, **the WCAB prefers written comments to oral testimony and prefers written comments submitted by e-mail. If written comments are timely submitted, it is not necessary to present oral testimony at the public hearing.***

The WCAB's proposed amendments to its Rules are being initiated pursuant to its rulemaking power under Labor Code sections 5307(a), 133, 5309 and 5708,² subject to the procedural requirements of section 5307.4. This Notice of Proposed Rulemaking and the accompanying Initial Statement of Reasons have been prepared to comply with the procedural requirements of section 5307.4 and for the convenience of the regulated public to assist it in analyzing and commenting on this largely non-APA rulemaking process.³

PUBLIC HEARING:

The WCAB will hold a public hearing starting at **10:00 AM on Tuesday, April 16, 2013**, in the Santa Barbara Room, Basement Level, of the Hiram Johnson State Office Building located at 455 Golden Gate Avenue, San Francisco, California. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action. Public comment will begin promptly at 10:00 AM and will conclude when the last speaker has finished his or her presentation. To provide everyone with an opportunity to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing. If public comment concludes before the Noon recess, no afternoon session will be held.

The state office building and its hearing rooms are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodations to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State-wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

The WCAB requests but does not require that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

WRITTEN COMMENT PERIOD:

Any interested persons, or their authorized representatives, may submit written comments to the WCAB relevant to the proposed rulemaking. The written comment period closes at **5:00 PM on Tuesday, April 15, 2013**. The WCAB will consider only comments it has *received* by that time. The address for submission of comments by e-mail is WCABRules@dir.ca.gov. The address for submission of comments by mail is: Neil P.

¹ See Cal. Code Regs., Title 8, Chapter 4.5, Subchapter 1.9, section 10250, and Subchapter 2, section 10300 et seq.

² All further statutory references are to the Labor Code unless otherwise specified.

³ Under Government Code section 11351, the WCAB is not subject to Article 5 (Gov. Code, § 11346 et seq.), Article 6 (*id.* § 11349 et seq.), Article 7 (*id.* § 11349.7 et seq.), or Article 8 (*id.* § 11350 et seq.) of the rulemaking provisions of the Administrative Procedures Act (APA), with the sole exception that section 11346.4(a)(5) [publication in the California Regulatory Notice Register] does apply to the WCAB.

Sullivan, Assistant Secretary and Deputy Commissioner, Workers' Compensation Appeals Board, P.O. Box 429459, San Francisco, CA 94142-9459. The address for submission of comments by delivery service or personal delivery is: Neil P. Sullivan, Assistant Secretary and Deputy Commissioner, Workers' Compensation Appeals Board, 455 Golden Gate Avenue, Ninth Floor, San Francisco, CA 94102. Comments also may be submitted by facsimile (Fax) at 1-415-703-4549.

AUTHORITY AND REFERENCE:

Labor Code sections 5307(a), 133, 5309 and 5708, authorize the WCAB to adopt the proposed regulations. The proposed regulations implement, interpret and make specific various sections of the Labor Code.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION:

The WCAB has made the following initial determinations:

Mandate on Local Agencies and School Districts: None.

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.

Other Nondiscretionary Costs or Savings to Local Agencies: None

Cost or Savings to Any State Agency or in Federal Funding to the State: There may be some savings to the Division of Workers' Compensation of the Department of Industrial Relations.

Significant Statewide, Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete With Businesses in Other States: None.

Effect on Small Business: Small businesses that file lien claims with the WCAB may experience slight reductions in costs due to the elimination of the filing of amended liens and the filing of documentation in support of liens. Otherwise, the proposed regulatory action involves changes in the procedures for the adjudication of lien claims that do not impose significant financial or economic burdens on the regulated small businesses.

Cost Impacts on Representative Private Persons or Businesses: None.

Other Impacts on Jobs and Businesses: None.

Effect on Housing Costs: None.

The adoption of these regulations is not expected to create or eliminate jobs or businesses in the State of California or reduce or expand businesses currently doing business in the State of California.

CONSIDERATION OF ALTERNATIVES:

Under Government Code section 11351, the WCAB is *not* subject to the provisions of Government Code section 11346.5(a)(13). Nevertheless, the WCAB invites interested persons to present statements or arguments at the scheduled hearing or during the written comment period regarding reasonable alternatives that would be more effective in carrying out the purpose of this rulemaking, or would be as effective and less burdensome to the affected private persons, than the proposed action of this rulemaking.

PRE-NOTICE PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS:

Under Government Code section 11351, the WCAB is *not* subject to the provisions of Government Code section 11346.45 relating to pre-notice public review and comment of contemplated amendments to its Rules. Nevertheless, the WCAB voluntarily conducted pre-notice public discussions on its web forum from Friday,

December 21, 2011, to and including Wednesday, January 9, 2012. The pre-notice public comments may be viewed at http://www.dir.ca.gov/WCAB/ForumDocs/WCAB_ForumDec2012.htm.

CONTACT PERSONS:

Nonsubstantive inquiries concerning this rulemaking action, such as requests to be added to the e-mail and/or mail distribution list(s) or requests for copies of rulemaking documents (e.g., the proposed regulations, the Initial Statement of Reasons), may be directed to: Annette Gabrielli, Regulations Coordinator, Workers' Compensation Appeals Board, P.O. Box 429459, San Francisco, CA 94142-9459, E-mail: WCABRules@dir.ca.gov, Phone: (415) 703-4580.

The contact person for substantive inquiries is: Neil P. Sullivan, Assistant Secretary and Deputy Commissioner, Workers' Compensation Appeals Board, P.O. Box 429459, San Francisco, CA 94142-9459, E-mail: WCABRules@dir.ca.gov, Phone: (415) 703-4554. Deputy Commissioner Sullivan is also the backup contact person for non-substantive inquiries.

Note: In the event that Deputy Commissioner Sullivan is unavailable, substantive inquiries should be directed to Rick Dietrich, Secretary and Deputy Commissioner at the same address, email address and telephone number.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE, AND INTERNET ACCESS:

Throughout the rulemaking process, the WCAB will have its entire rulemaking file available for inspection and copying at its office at 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102, between the hours of 9:00 AM and 4:30 PM, Monday through Friday (excluding holidays). In addition, the above-cited materials may be accessed on the internet at www.dir.ca.gov/wcab/WCABPropRegsApr2013.htm . As of the date of this Notice, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the proposed text of the regulations, and the Form 399, together with the pre-notice tentative proposed regulations posted on the WCAB's web forum and the timely comments the WCAB received in response.

AUTOMATIC MAILING:

A copy of this Notice, the Initial Statement of Reasons, and the text of the proposed regulations will automatically be sent to those interested persons on the mailing list of the WCAB, and to all persons who have requested notice of hearing as required by Labor Code Section 5307.4.

If adopted, the regulations with any final amendments will appear in the California Code of Regulations at Title 8, Chapter 4.5, Subchapter 2, commencing with Section 10300, with the exception that the amendments to Section 10250 will appear in Subchapter 1.9. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.ccr.oal.ca.gov.