

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

**INITIAL STATEMENT OF REASONS
(Workers' Compensation Information System)**

**Subject Matter of Proposed Regulations:
Workers' Compensation Information System Definitions;
Electronic Data Reporting;
Access To Individually Identifiable Information.**

BACKGROUND TO REGULATORY PROCEEDING:

Labor Code Section 138.6 requires the Administrative Director of the Division of Workers' Compensation to develop a cost-efficient workers' compensation information system (WCIS) to accomplish four objectives:

1. Assist the Department of Industrial Relations manage the workers' compensation system in an efficient and effective manner.
2. Facilitate the evaluation of the effectiveness and efficiency of the benefit delivery system.
3. Assist in measuring how adequately the system indemnifies injured workers and their dependents.
4. Provide statistical data for research into specific aspects of the workers' compensation system.

The statute further requires that the data collected electronically by the WCIS be compatible with the Electronic Data Interchange (EDI) system of the International Association of Industrial Accident Boards and Commissions (IAIABC), and that the data elements to be provided electronically must be set forth in regulations.

The regulations implementing Labor Code § 138.6 (Title 8, California Code of Regulations Sections 9700 – 9704) were filed with the Secretary of State on October 6, 1999 and became operative November 5, 1999. On March 1, 2000, California workers' compensation claims administrators adjusting approximately 95% of all worker's compensation claims in the State either began to transmit data elements required under Section 9702(b) or formally obtained a variance from Subsection (b)'s reporting requirements under Section 9702 (a).

The proposed regulations seek to refine WCIS reporting by eliminating unnecessary data elements, adding relevant data elements, and accommodating current data reporting under the two IAIABC implementation guides that are available for use by claims administrators. (EDI Implementation Guide, Release 1 and EDI Implementation Guide, Release 2.)

Following review of the data elements submitted by claims administrators under Section 9702 (b), the Division has been able to identify currently mandatory data elements that will not provide relevant

information regarding the California Workers' Compensation system. Correspondingly, the Division has been able to ascertain various data elements, contained in the adopted EDI Implementation Guides but not required in the originally approved regulations, which would provide such information. The proposed regulations intend to eliminate the irrelevant data elements and substitute the formerly excluded relevant data elements. Reporting requirements have been slightly adjusted to accommodate newly required data elements and the technical ability of the Division to receive such elements under the two IAIABC implementation guides now in use.

Additionally, the proposed regulations seek to allow the Division access to WCIS individually identifiable information to conduct research on the worker's compensation system in order to carry out the duties of the Division and the Administrative Director. To implement the Legislature's amendment of Labor Code Section 138.7 (Chapter 792, Stats. 2001), the proposed regulations will also allow access to this information by researchers employed or under contract to the Commission of Health and Safety and Workers' Compensation.

These proposed regulations implement, interpret, and make specific two sections of the Labor Code: (1) Labor Code § 138.6, which mandates the development of the WCIS, requires data to be collected electronically to be compatible with the IAIABC EDI system, and requires data elements to be collected through EDI to be set forth in regulations; and (2) Labor Code § 138.7, which limits access to individually identifiable information, and requires the Administrative Director to promulgate regulations governing access to this information by specified entities.

(1) Section Amended: 9701

Problem Addressed:

Some of key terms used in the existing and proposed regulations may be subject to more than a single meaning; others are terms with which the regulated community may not be generally familiar.

Specific Purpose:

The purpose of this proposed regulation is to define key terms used in the existing and proposed regulations to ensure that their content and meaning is clearly understood by the regulated community.

Rationale For Determination Regulation Is Reasonably Necessary To Accomplish Purpose:

The definition of "Bona Fide Statistical Research" is necessary to clarify the purpose for which individually identifiable information will be released under Section 9703 (d). "Closed Claim" is defined to provide a consistent meaning to an event that gives rise to a reporting obligation under Section 9702 (d). "EDI Implementation Guide, Release 2 " is amended to reflect an updated version of the guide issued by the IAIABC on December 1, 1999. "EDI Trading Partner Profile" is redefined to reflect a revision in the profile form. Finally, the definition of "International Association of Industrial Accident Boards and Commissions" is amended to reflect the association's change in office location.

Specific Technologies or Equipment Required:

This regulation defines, but does not mandate the use of, specific technologies or equipment.

Reports Supporting the Adoption

(1) *EDI Implementation Guide for First, Subsequent, Acknowledgment Detail, Header & Trailer Records, Release 1*, issued August 9, 1995, by the International Association of Industrial Accident Boards and Commissions.

(2) *EDI Implementation Guide for First, Subsequent, Acknowledgment Detail, Header & Trailer Records, Release 2*, issued December 1, 1999, by the International Association of Industrial Accident Boards and Commissions.

Consideration of Alternatives:

No alternatives to defining these terms in this manner were considered by the agency. The statute requires that the agency use data elements compatible with the IAIABC EDI system, thus mandating the use of the defined data elements and EDI Implementation Guides. The other terms are defined for reasons of clarity.

Consideration of Alternatives To Lessen Small Business Impact:

Small business is not directly affected by this regulation.

Business Impact:

The regulation will not have any adverse effect on businesses. It simply clarifies terms used in the regulations contained in this new article.

(2) Section Amended: 9702

Problem Addressed:

Labor Code § 138.6 requires the development of a cost efficient workers' compensation information system that will accomplish certain specified objectives, with electronic data elements compatible with the IAIABC EDI system. To accomplish this statutory directive, the data elements to be collected from claims administrators must provide the Division with information that will allow for an accurate estimation of the efficiency and effectiveness of the benefit delivery system.

Following the initial submission of data to the WCIS under the reporting mandate of the existing Section 9702 (b), the Division has identified various data elements, required to be reported to WCIS, that are unnecessary to estimate the efficacy of the system. Correspondingly, the Division has identified data elements available in the IAIABC EDI system that will assist the Division to meet its statutory directive, but are currently not required by existing statutes.

Further, the current regulations mandated the implementation of Release 2 formatted files by January 1, 2001. However, based on the IAIABC's inability to timely establish national transaction standards for Release 2, claims administrators have been frustrated in their effort to update their EDI systems from IAIABC's Release 1 to Release 2. While some claims administrators are utilizing Release 2, most have continued under the Release 1 format. (It is anticipated that claims administrators will update their systems to the IAIABC's EDI Implementation Guide, Release 3, which is expected to be issued by year-end 2002.) Timeframes set forth in the existing regulation for reporting several Release 2 data elements have thus become impractical.

Specific Purpose:

The purpose of this proposed regulation is to refine the list of data elements required to be electronically transmitted to the WCIS, the timing of the submission of these data elements, and the claims on which these data elements are to be submitted. The proposed regulation will further accommodate the reporting of data elements under either of the two EDI Implementation Guides (Release 1 and 2).

Rationale For Determination Regulation Is Reasonably Necessary To Accomplish Purpose:

Recognizing that claims administrators are utilizing either EDI Implementation Guide, Release 1, or EDI Implementation Guide, Release 2, the Division is proposing to amend the current regulations to accommodate the use of both Release 1 and Release 2. Subdivision (a) is modified to allow the use of either guide, and allow those using Release 1 to only transmit Release 1 data elements, while those using Release 2 to only transmit Release 2 data elements.

The Division's Research Unit determined, following the initial reporting of data elements by responsive claims administrators under Section 9702 (b), that several data elements required under the existing regulation would not provide the Division with information needed to answer whether the current benefit delivery system operates in an effective and efficient manner. These data elements are DN 65 under Subsection (b), DN 31 and 42 under Subsection (c), and DN 92 – 94, 125 – 129, and 145 under Subsection (d). Information obtained from these data elements can generally be gleaned from other data submitted to WCIS.

Conversely, the Research Unit has also determined that data elements available in the IAIABC EDI system that are not required under the existing regulation can provide relevant information on the current benefit delivery system. These data elements are DN 87, 90, 91, 193, 195, 212, and 241 under Subsection (d), and DN 88 and 89 under Subsection (g). DN 6, 8, 15, and 187 are added to Subsection (c) to ensure better linkage between individual claims and data elements submitted to WCIS.

The reporting requirements of several data elements required in the existing Subsection (b) (DN 8, 9, 155, 184, 187, 188, 189, 224, and 329) have been modified to reflect the Division's accommodation for reporting under either EDI Implementation Guides (Release 1 or 2).

The proposed regulation further clarifies other "technical" WCIS reporting obligations. The effective date for reporting under Subsection (g) is modified to claims with dates of injury on or after July 1, 2000 to correspond with the Subsequent Report requirements of Subsection (d). Footnote 2 in Subsection (d) is clarified to indicate acceptable permanent disability codes.

Specific Technologies or Equipment Required:

Labor Code § 138.6 requires the data submitted electronically to WCIS be compatible with the IAIABC EDI system. However, the proposed regulation, as well as the existing regulations, does not require the use of specific technologies or equipment beyond the requirement that the submission be compatible with the statutorily required standard. Claims administrators will be able to use any available technology, including those currently in use to transmit information to WCIS, to transmit the data in the required standard format.

Reports Supporting the Adoption:

(1) *EDI Implementation Guide for First, Subsequent, Acknowledgment Detail, Header & Trailer Records, Release 1*, issued August 9, 1995, by the International Association of Industrial Accident Boards and Commissions.

(2) *EDI Implementation Guide for First, Subsequent, Acknowledgment Detail, Header & Trailer Records, Release 2*, issued December 1, 1999, by the International Association of Industrial Accident Boards and Commissions.

Consideration of Alternatives:

No alternatives to defining these terms in this manner were considered by the agency. Labor Code § 138.6 requires that the Division use data elements compatible with the IAIABC EDI system, thus mandating the use of the defined data elements and EDI Implementation Guides. No alternative considered by the agency would be more effective in carrying out the purpose of the regulation or would be as effective and less burdensome to affected private persons.

Consideration of Alternatives To Lessen Small Business Impact:

Small business is not directly affected by this regulation.

Business Impact:

The regulation will not have any adverse effect on businesses. Claims administrators are now required under the existing regulation to report certain information about workers' compensation claims, most of which is currently required to be reported on paper, to the WCIS via electronic reporting.

(3) Section Amended: 9703

Problem Addressed:

Labor Code § 138.7 sets forth restrictions on access to individually identifiable information held in the WCIS, and directs the Administrative Director to adopt certain regulations to carry out the purposes set forth in the statute. The regulations adopted by the Administrative Director must set forth the specific uses for which individually identifiable information may be obtained.

The existing WCIS regulations do not expressly allow the Division to access WCIS individually identifiable information for the purpose of conducting research to assist the Division and the

Administrative Director in carrying out their duties and managing the workers' compensation system in an effective and efficient manner. Further, the existing regulations must be conformed to implement the legislature's amendment of Labor Code Section 138.7 (Chapter 792, Stats. 2001), which allows access to WCIS individually identifiable information by researchers employed or under contract to the Commission of Health and Safety and Workers' Compensation.

Specific Purpose:

The purpose of this amendment is to expressly allow the Division access to individually identifiable information from the WCIS for the purpose of conducting research and to conform the regulations to the legislature's amendment of Labor Code Section 138.7.

Rationale For Determination Regulation Is Reasonably Necessary To Accomplish Purpose:

Labor Code § 138.7 (b)(3) provides that the Division may use individually identifiable information to carry out its duties. The statute correspondingly directs the Administrative Director to adopt regulations governing access to such information; the regulations must set forth the specific uses for which information may be obtained. The WCIS can provide the Division with an accurate, independent source of information regarding the status of claims, including, for example, the amount and rate of indemnity benefits paid. Such, information, when collected and analyzed, can assist the Division in carrying out its duties. Such duties include but are not limited to proscribing rules regarding the issuance of benefit notices (Labor Code Section 138.4) and establishing a schedule of claims adjusting violations and corresponding administrative penalties (Labor Code Section 129.5). In the absence of a regulation, the Division would be statutorily precluded from using individually identifiable information from the WCIS to conduct research that would insure its regulations accurately address current claims adjusting practices.

The regulation further conforms this section to the legislature's amendment of Labor Code Section 138.7 (Chapter 792, Stats. 2001), which allows access to WCIS individually identifiable information by researchers employed or under contract to the Commission of Health and Safety and Workers' Compensation. This amendment to Labor Code Section 138.7, found in subdivision (b)(3)(B), provides:

Individually identifiable information maintained in the workers' compensation information system and the Division of Workers' Compensation may be used by researchers employed by or under contract to the Commission on Health and Safety and Workers' Compensation as necessary to carry out the commission's research. The administrative director shall adopt regulations governing the access to the information described in this subdivision by commission researchers. These regulations shall set forth the specific uses for which this information may be obtained and include provisions guaranteeing the confidentiality of individually identifiable information. Individually identifiable information obtained under this subdivision shall not be disclosed to commission members. No individually identifiable information obtained by researchers under contract to the commission pursuant to this subparagraph may be disclosed to any other person or entity, public or private, for a use other than that research project for which the information was obtained. Within a reasonable period of time after the research for which the information was obtained has been completed, the data

collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

Specific Technologies or Equipment Required:

This regulation does not mandate the use of specific technologies or equipment.

Reports Supporting the Adoption:

None

Consideration of Alternatives:

No alternative considered by the agency would be more effective in carrying out the purpose of the regulation or would be as effective and less burdensome to affected private persons.

Consideration of Alternatives To Lessen Small Business Impact:

Small business is not directly affected by this regulation.

Business Impact:

The regulation will not have any adverse effect on businesses.