

<b>Permanent Disability Rating Schedule Regulations</b>	<b>COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
§9805	<p>Commenter believes there is a major problem with the method of measuring psychiatric impairment. Commenter indicates that the current version of measuring impairment under the 2005 Permanent Disability Rating Schedule has opened the door to fraud and abuse which the industry has sought to close.</p> <p>Commenter believes that a more realistic method of measuring the psychiatric impairment would not be to have a psychiatrist/psychologist assign a GAF score based solely upon the comments made by the employee, but to establish the pre-injury GAF score and compare it with the post injury GAF score. The difference in the two should indicate the level of impairment due to the injury.</p> <p>Commenter further believes that to add objective standards to the evaluation, the evaluator should be required to perform and MMPI as part of the evaluation. The MMPI must be conducted as mandated by the structure under a controlled environment, and not a take home test.</p> <p>The commenter believes that these two suggested changes would put some form of objectivity and a way to measure the impairment back into the rating system.</p>	<p><b>Dennis Knotts</b> April 15, 2005 Written comment</p>	<p>The comment does not address the noticed modifications to the text of the regulation.</p>	<p>None.</p>

§9805.1	<p>Commenter suggests that the language in the last sentence of section 9805.1 be changed as follows:</p> <p>“The Administrative Director shall continue to collect data until a valid statistical sample is obtained. Upon determining that a statistically valid sample of data supports a revision to the diminished future earning capacity adjustment, the Administrative Director shall revise the PDRS before the mandatory five year statutory revision contained in Labor Code section 4660(c).”</p>	<p><b>Deborah J. Nosowsky,</b> DJN Consulting April 21, 2005 Written comment</p>	<p>Disagree. The intent of the Administrative Director is to collect permanent disability ratings data as specified in the section for 18 months, and to make changes to the 2005 PDRS if there is sufficient data to perform a statistically valid evaluation. It is believed that section 9805.1 clearly communicates this intention to the public, and that the proposed change to the language of the section would change the meaning of the section.</p>	None.
§9805.1	<p>Commenter believes that proposed section 9805.1 confirms the failure of the Administrative Director to obtain the additional empirical studies required under Labor Code section 4660(b)(2). Commenter states that proposed section 9805.1 does not fulfill the Administrative Director’s obligation to formulate an adjusted rating schedule based upon additional empirical studies.</p>	<p><b>Angie Wei,</b> Legislative Director, California Labor Federation, AFL-CIO April 25, 2005 Written comment</p>	<p>Disagree. The permanent disability rating schedule has been revised pursuant to SB 899 in a manner intended to promote consistency, uniformity, and objectivity based on the AMA Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition (AMA Guides), and taking into consideration the occupation, age, and diminished future earning capacity of the injured worker.</p> <p>Research was conducted to determine whether empirical studies were conducted which would contain empirical data that could be used to formulate the adjusted rating schedule (i.e., wage loss data based on permanent disability ratings using the AMA Guides). No such studies were found. Pursuant to proposed section 9805.1, the Administrative Director will collect permanent disability rating data on the 2005 PDRS for 18 months or until a valid statistical sample is obtained. The Administrative Director</p>	None.

			will evaluate such data to determine whether revision to the 2005 PDRS is necessary. If the Administrative Director determines that a statistically valid sample of data supports a revision to the diminished future earning capacity adjustment, the Administrative Director will revise the 2005 PDRS before the mandatory five year statutory revision contained in Labor Code section 4660(c).	
§9805.1	<p>Commenter supports the legislative goal of regularly updating the permanent disability rating schedule using fresh data and an up-to-date analysis. The review is essential to ensure the adequacy, equity, and efficiency of the permanent disability evaluation system. The data collection suggested in section 9805.1 is perfectly appropriate and necessary to sustain the continuous review process call for in Labor Code section 4660.</p> <p>The Administrative Director (AD) clearly has the statutory authority to conduct this evaluation under section 4660. The statute has traditionally given the AD considerable discretion to monitor and revise the permanent disability rating schedule to keep it up to date.</p> <p>Section 4610(b)(2), citing the Interim RAND Report (December 2003), clearly contemplates data and analysis for “additional empirical studies” in order to track system adequacy. The data collection period—acquiring 18 months of permanent disability ratings—is</p>	<p><b>Michael McClain,</b> General Counsel, California Workers’ Compensation Institute April 27, 2005 Written comment</p>	Agree.	None.

<p>§9805.1</p>	<p>certainly the necessary first step in the review process.</p> <p>Commenter further states that assuming that the disability ratings referred to in the regulation will all come from the DEU, the Administrative Director should also consider whether that sole source will provide the best and most relevant data. Commenter further states that if Disability Evaluation Unit ratings are not routinely incorporated into the findings of the Workers' Compensation Judges and the parties for settlement purposes, the that data will not reflect the true impact of the new AMA-based schedule. The regulation, therefore, should direct the data collection to the ratings on which an award of benefits of a settlement is based.</p>		<p>Disagree. Ratings by the Disability Evaluation Unit are the ratings that those experts will be providing to the Division for collection of its data. These ratings include summary ratings, consultative ratings, ratings arrived at by workers' compensation judges' decisions, and ratings arrived at by parties' stipulations or compromise and release agreements. The Division does not want to narrow the scope of the data collection as suggested by commenter, on the other hand, the goal is to be inclusive and to examine as many ratings as possible to arrive at a valid statistical sample of collected data.</p>	<p>None.</p>
<p>§9785.4</p>	<p>Commenter states that the proposed modification to the section of this form entitled "pain assessment" fails to correct a major defect of these regulations. Commenter states that in its previous submissions to the Division regarding these regulations, it was pointed out that the AMA Guides does not limit assessment of pain to a maximum rating of 3%.</p>	<p><b>J. David Schwartz</b> CA Applicants Attorneys Association April 27, 2005 Written comment</p>	<p>Disagree. The AMA Guides provides for assessment of the pain component already incorporated in the WPI rating under Chapters 3-17 of the AMA Guides. The modified text in the regulations—the pain assessment portion of the Primary Treating Physician Permanent and Stationary Report (PR-4) and the language contained in Section 1 of the PDRS relating to rating impairment based on pain—was amended to clarify that if the burden of the worker's condition has been increased by pain-related impairment in excess of the pain component already incorporated in the WPI rating under Chapters 3-17 of the AMA Guides, the additional whole person impairment rating may be specified in the range of 0% to 3% whole person impairment.</p>	<p>None.</p>

§9785.4	<p>Commenter states that with regard to the change to the section of the form entitled "functional capacity assessment," they understand the substitution of the word "impairment" for "disability." Commenter argues that the Administrative Director has no authority to limit the evidence submitted on behalf of an injured worker.</p>		<p>Disagree. This comment was already addressed in the 45-day comment chart. The reason the note preceding the functional capacity assessment is there is because there is a change from the previous method in rating impairment. In the old rating method, this information would have been considered as a rating factor. With the new schedule pursuant to the AMA Guides, this information is not considered. The note clearly indicates that the information is being collected for purposes of determining the injured workers' ability to return to his or her usual and customary employment, and will not be considered in the permanent impairment rating. The Administrative Director is not limiting the evidence submitted on behalf of an injured worker but complying with the requirements of the statute.</p>	None.
§9805	<p>Commenter states that the modifications to Table A of the schedule are designated as amendments to correct for clerical error. Since the FEC adjustments included in Table A are essentially unchanged, it is not readily apparent what "clerical error" is being corrected. Commenter states that the only recognizable difference is that each adjustment factor is carried to six decimal places instead of four decimal places.</p>		<p>Disagree. Table A, contained in the 2005 PDRS which was incorporated by reference in section 9805, was corrected by rounding the adjustment factor to the nearest whole number percentage. This was a mathematical/clerical correction which prevents different results in rating when using the FEC Adjustment Table or when the rating is accomplished by manually calculating the adjusted rating. (See comment submitted during the 45-day comment period by Marie W. Wardell, State Compensation Insurance Fund, dated April 4, 2005.)</p>	None.
9805.1	<p>The adoption of this new data collection requirement is an explicit admission that empirical data was not used to create the revised schedule.</p>		<p>Disagree. This comment was already addressed in the 45-day chart. Commenter points precisely in its letter at the data used to arrive at the DFEC. That is, the data used by RAND to develop the findings and recommendations in</p>	None.

	<p>Commenter believes that empirical data will not be available in 18 months to allow an evaluation of the diminished future earning capacity adjustment.</p>		<p>the Interim Report.</p> <p>Disagree. The intent of the Administrative Director is to collect permanent disability ratings data as specified in the section for 18 months, and to make changes to the 2005 PDRS if there is sufficient data to perform a statistically valid evaluation.</p>	<p>None.</p>
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