

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

NOTICE OF RULEMAKING AFTER EMERGENCY ADOPTION

Workers' Compensation – Workers' Compensation – Description of Disabilities, Primary Treating Physician Reporting Requirements, Schedule for Rating Permanent Disabilities

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3, has adopted regulations on an emergency basis to implement the provisions of Labor Code section 4660 as amended, and sections 4663 and 4664 as added to the Labor Code, by Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004).

The regulations adopted constitute Articles 2, 5 and 7 of Chapter 4.5, Subchapter 1, and Subchapter 1.6, of Title 8, California Code of Regulations, sections 9725, 9726, 9727, 9785, 9785.2, 9785.3, 9785.4, 9805, 10150, 10152, 10156, 10158, 10160, 10163, and 10165.5, and repealed sections 10151 and 10154. In the workers' compensation system, injured workers who are permanently disabled by industrial injuries or illness are entitled to indemnity. The regulations govern the indemnity awarded to permanently disabled injured workers based on percentages of permanent disability as set forth in a permanent disability rating schedule. The regulations implement, interpret, and make specific sections 4660, 4663 and 4664 of the Labor Code.

The emergency regulations listed below became effective on January 1, 2005, and will remain in effect for a period of 120 days from January 1, 2005. The purpose of this rulemaking is to adopt the emergency regulations on a permanent basis.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt Articles 2, 5 and 7 of Chapter 4.5, Subchapter 1, and Subchapter 1.6, of Title 8, California Code of Regulations, as follows:

Section 9725	Method of Measurement
Section 9726	Method of Measurement (Psychiatric)
Section 9727	Subjective Disability
Section 9785	Reporting Duties of the Primary Treating Physician
Section 9785.2	Form PR-2 "Primary Treating Physician's Progress Report"
Section 9785.3	Form PR-3 "Primary Treating Physician's Permanent and Stationary Report"
Section 9785.4	Form PR-4 "Primary Treating Physician's Permanent and Stationary Report"
Section 9805	Schedule for Rating Permanent Disabilities, Adoption, Amendment
Section 10150	Disability Evaluation Unit
Section 10151	Schedule for Rating Permanent Disabilities [Repealed]
Section 10152	Disability, When Considered Permanent
Section 10154	Permanent Disability Rating Determinations, Kinds [Repealed]
Section 10156	Formal Rating Determinations
Section 10158	Formal Rating Determinations as Evidence
Section 10160	Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee
Section 10163	Apportionment Referral (DEU Form 105)

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: April 4, 2005
Time: 1:00 p.m.
Place: Auditorium
The Governor Hiram Johnson State Office Building
455 Golden Gate Avenue
San Francisco, California 94102

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or any other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Adel Serafino, 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.

Please note that public comment will begin promptly at 1:00 p.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3.

Reference is to Labor Code sections 4061, 4061.5, 4062, 4600, 4600.3, 4603.2, 4636, 4660, 4662, 4663 and 4664.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

These regulations are required by a legislative enactment - Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004). Senate Bill 899 included Labor Code sections 4660 as amended, and sections 4663 and 4664 as added to the Labor Code.

Labor Code section 4660(a), as amended by Senate Bill 899, now provides that in determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to an employee's diminished future earning capacity.

Labor Code section 4660(b)(1) provides that for purposes of the section, the "nature of the physical injury or disfigurement" shall incorporate the descriptions and measurements of

physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment, 5th Edition (hereinafter “AMA Guides to the Evaluation of Permanent Impairment”).

Labor Code section 4660(b)(2) provides that, for purposes of this section, an employee's diminished future earning capacity shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The Administrative Director shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies.

Labor Code section 4660(c) requires the Administrative Director to amend the permanent disability rating schedule at least once every five years.

Labor Code section 4660(d) provides that the schedule shall promote consistency, uniformity, and objectivity, and that any revision made thereof shall apply prospectively and shall apply to and govern only those permanent disabilities that result from compensable injuries received or occurring on and after the effective date of the adoption of the schedule. Labor Code section 4660(d) further provides that for compensable claims arising before January 1, 2005, the schedule as revised shall apply to the determination of permanent disabilities when there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Section 4061 to the injured worker.

Labor Code section 4660(e) requires the Administrative Director adopt regulations to implement the changes made to this section by Senate Bill 899 on or before January 1, 2005.

In Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004), the Legislature further repealed Section 4663, and added new Section 4663 which provides that apportionment of permanent disability shall be based on causation. Section 4663 requires the physician preparing a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability. Section 4663 further requires that in order for a physician's report to be considered complete on the issue of permanent disability, it must include an apportionment determination. The physician is required to make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of the injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. Section 4663 also requires that upon request, the injured worker claiming an industrial injury disclose all previous permanent disabilities or physical impairments.

Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004) also added new Section 4664 to the Labor Code. Section 4664 provides that the employer is only liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment. It further provides that if the injured worker has received a prior award of permanent disability, it is conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury, and the presumption is a presumption affecting the burden of proof. Further, Labor Code section 4664 provides that the accumulation of all permanent disability awards issued for specified regions of the body is not to exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character pursuant to Section 4662, and prohibits a cumulative permanent disability rating over 100% for each individual injury sustained by an employee arising from the same industrial accident.

The proposed regulations clarify the method for determining percentages of permanent disability set forth in the Schedule for Rating Permanent Disabilities effective January 1, 2005, incorporating by reference the permanent disability rating schedule which incorporates the AMA Guides to the Evaluation of Permanent Impairment; define applicable terms related to the statutes; clarify when the permanent disability evaluations conducted by the physicians must be performed in accordance with the AMA Guides to the Evaluation of Permanent Impairment, and amend the forms used by the primary treating physician to comply with reporting duties as they are impacted by the requirements of the section 4660, including the form used by the primary treating physician to report on the permanent and stationary status of the injured worker's condition.

The aforementioned treating physician forms clarify which form is to be used with the 2005 permanent disability rating schedule and which are to be used with the 1997 permanent disability rating schedule. The forms also include requirements pertaining to the rating of impairments under the AMA Guides under section 4660, and apportionment sections 4663 and 4664.

The proposed regulations further clarify the manner in which the Disability Evaluation Unit, under the authority of the Administrative Director will issue permanent disability ratings consistent with the 2005 permanent disability rating schedule; clarify when a disability is considered permanent; and amend Disability Evaluation Unit's apportionment referral form (DEU Form 101) and DEU's Notice form after a permanent disability rating (DEU Form 110) to conform to the statutes.

The described regulations were adopted as emergency regulations, effective January 1, 2005. This rulemaking would make the regulations permanent. These proposed regulations implement, interpret, and make specific Sections 4660, 4663 and 4664 of the Labor Code as follows:

1. Section 9725. Method of Measurement.

This section provides that the method of measuring physical elements of a disability should follow the Report of the Joint Committee of the California Medical Association and Industrial Accident Commission, as contained in "*Evaluation of Industrial Disability*" edited by Packard Thurber, Second Edition, Oxford University Press, New York, 1960. It clarifies that the section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

2. Section 9726. Method of Measurement (Psychiatric).

This section provides that the method of measuring the psychiatric elements of a disability shall follow the Report of the Subcommittee on Permanent Psychiatric Disability to the Medical Advisory Committee of the California Division of Industrial Accidents, entitled "The Evaluation of Permanent Psychiatric Disability," (hereinafter referred to as the "Psychiatric Protocols") as adopted, forwarded for adoption on July 10, 1987, and subsequent amendments and/or revisions thereto adopted after a public hearing. It clarifies that the section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

3. Section 9727. Subjective Disability.

This section provides that subjective disability should be identified by a description of the activity which produces the disability; the duration of the disability; the activities which are precluded and those which can be performed with the disability; the means necessary for relief. It further provides that the following terms are presumed to mean the following: a *severe* pain would preclude the activity precipitating the pain; a *moderate* pain could be tolerated, but would cause marked handicap in the performance of the activity precipitating the pain; a *slight* pain

could be tolerated, but would cause some handicap in the performance of the activity precipitating the pain; a *minimal* (mild) pain would constitute an annoyance, but causing no handicap in the performance of the particular activity, would be considered as nonratable permanent disability. The section further clarifies that the section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

4. Section 9785. Reporting Duties of the Primary Treating Physician.

This section sets forth the reporting duties of the primary treating physician.

Subdivision 9785(a)(1) provides that the primary treating physician is the physician who is primarily responsible for managing the care of an employee, and who has examined the employee at least once for the purpose of rendering or prescribing treatment and has monitored the effect of the treatment thereafter. The subdivision further provides that the primary treating physician is the physician selected by the employer or the employee pursuant to Article 2 (commencing with section 4600) of Chapter 2 of Part 2 of Division 4 of the Labor Code, under the contract or procedures applicable to a Health Care Organization certified under section 4600.5 of the Labor Code, or in accordance with the physician selection procedures contained in the medical provider network pursuant to Labor Code section 4616.

Subdivision 9785(a)(8) defines permanent and stationary status as the point when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.

Subdivision 9785(b)(3) provides that if the employee disputes a medical determination made by the primary treating physician, including a determination that the employee should be released from care, or if the employee objects to a decision made pursuant to Labor Code section 4610 to modify, delay, or deny a treatment recommendation, the dispute shall be resolved under the applicable procedures set forth at Labor Code sections 4061 and 4062. It further provides that no other primary treating physician shall be designated by the employee unless and until the dispute is resolved.

Subdivision 9785(b)(4) provides that if the claims administrator disputes a medical determination made by the primary treating physician, the dispute shall be resolved under the applicable procedures set forth at Labor Code sections 4610, 4061 and 4062.

Subdivision 9785(g) provides that when the primary treating physician determines that the employee's condition is permanent and stationary, the physician shall, unless good cause is shown, report within 20 days from the date of examination any findings concerning the existence and extent of permanent impairment and limitations and any need for continuing and/or future medical care resulting from the injury. The information may be submitted on the "Primary Treating Physician's Permanent and Stationary Report" form (Form PR-3) contained in section 9785.3 or section 9785.4, or in such other manner which provides all the information required by Title 8, California Code of Regulations, section 10606. It further provides that for permanent disability evaluations performed pursuant to the permanent disability evaluation schedule adopted on or after January 1, 2005, the primary treating physician's reports concerning the existence and extent of permanent impairment shall describe the impairment in accordance with the AMA Guides to the Evaluation on Permanent Impairment (Form PR-4). It also provides that Qualified Medical Evaluators and Agreed Medical Evaluators may not use DWC Form PR-3 or DWC Form PR-4 to report medical-legal evaluations. *Subdivision 9785(g) has been corrected for clarification purposes.*

5. Section 9785.2. Primary Treating Physician's Progress Report (PR-2).

Primary treating physicians are required to submit treatment reports, using either the Primary Treating Physician's Progress Report form (DWC Form PR-2) set forth in Section 9785.2, or in a narrative format meeting specified content and format requirements.

Section 9785.2 provides that DWC Form PR-2 may also be used to submit a request for authorization pursuant to the requirements of Labor Code section 4610.

6. Section 9785.3. Primary Treating Physician's Permanent and Stationary Report (PR-3).

Primary treating physicians may submit their permanent and stationary reports using the Primary Treating Physician's Permanent and Stationary Report form (DWC Form PR-3) as set forth in Section 9785.3.

Section 9785.3 sets forth DWC Form PR-3, which is required to be used for ratings prepared pursuant to the 1997 Permanent Disability Rating Schedule. DWC Form PR-3 provides the requirements on apportionment consistent with sections 4663 and 4664. This language provides that effective April 19, 2004, apportionment of permanent disability shall be based on causation. It further provides that any physician who prepares a report addressing permanent disability due to a claimed industrial injury is required to address the issue of causation of the permanent disability, and in order for a permanent disability report to be complete; the report must include an apportionment determination. The determination must be made pursuant to Labor Code Sections 4663 and 4664 which are set forth in the form.

DWC Form PR-3 further provides questions to be answered in the affirmative or negative by the primary treating physician regarding whether the permanent disability was directly caused by an injury or illness arising out of and in the course of employment or whether the permanent disability was caused, in whole or in part by other factors besides this industrial injury or illness, including any prior industrial injury or illness.

If the primary treating physician determines that the answer to the second question as stated above is "yes," the primary treating physician is required to provide information regarding the approximate percentage of the permanent disability that is due to factors other than the injury or illness arising out of and in the course of employment; and a complete narrative description of the basis for the apportionment finding. DWC Form PR-3 further states that if the primary treating physician is unable to include an apportionment determination in his or her report, then he or she must state the specific reasons why such determination could not be made, and states that the primary treating physician may attach his or her findings and explanation on a separate sheet.

7. Section 9785.4. Primary Treating Physician's Permanent and Stationary Report (PR-4).

Section 9785.4 sets forth the DWC Form PR-4, which like the DWC Form PR-3, will be used by the primary treating physicians to submit their permanent and stationary reports. The DWC Form PR-4 will be used for ratings prepared pursuant to the 2005 Permanent Disability Rating Schedule and the AMA Guides to the Evaluation of Permanent Impairment. DWC Form PR-4 requires the reporting physician to set forth the impairment rating, requiring a report on the whole person impairment (WPI) rating for each impairment using the AMA Guides to the Evaluation of Permanent Impairment, and an explanation as to how the rating was derived. It further requires that the evaluation physician list the tables of the AMA Guides to the Evaluation of Permanent Impairment used, and the page numbers.

DWC Form PR-4 further requires the reporting physician to set forth an assessment of pain. 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, 5th Edition, the evaluating physician is required to specify the additional whole person impairment rating (up to 3% WPI) attributable to such pain. For excess pain involving multiple impairments, attribute the pain in whole number increments to the appropriate impairments. The sum of all pain impairment ratings may not exceed 3% for a single injury.

DWC Form PR-4 further requires the reporting physician to set forth Functional Capacity Assessment. The evaluating physician is advised that the assessment of functional capacity is to be prepared by the treating physician, solely for the purpose of determining a claimant's ability to return to his or her usual and customary occupation, and will not to be considered in the permanent disability rating.

8. Section 9805. Schedule for Rating Permanent Disabilities, Adoption, Amendment.

This section provides that the method for the determination of percentages of permanent disability is set forth in the Schedule for Rating Permanent Disabilities, which has been adopted by the Administrative Director effective January 1, 2005, and which shall be amended at least once every five years. This section further provides that the schedule is adopted and incorporated by reference in its entirety as though it was set forth in the regulation, and it provides that the schedule adopts and incorporates by reference AMA Guides to the Evaluation of Permanent Impairment. This section also provides that the schedule shall be effective for dates of injury on or after January 1, 2005, and in accordance with subdivision (d) of Labor Code section 4660, and that the schedule may be downloaded from the Division of Workers' Compensation website at <http://www.dir.ca.gov/dwc/dwcrep.htm>.

The schedule for permanent disability rating is revised in order to: (1) incorporate the AMA Guides to the Evaluation of Permanent Impairment to describe the nature of a physical injury or disfigurement, (2) give consideration to an employee's diminished future earning capacity by formulating an adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies, and (3) promote consistency, uniformity, and objectivity. A description of the schedule is set forth below:

SECTION 1—INTRODUCTION AND INSTRUCTIONS

I. Introduction

Generally, the introduction section of the Schedule for Rating Permanent Disabilities (hereinafter referred to as the "Schedule") indicates that the Schedule is adopted by the Administrative Director pursuant to Labor Code section 4660. It further states that the statute requires that the schedule be amended at least once every five years.

This section states that the extent of permanent disability that results from an industrial injury can be assessed once an employee's condition becomes permanent and stationary, and sets forth the definition of the term "permanent and stationary" as the point in time when the employee has reached maximal medical improvement (MMI), meaning his or her condition is well stabilized and unlikely to change substantially in the next year with or without medical treatment.

This section further indicates that the calculation of a permanent disability is initially based on an evaluating physician's impairment rating, in accordance with the medical evaluation protocols and rating procedures set forth in the American Medical Association (AMA) *Guides to*

the Evaluation of Permanent Impairment, 5th Edition, which is incorporated by reference and thereafter referred to as the “AMA Guides.”

This section also provides that initial impairment ratings are consolidated by body part and converted to a whole person impairment rating (hereinafter referred to as “impairment standard”). The impairment standard is then adjusted to account for the diminished future earning capacity, occupation and age at the time of injury to obtain a final permanent disability rating.

This section further clarifies that a disability rating can range from 0% to 100%. Zero percent signifies no reduction of earning capacity, while 100% represents permanent total disability. A rating between 0% and 100% represents permanent partial disability. Permanent total disability represents a level of disability at which an employee has sustained a total loss of earning capacity. Some impairments are conclusively presumed to be totally disabling. (Lab. Code, §4662.)

This section also states that each rating corresponds to a fixed number of weeks of compensation. Compensation is paid based on the number of weeks and the weekly compensation rate, in accordance with Labor Code section 4658.

II. Rating Procedures

A. Use of the AMA Guides

This section of the Schedule indicates that the AMA Guides are used by evaluating physicians to determine the extent of an individual’s impairment. The AMA Guides use different scales to describe impairment for different parts and regions of the body. For example, finger impairment is measured using a finger scale that can range from 0% to 100%. Other commonly used scales in the AMA Guides are the hand, upper extremity, foot, lower extremity and whole person scales.

It further states that the scales that correspond to different body regions are equivalent to a percentage of the whole person scale; therefore, these scales are converted to the whole person scale to determine the appropriate impairment rating. For example, an upper extremity impairment in the range of 0% to 100% is equivalent to a whole person impairment in the range of 0% to 60%. The upper extremity impairment is converted to a whole person impairment by multiplying by .6.

This section further indicates that when combining two or more ratings to create a composite rating, the ratings must be expressed in the same scale (this method is further explained in the section on Combining Disabilities).

It also indicates that the whole person impairment scale is referred to as WPI (whole person impairment). The upper and lower extremity scales are referred to as UE (upper extremity) and LE (lower extremity), respectively.

This section further provides that a final permanent disability rating is obtained only after the impairment rating obtained from an evaluating physician is adjusted for diminished future earning capacity, occupation and age at the time of injury.

B. Calculation of Rating

This section of the Schedule indicates that the schedule utilizes an impairment number and an impairment standard. The impairment standard is then modified to reflect diminished future earning capacity, the occupation and the age at the time of injury.

1. Impairment Number

This section of the Schedule indicates that the impairment number identifies the body part, organ system and/or nature of the injury and takes the form of “xx.xx.xx.xx”. The first two digits correspond to the chapter number in the AMA Guides which address the body part/organ system. Subsequent pairs of digits further refine the identification of the impairment.

It provides the following example: Soft tissue lesion of the neck rated under the range of motion (ROM) method would be represented as follows:

15. – 01. – 02. – 02

Spine – Neck – ROM method – Soft tissue lesion

The section further indicates that using Section 2 of the Permanent Disability Rating Schedule, an appropriate impairment number can be found for most impairments.

2. Impairment Standard

This section of the Schedule provides that after identification of the appropriate disability number(s), the next step is to calculate all relevant impairment standard(s) for the impairments being evaluated. An impairment standard is a whole person impairment rating under the AMA Guides, provided by the evaluating physician.

It further indicates that if an impairment based on an objective medical condition is not addressed by the AMA Guides, physicians should use clinical judgment, comparing measurable impairment resulting from the unlisted objective medical condition to measurable impairment resulting from similar objective medical conditions with similar impairment of function in performing activities of daily living.

It further provides that a single injury can result in multiple impairments of several parts of the body. For example, an injury to the arm could result in limited elbow range of motion and shoulder instability. It further states that multiple impairments must be combined in a prescribed manner to produce a final overall rating.

This section of the Schedule states that it is not always appropriate to combine all impairment standards resulting from a single injury, since two or more impairments may have a duplicative effect on the function of the injured body part. The AMA Guides provide some direction on what impairments can be used in combination. Lacking such guidance, it is necessary for the evaluating physician to exercise his or her judgment in avoiding duplication.

This section of the Schedule further provides that the impairment standard is assumed to represent the degree of impairment for a theoretical average worker, i.e., a worker with average occupational demands on all parts of the body and at the average age of 39.

3. Adjustment for Diminished Future Earning Capacity (FEC)

This section of the Schedule provides that the adjustment for diminished future earning capacity (FEC) loss is applied to the impairment standard in accordance with procedures outlined in section 2 of the Schedule. An impairment must be expressed using the whole person impairment scale before applying the FEC adjustment.

This section of the Schedule further provides that the methodology and FEC Adjustment table is premised on a numerical formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The empirical data was obtained from the interim report, "Evaluation of California's Permanent Disability Rating Schedule" (December 2003), prepared by the RAND Institute for Justice. The result is that the body injury categories are placed into different ranges (based on the ratio of standard ratings to proportional wage losses). Each of these ranges will generate a FEC adjustment between 10% and 40% for each injury category.

(a) Summary of the Methodology:

This section of the Schedule summarizes the methodology for arriving at the adjustment for diminished future earning capacity formula as follows:

1. RAND data was used to establish the ratio of average California standard ratings to proportional wage losses for each of 22 injury categories. (*Data for Adjusting Disability Ratings to Reflect Diminished Future Earnings and Capacity in Compliance with SB 899*, December 2004, RAND Institute for Civil Justice, Seabury, Reville, Neuhauser, <http://www.rand.org/publications/WR/WR214/>.) These ratios are listed in Table B below.

2. The range of the ratios for all body injury categories is .45 to 1.81. This numeric range was divided into eight evenly spaced ranges. (See the Range of Ratios columns in Table A below.) Each injury category will fall within one of these eight ranges, based on its rating/wage loss ratio.

3. A series of FEC adjustment factors were established to correspond to the eight ranges described above. (See column 4 of Table A below.) The smallest adjustment factor is a 1.1000 which will result in a 10% increase when applied to the AMA whole person impairment rating. The largest is 1.4000 which will result in a 40% increase. The six intermediate adjustment factors are determined by dividing the difference between 1.1 and 1.4 into seven equal amounts.

4. The formula for calculating the maximum and minimum adjustment factors is $(\frac{1.81}{a} \times .1) + 1$ where a equals the minimum or maximum rating/loss ratio from Table B below. AMA whole person impairment ratings for injury categories that correspond to a greater relative loss of earning capacity will receive a higher FEC adjustment. For example, a psychiatric impairment receives a higher FEC adjustment because RAND data shows that a relatively high wage loss corresponds to the average psychiatric standard permanent disability rating. A hand impairment would receive a lower FEC adjustment because RAND data shows a relatively low wage loss relative to the average psychiatric standard permanent disability rating.

This section of the Schedule further provides that the FEC rank and adjustment factors that correspond to relative earnings for the eight evenly-divided ranges are listed below in Table A. The ratio of earnings to losses and the corresponding rank for each injury category are listed below in Table B. To adjust an impairment standard for earning capacity, multiply it by the appropriate adjustment factor from the Table B and round to the nearest whole number percentage. Alternatively, a table is provided at the end of Section 2 of the Schedule which provides the earning capacity adjustment for all impairment standards and FEC ranks.

Table A

Range of Ratios			
Low	High	FEC Rank	Adjustment Factor
1.647	1.810	One	1.1000
1.476	1.646	Two	1.1429
1.305	1.475	Three	1.1857
1.134	1.304	Four	1.2286
0.963	1.133	Five	1.2714
0.792	0.962	Six	1.3143
0.621	0.791	Seven	1.3571
0.450	0.620	Eight	1.4000

Table B

Part of the Body	Ratio of Rating over Losses	FEC Rank
Hand/fingers	1.810	One
Vision	1.810	One
Knee	1.570	Two
Other	1.530	Two
Ankle	1.520	Two
Elbow	1.510	Two
Loss of grasping power	1.280	Four
Wrist	1.210	Four
Toe(s)	1.110	Five
Spine Thoracic	1.100	Five
General lower extremity	1.100	Five
Spine Lumbar	1.080	Five
Spine Cervical	1.060	Five
Hip	1.030	Five
General upper extremity	1.000	Five
Heart disease	0.970	Five
General Abdominal	0.950	Six
PT head syndrome	0.930	Six
Lung disease	0.790	Seven
Shoulder	0.740	Seven
Hearing	0.610	Eight
Psychiatric	0.450	Eight

The FEC Rank for the "Other" category is based on average ratings and proportional earning losses for the following impairments:

Impaired rib cage
Cosmetic disfigurement
General chest impairment
Facial disfigurement or impairment
Impaired mouth or jaw

Speech impairment
Impaired nose
Impaired nervous system
Vertigo
Impaired smell
Paralysis
Mental Deterioration
Epilepsy
Skull aperture

4. Occupational Grouping

This section of the Schedule provides that after the rating is adjusted for diminished future earning capacity, it is then modified to take into account the requirements of the specific occupation that the employee was engaged in when injured.

It further provides that the Schedule divides the labor market into 45 numbered occupational groups. Each group is assigned a three-digit code called an occupational group number. The first digit of the code refers to the arduousness of the duties, ranking jobs from 1 to 5 in ascending order of physical arduousness; the second digit separates occupations into broad categories sharing common characteristics; the third digit differentiates between occupations within these groups.

This section of the Schedule further indicates that the appropriate occupational group number can be identified by looking up the occupation in the list contained in Section 3A of the Schedule. Each job title is listed along with its corresponding group number. The appropriate occupation can generally be found listed under a scheduled or alternative job title. If the occupation cannot be found, an appropriate occupational group is determined by analogy to a listed occupation(s) based on a comparison of duties. This section further provides that the table Occupational Group Characteristics in Section 3C of the Schedule provides a description of each occupational group to facilitate the determination of a group number.

5. Occupational Variant

This section of the Schedule references section 4 of the Schedule, which contains tables that cross-reference impairment numbers and occupational group numbers to produce an "occupational variant," which is expressed as a letter. These tables are designed so that variant "F" represents average demands on the injured body part for the particular impairment being rated, with letters "E", "D" and "C" representing progressively lesser demands, and letters "G" through "J" reflecting progressively higher demands.

6. Occupational Adjustment

This section of the Schedule provides that after adjusting for diminished future earning capacity, the rating is adjusted next for occupation by reference to tables found in Section 5 of the Schedule. One can find the earning capacity-adjusted rating in the column entitled "Rating" and read across the table to the column headed with the appropriate occupational variant. The intersection of the row and column contains the occupation-adjusted rating.

7. Age Adjustment

This section of the Schedule indicates that after all the previous steps have been completed, then the rating is adjusted to account for the worker's age on the date of injury. Section 6 of the Schedule contains tables for determining the age adjustment. One can find the

occupation-adjusted rating in the column entitled "Rating" and read across the table to the column with the injured worker's age on the date of injury.

8. Final Permanent Disability Rating

This section of the Schedule provides that the number identified on the age adjustment table represents the final overall permanent disability rating percentage for a single impairment. (There is a reference to Subdivisions C.1. and C.2. of the schedule, page 11, concerning the combining of multiple impairments and disabilities.)

9. Rating Formula

This section of the Schedule provides that the final rating is generally expressed as a rating formula, as in the following example:

15.01.02.02 – 8% - 10% - 470H – 13% – 11%

The section indicates that each component is described as follows:

15.01.02.02 – Impairment number for cervical spine, soft tissue lesion

8% – Impairment standard

10% – Rating after adjustment for earning capacity

470 – Occupational group number for Furniture assembler, heavy

H – Occupational variant

13% – Rating after occupationally adjustment

11% – Rating after age adjustment

C. Additional Rating Procedures

1. Formula for Combining Impairments and Disabilities

This section of the Schedule provides the formula for combining impairments and disabilities it provides that impairments and disabilities are generally combined using the following formula where a and b are the decimal equivalents of the impairment or disability percentages:

$$a + b(1-a)$$

This section of the Schedule further provides the following example: The result of combining 15% and 25% would be calculated as follows:

$$\begin{aligned} &.15 + .25(1-.15) \\ &.15 + .25(.85) \\ &.15 + .2125 = .3625 = 36\% \end{aligned}$$

This section further provides that the impairment ratings must be expressed in the same scale to be combined. For example, it would be inappropriate to combine 15% UE with 20% WPI. Likewise, one cannot combine an impairment rating with a disability rating.

This section of the Schedule indicates that except as specified in the section “Adjusting AMA Impairments and Combining Ratings,” when combining three or more ratings on the same scale into a single rating, combine the two largest first, rounding the result to the nearest whole percent. Then combine that result with the next largest rating, and so on, until all ratings are combined. Each successive calculation result must be rounded before performing the next.

2. Adjusting AMA Impairments and Combining Ratings

This section provides that as used in the Schedule, the term “adjusting” refers to adjusting an AMA impairment rating for diminished future earning capacity, occupation and age.

The section further provides that except as specified below, all impairments are converted to the whole person scale, adjusted, and then combined to determine a final overall disability rating.

This section further indicates that multiple impairments involving the hand or foot are combined using standard AMA Guides protocols. The resulting upper or lower extremity impairment is converted to a whole person impairment and adjusted before being combined with other impairments of the same extremity.

It further provides that multiple impairments involving a single part of an extremity, e.g. two impairments involving a shoulder such as shoulder instability and limited range of motion, are combined at the upper extremity level, then converted to whole person impairment and adjusted before being combined with other parts of the same extremity. It notes that some impairments of the same body part may not be combined because of duplication.

This section states that impairments with disability numbers in the 16.01 and 17.01 series are converted to whole person impairment and adjusted before being combined with any other impairment of the same extremity.

It also states that impairments of an individual extremity are adjusted and combined at the whole person level with other impairments of the same extremity before combination with impairments of other body parts. For example, an impairment of the left knee and ankle would be combined before combination with an impairment of the opposing leg or the back.

This section further states that the composite rating for an extremity (after adjustments) may not exceed the amputation value of the extremity adjusted for earning capacity, occupation and age. The occupational variant used to rate an entire extremity shall be the highest variant of the involved individual impairments.

3. Rating Impairment Based on Pain

This section of the Schedule provides that pursuant to Chapter 18 of the AMA Guides, a whole person impairment rating based on the body or organ rating system of the AMA Guides (Chapters 3 through 17) may be increased by up to 3% WPI 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 in Chapters 3-17. (AMA, p. 573.)

It further provides that a physician may perform a formal pain-related impairment assessment if deemed necessary to justify the increase of an impairment rating based on the body or organ rating system. (See Section 18.3f of the AMA Guides starting on page 575.)

It also states that the maximum allowance for pain resulting from a single injury is 3% WPI, regardless of the number of impairments resulting from that injury.

This section of the Schedule further indicates that the addition of up to 3% for pain is to be made at the whole person level. For example, if an elbow impairment were to be increased by 3% for pain, the rating for the elbow would first be converted to the whole person scale, and then increased. The resultant rating would then be adjusted for diminished future earning capacity, occupation and age.

This section also indicates that in the case of multiple impairments, the evaluating physician shall, when medically justifiable, attribute the pain in whole number increments to the appropriate impairments. The additional percentage added for pain will be applied to the respective impairments as described in the preceding paragraph.

4. Rating Psychiatric Impairment

This section of the Schedule provides that psychiatric impairment is to be evaluated by the physician using the Global Assessment of Function (GAF) scale. The resultant GAF score is then converted to a whole person impairment rating using the GAF conversion table.

(a) Instructions for Determining a GAF Score

This section of the Schedule sets forth step by step instructions for determining a GAF score.

(b) Global Assessment of Function (GAF) Scale

This section of the Schedule requires that psychological, social, and occupational functioning be considered on a hypothetical continuum of mental health-illness. It instructs that impairment in functioning due to physical (or environmental) limitations not be included. It further sets forth the GAF scale.

(c) Converting the GAF Score to a Whole Person Impairment

This section of the Schedule sets forth a table which converts the GAF score to a whole person impairment. It instructs the reader to locate the GAF score in the table and read across to determine the corresponding whole person impairment score.

SECTION 2—IMPAIRMENT NUMBER/EARNING CAPACITY ADJUSTMENT

Section 2 replaces the disability number section 2 in the 1997 Permanent Disability Rating Schedule with impairment numbers. It further replaces the disability descriptions of Section 2 of the 1997 Permanent Disability Rating Schedule with impairment descriptions. Further, Section 2 adds the future earning capacity rank for each listed impairment. The introduction in Section 2 states that if the impairment (based on an objective medical condition) is not addressed by the AMA Guides, the user is required to choose the closest applicable impairment number. A table at the end of Section 2 enables the user to apply the earning capacity adjustment to any impairment standard rating.

SECTION 3—OCCUPATIONS AND GROUP NUMBERS

This section of the Schedule remains the same as the 1997 Permanent Disability Rating Schedule, except that the following occupations and group numbers have been added:

Alarm Service Technician (business ser.) – 380
Auto Painter (any industry) – 321
Baggage screener, airport (air transport.) – 212
Bicycle messenger – (business ser.) – 493

Bounty hunter (business ser.) – 390
 Bowler, professional (amuse. and rec.) - 493
 Cable car operator (r.r. transportation) – 350
 CAD designer – (profess. & kindred) – 120
 Card dealer (amusement and rec.) – 211
 Cartographer (prof. & kindred) – 120
 Checker, warehouse (retail trade) – 360
 Coffeemaker (hotel & rest.) – 322
 Community organization worker (social serv.) – 111
 Community service officer, patrol (social serv.) – 250
 Computer set-up person (business serv.)– 320
 Courier (any industry) – 250
 Dietary Aide, Hospital Services (medical ser.) – 322
 Fire inspector (government serv.) – 490
 Flagger, Traffic Control (construction) – 213
 Glass blower, hand (glass mfg.) – 221
 Golf instructor (amuse. and rec.) – 390
 Golfer, professional (amuse. and rec.) – 493
 Hand Labeler (any ind.) – 211
 Inmate, laborer (any industry) – 460
 Loader/unloader (any industry) – 460
 Newscaster (radio-tv broad.) – 210
 Nurse case manager (medical services) – 212
 Painter, traffic line (construction) – 350
 Patrol officer, volunteer (government serv.) – 250
 Pit boss/floor person (amusement & rec.) – 214
 Produce Clerk, Retail (retail trade) – 360
 School Principal (education) – 212
 Set-up person/trade show (retail trade) – 360
 Ski instructor (amuse. and rec.) – 493
 Ski lift operator (amuse. and rec.) – 240
 Ski patroller (amuse. and rec.) – 590
 Smog Technician (automotive ser.) – 370
 Surgical technician (medical serv.) – 212
 Ticket inspector, transportation (r.r. transportation) – 213
 Truss Builder, Construction (construction) – 380
 Waysman (ship-boat mfg.) – 481
 Wind Turbine Technician (construction; utilities) – 482

The section further provides for a reclassification of the occupational group number of aerobic instructor (amusement and rec.) – from 390 to 493

This section of the Schedule has been reorganized. Part A contains an alphabetized list of occupations with their scheduled occupational group numbers. Part B contains an occupational group chart which illustrates the overall system for classifying occupations into groups. Part C contains a description and sample occupations of each group.

SECTION 4—OCCUPATIONAL VARIANTS

This section remains the same as it is in the 1997 Permanent Disability Rating Schedule.

SECTION 5—OCCUPATIONAL ADJUSTMENT

This section remains the same as it is in the 1997 Permanent Disability Rating Schedule.

SECTION 6—AGE ADJUSTMENT

This section remains the same as it is in the 1997 Permanent Disability Rating Schedule.

SECTION 7—EXAMPLES

This section sets forth rating examples illustrating all the basic components of disability rating, including converting AMA scales, adjusting for diminished future earning capacity, occupation and age.

SECTION 8—COMBINED VALUES CHART

This section provides the “Combined Values Chart,” at pp. 604-606 of the AMA Guides.

9. Section 10150. Disability Evaluation Unit.

This section provides that the Disability Evaluation Unit, under the direction and authority of the Administrative Director, will issue permanent disability ratings as required under this subchapter utilizing the Schedule for Rating Permanent Disabilities adopted by the Administrative Director. It further provides that the Disability Evaluation Unit will prepare the following kinds of rating determinations: (a) Formal rating determinations; (b) Summary rating determinations; (c) Consultative rating determinations; and (d) Informal rating determinations.

10. Section 10151. Schedule for Rating Permanent Disabilities.

This section is repealed as redundant.

11. Section 10152. Disability, When Considered Permanent.

This section provides that a disability is considered permanent when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.

12. Section 10154. Permanent Disability Rating Determinations, Kinds.

This section is repealed as redundant.

13. Section 10156. Formal Rating Determinations.

This section provides that a formal rating determination will be prepared by the Disability Evaluation Unit when requested by the Appeals Board or a Workers' Compensation Administrative Law Judge on a form specified for that purpose by the Administrative Director. The form will provide for a description of the disability to be rated, the occupation of the injured employee, the employee's age at the time of injury, the date of injury, the formula used, and a notice of submission in accordance with Appeals Board Rules of Practice and Procedure.

14. Section 10158. Formal Rating Determinations As Evidence.

This section provides that formal rating determinations prepared by disability evaluators shall be deemed to constitute evidence only as to the relation between the disability or impairment standard(s) described and the percentage of permanent disability.

15. Section 10160. Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee.

This section sets forth procedures for summary rating determinations and comprehensive medical evaluations of unrepresented employees. The pertinent subdivisions below have been amended to conform to the statutes.

Subdivision 10160(c) provides that the insurance carrier, self-insured employer or injured worker shall complete a Request for Summary Rating Determination (DEU Form 101), a copy of which shall be served on the opposing party. The requesting party shall send the request, including proof of service of the request on the opposing party, to the Qualified Medical Evaluator together with all medical reports and medical records relating to the case prior to the scheduled examination with the Qualified Medical Evaluator. The request shall include the appropriate address of the Disability Evaluation Unit. A listing of all of the offices of the Disability Evaluation Unit, with each office's area of jurisdiction, will be provided, upon request, by any office of the Disability Evaluation Unit or any Information and Assistance Office.

Subdivision 10160(d) provides that when a summary rating determination has been requested, the Qualified Medical Evaluator shall submit all of the following documents to the Disability Evaluation Unit at the location indicated on the DEU Form 101 and shall concurrently serve copies on the employee and claims administrator:

Subdivision 10160(f) provides that any request for the rating of a supplemental comprehensive medical evaluation report shall be made no later than twenty days from the receipt of the report and shall be accompanied by a copy of the correspondence to the evaluator soliciting the supplemental evaluation, together with proof of service of the correspondence on the opposing party.

16. Section 10163. Apportionment Referral

Section 10163 is a Disability Evaluation Unit Form (DEU Form 105) which is used by the Presiding Workers' Compensation Administrative Law Judge to request that the DEU evaluate a report indicating that part of or all of the permanent disability may be subject to apportionment. Pertinent portions of the DEU Form 105 have been amended to conform to the statutes.

DEU Form 105 provides that the formal medical evaluation report attached to the form indicates that part or all of the permanent disability may be subject to apportionment pursuant to Labor Code Section 4663 and/or Labor Code Section 4664, and requests that the Workers' Compensation Administrative Law Judge determine whether the apportionment is inconsistent with the law. It also revised the provision with respect to a Workers' Compensation Administrative Law Judge's referral of a report back to a medical evaluator to clarify this procedure and to eliminate reference to the word "evidence," which term is inappropriate given the informal, non-judicial nature of this procedure. Thus, the sentence "[i]f you refer the report back to the medical evaluator for correction or clarification, and you receive no response within 30 days, please make a determination based on the available evidence," was deleted and replaced with the following language: "If you believe the apportionment is inconsistent with the law, you may refer the report back to the medical evaluator for correction or clarification. If you receive no response from the medical evaluator within 30 days from your request, please make your determination based on the original report."

DEU Form 105 further provides that after checking the appropriate space as to whether the apportionment is consistent with the law or not, the Workers' Compensation Administrative Law Judge is required to sign and date the bottom of this form and return it with the medical report to the DEU office listed on the form.

17. Section 10165.5. Notice of Options Following Permanent Disability Rating (DEU Form 110)

DEU Form 110 is a form used by DEU to notify the injured worker of his or her options following a permanent disability rating determination. Pertinent portions of the DEU Form 110 have been amended to conform to the statutes.

The first paragraph of DEU Form 110 provides that this is a permanent disability rating determination (Rating) prepared by the State of California Disability Evaluation Unit within the Division of Workers' Compensation. It describes the employee's percentage of permanent disability based a report by the employee's doctor, potential loss of future earning capacity, age, and the type of work at the time of injury.

The first paragraph of DEU Form 110 further provides that if the injured employee disagrees with the rating because he or she believes that the rating was improperly calculated or that the doctor failed to address any or all issues or failed to properly rate his or her impairment, he or she may request administrative review of the rating within 30 days of receipt of the rating, from the Administrative Director of the Division of Workers' Compensation. It further provides that in some cases, he or she may be entitled to an additional medical evaluation or a different medical specialist. It indicates that his or her request should include a copy of the rating and a copy of the report from the doctor. A copy of the request must be sent to the employee's claims adjustor.

The second paragraph of DEU Form 110 under the heading "Special Notice to Unrepresented Injured Workers" provides that if the injured employee has questions about whether to request administrative review of his or her rating or whether another medical evaluation is appropriate, he or she should contact the local Information and Assistance Officer listed in the state government section of his or her telephone book under Department of Industrial Relations, Division of Workers' Compensation. The term "administrative review" of a rating replaces the former term "reconsideration" of a rating, in order to avoid confusion with the procedure for seeking reconsideration of a Workers' Compensation Administrative Law Judge's decision.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of this regulation will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Permanent partial disability awards for injured employees will be determined under the 2005 Permanent Disability Rating Schedule, which is based on objective medical evidence rated under the AMA Guides to the Evaluation of

Permanent Impairment and adjustments for diminished future earning capacity, occupation and age. The new schedule eliminates the use of subjective components of disability of the 1997 Permanent Disability Rating Schedule, which will result in more consistent, uniform and objective ratings that more accurately reflect the work-related medical condition/injury.

- All employers in the state of California that are governed by the California workers' compensation statute, including the State itself and every local agency, are required to pay permanent partial disability indemnity to injured workers whose injury results in permanent partial disability. Because of the legal requirement to pay permanent partial disability indemnity to injured workers, as many as 10,000 California businesses may be impacted. Approximately 500 insurance carriers and 3,000 self-insured employers, which include private corporations and government agencies, may also be impacted.
- Generally, benefits will accrue to all businesses and other entities that employ individuals in the State of California because the permanent disability rating schedule is being revised in a manner intended to promote consistency, uniformity, and objectivity based on the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, and taking into account the occupation, age and diminished future earning capacity of the injured worker. It is estimated there will be a 2.5% decrease in the overall pure premium rate level due to revisions in the schedule in the number of weeks of permanent disability indemnity awarded for specific ranges of percentages of impairment. (See, Labor Code section 4658; Department of Insurance, Decision, File No. RH-04039178.) Further benefits may accrue based on the elimination of the subjective component of the permanent disability rating schedule.
- There will be some small costs related to training insurers and physicians to use the AMA Guides to Evaluation of Permanent Impairment, updating computer systems to incorporate the changes of the revised permanent disability rating schedule, and purchase of the AMA Guides to Evaluation of Permanent Impairment, at the cost of \$128.00 each.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: State government operates under the same workers' compensation system as all other employers in California. There will be a decrease in permanent partial disability costs due to revisions in the schedule in the number of weeks of permanent disability indemnity awarded for specific ranges of percentages of impairment. (See, Labor Code section 4658; Department of Insurance, Decision, File No. RH-04039178.) Further benefits may accrue based on the elimination of the subjective component of the permanent disability rating schedule.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments. The Administrative Director has determined that the proposed regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because

the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The potential costs imposed on all public agency employers and payors by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers and payors, both public and private, and not uniquely to local governments.

- 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. (See “Local Mandate” section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: Local government entities operate under the same workers' compensation system as all other employers in California. There will be a decrease in permanent partial disability costs due to revisions in the schedule in the number of weeks of permanent disability indemnity awarded for specific ranges of percentages of impairment. (See, Labor Code section 4658; Department of Insurance, Decision, File No. RH-04039178.) Further benefits may accrue based on the elimination of the subjective component of the permanent disability rating schedule.

EFFECT ON SMALL BUSINESS

- The Administrative Director has determined that the proposed regulations will result in minor initial costs to small businesses. All employers in the state of California that are governed by the California workers' compensation statute, including small businesses, are required by law to provide workers' compensation benefits, and specifically required to pay permanent partial disability indemnity to injured workers whose injury results in permanent partial disability. These costs may be related to training insurers and physicians to use the AMA Guides to Evaluation of Permanent Impairment, updating computer systems to incorporate the changes of the revised permanent disability rating schedule, and purchase of the AMA Guides to Evaluation of Permanent Impairment, at the cost of \$128.00 each.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present reasonable alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATION

Pursuant to Government Code section 11346.45, prior to the emergency adoption of the regulations, the Administrative Director held several stakeholder meetings to which the public was invited, at which proposed regulations were discussed, and at which a representative group of interested parties was present.

In addition, the text of the proposed regulations and draft of the permanent disability rating schedule were made available for pre-adoption public comment period through the Division's Internet message board (the DWC Forum).

**AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF
PROPOSED REGULATION / INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulation have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below or a copy will be provided upon written request.

In addition, this Notice, the Initial Statement of Reasons, and the text of regulations may be accessed and downloaded from the Department of Industrial Relations' Internet site at www.dir.ca.gov under the heading "Rulemaking-proposed regulations." Any subsequent changes in regulation text, and the Final Statement of Reasons will be available at that Internet site when made.

**PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS AND DEADLINE
FOR SUBMISSION OF WRITTEN COMMENTS**

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing. If you provide a written comment, it will not be necessary to present your comment as oral testimony at the public hearing. Any person may submit written comments on the proposed regulation, prior to the public hearing to:

Ms. Kathleen Llemos
Division of Workers' Compensation - 9th Floor
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov

Unless submitted prior to or at the public hearing, all written comments must be received by the agency contact person, no later than 5:00 p.m. on April 4, 2005. Equal weight will be accorded to oral and written materials.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

Due to the inherent risks of non-delivery by facsimile transmission and email transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission or email 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 RULEMAKING FILE AND LOCATION
WHERE RULEMAKING FILE MAY BE INSPECTED**

Any interested person may inspect a copy or direct questions about the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file.

The rulemaking file, including the Initial Statement of Reasons, the complete text of the proposed regulation and any documents relied upon in this rulemaking may be inspected during

normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays) at the following location:

Division of Workers' Compensation
455 Golden Gate Avenue, Ninth Floor
San Francisco, California 94102

AVAILABILITY OF RULEMAKING DOCUMENTS ON THE INTERNET

Documents concerning this proceeding are available on the Division's website: www.dir.ca.gov. To access them, click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the "Permanent Disability Rating Schedule" rulemaking link.

CONTACT PERSON:

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be directed to the contact person. The contact person is:

Ms. Kathleen Llemos
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

BACK-UP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

To obtain responses to questions regarding the substance of the proposed regulation, or in the event the contact person is unavailable, inquiries should be directed to: Minerva Krohn, Industrial Relations Counsel, at the same address and telephone number as noted above for the contact person.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulation as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulation is adopted. The modified text will be made available on the Division's website: www.dir.ca.gov and may be located by following the direction provided above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website: www.dir.ca.gov by following the directions provided above.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted on a permanent basis, the proposed regulation will remain in effect at Title 8, California Code of Regulations, sections 9725 et seq.