TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 130: IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS
AMEND: §130.1

1. INTRODUCTION.

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §130.1, concerning Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment. This section is adopted without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 630) and will not be republished.

The purpose of these adopted amendments is to clarify the consequence of noncompliance with 28 Texas Administrative Code (TAC) §130.1(c)(3). The adopted amendments to §130.1(c)(3) clarify that an impairment rating is invalid if it is based on the injured employee's condition on a date that is not the maximum medical improvement (MMI) date. The adopted amendments reiterate the Division's interpretation of §130.1(c)(3) since 2004. These adopted amendments further clarify that an impairment rating and its corresponding MMI date must be on a Report of Medical Evaluation to be valid.

In accordance with Government Code §2001.033, this preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were in support of or in opposition to adoption of the rule, and the reasons why the Division agrees or disagrees with the comments and suggestions.

An informal draft of this proposal was published on the Division's website on November 28, 2012. A public hearing for the formal proposal was held on April 12, 2013. The public comment period closed on March 11, 2013, and the Division received written comments from eight commenters and oral comments from four commenters. The Division made no changes in response to written or oral comments.

2. REASONED JUSTIFICATION.

These amendments are necessary to implement Labor Code §408.123, concerning Certification of Maximum Medical Improvement; Evaluation of Impairment Rating. The amendments are also necessary in light of the Sixth Court of Appeals' decision in *State Office of Risk Management v. Joiner*, 363 S.W.3d 242 (Tex. App. – Texarkana, 2012, pet. filed) (*Joiner*). In *Joiner* the court found that §130.1(c)(3) did not state the consequence of noncompliance with §130.1(c)(3). The court affirmed the trial court's decision to adopt an impairment rating corresponding to a certified MMI date that was not the stipulated MMI date. The Division interprets §130.1(c)(3) to require an impairment rating to be based on the MMI date for the impairment rating to be adoptable, as found in Appeal No. 040514 (4/28/2004), Appeal No. 070867 (7/6/2007), and Appeal No. 071398 (9/28/2007). However, the court expressly disagreed with the Division's interpretation of the rule because the rule did not clearly state the consequence of noncompliance with §130.1(c)(3). These amendments reiterate the Division's longstanding position that in accordance with the Act, an impairment rating is valid only when it is assigned and tied directly to an injured employee's certified date of MMI. Division rules implementing the Act do not allow matching one doctor's certified MMI date on a report and an assigned impairment rating from another report. Consequently, the finder of fact cannot match a doctor's certified MMI date from one report with an assigned impairment rating from another report. The rulemaking is necessary to clearly state the consequence of

noncompliance with §130.1(c)(3) and to prevent confusion on the part of system participants regarding the Division's interpretation of its rules in light of the *Joiner* decision. The rulemaking will affect impairment ratings adopted after the effective date of these amendments.

The amendments, which are more fully described below, provide that an impairment rating based on a date other than the MMI date is invalid and cannot be adopted for settlement, at hearing, or at trial. These amendments are necessary to clarify the Division's longstanding interpretation of §130.1(c)(3). These amendments do not affect an insurance company's obligation to pay benefits under Labor Code §410.169, any other Division order, or under Labor Code §408.0041(f).

Statutory objectives require that the impairment rating be based upon an injured employee's condition on the date of MMI. The statutory framework inextricably intertwines certification of an MMI date and assignment of an impairment rating. Labor Code §408.123(a) and §408.011(23) require that an impairment rating be assigned after MMI is reached because an impairment rating is a logical outgrowth of and is based upon an injured employee's condition on that date. The statutory requirement that the impairment rating be assigned after MMI does not center upon the order of operations, but rather the logical connection between the two determinations.

Furthermore, an employee's entitlement to impairment income benefits begins on the day after the date the employee reaches MMI, per Labor Code §408.121(a). Because the definition of MMI refers to the earliest date, as opposed to any subsequent time, and because payment of benefits is tied to the MMI date, the Division requires that the impairment rating be based on the employee's condition on the MMI date to be valid. Additionally, matching one doctor's certified MMI date with another doctor's impairment rating is equivalent to one doctor's opinion of what another doctor's opinion would have been under different circumstances. This is particularly problematic with

the certification of a designated doctor whose opinion is accorded presumptive weight per Labor Code §408.0041(e).

The Division maintains it is appropriate to require that an impairment rating be based on the MMI date to ensure reliable results in the payment of income benefits for workers' compensation claims and in the adjudication of disputes. An impairment rating based on an injured employee's condition on a date before the MMI date is unreliable, for instance, because it, by definition, fails to account for foreseeable intervening changes in an employee's condition. An impairment rating based on a date after the MMI date is also unreliable. For example, if statutory MMI has been reached, and an impairment rating is based on a later date, then that impairment rating might take into account changes in an injured employee's condition after the statutory cut-off date, which is prohibited. Similarly, if clinical MMI was thought to have been reached at an earlier date, and an impairment rating is assigned based on the injured employee's condition on a later incorrect date of MMI, then the initial clinical MMI date might need to be reevaluated to determine when the injured employee in fact reached MMI. In such a case, the MMI date, the impairment rating, or both **c**ould be inaccurate.

The amendments further clarify that an impairment rating and the corresponding MMI date must be included in the Report of Medical Evaluation (report) to be valid and to be adoptable for settlement, at hearing, or at trial. This amendment, along with other changes made to §130.1(b)(2) and (c)(3), is necessary to clarify that an MMI date certified on one Report of Medical Evaluation cannot be associated with an impairment rating assigned on a different Report of Medical Evaluation. A certification of MMI and an assigned impairment rating must be on a Form DWC-069, Report of Medical Evaluation, to be adoptable.

3. HOW THESE SECTIONS WILL FUNCTION.

The amendments to §130.1 update and clarify the rule. First, the adopted amendments include changes made for consistency, clarity, editorial reasons, and to correct typographical and/or grammatical errors.

Second, the amendments clarify §130.1(b)(2) by stating the impairment rating must be assigned for the injured employee's condition on the date of MMI. An impairment rating is invalid if it is based on the injured employee's condition on a date that is not the MMI date. This is necessary to make clear that an impairment rating cannot be adopted unless the impairment rating is based on the employee's condition on the date of MMI as determined by the certifying doctor. An impairment rating assigned to a date other than the date of MMI as determined by the certifying doctor is not adoptable.

Section 130.1(b)(2) is amended to state that an impairment rating and the corresponding MMI date must be included in the report to be valid. This is necessary because the requirements in §130.12(c)(1) - (3) regarding the Report of Medical Evaluation also affect the validity and finality of an MMI date and impairment rating. If an impairment rating is not specified on a Report of Medical Evaluation, which is completed by the certifying doctor, then the impairment rating is invalid.

Third, an amendment to §130.1(c)(3) replaces "as of" the MMI date with "on" the MMI date to reiterate that the impairment rating must be assigned to the MMI date. Further, §130.1(c)(3) is amended to add that an impairment rating is invalid if it is based on the injured employee's condition on a date that is not the MMI date. As discussed in the explanation of amendments to §130.1(b)(2), this is necessary to make clear that an impairment rating cannot be adopted unless the impairment rating is based on the employee's condition on the date of MMI. Finally, §130.1(c)(3) is amended to add that an impairment rating and the corresponding MMI date must be included in the Report of Medical Evaluation to be valid. As discussed in the explanation of amendments to §130.1(b)(2), this

amendment is necessary to reiterate that a valid impairment rating is one that is assigned to the injured employee's condition on the MMI date and specified on a Report of Medical Evaluation.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSES.

General

Comment: Commenters suggest that this proposal is premature. A Petition for Review is pending before the Supreme Court of Texas in *Joiner*, and the Supreme Court has ordered briefing on the merits. A more proper course of action would be for the Division to file an amicus brief with the Supreme Court if it believes its rule was misinterpreted by the Court of Appeals. A commenter suggests submitting an amicus brief in the *Joiner* case on behalf of Ms. Joiner instead of proceeding with the amendment. The commenter is concerned that SORM will attach a copy of the amendment to its brief, which might negatively affect Ms. Joiner's case. The commenter is concerned that the proposal does not benefit the injured worker.

A commenter is concerned that moving forward with the proposal might be an inefficient use of state resources because the Supreme Court might issue a decision that renders the rulemaking invalid.

A commenter suggests postponing the amendment until the current legislative session ends. The commenter states that new legislation might affect Ms. Joiner's case.

A commenter suggests withdrawing the proposal.

Agency Response: The Division disagrees and declines to withdraw the rule proposal. The rulemaking is necessary to prevent confusion on the part of system participants regarding the Division's interpretation of its rules in light of the Sixth Court of Appeals' decision in *Joiner*. The rulemaking reiterates the Division's longstanding interpretation of §130.1(c)(3). The Division interprets §130.1(c)(3) to require an impairment rating to be based on the MMI date as determined by the certifying doctor for the impairment rating to be adoptable. The rulemaking will affect

impairment ratings adopted after the effective date of these amendments. The rulemaking clarifies the Division's interpretation of §130.1(c)(3) in disputes after that date as well.

§130.1.

Comment: A commenter expresses concern regarding the applicability of §130.1 to the commenter's individual claim for benefits and the difficulty of obtaining benefits in the workers' compensation system. The commenter requests that the Division amend §130.1 and all other rules.

Agency Response: The Division agrees that §130.1 should be amended. The Division disagrees that all other Division rules should be amended at this time. Those amendments would be outside the scope of this rulemaking.

§130.1.

Comment: A commenter is concerned about the impartiality of designated doctors. The commenter is concerned about carrier and peer-review doctors sitting at judgment on cases in which they have affiliation with parties to the dispute. The commenter suggests finding independent doctors from health centers, hospitals, or schools. The commenter expresses concern over designated doctors demonstrating a bias that stems from their training. Some carrier doctors recommend considering the effects of spinal surgery in assigning an impairment rating even though they are instructed not to consider such effects. Many doctors do not follow the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides) in their entirety, such as the section related to scarring.

Agency Response: The Division disagrees. The Division has established procedures and training programs to ensure that designated doctors perform their statutory duties without bias toward any system participant. In addition, if a person believes that a designated doctor or any other certifying doctor is out of compliance with the Labor Code or Division rules, that person may file a

complaint. The Division will investigate the complaint and take appropriate action based on the complaint.

§130.1.

Comment: Commenters support the amendments.

Agency Response: The Division appreciates the comment.

§130.1(a)(1)(B)(i).

Comment: A commenter states §130.1(a)(1)(B)(i) conflicts with §130.1(b)(2). Section 130.1(a)(1)(B)(i) should be amended by adding "is at MMI" after "injured employee," and relocating "certify MMI" before "assign an impairment rating."

Agency Response: The Division disagrees. Section 130.1(a)(1)(B)(i) lists the acts a doctor whom the commission has certified to assign impairment ratings is authorized to perform. This list does not specify the order in which those acts must be performed. Section 130.1(b)(2) states that MMI must be certified before an impairment rating is assigned and the impairment rating must be assigned for the injured employee's condition on the date of MMI.

§130.1(a)(1)(B)(ii).

Comment: A commenter states the current rule allows a treating doctor, who is not certified, to certify MMI and assign an impairment rating. The current rule also contradicts this by prohibiting a treating doctor, who is not certified, from certifying MMI and assigning an impairment rating.

The commenter suggests deleting §130.1(a)(1)(B)(ii). It seems inappropriate that a doctor should not have to be certified to determine that an injured employee is at MMI and has no impairment.

Agency Response: The Division disagrees. The comment is outside the scope of this rulemaking. The comment pertains to authorizing a doctor to certify MMI. This rulemaking pertains to the Division's longstanding prohibition against adopting an impairment rating based on the injured employee's condition on a date that is not the MMI date.

§130.1(a)(3).

Comment: A commenter states §130.1(a)(3) is confusing. Section 130.1(a)(3) should be revised by adding language that refers to "a particular claim."

Agency Response: The Division disagrees. The comment is outside the scope of this rulemaking. The comment pertains to the certifying doctor. This rulemaking pertains to the Division's longstanding prohibition against adopting an impairment rating based on the injured employee's condition on a date that is not the MMI date.

§130.1(a)(3).

Comment: A commenter states the Division lacks statutory authority to create a definition of "certifying doctor." The rule should state under what circumstances a doctor qualifies as a certifying doctor.

Agency Response: The Division disagrees. The comment pertains to the definition of certifying doctor. This rulemaking pertains to the Division's longstanding prohibition against adopting an impairment rating based on the injured employee's condition on a date that is not the MMI date.

§130.1(b)(1)(A).

Comment: A commenter states §130.1(b)(1)(A) is vague and confusing. Section 130.1(b)(1)(A) should be revised by adding "in the opinion of a certifying doctor."

Agency Response: The Division disagrees. The Division declines to make the change because §130.1(b)(1)(A) matches the definition of MMI in Labor Code §401.011(30).

§130.1(b)(2) and (c)(3).

Comment: A commenter states there is nothing in the statute that prohibits matching one doctor's certified MMI date to another doctor's assigned impairment rating if there is evidence that supports linking the two.

Agency Response: The Division disagrees. Statutory objectives require that the impairment rating be based upon an injured employee's condition on the date of MMI. The statutory framework

inextricably intertwines certification of an MMI date and assignment of an impairment rating. Labor Code §408.123(a) and §408.011(23) require that an impairment rating be assigned after MMI is reached because an impairment rating is a logical outgrowth of and is based upon an injured employee's condition on that date. The statutory requirement that the impairment rating be assigned after MMI does not center upon the order of operations, but rather the logical connection between the two determinations.

Furthermore, an employee's entitlement to impairment income benefits begins on the day after the date the employee reaches MMI, per Labor Code §408.121(a). Because the definition of MMI refers to the earliest date, as opposed to any subsequent time, and because payment of benefits is tied to the MMI date, the Division requires that the impairment rating be based on the employee's condition on the MMI date to be valid. Additionally, matching one doctor's certified MMI date with another doctor's impairment rating is equivalent to one doctor's opinion of what another doctor's opinion would have been under different circumstances. This is particularly problematic with the certification of a designated doctor whose opinion is accorded presumptive weight per Labor Code §408.0041(e).

The Division prohibits matching one doctor's certified MMI date with another doctor's assigned impairment rating to ensure reliable results in the payment of income benefits and in the adjudication of disputes. The certifying doctor, who is a medical professional, has made a professional evaluation of an injured employee's condition as of a specific date in time. While it is the finder of fact's responsibility to determine the weight of evidence for or against a doctor's certification and assignment, the finder of fact is not qualified to produce a new certification and corresponding impairment rating. The finder of fact would essentially be substituting his or her

opinion for the medical opinion of the doctor, rather than weighing the evidence of the doctor's report.

The Division also prohibits matching one doctor's certified MMI date with another doctor's assigned impairment rating because Labor Code §408.0041(e) accords presumptive weight to the report of the designated doctor unless a preponderance of the evidence is to the contrary. It is unclear how attaching another doctor's impairment rating or MMI date to the designated doctor's report would comport with this presumption.

§130.1(b)(2) and (c)(3).

Comment: Commenters state the Division is without authority to define what is or what is not a valid impairment rating, and this rule will lead to legal challenges.

The statutory framework contained in Labor Code §408.123(f)(1)(A) - (C) and Labor Code §408.124(b) defines what renders a certification of maximum medical improvement or assignment of an impairment rating invalid, and there exists no statutory grant of authority to the agency to further define invalidity. All other deficiencies in the certifying doctor's report go to the weight of the evidence.

Labor Code §408.123(f) states the circumstances under which an employee's first certification of MMI or assignment of an impairment rating may be disputed after the period described in Labor Code §408.123(e). One circumstance is when compelling medical evidence exists of a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the impairment rating. A second circumstance is when compelling medical evidence exists of a clearly mistaken diagnosis or a previously undiagnosed medical condition. A third circumstance is when compelling medical evidence exists of improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid. The third circumstance, which is found in Labor Code §408.123(f)(1)(C) ends

with the phrase "that would render the certification or assignment invalid." Thus, Labor Code §408.123(f)(1) provides an exclusive list of the three circumstances in which the first certification can be determined invalid so as to allow a party to dispute it after the finality period.

The commenter further reasons that Labor Code §408.123(f)(2) only permits the agency to adopt a rule that would provide circumstances where an otherwise non-invalid can be disputed.

Agency Response: The Division disagrees. First, the Division finds no grammatical reason to read the phrase "that would render the certification or assignment invalid" to modify not only Labor Code §408.123(f)(1)(C) but also Labor Code §408.123(f)(1)(A) and (B). Moreover, the reading appears unlikely because the phrase refers to "certification or assignment" yet Labor Code §408.123(f)(1)(A) only concerns impairment ratings, which have no "certification." Nonetheless, the phrase, at most, presents an ambiguous grammatical construction.

This ambiguity is easily resolved, however, because the commenter's reading of Labor Code §408.123(f) leads to absurd outcomes. Specifically, if the phrase "that would render the certification or assignment invalid" modified Labor Code §408.123(f)(1)(A) that would mean that there could exist compelling medical evidence of a significant error by the certifying doctor in applying the American Medical Association guidelines or in calculating the impairment rating that would *not* render an impairment rating invalid. In light of the requirements of Labor Code §408.124, the Division declines to agree with this outcome. Any significant error described by Labor Code §408.123(f)(1)(A), if demonstrated by compelling medical evidence, renders an impairment rating invalid and, therefore, the phrase "that would render the certification or assignment invalid" does not modify Labor Code §408.123(f)(1)(A). If it did, the phrase would be either redundant or incorrect because it leads to the outcome described above that is not permissible under the Act. A similar rationale applies to Labor Code §408.123(f)(1)(B).

Furthermore, the commenter's reading of Labor Code §408.123(f) results in the outcome that the Division can only craft exceptions to ninety day finality under Labor Code §408.123(e) that would not render a certification of MMI or assignment of impairment invalid. The outcome, however, plainly conflicts with Labor Code §408.123(e) requirement that "the first valid certification of maximum medical improvement and first valid assignment of impairment rating" become final if not disputed within the timeframe specified by that subsection. Thus, if a first certification of MMI or first assignment of impairment rating is not invalid and not timely disputed, then the Division cannot craft an exception to later dispute that certification or assignment without conflicting with Labor Code §408.123(e).

For these reasons, the Division does not read Labor Code §408.123(f)(1) as an exclusive list of which certifications or assignments are invalid, and the Division is authorized to adopt these amendments in order to implement the statutory provisions discussed above.

§130.1(b)(2) and (c)(3).

Comment: Commenters state the word "valid" has three meanings in the §130.1, one in statute, and one as used by the Texas Supreme Court. Section 130.1(c)(1) states a zero percent impairment rating may be a valid rating. Section 130.1(a)(2) states a certification of MMI, finding of permanent impairment, and/or impairment rating assigned by an unauthorized doctor are invalid. Section 130.1(c)(2)(C) states impairment ratings assigned using the wrong edition of the AMA Guides shall not be considered valid.

Labor Code §408.123(e) states an employee's first valid certification of MMI and first valid assignment of an impairment rating is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee or the carrier by verifiable means.

The Texas Supreme Court in *American Zurich Ins. Co. v. Samudio*, 370 S.W.3d 363 (Tex. 2012) states an impairment rating not adopted in compliance with Labor Code §408.124(b) would be invalid.

Agency Response: The Division acknowledges that validity of an impairment rating can come into question under various circumstances under the Act and rules. None of the references listed by the commenter conflict with the amendments in this rulemaking. These amendments require that an impairment rating and the corresponding MMI date meet the requirements of §130.1(b)(2) and (c)(3) to be valid and adoptable by the finder of fact.

§130.1(b)(2) and (c)(3).

Comment: Commenters state the language in §130.1(b)(2) and (c)(3), which states an impairment rating and the corresponding MMI date must be included in the Report of Medical Evaluation to be valid, exceeds the Division's authority and is inconsistent with the statute.

Certification of MMI and assignment of the impairment rating are prerequisites to the issuance of the report described in Labor Code §408.123(b) and in the proposed amendments to §130.1(b)(2) and (c)(3). It is only that report, and not the certification of MMI or assignment of impairment rating, that must contain the additional information required by the Commissioner and described in §130.1.

As the date of MMI is already certified and the impairment rating already assigned prior to the issuance of the report, neither can be retrospectively invalidated solely due to a defect in the report itself.

Neither the MMI nor the impairment rating can be said to be invalid simply because they do not appear together in a single document, which would be a mere reporting deficiency.

Agency Response: The Division disagrees. A certifying doctor certifies the date an injured employee reaches MMI and assigns an impairment rating, both of which are to be included in a written report, called the Report of Medical Evaluation, as required by §408.123(b). The report

serves as the document through which the MMI date and impairment rating are communicated to the Division and to the parties, including the injured employee. If the report contains a technical defect, such as a typo related to spelling the employee's name, that defect does not invalidate the report. However, the certification of an injured employee's date of MMI is a critical element which, if incorrect, renders both the report and the impairment rating invalid.

§130.1(b)(2) and (c)(3).

Comment: Commenters state the proposed amendment will likely lead to gamesmanship and protracted dispute resolution. Commenters appear to be concerned about disputes designed to disqualify certified MMI dates and assigned impairment ratings with which a party disagrees. Commenters are concerned about disputes arising from minor, technical defects in a certification or assignment.

Agency Response: The Division disagrees. As set forth above, the rulemaking clarifies the Division's existing interpretation of §130.1. The Division believes any reversal of its interpretation of §130.1 will increase the number of disputes in the workers' compensation system because parties would bring forward claims for adjudication because of the opportunity to mix and match impairment ratings and MMI dates from different certifying doctors.

In addition, the likelihood of disputes designed to disqualify a certification or assignment because of a technicality has been lessened as a result of measures the Division has taken to instruct certifying doctors. Certifying doctors are trained and tested over how to properly certify an MMI date and assign an impairment rating. The doctor conducts a certifying examination and reviews the medical record to certify an MMI date with a reasonable degree of medical probability.

§130.1(b)(2) and (c)(3).

Comment: Commenters state in most, or certainly many, cases the impairment examination occurs significantly after the MMI date. Arguably, an impairment rating cannot be based on the

employee's condition on the date of MMI, when the impairment examination does not occur shortly after the MMI date.

A requirement that an IR be based on the claimant's condition on the MMI date will effectively create an impossible burden on the party relying upon that impairment rating to demonstrate why or how it is so based.

Agency Response: The Division disagrees that it is impossible to base an impairment rating on the MMI date when the certifying examination took place well after MMI.

Designated doctors and other doctors authorized to certify MMI are trained how to determine MMI and assign impairment ratings, based on the statutory definition of MMI and the requirement that the impairment rating be based on the injured employee's condition on the MMI date. A certifying doctor assigns an impairment rating based on the certifying examination, as well as information found in the medical record. This information is sufficient for the doctor to certify MMI and assign an impairment rating based on reasonable medical probability.

§130.1(b)(2) and (c)(3).

Comment: Commenters state the proposed language in §130.1(b)(2) and (c)(3) do not prohibit matching one doctor's certified MMI date to another doctor's assigned impairment rating.

This rule only prohibits the certifying doctor from assigning an impairment rating that is not reflective of the date that he or she certifies the employee reached MMI.

Two doctors, however, could issue two different ratings and two different certifications of MMI and either of those reports would be valid and adoptable under the proposed language. Nothing in this language, then, actually prohibits a finder of fact from mixing and matching the two.

Agency Response: The Division disagrees. The adopted language states the impairment rating must be assigned for the injured employee's condition on the date of MMI, rather than on any other date. The language also states an impairment rating is invalid if it is based on the injured

employee's condition on a date that is not the MMI date. Therefore, the finder of fact cannot attach one doctor's impairment rating to the MMI date certified by another doctor because the impairment rating would not have been based on the MMI date, but rather some other date. Additionally, the rule amendments clarify that an "impairment rating and the corresponding MMI date must be included in the Report of Medical Evaluation to be valid." This means the impairment rating and MMI date must be on the same Report of Medical Evaluation to be valid.

§130.1(b)(2) and (c)(3).

Comment: Commenters state the act of the finder of fact cannot be the act that invalidates either a date of MMI or an impairment rating under this rule as the rule does not even address the actions of the finder of fact. Further, there is nothing in the statute to suggest that once the finder of fact adopts a date of MMI, said act then invalidates every other assigned impairment rating.

Agency Response: The Division disagrees. The finder of fact determines which certification is valid and which others are invalid. The finder of fact invalidates a certification because of an act of a doctor, such as when a doctor bases the impairment rating on the injured employee's condition on a date that is not the MMI date or when a doctor applies the wrong edition of the AMA Guides.

§130.1(b)(2) and (c)(3).

Comment: A commenter states there may be multiple dates of MMI. Section 130.1 addresses pre-dispute issues rather than post-dispute issues.

Agency Response: The Division agrees that there may be multiple certifications of MMI in a particular claim, but only one is used to determine liability for income benefits.

§130.1(b)(2) and (c)(3).

Comment: Commenters state while an impairment rating must be reflective of the claimant's condition on the date of MMI, an impairment rating cannot be disregarded solely because the simultaneously certified date of MMI is different from the adopted date of MMI.

Commenters state the question is one of evidence, as recognized by the courts in *Joiner*, *Am. Cas. Co. v. Hill*, 194 S.W.3d 162 (Tex. App.—Dallas, 2006, pet. denied), *Fireman's Fund Ins. Co. v. Weeks*, 259 S.W.3d 335 (Tex. App.—El Paso, 2008, pet. denied), and *SORM v. Ramirez*, 2010 Tex. App. LEXIS 4956 (Tex. App.—San Antonio, 2010, pet. denied). Commenters state a rating disconnected from an adopted date of MMI should be admissible and adoptable if there is a sufficient attendant explanation as to how the certified rating is consistent with the claimant's condition on the date of MMI, or in the absence of any affirmative evidence that it was not.

Agency Response: The Division disagrees. The Court in *Joiner* found that §130.1(c)(3) did not state the consequence of noncompliance with the rule. The Court then examined the Labor Code and determined that it did not state the consequence of noncompliance either. The Division adopts this rulemaking to reiterate the consequence. The rulemaking is consistent with the Labor Code and is necessary to implement statutory provisions related to MMI and impairment ratings discussed above.

The Division disagrees with the commenters' opinions about *Joiner*, *Hill*, *Weeks*, and *Ramirez*. The courts in *Hill*, *Weeks*, and *Ramirez* each adopted an MMI date certified by a doctor and an impairment rating assigned by that same doctor. These outcomes are consistent with the requirements in this rulemaking.

§130.1(b)(2) and (c)(3).

Comment: A commenter states the Division, by rule, can overturn a court's decision only if the court's decision was based upon an interpretation of an agency rule. In *Joiner*, however, after determining that the rule was silent on the issue before it, then the court turned to and interpreted the statute. The result can, therefore, only be overturned by a legislative change to the statute.

Agency Response: The Division disagrees. *Joiner* was not a challenge to the validity of the Division's rule. The court in *Joiner* merely stated the Labor Code does not require the Division's

interpretation. The court did not find the Labor Code precluded that interpretation. The court left open the opportunity to clarify the consequence of noncompliance, which is the purpose of this rulemaking. The Division adopts this rulemaking to implement provisions in the statutory framework consistent with other Division rules and in furtherance of the Workers' Compensation Act.

§130.1(b)(2) and (c)(3).

Comment: Commenters state the Division's focus should be on prohibiting the adoption of dates of MMI or impairment ratings that are disconnected from each other.

A commenter states if any change is made to the rule, it should be to make valid any impairment rating assigned after MMI is reached. The impairment rating should be the same one day after MMI as well as two months after MMI. The specific date only matters as to the payment of weekly benefits. All possible impairments, including aggravation of preexisting conditions, resulting from a compensable injury should be included in the report.

A commenter states the finder of fact should be allowed to adopt one doctor's certified MMI date and another doctor's assigned impairment rating.

Agency Response: The Division disagrees. If the finder of fact adopts one doctor's MMI date and another doctor's impairment rating, the result would be unreliable. Such an outcome would be inconsistent with the statutory provisions discussed above.

§130.1(b)(2) and (c)(3).

Comment: A commenter states the issue in *Joiner* would have been better resolved had the treating doctor been informed of the correct date of statutory MMI, particularly because it seems likely that he provided a certification of MMI and impairment rating under the provisions of §130.2(c) and (d), which clearly envision that the treating doctor would be provided with that date in the Division's notice. In the absence of information from the Division, a doctor simply does not have the information required to calculate the date.

Agency Response: The Division agrees that it is necessary to inform the treating doctor of the date of statutory MMI. Pursuant to Labor Code §408.123(d), the Division notifies a treating doctor of an approaching statutory MMI date so that the doctor may use the information while evaluating the injured employee.

Nothing prohibits the injured employee, or those representing or assisting the injured employee, from seeking clarification. Furthermore, the Division does not always have perfect information to determine the statutory MMI date because the Division is not informed in all cases of the date when benefits begin to accrue. Ultimately, the parties themselves are in the best position to know the date of statutory MMI and keep the certifying doctor informed.

§130.1(b)(2) and (c)(3).

Comment: A commenter states that creating an artificial date for conditions that are permanent will not fairly treat any participant in this system. Any attempt to elevate form over substance of impairment ratings should be discouraged. The Division cannot adopt a rule for every situation.

Agency Response: The concept of statutory MMI is found in Labor Code §401.011(30) and occurs at the expiration of 104 weeks from the date on which income benefits begin to accrue. The Division does not have authority to abolish statutory MMI.

The Division disagrees that this rulemaking elevates form over substance. The Report of Medical Evaluation serves as the document through which the MMI date and impairment rating are communicated to the Division and to the parties, including the injured employee. If the report contains a technical defect, such as a typo related to spelling the employee's name, that defect does not invalidate the report. However, the certification of an injured employee's date of MMI is a critical element which, if incorrect, renders both the report and the impairment rating invalid.

§130.1(b)(2) and (c)(3).

Comment: A commenter states the rule should allow for a reasonable assessment of when the injured employee reached MMI as opposed to requiring a specific date.

In many instances a reasonable assessment of impairment should be made after statutory MMI is reached and be subject to finalization when reasonably possible.

Agency Response: The Division disagrees. The Labor Code refers to MMI as the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated.

As stated above, a reasonable assessment is not appropriate in the context suggested by the commenter. However, the Division allows for a reasonable assessment of what a carrier believes the impairment rating should be when the carrier has not received a Report of Medical Evaluation by the date of statutory MMI, per §130.2(e)(3). Outside of this context, the Division declines to use a reasonable assessment regarding an MMI date or impairment rating.

§130.1(b)(2) and (c)(3).

Comment: A commenter disagrees that the proposal represents the longstanding interpretation of the Division.

Agency Response: Since 2004 the Division has prohibited adopting an impairment rating based on the injured employee's condition on a date that is not the MMI date. This is demonstrated in Division Appeals Panel decision #040514 (4/28/2004), #070867 (7/6/2007), and #071398 (9/28/2007).

§130.1(b)(2) and (c)(3).

Comment: A commenter is concerned that a typo on the Report of Medical Evaluation might render invalid an otherwise useful piece of evidence. As long as the evaluation took place after the MMI date, the report should be admissible. The commenter is concerned that an injured employee might not be aware of a technical defect in a doctor's certification.

Agency Response: The Division disagrees. The Report of Medical Evaluation serves as the document through which the MMI date and impairment rating are communicated to the Division. If the report contains a technical defect, such as a typo related to spelling the employee's name, that defect does not invalidate the report. However, the certification of an injured employee's date of MMI is a critical element which, if incorrect, renders both the report and the impairment rating invalid.

§130.1(b)(2) and (c)(3).

Comment: Commenters state if the Division has the authority to further define validity of MMI certifications and impairment rating assignments, then §130.12(c) will also have to be amended. The comment appears to indicate a conflict between §130.12(c) and amended language in §130.1(b)(2) and (c)(3).

Agency Response: The Division disagrees. Section 130.12(c) prescribes requirements for the certification on Form DWC-069, the Report of Medical Evaluation. Subsections 130.1(b)(2) and (c)(3) state an impairment rating is invalid if it is based on the injured employee's condition on a date that is not the MMI date. It is unclear from the comment how these three sections might conflict. The Division requires compliance with amended §130.1(b)(2) and (c)(3), in addition to the requirements applicable to the certification on Form DWC-069, Report of Medical Evaluation, in §130.12(c).

§130.1(b)(2) and (c)(3).

Comment: A commenter states if the Division does not desire to adopt a wholly new rule, the prohibition should be in §130.8 instead of §130.1. The commenter suggests a new §130.8(d) that makes valid an impairment rating that merely is reflective of the injured employee's condition on the MMI date. The commenter also suggests a new §130.8(d) that makes valid an impairment rating if it reliably reflects the injured employee's condition on the MMI date.

Agency Response: The Division disagrees. The suggested change is outside the scope of this rulemaking. Further, the suggested language would permit the fact finder to substitute its opinion for the expert opinion of a medical doctor, which is not permissible under the Act and would result in an unreliable report as stated above. Therefore, the Division declines to make the change.

§130.1(b)(2).

Comment: A commenter states §130.1(b)(2) conflicts with Labor Code §408.122 and §408.123. The commenter suggests changing "the date of MMI" to "a date of MMI" and deleting the word "corresponding." The commenter states §130.1(b)(2) is confusing.

Agency Response: The Division disagrees. As discussed above, if the Division were to adopt the changes suggested by the commenter, the result would allow adoption of an unreliable impairment rating, and would not fit within the statutory framework.

§130.1(b)(4).

Comment: A commenter states §130.1(b)(4) is vague and confusing. Section 130.1(b)(4) should be revised by replacing "the" with "a" in reference to the certifying doctor.

Agency Response: The Division disagrees. The comment is outside the scope of this rulemaking. The comment pertains to instructions for the certifying doctor. This rulemaking pertains to the Division's longstanding prohibition against adopting an impairment rating based on the injured employee's condition on a date that is not the MMI date.

§130.1(c)(3).

Comment: A commenter states §130.1(c)(3) is vague and confusing. The commenter suggests changing "the date of MMI" to "a date of MMI" and deleting the word "corresponding." The commenter also suggests deleting the words "to be valid."

Agency Response: The Division disagrees. As discussed above, if the Division were to adopt the changes suggested by the commenter, the result would allow adoption of an unreliable impairment rating, and would not fit within the statutory framework.

§130.1(c)(1) - (3).

Comment: A commenter states §130.1(c)(1), (2) and (3) conflict with Labor Code §408.011(24). The statutory definition of "impairment rating" does not contain the word "current." The word "current" should be deleted from the rule.

Section 130.1(d)(1) conflicts with Labor Code §408.011(24). The statutory definition of "impairment rating" does not contain the word "current." The word "current" should be deleted from the rule.

Agency Response: The Division disagrees. In some cases, an injured employee has incurred more than one compensable injury in previous claims. The word "current" is necessary to clarify which particular compensable injury is at issue.

§130.1(c)(4).

Comment: A commenter suggests that the last sentence of §130.1(c)(4) be deleted and the following sentence substituted for it: "If a health care practitioner other than the certifying doctor conducts motion, sensory, or strength testing, the health care practitioner shall be identified by name and a copy of a report from the health care practitioner shall be attached to the certifying doctor's certification of maximum medical improvement and impairment rating." This will better ensure that the health care practitioner performing such testing has actually received the required training.

Agency Response: The Division disagrees. The comment is outside the scope of this rulemaking. The comment pertains to the qualification of a health care practitioner who conducts motion, sensory, and strength testing. This rulemaking pertains to the Division's longstanding prohibition against adopting an impairment rating based on the injured employee's condition on a date that is not the MMI date.

§130.1(c)(4).

Comment: A commenter states §130.1(c)(4) is also vague and confusing. Section 130.1(c)(4) should be revised by replacing "the" with "a" in reference to the certifying doctor. The commenter also suggests adding "who made the referral for additional testing" to clarify which certifying doctor is responsible for ensuring the requirements of this subsection are complied with.

Agency Response: The Division disagrees. The comment is outside the scope of this rulemaking. The comment pertains to the qualification of a health care practitioner who conducts motion, sensory, and strength testing. This rulemaking pertains to the Division's longstanding prohibition against adopting an impairment rating based on the injured employee's condition on a date that is not the MMI date.

§130.1(d)(1)(A).

Comment: A commenter states §130.1(d)(1)(A) is also vague and confusing. Section 130.1(d)(1)(A) should be revised by stating the report must be signed by the certifying doctor "who conducted the evaluation." Electronic signature should also be allowed.

Agency Response: The Division disagrees. The comment is outside the scope of this rulemaking. The comment pertains to a doctor's signature on the Report of Medical Evaluation. This rulemaking pertains to the Division's longstanding prohibition against adopting an impairment rating based on the injured employee's condition on a date that is not the MMI date.

§130.1(d)(4).

Comment: A commenter states a new §130.1(d)(4) should be adopted by the Division to clarify that anyone may file the Report of Medical Evaluation and avoid confusion among Division staff, treating doctors, designated doctors, employers, and service agents.

Agency Response: The Division disagrees. The comment is outside the scope of this rulemaking. The comment pertains to who may file a Report of Medical Evaluation. This rulemaking

pertains to the Division's longstanding prohibition against adopting an impairment rating based on the injured employee's condition on a date that is not the MMI date.

§130.1(e).

Comment: A commenter states §130.1(e) conflicts with other agency rules. Section 130.1(e) is also vague and confusing. Section 130.1(e) should be revised allowing a certifying doctor, doctor's agent, or doctor's employer to maintain the original copy of the certifying doctor's report, narrative, and related documentation. The rule should allow for electronic or facsimile transmittal of reports.

Agency Response: The Division disagrees. The comment is outside the scope of this rulemaking. The comment pertains to maintaining the original copy of the Report of Medical Evaluation. This rulemaking pertains to the Division's longstanding prohibition against adopting an impairment rating based on the injured employee's condition on a date that is not the MMI date.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For:

Property Casualty Insurers Association of America, Insurance Council of Texas, and American Insurance Association

Against: Office of Injured Employee Counsel

6. STATUTORY AUTHORITY.

The amendments are adopted under Labor Code §§401.011, 402.00128, 402.061, 408.0041, 408.025, 408.121, 408.123, 408.124, 408.125, and 415.0035.

Section 401.011 contains definitions used in the Texas Workers' Compensation Act. Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 requires the Division to adopt rules necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Section 408.0041 establishes requirements applicable to designated doctor examinations of an injured employee. Section 408.025 requires the

Division to specify by rule the reports a health care provider is required to file. Section 408.121 provides that an employee's entitlement to impairment income benefits begins on the day after the date the employee reaches MMI. Section 408.123 requires a doctor certifying MMI to file a written report certifying that maximum medical improvement has been reached, stating the employee's impairment rating, and providing any other information required by the Commissioner. Section 408.124 requires an award of an impairment income benefit to be based on an impairment rating determined using the impairment rating guidelines described in that section. Section 408.125 provides the process for disputing impairment ratings. Section 415.0035 establishes administrative violations for a provider failing to submit required medical reports.

7. TEXT.

§130.1. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment

(a) Authorized Doctor.

(1) Only an authorized doctor may certify maximum medical improvement (MMI), determine whether there is permanent impairment, and assign an impairment rating if there is permanent impairment.

(A) Doctors serving in the following roles may be authorized as provided in subsection (a)(1)(B) of this section.

(i) the treating doctor (or a doctor to whom the treating doctor has referred the injured employee for evaluation of MMI and/or permanent whole body impairment in the place of the treating doctor, in which case the treating doctor is not authorized);

(ii) a designated doctor; or

(iii) a required medical examination (RME) doctor selected by the insurance carrier and approved by the division to evaluate MMI and/or permanent whole body impairment after a designated doctor has performed such an evaluation.

(B) Prior to September 1, 2003 a doctor serving in one of the roles described in subsection (a)(1)(A) of this subsection is authorized to determine whether an injured employee has permanent impairment, assign an impairment rating, and certify MMI. On or after September 1, 2003, a doctor serving in one of the roles described in subsection (a)(1)(A) of this section is authorized as follows:

(i) a doctor whom the division has certified to assign impairment ratings or otherwise given specific permission by exception to, is authorized to determine whether an injured employee has permanent impairment, assign an impairment rating, and certify MMI; and

(ii) a doctor whom the division has not certified to assign impairment ratings or otherwise given specific permission by exception to is only authorized to determine whether an injured employee has permanent impairment and, in the event that the injured employee has no impairment, certify MMI.

(2) Doctors who are not authorized shall not make findings of permanent impairment, certify MMI, or assign impairment ratings and shall not be reimbursed for the examination, certification, or report if one does so. A certification of MMI, finding of permanent impairment, and/or impairment rating assigned by an unauthorized doctor are invalid. If a treating doctor finds that the injured employee has permanent impairment but is not authorized to assign an impairment rating, the doctor is also not authorized to certify MMI and shall refer the injured employee to a doctor who is so authorized.

(3) A doctor who is authorized under this subsection to certify MMI, determine whether permanent impairment exists, and assign an impairment rating and who does, shall be referred to as the "certifying doctor."

(b) Certification of Maximum Medical Improvement.

(1) Maximum medical improvement (MMI) is:

(A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;

(B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or

(C) the date determined as provided by Texas Labor Code §408.104.

(2) MMI must be certified before an impairment rating is assigned and the impairment rating must be assigned for the injured employee's condition on the date of MMI. An impairment rating is invalid if it is based on the injured employee's condition on a date that is not the MMI date. An impairment rating and the corresponding MMI date must be included in the Report of Medical Evaluation to be valid.

(3) Certification of MMI is a finding made by an authorized doctor that an injured employee has reached MMI as defined in subsection (b)(1) of this section.

(4) To certify MMI the certifying doctor shall:

(A) review medical records;

(B) perform a complete medical examination of the injured employee for the explicit purpose of determining MMI (certifying examination);

(C) assign a specific date at which MMI was reached.

(i) The date of MMI may not be prospective or conditional.

(ii) The date of MMI may be retrospective to the date of the certifying exam.

(D) Complete and submit required reports and documentation.

(c) Assignment of Impairment Rating.

(1) An impairment rating is the percentage of permanent impairment of the whole body resulting from the current compensable injury. A zero percent impairment may be a valid rating.

(2) A doctor who certifies that an injured employee has reached MMI shall assign an impairment rating for the current compensable injury using the rating criteria contained in the appropriate edition of the AMA Guides to the Evaluation of Permanent Impairment, published by the American Medical Association (AMA Guides).

(A) The appropriate edition of the AMA Guides to use for all certifying examinations conducted before October 15, 2001 is the third edition, second printing, dated February, 1989.

(B) The appropriate edition of the AMA Guides to use for certifying examinations conducted on or after October 15, 2001 is:

(i) the fourth edition of the AMA Guides (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the AMA prior to May 16, 2000). If a subsequent printing(s) of the fourth edition of the AMA Guides occurs, and it contains no substantive changes from the previous printing, the division by vote at a public meeting may authorize the use of the subsequent printing(s); or

(ii) the third edition, second printing, dated February, 1989 if, at the time of the certifying examination, there is a certification of MMI by a doctor pursuant to subsection (b) of this section made prior to October 15, 2001 which has not been previously withdrawn through agreement of the parties or previously overturned by a final decision.

(C) This subsection shall be implemented to ensure that in the event of an impairment rating dispute, only ratings using the appropriate edition of the AMA Guides shall be considered. Impairment ratings assigned using the wrong edition of the AMA Guides shall not be considered valid.

(3) Assignment of an impairment rating for the current compensable injury shall be based on the injured employee's condition on the MMI date considering the medical record and the certifying examination. An impairment rating is invalid if it is based on the injured employee's condition on a date that is not the MMI date. An impairment rating and the corresponding MMI date must be included in the Report of Medical Evaluation to be valid. The doctor assigning the impairment rating shall:

(A) identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;

(B) document specific laboratory or clinical findings of an impairment;

(C) analyze specific clinical and laboratory findings of an impairment;

(D) compare the results of the analysis with the impairment criteria and provide the following:

(i) A description and explanation of specific clinical findings related to each impairment, including zero percent (0%) impairment ratings; and

(ii) A description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides. The doctor's inability to obtain required measurements must be explained.

(E) assign one whole body impairment rating for the current compensable injury;

(F) be responsible for referring the injured employee to another doctor or health care provider for testing, or evaluation, if additional medical information is required. The certifying doctor is responsible for incorporating all additional information obtained into the report required by this rule:

(i) Additional information must be documented and incorporated into the impairment rating and acknowledged in the required report.

(ii) If the additional information is not consistent with the clinical findings of the certifying doctor, then the documentation must clearly explain why the information is not being used as part of the impairment rating.

(4) After September 1, 2003, if range of motion, sensory, and strength testing required by the AMA Guides is not performed by the certifying doctor, the testing shall be performed by a health care practitioner, who within the two years prior to the date the injured employee is evaluated, has had the impairment rating training module required by §180.23 (relating to Division Required Training for Doctors) for a doctor to be certified to assign impairment ratings. It is the responsibility of the certifying doctor to ensure the requirements of this subsection are complied with.

(5) If an impairment rating is assigned in violation of subsection (c)(4), the rating is invalid and the evaluation and report are not reimbursable. A provider that is paid for an evaluation and/or report that is invalid under this subsection shall refund the payment to the insurance carrier.

(d) Reporting.

(1) Certification of MMI, determination of permanent impairment, and assignment of an impairment rating (if permanent impairment exists) for the current compensable injury requires completion, signing, and submission of the Report of Medical Evaluation and a narrative report.

(A) The Report of Medical Evaluation must be signed by the certifying doctor. The certifying doctor may use a rubber stamp signature or an electronic facsimile signature of the certifying doctor's personal signature.

(B) The Report of Medical Evaluation includes an attached narrative report. The narrative report must include the following:

(i) date of the certifying examination;

(ii) date of MMI;

(iii) findings of the certifying examination, including both normal and abnormal findings related to the compensable injury and an explanation of the analysis performed to find whether MMI was reached;

(iv) narrative history of the medical condition that outlines the course of the injury and correlates the injury to the medical treatment;

(v) current clinical status;

(vi) diagnosis and clinical findings of permanent impairment as stated in subsection (c)(3);

(vii) the edition of the AMA Guides that was used in assigning the impairment rating (if the injured employee has permanent impairment); and

(viii) a copy of the authorization if, after September 1, 2003, the doctor received authorization to assign an impairment rating and certify MMI by exception granted from the division.

(2) A Report of Medical Evaluation under this rule shall be filed with the division, injured employee, injured employee's representative, and the insurance carrier no later than the seventh working day after the later of:

(A) date of the certifying examination; or

(B) the receipt of all of the medical information required by this section.

(3) The report required to be filed under this section shall be filed as follows:

(A) The Report of Medical Evaluation shall be filed with the insurance carrier by facsimile or electronic transmission; and

(B) The Report of Medical Evaluation shall be filed with the division, the injured employee and the injured employee's representative by facsimile or electronic transmission if the doctor has been provided the recipient's facsimile number or email address; otherwise, the report shall be filed by other verifiable means.

(e) Documentation. The certifying doctor shall maintain the original copy of the Report of Medical Evaluation and narrative as well as documentation of:

(1) the date of the examination;

(2) the date any medical records necessary to make the certification of MMI were received, and from whom the medical records were received; and

(3) the date, addressees, and means of delivery that reports required under this section were transmitted or mailed by the certifying doctor.

8. CERTIFICATION.

This agency hereby certifies that the adopted amendments have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on_____.

X _____

Dirk Johnson
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the amendments to 28 TAC §130.1 specified herein, concerning Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment, are adopted.

AND IT IS SO ORDERED.

X _____

ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

X

Dirk Johnson
General Counsel

COMMISSIONER ORDER NO.