

the fund is not in excess of 10 percent of the total value of all of the fund's investments.

(4) *Parent corporation.* Parent corporation has the meaning given such term by section 424(e).

(5) *Publicly traded*—(i) *In general.* A security is publicly traded if it is readily tradable on an established securities market.

(ii) *Established securities market.* For purposes of this paragraph (f)(5), a security is traded on an established securities market if—

(A) The security is traded on a national securities exchange that is registered under section 6 of the Securities and Exchange Act of 1934 (15 U.S.C. 78f); or

(B) The security is traded on a foreign national securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority.

(iii) *Readily tradable.* For purposes of this paragraph (f)(5), except as provided by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin, a security is readily tradable if—

(A) The security is traded on a securities exchange that is described in paragraph (f)(5)(ii)(A) of this section; or

(B) The security is traded on a securities exchange that is described in paragraph (f)(5)(ii)(B) of this section and the security is deemed by the Securities and Exchange Commission (SEC) as having a "ready market" under SEC Rule 15c3-1 (17 CFR 240.15c3-1).

(g) *Effective date and transition rules*—(1) *Statutory effective date*—(i) *General rule.* Except as otherwise provided in this paragraph (g), section 401(a)(35) is effective for plan years beginning after December 31, 2006.

(ii) *Collectively bargained plans*—(A) *Delayed effective date.* In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006, section 401(a)(35) is effective for plan years beginning after the earlier of

- (1) the later of—
- (i) December 31, 2007; or
- (ii) the date on which the last such collective bargaining agreement terminates (determined without regard to any extension thereof); or
- (2) December 31, 2008.

(B) *Definition of collectively bargained plans.* For purposes of this paragraph (g)(1)(ii), in the case of a plan for which one or more collective bargaining agreements apply to some, but not all, of the plan participants, the plan is considered a collectively bargained plan if at least 25 percent of the participants in the plan are members

of collective bargaining units for which the contributions under the plan are specified under a collective bargaining agreement.

(iii) *Special rule for certain employer securities held in an ESOP.* Section 901(c)(3)(A) and (B) of the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (PPA '06), provides a special effective date for an employee stock ownership plan that holds a class of preferred stock with a guaranteed minimum value, as described in that section.

(2) *Statutory transition rules*—(i) *General rule.* Pursuant to section 401(a)(35)(H), in the case of the portion of an account to which paragraph (c) of this section applies and that consists of employer securities acquired in a plan year beginning before January 1, 2007, the requirements of paragraph (c) of this section only apply to the applicable percentage of such securities.

(ii) *Applicable percentage*—(A) *Phase-in percentage.* For purposes of this paragraph (g)(2), the applicable percentage is determined as follows—

Plan year to which paragraph (c) of this section applies:	The applicable percentage is:
1st	33
2nd	66
3rd and following	100

(B) *Special rule.* For a plan described in paragraph (g)(1)(iii) of this section for which the special effective date under section 901(c)(3) of PPA '06 applies, the applicable percentage under this paragraph (g)(2)(ii) is determined without regard to the delayed effective date in section 901(c)(3)(A) and (B) of PPA '06.

(iii) *Nonapplication for participants age 55 with three years of service.* Paragraph (g)(2)(i) of this section does not apply to an individual who is a participant who attained age 55 and had completed at least three years of service (as defined in paragraph (c)(3) of this section) before the first day of the first plan year beginning after December 31, 2005.

(iv) *Separate application by class of securities.* This paragraph (g)(2) applies separately with respect to each class of securities.

(3) *Regulatory effective date.* This section is effective for plan years beginning on or after January 1, 2009.

Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

[FR Doc. E7-25533 Filed 1-2-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AM55

Schedule for Rating Disabilities; Evaluation of Scars

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising that portion of the Schedule that addresses the Skin, so that it more clearly reflects our policies concerning the evaluation of scars.

DATES: Comments must be received on or before February 4, 2008.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to RIN 2900-AM55 "Schedule for Rating Disabilities; Evaluation of Scars." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 319-5847. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (38 CFR part 4) by revising the portions of § 4.118, the Skin, that address scars. A prior proposed rulemaking addressing the evaluation of scars was published in the **Federal Register** (67 FR 65915) on October 29, 2002, but it was subsequently withdrawn as VA determined that the proposed amendments did not accomplish the stated purpose or intended effect. The

withdrawal was published at 71 FR 78391 on December 29, 2006.

Scars resulting from burns potentially involve a wide range of locations, extent and severity. This rule would clarify that VA's diagnostic codes and means for evaluating scars, set forth under § 4.118, also encompass burn scars by incorporating "burn scars" into the title of the diagnostic codes most appropriate for evaluating them. At the same time, it would revise diagnostic codes 7800, 7801, 7802, 7804, and 7805, and remove diagnostic code 7803, to update and clarify the rating schedule.

Diagnostic Code 7800

Diagnostic code 7800 addresses disfigurement of the head, face, or neck, and provides criteria for evaluation based on eight possible characteristics of disfigurement and the extent of any gross distortion or asymmetry of facial features. We propose to change the title of diagnostic code 7800 from "Disfigurement of the head, face, or neck" to "Burn scar(s); scar(s) due to other causes; or other disfigurement of the head, face, or neck" to more clearly indicate that scarring, including burn scarring, may be the cause of disfigurement.

There are currently three notes under diagnostic code 7800, and we propose to add two more. New note #4 directs that disabling effects other than disfigurement that are associated with individual scar(s) of the head, face, or neck, such as pain, instability, and residuals of associated muscle or nerve injury, be evaluated under the appropriate diagnostic code(s) and combined under § 4.25. This note would provide clear guidance to raters for assessing disability other than disfigurement that is related to scars of the head, face, and neck.

We propose to add new note #5 to explain that the number of characteristics of disfigurement required to reach a particular evaluation level need not be present in a single scar in order to assign that level. The purpose of this proposed change is to ensure clarity in the method of application of the eight characteristics of disfigurement.

Diagnostic Code 7801

We propose to change the title of diagnostic code 7801 from "Scars, other than head, face, or neck, that are deep or that cause limited motion" to "Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are deep and nonlinear." First, this change indicates that this is the appropriate diagnostic code for the evaluation of burn scars that are deep, as well as for

nonburn scars that are deep. Second, the addition of "that are nonlinear" further clarifies what types of scars require evaluation under this diagnostic code. Because evaluation under diagnostic code 7801 is based on the surface area of scar(s), with the minimum compensable level requiring an area of at least 6 square inches (39 square centimeters), linear scars, which may have considerable length but only minimal width, could virtually never reach even the minimum evaluation under this diagnostic code. Therefore, it is not an appropriate diagnostic code to use for their evaluation. Linear scars, which would include, for example, most surgical scars, would be evaluated under diagnostic code 7804, as well as 7805, if applicable.

Third, the removal of reference to scars that limit motion reflects other changes proposed by this rule. Currently a scar that limits motion is assigned a rating under diagnostic code 7801, but the rating is based solely on the area of the scar and thus may not accurately reflect the degree of limitation of motion. As proposed by this rule, diagnostic code 7805 would make clear that veterans may receive a rating for the limitation of motion, or other functional effects of scars, under the diagnostic codes specifically governing such effects on the relevant body part, and that such a rating may be assigned in addition to any rating under diagnostic code 7801 or 7802 based on the area of the scar. We believe this practice would more accurately reflect the true level of disability where a scar limits motion. Accordingly, there is no need to refer to limitation of motion in diagnostic code 7801.

The evaluation criteria for diagnostic code 7801 are based on the area(s) of scars that fall under this diagnostic code and are currently: Area or areas exceeding 144 square inches (929 sq. cm.) for 40 percent, area or areas exceeding 72 square inches (465 sq. cm.) for 30 percent, area or areas exceeding 12 square inches (77 sq. cm.) for 20 percent, and area or areas exceeding 6 square inches (39 sq. cm.) for 10 percent. We propose to make a nonsubstantive change to these evaluation criteria to eliminate any possible confusion in the current criteria and to provide clear guidance on evaluating scars that fall between the sizes indicated at various percentage levels, for example a scar that exceeds 72 square inches but does not reach 144 square inches in area. This amendment would change the criteria to: Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.) for 10 percent, area or areas of

at least 12 square inches (77 sq. cm.) but less than 72 square inches (465 sq. cm.) for 20 percent, area or areas of at least 72 square inches (465 sq. cm.) but less than 144 square inches (929 sq. cm.) for 30 percent, and area or areas of 144 square inches (929 sq. cm.) or greater for 40 percent.

We propose to redesignate current Note (2) as Note (1). We propose to revise current Note (1) under diagnostic code 7801 (which is renumbered as note (2)) to make clearer the guidance on evaluating multiple scars under this diagnostic code and to assure that it reflects current policy. The current note says: "Scars in widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated and combined in accordance with § 4.25 of this part." We propose to revise this note to clarify that if multiple scars are present, VA will assign a separate evaluation for each affected extremity, based on the total area of the qualifying scars of that extremity, and assign a separate evaluation for the trunk, if affected, based on the total area of the qualifying scars of the trunk. Note (2) would also direct that the separate evaluations be combined under § 4.25. Qualifying scars are deep scars that are not located on the head, face, or neck.

Multiple scars on different parts of the body (i.e., each extremity and the trunk), such as a scar on each arm or separate scars on the right leg and torso, would be evaluated separately based on the surface area of the scar located on each affected body part. Similarly, multiple scars on one part of the body, such as two scars on the right arm, would be evaluated based on the surface area of the scars on that part of the body. In this manner, a veteran with two scars on one arm would receive a single rating but a veteran with one scar on each arm would receive two ratings, but both evaluations would reflect the area of the scar(s). We recognize that a veteran with one affected body part may be compensated at a slightly lower rate than a veteran with two affected body parts, depending on the size of the areas of scarring. However, this difference reflects the somewhat greater difficulty in obtaining and maintaining employment that is caused by two scars that are not located near each other as compared to two scars proximate to each other.

Note (2), as revised, would also acknowledge that a scar may run into two separate areas (for example a scar of the trunk that runs across the shoulder onto the left arm). This one scar would be treated as two separate scars to ensure that the ratings reflect the effects

on distinct areas of the body. For example, we would separately evaluate the surface area of the portion of the scar located on the extremity and the surface area of the portion of the scar located on the trunk, and then combine those ratings under 38 CFR 4.25.

This revised note would remove any possible ambiguity regarding the appropriate rating for a scar that affects the trunk and one or more extremities, a scar that affects two or more extremities, and multiple scars. In addition, it would clarify that each extremity and the trunk represent the only body areas for which we may assign ratings. In other words, it would clarify the possible ambiguity present in the current regulation as to whether these areas of the body are merely examples of scarred body parts eligible for a disability rating.

Further, although the current note addresses the anterior and posterior surfaces of the trunk as widely separated areas, we propose that the trunk be considered as a single area. This would ensure that the area of all deep scars of the trunk are taken into account in the evaluation. Scars of the trunk of considerable area may extend from one surface of the trunk to another, crossing the sides of the trunk, and as such the anterior and posterior surfaces of the trunk are not widely separate areas. Under this note #2, a maximum of 40 percent could be assigned for each of the five areas, including the trunk. This proposed note is clearer and easier to apply than the current note, represents an accurate view of our current policy, and provides appropriate levels of evaluation for these types of scars.

Diagnostic Code 7802

We propose to change the title of this diagnostic code from "Scars, other than head, face, or neck, that are superficial and that do not cause limited motion" to "Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are superficial and nonlinear." As with diagnostic code 7801, we propose to add burn scar(s) to the title to indicate that this is the appropriate diagnostic code for the evaluation of superficial burn scars and other superficial scars that are nonlinear. As under diagnostic code 7801, evaluation under diagnostic code 7802 is based on area, and it is therefore not an appropriate diagnostic code for the evaluation of linear scars.

We propose to revise Note (1) in a similar manner to the revision of Note (1) under diagnostic code 7801, in order to make the guidance on evaluating multiple scars under this diagnostic

code clearer and to ensure that it reflects current policy.

Diagnostic Codes 7803 and 7804

Diagnostic code 7803 is now titled "Scars, superficial, unstable," and provides a single evaluation level of 10 percent for such scars. It also includes two notes, one defining an unstable scar and the other defining a superficial scar.

Diagnostic code 7804 is now titled "Scars, superficial, painful on examination" and provides a single evaluation level of 10 percent for such scars.

We propose deleting diagnostic code 7803 and amending diagnostic code 7804 so that it will govern the evaluation of both unstable and painful scars. Because a deep scar can also be unstable, painful, or both, we propose removing "superficial" from the title of diagnostic code 7804, so that it will apply to both deep and superficial scars. The new title of diagnostic code 7804 would be: "Scar(s), unstable or painful". We propose removing the "on examination" language in the new title because VA's disability ratings are based on relevant medical evidence; as such, to include "on examination" in the title is redundant.

We propose providing evaluation criteria that encompass both unstable and painful scars and apply to one or more scars. We propose assigning a 10 percent evaluation if there are one or two scars that are unstable or painful, a 20 percent evaluation if there are three or four scars that are unstable or painful, and a 30 percent evaluation if there are five or more scars that are unstable or painful. Furthermore, we propose adding a note #2 explaining that if one or more scars are both unstable and painful, 10 percent will be added to the evaluation based on the total number of unstable or painful scars. The existing criteria provide no specific guidance on evaluating multiple painful or unstable scars, and we propose providing new criteria that reflect our policies concerning the evaluation of multiple superficial scars that are unstable, painful, or both. In our judgment, these criteria are equitable, in that if five painful scars are present on a single extremity, for example, they would receive the same evaluation (30 percent) as would five painful scars, if one were on each extremity, and one on the trunk. Unlike the physical effects of a deep or superficial scar, which may be limited to a particular part of the body, pain tends to affect the person as a whole; therefore, in cases of multiple scars, this diagnostic code does not distinguish scars based on where they are located

but rather considers their cumulative effect.

Finally, we propose adding note #3, which indicates that scars evaluated under diagnostic codes 7800, 7801, 7802, or 7805 may also receive an evaluation under diagnostic code 7804, when applicable. This would clarify which types of scars may be evaluated under diagnostic code 7804 as well as under another diagnostic code.

We propose deleting note #1 to diagnostic code 7804, which defines a superficial scar, because we propose to make this diagnostic code applicable to both deep and superficial scars, and there will therefore no longer be a need to define a superficial scar under this diagnostic code. We propose replacing it with new note #1, which defines an unstable scar (using the same definition as in Note (1) under current diagnostic code 7803).

We also propose deleting Note (2) to diagnostic code 7804, concerning the evaluation of a scar on the tip of a finger or toe. The note is unnecessary because a scar on the tip of a finger or toe is evaluated under the same criteria as any other scar. In other words, a fingertip is part of the arm extremity and a toe is part of the leg extremity. We propose replacing that note with new note #2, discussed above.

Diagnostic Code 7805

Current diagnostic code 7805 has been most commonly used to evaluate well-healed, asymptomatic, linear surgical or wound scars. This diagnostic code includes a direction to rate on limitation of function of affected part. We propose revising the provision in order to clarify its intended applicability, but substantively it continues to serve the same purpose.

We propose that diagnostic code 7805 now be titled, "Scars, other (including linear scars) and other effects of scars evaluated under Diagnostic Codes 7800, 7801, 7802, and 7804", in order to emphasize that a single scar may receive, for example, a rating under both diagnostic codes 7801 and 7805. The purpose of the rating under diagnostic code 7805 is to ensure that we evaluate the disabling effects of a scar other than those reflected in an evaluation under the criteria set forth in diagnostic codes 7800-04. Most often, this diagnostic code is used to evaluate healed scars that are linear, are not tender or unstable, and are not of head, face, or neck, but may cause functional limitation to the affected body part, for example, a healed appendectomy scar or a scar related to gall bladder removal. An evaluation under this diagnostic code would therefore consist of a

hyphenated diagnostic code, with diagnostic code 7805 being the primary, and the affected body part being secondary, with the rating percentage based on the body part.

Applicability Date

VA proposes to make the provisions of this rule applicable to all applications for benefits received by VA on or after the effective date of this rule. A veteran who VA rated under diagnostic codes 7800, 7801, 7802, 7803, 7804, or 7805 of § 4.118, as in effect prior to the effective date of this rule, will be permitted to request review under these clarified criteria, irrespective of whether his or her disability has worsened since the last review. VA would review that veteran's disability rating to determine whether the veteran may be entitled to a higher disability rating under the provisions established by this rulemaking. The effective date of any award of an increase in disability compensation based on the clarifications in this rule would not be earlier than the effective date of the new criteria, but will otherwise be assigned under the current regulations regarding effective dates for increases in disability compensation, 38 CFR 3.400, etc. We propose adding this provision in the regulation to ensure veterans are fully notified of the availability of the review.

We propose establishing this process for veterans potentially affected by this rulemaking in order to ensure that veterans, especially those wounded during Operation Enduring Freedom or Operation Iraqi Freedom, are compensated as fully as possible for their wounds.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment would not significantly impact any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866—Regulatory Planning and Review

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and,

when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.104, Pension for Non-Service-Connected Disability for Veterans, and 64.109, Veterans Compensation for Service-Connected Disability.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: November 16, 2007.

Gordon H. Mansfield,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is

proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

2. Section 4.118 is amended by:

a. Adding an introductory paragraph to § 4.118.

b. Revising the heading to diagnostic code 7800 and adding new notes (4) and (5).

c. Revising diagnostic codes 7801, 7802, 7804, and 7805.

d. Removing diagnostic code 7803.

The additions and revisions read as follows:

§ 4.118 Schedule of ratings—skin.

A veteran who VA rated under diagnostic codes 7800, 7801, 7802, 7803, 7804, or 7805, before [date 30 days after date of publication of the final rule in the **Federal Register**], can request review under diagnostic code 7800, 7801, 7802, 7804, and 7805, irrespective of whether his or her disability has increased since the last review. VA will review that veteran's disability rating to determine whether the veteran may be entitled to a higher disability rating under diagnostic code 7800, 7801, 7802, 7804, and 7805. A request for review pursuant to this rulemaking will be treated as a claim for an increased rating for purposes of determining the effective date of an increased rating awarded as a result of such review; however, in no case will the award be effective before [date 30 days after date of publication of the final rule in the **Federal Register**].

	Rating
7800 Burn scar(s); scar(s) due to other causes; or other disfigurement of the head, face, or neck: Note (4): Separately evaluate disabling effects other than disfigurement that are associated with individual scar(s) of the head, face, or neck, such as pain, instability, and residuals of associated muscle or nerve injury, under the appropriate diagnostic code(s) and apply § 4.25 to combine the evaluation(s) with the evaluation assigned under this diagnostic code.	

	Rating		Rating
<p>Note (5): The characteristic(s) of disfigurement may be caused by one scar or by multiple scars; the characteristic(s) required to assign a particular evaluation need not be caused by a single scar in order to assign that evaluation.</p> <p>7801 Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are deep and non-linear:</p> <p>Area or areas of 144 square inches (929 sq. cm.) or greater 40</p> <p>Area or areas of at least 72 square inches (465 sq. cm.) but less than 144 square inches (929 sq. cm.) 30</p> <p>Area or areas of at least 12 square inches (77 sq. cm.) but less than 72 square inches (465 sq. cm.) 20</p> <p>Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.) 10</p> <p>Note (1): A deep scar is one associated with underlying soft tissue damage.</p> <p>Note (2): If multiple scars are present, or if a single scar affects more than one extremity, assign a separate evaluation for each affected extremity, based on the total area of the qualifying scars that affect that extremity, and assign a separate evaluation for the trunk, if affected, based on the total area of the qualifying scars of the trunk. Combine the separate evaluations under § 4.25. Qualifying scars are scars that are nonlinear, deep, and are not located on the head, face, or neck.</p> <p>7802 Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are superficial and nonlinear:</p> <p>Area or areas of 144 square inches (929 sq. cm.) or greater 10</p> <p>Note (1): A superficial scar is one not associated with underlying soft tissue damage.</p> <p>Note (2): If multiple superficial scars are present, assign a separate evaluation for each affected extremity, based on the total area of the superficial scars of that extremity, and assign a separate evaluation for the trunk, if affected, based on the total area of the superficial scars of the trunk. Combine the separate evaluations under § 4.25.</p> <p>7804 Scar(s), unstable or painful:</p> <p>Five or more scars that are unstable or painful 30</p> <p>Three or four scars that are unstable or painful 20</p>		<p>One or two scars that are unstable or painful</p> <p>Note (1): An unstable scar is one where, for any reason, there is frequent loss of covering of skin over the scar.</p> <p>Note (2): If one or more scars are both unstable and painful, add 10 percent to the evaluation that is based on the total number of unstable or painful scars.</p> <p>Note (3): Scars evaluated under diagnostic codes 7800, 7801, 7802, or 7805 may also receive an evaluation under this diagnostic code, when applicable.</p> <p>7805 Scars, other (including linear scars) and other effects of scars evaluated under Diagnostic Codes 7800, 7801, 7802, and 7804: Evaluate any disabling effect(s) not considered in a rating provided under diagnostic codes 7800-04 under an appropriate diagnostic code.</p> <p>* * * * *</p> <p>[FR Doc. E7-25525 Filed 1-2-08; 8:45 am]</p> <p>BILLING CODE 8320-01-P</p> <p>DEPARTMENT OF VETERANS AFFAIRS</p> <p>38 CFR Part 4</p> <p>RIN 2900-AM75</p> <p>Schedule for Rating Disabilities; Evaluation of Residuals of Traumatic Brain Injury (TBI)</p> <p>AGENCY: Department of Veterans Affairs.</p> <p>ACTION: Proposed rule.</p> <p>SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising that portion of the Schedule that addresses neurological conditions and convulsive disorders, in order to provide detailed and updated criteria for evaluating residuals of traumatic brain injury (TBI).</p> <p>DATES: Comments must be received on or before February 4, 2008.</p> <p>ADDRESSES: Written comments may be submitted through http://www.Regulations.gov; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026.</p> <p>Comments should indicate that they are submitted in response to RIN 2900-AM75—"Schedule for Rating</p>	<p>10</p> <p>Disabilities; Evaluation of Residuals of Traumatic Brain Injury (TBI)." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at http://www.Regulations.gov.</p> <p>FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 319-5847. (This is not a toll-free number.)</p> <p>SUPPLEMENTARY INFORMATION: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (38 CFR part 4) by revising the material under diagnostic code 8045, Brain disease due to trauma, in 38 CFR 4.124a (neurological conditions and convulsive disorders). TBI has been called a signature injury of the conflict in Iraq, and VA is seeing a statistically larger number of veterans of the Iraq and Afghanistan conflicts with residuals of TBI than has been seen in previous conflicts. In addition, the effects of injuries stemming from blasts resulting from roadside explosions of improvised explosive devices, which have been common sources of injury in these conflicts, appear to be somewhat different from the effects of brain trauma seen from other sources of injury. VA proposes to amend the criteria for rating residuals of TBI to update them in light of current knowledge of the condition.</p> <p>We propose changing the title of diagnostic code 8045 from "Brain disease due to trauma" to "Residuals of traumatic brain injury (TBI)," which reflects modern terminology for this condition.</p> <p>TBI is an injury to the brain from an external force that results in immediate effects such as loss or alteration of consciousness, amnesia, and sometimes neurological impairments. These abnormalities may all be transient, but more prolonged or even permanent problems with a wide range of impairment in such areas as physical, mental, and emotional/behavioral functioning may occur. TBI is classified as mild, moderate, or severe at, or close to, the time of the original injury, and while this classification will often</p>