

EVALUATION OF COGNITIVE IMPAIRMENT AND OTHER RESIDUALS OF TBI NOT OTHERWISE CLASSIFIED—Continued

Facets of cognitive impairment and other residuals of TBI not otherwise classified	Level of impairment	Criteria
Consciousness	Total	Persistently altered state of consciousness, such as vegetative state, minimally responsive state, coma.

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■ 3. In Appendix A to Part 4, § 4.124a, add diagnostic code 8045 in numerical order to the table to read as follows:

Appendix A to Part 4—Table of Amendments and Effective Dates Since 1946

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Sec.	Diagnostic code No.	
4.124a	8045	Criterion and evaluation October 23, 2008.

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■ 4. In Appendix B to Part 4, diagnostic code 8045 is revised to read as follows:

Appendix B to Part 4—Numerical Index of Disabilities

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Diagnostic code No.	
8045	Residuals of traumatic brain injury (TBI).

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■ 5. In Appendix C to Part 4 under the heading for “Brain” remove “Disease due to trauma” and its diagnostic code “8045”; and add in alphabetical order a new heading “Traumatic brain injury residuals” and its diagnostic code “8045”.

[FR Doc. E8–22083 Filed 9–22–08; 8:45 am]

BILLING CODE 8320–01–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: Final rule.

SUMMARY: This document amends 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: *Effective Date:* This amendment is effective October 23, 2008.

Applicability Date: This amendment shall apply to all applications for benefits received by VA on or after October 23, 2008. A veteran whom VA rated before such date under diagnostic codes 7800, 7801, 7802, 7803, 7804, or 7805 of 38 CFR 4.118 may request review under these clarified criteria, irrespective of whether his or her disability has worsened since the last review. The effective date of any award, or any increase in disability compensation, based on this amendment will not be earlier than the effective date of this rule, but will otherwise be assigned under the current regulations regarding effective dates, 38 CFR 3.400, etc.

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: On January 3, 2008, VA published in the **Federal Register** (73 FR 428) a proposal to amend those portions of the Schedule for Rating Disabilities that address the Skin, 38 CFR 4.118, by revising the guidelines for the evaluation of scars. Interested persons were invited to submit written comments on or before February 4, 2008. We received comments from the National

Organization of Veterans' Advocates, Inc. (NOVA), and Disabled American Veterans (DAV).

NOVA's Comment

NOVA addressed a proposed change to a note in diagnostic code 7801 that would consider the trunk as one area of the body. Currently, the note in diagnostic code 7801 directs that scars on widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated. We proposed 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 on that extremity, and assign a separate evaluation for the trunk based on the total area of the qualifying scars on the trunk. Qualifying scars under diagnostic code 7801 are deep scars that are not located on the head, face, or neck.

NOVA is concerned that the proposed change will not adequately compensate veterans for scars of the trunk. NOVA stated the rationale for the change of ensuring that the area of all deep scars of the trunk are taken into account was inadequate considering that the anterior and posterior surfaces of the trunk may be the largest separate and distinct areas of the body.

Second, NOVA stated that a scar can cross over into more than one separate area of the body. In the proposed rule, we stated that such a scar would be treated as two separate scars to ensure that the ratings reflect the disability to each distinct area of the body.

Third, NOVA stated the proposed change would potentially result in a lower evaluation for a veteran with one scar that covers both the anterior and posterior trunk. NOVA offers the following example: A veteran has one 30 inch scar that wraps around his anterior and posterior trunk, with 15 square inches on the anterior side and 15 square inches on his posterior side. Under the current diagnostic code, this scar would be rated separately at 20 percent and 20 percent, for a combined evaluation of 40 percent. Under the proposed change, the veteran would be

entitled to one evaluation for a 30 inch scar of 20 percent.

Fourth, NOVA comments that under the proposed change a veteran who has two scars, one on his posterior trunk and one on his anterior trunk, would only receive one rating for that area; we would not rate each scar separately, and then provide a combined rating. The effect could potentially be a lower rating under the revised rule than the veteran would receive under the current rule.

Response

We did not intend in the proposed regulation to produce a lower evaluation for scars of the trunk, and we agree that this could happen under the criteria we proposed. While in the proposed regulation we considered the trunk to be a single location for purposes of evaluating multiple scars, after further consideration, we have made changes in the final rule indicating that the anterior and posterior portions of the trunk represent separate locations for purposes of evaluation. With that change, separate evaluations can be assigned for the total area of qualifying scars of each extremity, for the total area of qualifying scars of the anterior portion of the trunk, and for the total area of qualifying scars of the posterior portion of the trunk. Accordingly, we have changed the first sentence of proposed note 2 under diagnostic codes 7801 and 7802 to direct raters, if multiple scars are present, or if a single scar affects more than one extremity, or a single scar affects one or more extremities and either the anterior portion or posterior portion of the trunk, or both, or a single scar affects both the anterior portion and the posterior portion of the trunk, to assign a separate evaluation based on the total area of qualifying scars of each affected extremity, the total area of qualifying scars of the anterior portion of the trunk, if affected, and the total area of the qualifying scars of the posterior portion of the trunk, if affected.

We have also added a statement in note 2 of diagnostic codes 7801 and 7802 clarifying the borders of the anterior (ventral) and posterior (dorsal) portions of the trunk, in order to avoid confusion about scars that may be reported as being on the lateral aspects of the trunk. It states that the midaxillary line on each side separates the anterior and posterior portions of the trunk. Therefore, all portions of the trunk are designated as either "anterior" or "posterior," based on their relationship to the midaxillary line, and there is no portion that is designated "lateral."

We revised note 2 of diagnostic code 7802 to be identical to note 2 of diagnostic code 7801. These notes address the same concept and the identical language will make the notes easier to use. We are also making minor technical changes to improve the clarity of both notes.

DAV's Comments

Method of Measurement

DAV commented that while they agreed with the amendment to the areas of scars, they were concerned that the method of measurement was not specifically stated in the regulation. DAV stated that the diagnostic code provides evaluations for square inches. However, scars are often oddly shaped. DAV proposed that the area of a scar be measured based on the shape of a rectangle from the top of the scar to the bottom of the scar for the height measurement, and from the farthest side points of the scar for the width. According to DAV, this method of measurement would result in more accurate measurements and more consistent disability ratings. DAV believes it is difficult for examiners and adjudicators to determine the surface area in square inches for oddly shaped scars.

Response

We make no change based on this comment. We note that the current regulation does not specify a method of measurement, and this has not created difficulty for medical professionals who are responsible for measuring scars. Using the "rectangular area" method described by DAV would inappropriately overestimate the area of scars that are hourglass-shaped, with the narrow area being very long and thin, and other scars where one portion is much thinner than another. Measuring as a rectangle in such cases could lead to possible inaccuracies in evaluation. Measuring the actual surface area, as required by the rule, will not lead to such inaccuracies; additionally, it is impractical to set forth all of the methods that can be used to measure scars of various shapes and sizes. No two scars are identical, and different measuring techniques must be employed based on the size, shape, and location of a particular scar. Relying on medical professionals who measure and describe scars in VA medical examinations and on evidence contained in medical records is more likely to produce accurate measurements than a general rule such as the one proposed by DAV. As such, it would not be helpful to revise the

regulation to specify a method of measuring scars.

Diagnostic Code 7801 Note 2 Preamble

DAV stated that the discussion of proposed diagnostic code 7801 note 2 in the preamble of our notice of proposed rulemaking states that scars may run into two separate areas and each area should be separately evaluated. However, DAV stated that the note itself does not state this. DAV believes that VA should ensure that this concept is included in the note to ensure scars are properly evaluated.

Response

We agree that note 2 can be clearer on this point. Our revision to note 2 discussed above will include a revision based on this comment. Additionally, for clarity and as part of the revision based on the separate comment, we will make the same revision to note 2 of diagnostic code 7802.

Diagnostic Code 7801 Note 2 Separate Ratings

DAV additionally stated that the proposed criterion that requires adjudicators to award separate ratings for a scar that runs into two separate areas, for example the trunk and left arm, may be less beneficial to veterans in some cases. DAV stated that a veteran with a scar of 12 square inches: 11 square inches on the trunk and 1 square inch on the left arm, would receive a 10 percent evaluation for the trunk and 0 percent evaluation for the left arm, which combine to 10 percent. If the 12 square inch scar was solely on the trunk, the veteran receives a 20 percent evaluation. DAV believes that adjudicators should be able to award either a single rating for the combined surface area of a scar that runs into two separate areas, or separate ratings, whichever results in the higher rating.

Response

We make no change based on this comment. We note that the requirement to separately evaluate scars on separate areas of the body is not a new requirement; our proposed language merely clarifies already existing evaluation methods. Further, we evaluate separate areas of the body to compensate for functional loss of the different areas of the body separately. In the example mentioned by DAV, the veteran has an 11 square inch scar of the trunk versus a 12 square inch scar of the trunk, which require different evaluations because the 12 square inch scar could lead to greater functional loss of the trunk. VA's ratings are based on the average impairment to earning

capacity caused by service-connected disabilities. 38 U.S.C. 1155. Each area of the body identified in the rule has a separate and distinct function; therefore, a scar that affects a single area of the body is less likely to produce greater overall disability than a similar scar that affects more than one area of the body. For this reason, we will rate the separate areas of the body separately. Although DAV suggests that assigning separate ratings for each affected body part may be less favorable to claimants in certain circumstances than assigning only one rating for each scar that affects more than one body part, we believe that assigning separate ratings for each affected body part generally will be beneficial to claimants and, moreover, more closely comports with the purpose of assigning ratings based on functional loss.

We made an additional change to the title of diagnostic code 7800 for the sake of clarity. To avoid any possible confusion about whether it refers to burn scars, scars due to other causes, or disfigurement only of the head, face, or neck, or also to scars or disfigurement in other areas, we clarified the title by changing it to "Burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck". This eliminates any possible confusion about the purpose of this diagnostic code but does not represent a substantive change from the proposed regulation.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted as a final rule with the changes noted.

We are additionally adding updates to 38 CFR part 4, Appendices A, B, and C, to reflect changes to the diagnostic criteria for scars made by this rulemaking. The appendices are tools for users of the Schedule for Rating Disabilities and do not contain substantive content regarding evaluation of disabilities. As such, we believe it is appropriate to include these updates in this final rule.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will 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 final rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

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 (OMB), 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 final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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 final 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 final rule 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: June 20, 2008.

Gordon H. Mansfield,
Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 4, subpart B, is 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.
- 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 October 23, 2008 can request review under diagnostic codes 7800, 7801, 7802, 7804, and 7805, irrespective of whether the veteran's 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 codes 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 October 23, 2008.

Rating

7800 Burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck 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.

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.

7801 Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are deep and nonlinear:

Area or areas of 144 square inches (929 sq. cm.) or greater	40
Area or areas of at least 72 square inches (465 sq. cm.) but less than 144 square inches (929 sq. cm.)	30
Area or areas of at least 12 square inches (77 sq. cm.) but less than 72 square inches (465 sq. cm.)	20
Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.)	10

Note (1): A deep scar is one associated with underlying soft tissue damage..

Note (2): If multiple qualifying scars are present, or if a single qualifying scar affects more than one extremity, or a single qualifying scar affects one or more extremities and either the anterior portion or posterior portion of the trunk, or both, or a single qualifying scar affects both the anterior portion and the posterior portion of the trunk, assign a separate evaluation for each affected extremity based on the total area of the qualifying scars that affect that extremity, assign a separate evaluation based on the total area of the qualifying scars that affect the anterior portion of the trunk, and assign a separate evaluation based on the total area of the qualifying scars that affect the posterior portion of the trunk. The midaxillary line on each side separates the anterior and posterior portions 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.

7802 Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are superficial and nonlinear:

Area or areas of 144 square inches (929 sq. cm.) or greater	10
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Note (1): A superficial scar is one not associated with underlying soft tissue damage.

Note (2): If multiple qualifying scars are present, or if a single qualifying scar affects more than one extremity, or a single qualifying scar affects one or more extremities and either the anterior portion or posterior portion of the trunk, or both, or a single qualifying scar affects both the anterior portion and the posterior portion of the trunk, assign a separate evaluation for each affected extremity based on the total area of the qualifying scars that affect that extremity, assign a separate evaluation based on the total area of the qualifying scars that affect the anterior portion of the trunk, and assign a separate evaluation based on the total area of the qualifying scars that affect the posterior portion of the trunk. The midaxillary line on each side separates the anterior and posterior portions of the trunk. Combine the separate evaluations under § 4.25. Qualifying scars are scars that are nonlinear, superficial, and are not located on the head, face, or neck.

7804 Scar(s), unstable or painful:

Five or more scars that are unstable or painful	30
Three or four scars that are unstable or painful	20
One or two scars that are unstable or painful	10

Note (1): An unstable scar is one where, for any reason, there is frequent loss of covering of skin over the scar..

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.

Note (3): Scars evaluated under diagnostic codes 7800, 7801, 7802, or 7805 may also receive an evaluation under this diagnostic code, when applicable.

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.

* * * * *

■ 3. In Appendix A to Part 4, § 4.118 revise diagnostic codes 7800, through

7804 and add diagnostic code 7805 to read as follows:

Appendix A to Part 4—Table of Amendments and Effective Dates Since 1946

Sec.	Diagnostic code No.	
4.118	7800	Evaluation August 30, 2002; criterion October 23, 2008.
	7801	Criterion July 6, 1950; criterion August 30, 2002; criterion October 23, 2008.
	7802	Criterion September 22, 1978; criterion August 30, 2002; criterion October 23, 2008.
	7803	Criterion August 30, 2002; removed October 23, 2008.
	7804	Criterion July 6, 1950; criterion September 22, 1978; criterion and evaluation October 23, 2008.
	7805	Criterion October 23, 2008.

■ 4. In Appendix B to Part 4 remove diagnostic code 7803 and its disability entry and revise the disability entries for

diagnostic codes 7800, 7801, 7802, 7804, and 7805 to read as follows:

Appendix B to Part 4—Numerical Index of Disabilities

Diagnostic
code No.

THE SKIN

	*	*	*	*	*	*	*
7800	.....	Burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck.					
7801	.....	Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are deep and nonlinear.					
7802	.....	Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are superficial and nonlinear.					
7804	.....	Scar(s), unstable or painful.					
7805	.....	Scars, other.					
	*	*	*	*	*	*	*

■ 5. In Appendix C to Part 4, revise the disability entries immediately following the heading “Scars:” to read as follows:

Appendix C to Part 4—Alphabetical Index of Disabilities

							Diagnostic code No.
	*	*	*	*	*	*	*
Scars:							
Burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck	.....						7800
Burn scar(s) or scars(s) due to other causes, not of the head, face, or neck, that are deep and nonlinear	.....						7801
Burn scar(s) or scars(s) due to other causes, not of the head, face, or neck, that are superficial and nonlinear	.....						7802
Other	.....						7805
Retina	.....						6011
Unstable or painful	.....						7804
	*	*	*	*	*	*	*

[FR Doc. E8–21980 Filed 9–22–08; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Marking Requirements for Parcel Select

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) to reflect changes to the marking requirements of our Shipping Services product, Parcel Select®. On May 21, 2008, we published in the **Federal Register** (Volume 73, Number 99) the proposed rule describing Parcel Select marking changes. This final rule revises the effective date to October 9, 2008 (proposed rule date was September 30, 2008) when Parcel Select shippers must use one of the following markings, as appropriate, on each Parcel Select package:

- For all destination entry packages, use “Parcel Select”.

- For BMC presort entry packages, use “Parcel Select BMC Presort” or “Parcel Select BMC PRSRT”.

- For OBMC presort entry packages (Inter-BMC) packages, use “Parcel Select OBMC Presort” or “Parcel Select OBMC PRSRT”.

- For barcoded Intra-BMC and barcoded Inter-BMC packages, use “Parcel Select Barcoded” or “Parcel Select BC”.

DATES: *Effective Date:* October 9, 2008.**FOR FURTHER INFORMATION CONTACT:** Bert Olsen at 202–268–7276.**SUPPLEMENTARY INFORMATION:****Comments**

There were no comments received on the May 21, 2008 proposed rule.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

- Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

- 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

- 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

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400 Commercial Mail Parcels

* * * * *

402 Elements on the Face of a Mailpiece

* * * * *

2.0 Placement and Content of Markings

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2.2 Parcel Select, Bound Printed Matter, Media Mail, and Library Mail Markings**2.2.1 Basic Markings**

[Revise the text of 2.2.1 as follows:]

The basic required marking (e.g., “Parcel Select”, “Bound Printed Matter”, “Media Mail”, “Library Mail”)