(g) *Redeterminations.* VA will reassess a determination under this section whenever it receives evidence indicating that a change is warranted.

(h) *Referrals.* If a regional office is unclear in any case as to whether a condition is a covered birth defect, it may refer the issue to the Director of the Compensation and Pension Service for determination.

(i) *Effective dates.* Except as provided in § 3.114(a) or paragraph (i)(1) or (2) of this section, VA will award the monetary allowance under subchapter II of 38 U.S.C. chapter 18, for an individual with disability resulting from one or more covered birth defects, based on an original claim, a claim reopened after final disallowance, or a claim for increase, as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is latest. Subject to the condition that no benefits may be paid for any period prior to December 1, 2001:

(1) VA will increase benefits as of the earliest date the evidence establishes that the level of severity increased, but only if the beneficiary applies for an increase within one year of that date.

(2) If a claimant reopens a previously disallowed claim based on corrected military records, VA will award the benefit from the latest of the following dates: the date the veteran or beneficiary applied for a correction of the military records; the date the disallowed claim was filed; or, the date one year before the date of receipt of the reopened claim.

(j) *Reductions and discontinuances.* VA will generally reduce or discontinue awards under subchapter II of 38 U.S.C. chapter 18 according to the facts found except as provided in §§ 3.105 and 3.114(b).

(1) If benefits were paid erroneously because of beneficiary error, VA will reduce or discontinue benefits as of the effective date of the erroneous award.

(2) If benefits were paid erroneously because of administrative error, VA will reduce or discontinue benefits as of the date of last payment.

(Authority: 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)

[FR Doc. 02–19328 Filed 7–30–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AF00

Schedule for Rating Disabilities; the Skin

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the Skin. The intended effect of this action is to update the portion of the rating schedule that deals with skin to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

DATES: *Effective Date:* This amendment is effective August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: As part of a comprehensive review of the rating schedule, VA published a proposal to amend 38 CFR 4.118, which addresses disabilities of the skin, in the **Federal Register** of January 19, 1993 (58 FR 4969). Comments were received from the American Legion, Paralyzed Veterans of America, Veterans of Foreign Wars, Disabled American Veterans, and VA employees.

One commenter suggested that VA withdraw the proposed regulations and reissue them based on more objective standards, and also made specific suggestions for changes to many diagnostic codes.

We do not agree that the proposed regulations should be withdrawn.

We made the process of revision as open as possible. For example, prior to publication of the proposed amendment, we published an advance notice of proposed rulemaking in the **Federal Register** to receive public comments about the revision. We also contracted with an outside consultant, who convened a panel of non-VA physician specialists in skin diseases to make recommendations for revisions of this section of the rating schedule. We asked the Veterans Health Administration to review our proposed changes. We published the proposed revision only after reviewing all of these sources of information. We received several other comments on the proposed rule after it was published in the **Federal Register**, but none of the commenters suggested withdrawing the proposed revision. In response to comments, we have however, made further revisions to some of the criteria for the sake of clarity and more objectivity and have added definitions and explanatory notes under some conditions. These added changes are discussed in more detail below. The same commenter who suggested withdrawing the proposed revision also made specific suggestions for changes to many diagnostic codes. With the additional changes we have made in the final revision, we believe we have made the evaluation criteria for skin conditions reasonably clear and objective.

Under diagnostic code (DC) 7800, disfigurement of the head, face, or neck, the former rating schedule provided evaluation levels of 50, 30, 10, and zero percent based on whether there is repugnant deformity of one or both sides of the face, whether the disfigurement is ''severe,'' producing a marked and unsightly deformity of eyelids, lips, or auricles, and on whether the disfigurement is ''moderate'' or ''slight.'' Following these criteria was a note stating that each level could be increased to the next higher evaluation level on the basis of marked discoloration or color contrast and that the most repugnant, disfiguring conditions, including scars and diseases of the skin, could be submitted with photographs for central office rating. The proposed amendment added an 80-percent evaluation level and deleted the part of the note that provided authority to elevate evaluations in the presence of marked discoloration or color contrast based on the rationale that these criteria are subject to inconsistent interpretations. The proposed evaluation criteria were based at 80 percent on whether disfigurement is so disfiguring as to preclude occupational interaction with the public, at 50 percent on whether it is repugnant on casual inspection, at 30 percent on whether it is disagreeable on casual inspection, at 10 percent on whether it is noticeable on casual inspection, and at zero percent on whether it is noticeable, but only on close inspection.

One commenter felt that the deleted note should be retained. Another commenter, while offering no alternative language for us to consider, stated that the words ''repugnant,'' disagreeable,'' and ''noticeable,'' used to describe degrees of disfigurement, are too subjective to be useful and are not

based on medical criteria. In a similar vein, another commenter said that we should establish objective criteria for rating scars that should include evaluation of size, configuration, color, etc. One commenter felt that the difference between casual and close inspection, part of the criteria used to determine disfigurement, is a distinction that is difficult to understand.

In response to these comments, we have further revised the evaluation criteria for DC 7800 by basing them on the number of objective characteristics of disfigurement that are present and whether there is asymmetry or gross distortion of the features. We provided a new note following DC 7800 describing the eight specific characteristics of disfigurement, for purposes of evaluation under § 4.118: Scar 5 or more inches (13 or more cm.) in length; scar at least one-quarter inch (0.6 cm.) wide at widest part; surface contour of scar elevated or depressed on palpation; scar adherent to underlying tissue; skin hypo- or hyper-pigmented in an area exceeding six square inches (39 sq. cm.); skin texture abnormal (irregular, atrophic, shiny, scaly, etc.) in an area exceeding six square inches (39 sq. cm.); underlying soft tissue missing in an area exceeding six square inches (39 sq. cm.); and skin indurated and inflexible in an area exceeding six square inches (39 sq. cm.). For an 80-percent evaluation, there must be visible or palpable tissue loss and either gross distortion or asymmetry of three or more features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or six or more characteristics of disfigurement must be present. For a 50-percent evaluation, there must be visible or palpable tissue loss and either gross distortion or asymmetry of two features or paired sets of features, or four or more characteristics of disfigurement must be present. For a 30-percent evaluation, there must be visible or palpable tissue loss and either gross distortion or asymmetry of one feature or set of paired features, or two or three characteristics of disfigurement must be present. For a 10-percent evaluation, one characteristic of disfigurement must be present. In our judgment, these further revised criteria are sufficiently clear and objective to assure that evaluations take into account the most significant characteristics of disfigurement and will be consistent from veteran to veteran. We have provided two additional notes under DC 7800, one directing the rater to rate tissue loss of the auricle under DC 6207 (loss of auricle) and anatomical loss of the eye under DC 6061 (anatomical loss of both eyes) or DC 6063 (anatomical loss of one eye), as appropriate; and the second directing the rater to take into consideration unretouched color photographs.

The former rating schedule designated DC 7801 as ''scars, burns, third degree,'' and DC 7802 as ''scars, burns, second degree.'' We proposed to revise these codes so that they additionally addressed scars from causes other than burns and so that the conditions would be evaluated based on actual residual disability, i.e., the size of the area of underlying soft tissue damage or limitation of motion, rather than on the initial assessment of the severity of a burn. We proposed to redesignate DC 7801 as ''scars, other than head, face, or neck, with underlying soft tissue damage causing deep contour defect or limited motion'' and DC 7802 as ''scars, other than head, face, or neck, that are superficial and that do not cause limited motion.'' We proposed that under DC 7801 scars with an area or areas exceeding 144 square inches (929 sq. cm.) receive a 40-percent evaluation; with area or areas exceeding 72 square inches (465 sq. cm.) a 30-percent evaluation; with area or areas exceeding 12 square inches (77 sq. cm.) a 20-percent evaluation; and with area or areas exceeding 6 square inches (39 sq. cm.) a 10-percent evaluation. We proposed that under DC 7802 scars with area or areas approximating 144 square inches (929 sq. cm.) receive a 10-percent evaluation. A commenter felt that historical precedent requires continuation of the wording ''third degree'' and ''second degree'' under DC's 7801 and 7802, formerly burn scars.

We disagree. One objective of the rating schedule revision is to incorporate medical advances and to delete obsolete concepts and conditions. Our consultants, a panel of non-VA physician specialists in skin diseases, as well as medical textbooks such as ''Christopher's Textbook of Surgery'' 140–41 (Loyal Davis, M.D., ed., 9th ed. 1968), indicate that the clinical estimation of the degree of a burn is not always accurate and does not necessarily relate to long-term disability. The severity of residual scarring from burns of all depths varies. Furthermore, burn scars that are not caused by thermal injury, but by chemical, electrical, or friction injury, as well as scars resulting from non-burn injuries that permanently alter the skin, can lead to comparable residuals. For these reasons, a determination of disability that is based on the extent of the scarring itself and its effects, rather than on the etiology of the scarring, is preferable because it will result in wider application of these criteria and afford consistency in the evaluation of comparable scarring, whatever the etiology. For more clarity and consistency of language, we have, however, modified the titles slightly, for better differentiation of superficial and deep scars, as discussed below.

We proposed that DC 7801 (formerly titled ''scars, burns, third degree'') be retitled ''scars, other than head, face, or neck, with underlying soft tissue damage causing deep contour defect or limited motion.'' According to one commenter, the term ''deep contour defect'' is confusing. When there is soft tissue damage beneath the skin, in addition to scarring of the skin, the overlying scar shows a greater anatomical change in contour than when there is skin damage alone. The defect that appears in a scarred area when there is underlying soft tissue damage is known as a deep contour defect and could also be called a deep scar. The lesser change that results in a scarred area when there is skin damage alone, without soft tissue damage beneath the skin, is known as a superficial contour defect and could also be called a superficial scar. A superficial scar may have an irregular surface that is either raised or depressed, but the abnormal contour goes no deeper than the skin. To make the distinction between the scars to be evaluated under DC's 7801 and 7802 clearer, we have removed the term ''deep contour defect'' and have retitled DC 7801 ''scars, other than head, face, or neck, that are deep or that cause limited motion'' and retitled DC 7802 ''scars, other than head, face, or neck, that are superficial and that do not cause limited motion.'' We have also added a definition of deep scar, as one associated with underlying soft tissue damage, in a note under DC 7801 and of superficial scar, as one not associated with underlying soft tissue damage, in a note under DC 7802.

We proposed to retitle DC 7803 (formerly titled ''scars, superficial, poorly nourished, with repeated ulceration'') ''scars, superficial, unstable with frequent loss of epidermal covering.'' One commenter felt that the meaning of ''unstable'' under DC 7803 is unclear, and wondered whether this means that the wound is infected or unhealed.

The term ''unstable'' in the title of DC 7803 does not imply a specific etiology but only indicates that there is frequent loss of covering of the skin over the scar. An unstable scar may result from a

number of causes, including poor healing or infection. For further clarity, we have added a note under DC 7803 defining unstable scar as one where, for any reason, there is frequent loss of covering of skin over the scar. We have also removed the term ''with frequent loss of epidermal covering'' from the title and repeated the definition of superficial scar under this code.

One commenter suggested that we not repeat identical criteria when several different conditions are evaluated using the same criteria.

While it is feasible to use general rating formulas when related conditions are listed consecutively, we have repeated criteria under a number of diagnostic codes in this section for several reasons. First, conditions evaluated under identical criteria in this section are not consecutive diagnostic codes. The repetition of criteria will save time by eliminating the need to seek the appropriate evaluation criteria, lessen the chance of error by eliminating the need to search other pages of the rating schedule, and eliminate the ''double references'' that are present under some diagnostic codes (where the schedule says to see a certain diagnostic code and there is a reference under that diagnostic code to see yet another diagnostic code). Additionally, while rating specialists may readily locate the appropriate rating criteria, others who use the schedule may find it more difficult. While eliminating the repetition of criteria would save space, we believe that the advantages gained favor their repetition in this case. Where a general rating formula applies to several diagnostic codes that are listed consecutively, the proximity of the conditions and the rating formula eliminates most of the potential problems discussed above.

In the former schedule, DC 7806 (dermatitis or eczema) was evaluated at levels of 50, 30, 10, or zero percent. The criteria called for a 50-percent evaluation for ulceration or extensive exfoliation or crusting, with systemic or nervous manifestations, or being exceptionally repugnant; a 30-percent evaluation for constant exudation or itching, with extensive lesions, or with marked disfigurement; a 10-percent evaluation for exfoliation, exudation or itching, if involving an exposed surface or extensive area; and a zero-percent evaluation for slight, if any, exfoliation, exudation or itching, if on a nonexposed surface or small area. DC's 7809 (discoid lupus erythematosus), 7815 (bullous disorders), 7816 (psoriasis), and 7817 (exfoliative dermatitis) did not include specific evaluation criteria, but were ordinarily rated as analogous conditions, using the same criteria as for DC 7806. We proposed to evaluate all five of these conditions, plus four new conditions-cutaneous manifestations of collagen-vascular diseases not listed elsewhere (DC 7821), papulosquamous disorders not listed elsewhere (DC 7822), vitiligo (DC 7823), and diseases of keratinization (DC 7824)—under identical criteria, with evaluation levels of 100, 50, 30, 10, and zero percent. We proposed a 100-percent evaluation for generalized scaling, crusting, systemic manifestations, pruritus and for being so disfiguring as to preclude interaction with the public; a 50-percent evaluation for ulceration or extensive exfoliation or crusting, and systemic manifestations, or being so disfiguring as to be repugnant on casual inspection; a 30-percent evaluation for exudation or constant itching, or extensive lesions, or being so disfiguring as to be disagreeable on casual inspection; a 10-percent evaluation for exfoliation, exudation, or itching, if involving an exposed surface or extensive area; and a zero-percent evaluation for minimal exfoliation, exudation or itching, if on a nonexposed surface or small area. We proposed to evaluate a second group of skin disorders-disfigurement of the head, face, or neck (DC 7800), acne (DC 7828), chloracne (DC 7829), scarring alopecia (DC 7830), and alopecia areata (DC 7831)—solely on the basis of disfigurement, as described above under the discussion of DC 7800, and made 80 percent the maximum evaluation for this group based on disfigurement that precludes occupational interaction with the public. There were several comments regarding similarities between the proposed criteria for a 100-percent evaluation for the first group (DC 7806 and conditions rated under the same criteria) and the criterion for an 80-percent evaluation for the second group (DC 7800 and conditions rated under the same criteria).

One commenter objected to the fact that when interaction with the public is precluded, one group of skin conditions may be assigned an evaluation of 100 percent and another group may be assigned no more than 80 percent. Another commenter suggested that we add an intermediate evaluation level between 50 and 100 percent for the skin conditions for which we proposed evaluation levels of 100, 50, 30, 10, and zero percent. An evaluation of 60 percent or more for a single disability would allow a veteran to advance a claim under 38 CFR 4.16(a), which allows a claim for individual unemployability in cases where there is a service-connected disability rating that is less than total but which renders an individual unable to secure or follow a substantially gainful occupation.

In response to these comments, and because the more specific criteria we have provided for DC 7800 are not as readily applicable to other skin conditions as those we proposed, we have further revised the criteria for DC's 7806, 7809, 7815, 7816, 7817, 7821, 7822, 7823, and 7824. We have removed the proposed criteria, which were the same for all these conditions and have provided criteria that are more objective and more specific for each condition.

For dermatitis or eczema, DC 7806, instead of the proposed evaluation levels of 100, 50, 30, 10, and zero percent based on the presence of scaling, crusting, whether there are systemic manifestations, itching, exudation, exfoliation, etc., or, alternatively, on the extent of disfigurement, we have now provided evaluation levels of 60, 30, 10, and zero percent, as the commenter suggested. As part of the more condition-specific criteria we have provided, we have also removed the 100-percent evaluation level because dermatitis is rarely totally disabling. However, since a 60-percent evaluation level may now be assigned, a claim for individual unemployability, when appropriate, is feasible under 38 CFR 4.16 (a) for those individuals unable to secure or follow a substantially gainful occupation as a result of service-connected skin disease. The criteria are based on the extent (in percentage) to which the entire body or exposed areas are affected by the condition or on the treatment required. For a 60-percent evaluation for dermatitis, more than 40 percent of the entire body or more than 40 percent of exposed areas must be affected, or constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs is required. For a 30-percent evaluation, 20 to 40 percent of the entire body or 20 to 40 percent of exposed areas must be affected, or systemic therapy for a total duration of six weeks or more, but not constantly, during the past 12-month period is required. For a 10-percent evaluation, at least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas must be affected, or intermittent systemic therapy for a total duration of less than six weeks during the past 12-month period is required. For a zero-percent evaluation, less than 5 percent of the entire body or less than 5 percent of exposed areas must be affected, with no more than topical therapy required during the past 12-month period. We

also added an alternative direction to rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. This will provide an alternative means of evaluation in cases, for example, where the active disease has been controlled but there are significant residuals, such as scarring. These criteria are much more objective than the proposed criteria and will assure more consistent evaluations.

We had proposed criteria identical to those for DC 7806 for DC's 7815 (Bullous disorders (including pemphigus vulgaris, pemphigus foliaceous, bullous pemphigoid, dermatitis herpetiformis, epidermolysis bullosa acquisita, benign chronic familial pemphigus (Hailey-Hailey), and porphyria cutanea tarda)); 7816 (Psoriasis); 7821 (Cutaneous manifestations of collagen-vascular diseases not listed elsewhere (including scleroderma, calcinosis cutis, and dermatomyositis)); and 7822 (Papulosquamous disorders not listed elsewhere (including lichen planus, large or small plaque parapsoriasis, pityriasis lichenoides et varioliformis acuta (PLEVA), lymphomatoid papulosus, and pityriasis rubra pilaris (PRP))). The further revised evaluation criteria we have provided for DC 7806 remain appropriate for those four conditions, and we have provided identical criteria under each diagnostic code.

We also proposed to provide evaluation criteria identical to those for DC 7806 for the evaluation of DC's 7809 (Discoid lupus erythematosus or subacute cutaneous lupus erythematosus), 7817 (Exfoliative dermatitis (erythroderma)), 7823 (Vitiligo), and 7824 (Diseases of keratinization). However, the proposed criteria were not specific enough to these conditions to assure consistent evaluations, and the revised criteria for DC 7806 are also not appropriate for their evaluation. We have therefore provided more disease-specific evaluation criteria for these conditions, and also revised the evaluation levels in order to make them appropriate for the usual range of severity of each individual condition. The evaluation criteria for each of these conditions is discussed in more detail below.

Discoid lupus erythematosus (DC 7809) can present in a number of different ways (scaling, plaques, atrophy, erythema, scars, etc.), and we have therefore directed that it be rated as disfigurement (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.

Exfoliative dermatitis (DC 7817) is a disease that may be very severe, and its treatment is different from that of most other skin conditions. It may require the use of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy. It may also be associated with systemic manifestations, such as fever, weight loss, and hypoproteinemia (low level of protein in the blood, often associated with edema). We have provided evaluation levels of 100, 60, 30, 10, and zero percent for this condition, based on the extent of involvement of the skin, whether there are also systemic manifestations, and the type and duration of treatment. For a 100-percent evaluation, generalized involvement of the skin, plus systemic manifestations (such as fever, weight loss, and hypoproteinemia) must be present, and constant or near-constant systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy during the past 12-month period is required. For a 60-percent evaluation, generalized involvement of the skin without systemic manifestations must be present, and constant or near-constant systemic therapy during the past 12-month period is required. For a 30-percent evaluation, there can be any extent of involvement of the skin, and systemic therapy for a total duration of six weeks or more, but not constantly, during the past 12-month period is required. For a 10-percent evaluation, there can be any extent of involvement of the skin, and systemic therapy for a total duration of less than six weeks during the past 12-month period is required. For a zero-percent evaluation, there can be any extent of involvement of the skin with no more than topical therapy required during the past 12-month period. These criteria are specific to this condition and are more objective than the proposed criteria.

We proposed to evaluate vitiligo (DC 7823) under the same evaluation criteria as those we proposed for DC 7806 (dermatitis or eczema). Vitiligo is a condition in which the only abnormal finding is hypopigmented skin; the only treatment for it is cosmetic. The proposed criteria, however, included findings such as ulceration, itching, crusting, exfoliation, and systemic manifestations, none of which is specific to, or even occurs in, vitiligo. It is unlikely that an evaluation higher than zero percent could have been assigned for vitiligo using those criteria. Disfigurement was another of the proposed criteria under DC 7806. Of the characteristics of disfigurement described under DC 7800, only one—hypopigmentation—is present in vitiligo, and that is its only disabling effect. For one characteristic of disfigurement of the head, face, or neck under DC 7800, a 10-percent evaluation is assigned. We have therefore provided evaluation levels for vitiligo of ten and zero percent, providing ten percent if exposed areas are affected, and zero percent if they are not. These criteria will assure consistent evaluations for vitiligo, and they are internally consistent with the evaluations for disfigurement of the head, face, or neck, where the maximum evaluation based on the presence of hypopigmentation alone is 10 percent.

We also proposed to evaluate DC 7824, diseases of keratinization (including icthyoses, Darier's disease, and palmoplantar keratoderma) under the same evaluation criteria as those we proposed for DC 7806 (dermatitis or eczema). The further revised criteria for DC 7806 are not entirely appropriate for evaluating diseases of keratinization. We have therefore provided evaluation levels of 60, 30, 10, and zero percent for diseases of keratinization, based on requirements for therapy, the extent of cutaneous involvement, whether there are systemic manifestations, and whether the skin involvement is constant or episodic. A 60-percent evaluation requires either generalized cutaneous involvement or systemic manifestations and constant or near-constant systemic medication, such as immunosuppressive retinoids, during the past 12-month period. A 30-percent evaluation requires either generalized cutaneous involvement or systemic manifestations and intermittent systemic medication, such as immunosuppressive retinoids, for a total duration of six weeks or more, but not constantly, during the past 12-month period. A 10-percent evaluation requires localized or episodic cutaneous involvement and intermittent systemic medication, such as immunosuppressive retinoids, for a total duration of less than six weeks during the past 12-month period. A zero-percent evaluation is assigned if no more than topical therapy was required during the past 12-month period. These criteria are more appropriate for the evaluation of diseases of keratinization. In addition, we have added to the title some of the specific diseases that make

up the category of diseases of keratinization-icthyoses, Darier's disease, and palmoplantar keratoderma.

Under the former schedule, leishmaniasis, both American (DC 7807) and Old World (DC 7808), were ordinarily evaluated under the same criteria as DC 7806 (eczema). We proposed to evaluate leishmaniasis as disfigurement, scars, or dermatitis, depending upon the predominant disability. One commenter suggested that we include evaluation criteria for systemic manifestations of the disease under these codes. In our judgment, there is no need to include criteria for the systemic forms of leishmaniasis here, because evaluation criteria for visceral leishmaniasis are provided under DC 6301, in the section of the rating schedule on infectious diseases, immune disorders and nutritional deficiencies (38 CFR 4.88b). However, as a reminder to rating specialists, we have added a note under each of these codes directing that non-cutaneous (visceral) leishmaniasis be evaluated under DC 6301 (visceral leishmaniasis).

In the former schedule and in the proposed rule, DC 7811 (tuberculosis luposa (lupus vulgaris), active or inactive) was directed to be rated under §§ 4.88b or 4.89. Section 4.88b was redesignated § 4.88c in a separate rulemaking, so we have corrected the reference under DC 7811 to codes to be used for the evaluation of tuberculosis of the skin to §§ 4.88c and 4.89.

Malignant neoplasms of the skin (DC 7818) were evaluated on scars, disfigurement, etc., on the extent of constitutional symptoms, and on physical impairment, in the former schedule. We proposed to evaluate based on impairment of function, disfigurement, or scars. One commenter stated that these criteria are inadequate for malignant melanoma because the condition is potentially lethal.

On further consideration, we have added a separate diagnostic code, 7833, to the rating schedule for malignant melanoma of the skin because it is a common malignancy and often behaves differently, particularly more aggressively, than other skin malignancies. All residuals that might occur from any skin malignancy can be evaluated under the proposed criteria for malignant neoplasms of the skin because ''impairment of function'' covers virtually any disability that might result, and we propose to provide the same evaluation criteria for malignant melanoma as for other skin malignancies. However, malignant melanoma, and at times other malignancies of the skin, may require a level of antineoplastic treatment that is similar to that used for internal malignancies. We have therefore added a note under DC's 7818 and 7833 stating that if a skin malignancy requires therapy that is comparable to that used for internal malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the skin, or surgery more extensive than wide local excision, a 100-percent evaluation will be assigned from the date of onset of treatment, and will continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination subject to the provisions of 38 CFR 3.105(e). Those provisions require a 60-day notice before VA reduces an evaluation and an additional 60-day notice before the reduced evaluation takes effect. The revision requires a current examination to assure that all residuals are documented, and also offers the veteran more contemporaneous notice of any proposed action and expands the veteran's opportunity to present evidence showing that the proposed action should not be taken. If there has been no local recurrence or metastasis, evaluation will then be made on residuals. This will assure that the evaluation of these neoplasms, when they require treatment that is comparable to the treatment of internal malignancies, is commensurate with that type of treatment and is consistent with the method of evaluating malignancies in other systems. If treatment is confined to the skin, the provisions for a 100-percent evaluation do not apply. Since we have provided a separate diagnostic code for malignant melanoma, we added to the title of malignant skin neoplasms (DC 7818) for clarity, ''other than malignant melanoma.''

We proposed to add urticaria to the rating schedule as DC 7825, with evaluation levels of 40, 20, and zero percent. We proposed to call for a 40-percent evaluation if there is either a need for regular immunosuppressive therapy or the presence of uncontrollable episodes despite therapy; a 20-percent evaluation if there is a need for frequent immunosuppressive therapy; and a zero-percent evaluation if the condition is occasional or asymptomatic. We received two comments about these criteria. One commenter said that urticaria should be evaluated at 60 percent if it is uncontrollable despite any therapy, and at 50 percent if it requires frequent treatment. The other said that urticaria should be evaluated higher than 40 percent if it is uncontrolled by systemic immunosuppressive therapy and that we should replace the words ''frequent,'' ''regular,'' and ''occasional'' with more objective criteria.

We agree that a higher level of evaluation is warranted and have therefore added a 60-percent evaluation level for urticaria when there are at least four debilitating episodes during the past 12-month period despite continuous immunosuppressive therapy. In conjunction with this change, we made the next lower evaluation level 30 percent instead of 40 percent, and based it on debilitating episodes occurring at least four times during the past 12-month period but requiring only intermittent systemic immunosuppressive therapy for control, and made the level below that 10 percent instead of 20 percent, and based it on recurrent episodes occurring at least four times during the past 12-month period and that respond to treatment with antihistamines or sympathomimetics. These evaluation levels are consistent with the ranges for other skin diseases, and these criteria respond to the comments by providing a higher evaluation level for the most severe cases of urticaria, and by providing more objective criteria. The more objective criteria will assure more consistent evaluations.

We proposed to add primary cutaneous vasculitis as DC 7826, to be evaluated on the basis of disfigurement, scars, or urticaria, depending upon the predominant disability. Because the revised evaluation criteria for disfigurement (DC 7800) and urticaria (DC 7825) are more specific to those conditions than the proposed criteria were, they are less appropriate for the evaluation of primary cutaneous vasculitis, which is a chronic, but episodic, condition. We have therefore provided a separate set of more objective criteria with evaluation levels of 60, 30, and 10 percent for primary cutaneous vasculitis, based on the frequency of debilitating episodes and the type and frequency of treatment. A 60-percent evaluation calls for recurrent debilitating episodes occurring at least four times during the past 12-month period despite continuous immunosuppressive therapy; a 30-percent evaluation calls for recurrent debilitating episodes occurring at least four times during the past 12-month period and requiring intermittent systemic immunosuppressive therapy for control; and a ten-percent evaluation calls for recurrent episodes occurring one to three times during the past 12-month period and requiring intermittent systemic immunosuppressive therapy

for control. These criteria are more specific to this condition and will result in more consistent evaluations. We have also provided an alternative direction to rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. These are consistent with the criteria recommended by our consultants.

Similarly, we proposed to add erythema multiforme (toxic epidermal necrolysis) as DC 7827, with evaluation based on disfigurement, scars, or urticaria, depending upon the predominant disability. Because the revised evaluation criteria for disfigurement (DC 7800) and urticaria (DC 7825) are more specific to those conditions than the proposed criteria were, they are less appropriate for the evaluation of erythema multiforme. We have therefore provided a separate set of more objective criteria for erythema multiforme, which is an episodic condition, with levels of 60, 30, and 10 percent, based on the frequency of debilitating episodes and the type and frequency of treatment. A 60-percent evaluation calls for recurrent debilitating episodes at least four times during the past 12-month period despite ongoing immunosuppressive therapy; a 30-percent evaluation calls for recurrent debilitating episodes at least four times during the past 12-month period despite ongoing immunosuppressive therapy; and a ten-percent evaluation calls for recurrent episodes that respond to treatment with antihistamines or sympathomimetics. We also provided an alternative direction to rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. These criteria are identical to the criteria for DC 7826, since both conditions are episodic and require similar treatment, and they are consistent with the criteria recommended by our consultants.

We proposed that acne (DC 7828) and chloracne (DC 7829), which have similar manifestations, be evaluated under the same criteria as DC 7800 (disfigurement of the head, face, or neck). One commenter suggested that acne on nonexposed areas may warrant a compensable evaluation if there are extensive painful cysts. The proposed criteria did not provide for a compensable evaluation for such manifestations.

We agree that acne involving nonexposed areas may be disabling, more because of the inflammatory aspects than the disfiguring aspects. We have therefore established evaluation criteria for acne and chloracne that are based on the extent of involvement by acne, its location, and whether it is deep or superficial. We have provided a 30-percent evaluation for deep acne (meaning deep inflamed nodules and pus-filled cysts) affecting 40 percent or more of the face and neck; a 10-percent evaluation for deep acne affecting less than 40 percent of the face and neck, or deep acne other than on the face and neck; and a zero-percent evaluation for superficial acne (comedones, papules, pustules, superficial cysts) of any extent. We have provided an alternative direction to rate acne and chloracne as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. This change will allow more leeway in assessing which type of disability best represents the findings in a particular case of acne or chloracne.

We proposed to evaluate scarring alopecia (DC 7830) and alopecia areata (DC 7831) on the basis of disfigurement. One commenter suggested that the criteria for DC's 7830 and 7831 take into account the ability or inability to improve appearance with a hairpiece or wig. We have reconsidered the criteria for these types of alopecia in view of our changed disfigurement criteria, which are not appropriate for these conditions, and have provided evaluation criteria based instead on the extent of involvement by alopecia. We have provided evaluation levels of 20, 10, and zero percent for scarring alopecia and ten and zero percent for alopecia areata. These levels are commensurate with the range of disability these conditions produce, according to our contract consultant specialists, who reviewed the rating schedule and made recommendations for changes to help fulfill the goals of revising and updating the medical criteria. For scarring alopecia, which usually follows injury, infection, burns, etc., and shows tissue loss and scarring, we have provided a 20-percent evaluation if the condition affects more than 40 percent of the scalp; a 10-percent evaluation if it affects 20 to 40 percent of the scalp; and a zero-percent evaluation if it affects less than 20 percent of the scalp. For alopecia areata, where scarring and atrophic changes are not present, we have provided a 10-percent evaluation for generalized involvement of the body, and a zero-percent evaluation if the condition is limited to the scalp and face. These criteria are clear and objective and will assure consistency in evaluation. They do not take into account the potential improvement of appearance with a hairpiece or wig, which would require a subjective assessment, but are based instead on the objectively determinable effects of the condition and are consistent with the recommendations of our consultants.

We edited the language of the note regarding under painful superficial scars (DC 7804) for clarity, and the notes under DC's 7801 and 7802 regarding scars in widely separated areas for the same reason, but these are not substantive changes.

For more clarity and objectivity, we have revised the language in DC 7802 from ''area or areas approximating 144 square inches (929 sq. cm.)'' to ''area or areas of 144 square inches (929 sq. cm.) or greater.'' We revised the title of DC 7813, Dermatophytosis, to include ''(ringworm: of body, tinea corporis; of head, tinea capitis; of feet, tinea pedis; of beard area, tinea barbae; of nails, tinea unguium; of inguinal area (jock itch), tinea cruris)'' to clarify what is included.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted with the amendments noted above.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. 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

This regulatory amendment has been reviewed by the Office of Management

and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: May 17, 2002.

Anthony J. Principi,

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

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

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

Subpart B—Disability Ratings

2. Section 4.118 is revised to read as follows:

§ 4.118 Schedule of ratings—skin.

	Rating
7800 Disfigurement of the head, face, or neck:	
With visible or palpable tissue loss and either gross distortion or asymmetry of three or more features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with six or more characteristics of disfigurement	80
With visible or palpable tissue loss and either gross distortion or asymmetry of two features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with four or five characteristics of disfigurement	50
With visible or palpable tissue loss and either gross distortion or asymmetry of one feature or paired set of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with two or three characteristics of disfigurement	30
With one characteristic of disfigurement	10
Note (1): The 8 characteristics of disfigurement, for purposes of evaluation under § 4.118, are:	
Scar 5 or more inches (13 or more cm.) in length.	
Scar at least one-quarter inch (0.6 cm.) wide at widest part.	
Surface contour of scar elevated or depressed on palpation.	
Scar adherent to underlying tissue.	
Skin hypo-or hyper-pigmented in an area exceeding six square inches (39 sq. cm.).	
Skin texture abnormal (irregular, atrophic, shiny, scaly, etc.) in an area exceeding six square inches (39 sq. cm.).	
Underlying soft tissue missing in an area exceeding six square inches (39 sq. cm.).	
Skin indurated and inflexible in an area exceeding six square inches (39 sq. cm.).	
Note (2): Rate tissue loss of the auricle under DC 6207 (loss of auricle) and anatomical loss of the eye under DC 6061 (anatomical loss of both eyes) or DC 6063 (anatomical loss of one eye), as appropriate.	
Note (3): Take into consideration unretouched color photographs when evaluating under these criteria.	
7801 Scars, other than head, face, or neck, that are deep or that cause limited motion:	
Area or areas exceeding 144 square inches (929 sq.cm.)	40
Area or areas exceeding 72 square inches (465 sq. cm.)	30
Area or areas exceeding 12 square inches (77 sq. cm.)	20
Area or areas exceeding 6 square inches (39 sq. cm.)	10
Note (1): 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.	
Note (2): A deep scar is one associated with underlying soft tissue damage.	
7802 Scars, other than head, face, or neck, that are superficial and that do not cause limited motion: Area or areas of 144 square inches (929 sq. cm.) or greater	10
Note (1): 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.	
Note (2): A superficial scar is one not associated with underlying soft tissue damage.	
7803 Scars, superficial, unstable	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): A superficial scar is one not associated with underlying soft tissue damage.	
7804 Scars, superficial, painful on examination	10
Note (1): A superficial scar is one not associated with underlying soft tissue damage.	
Note (2): In this case, a 10-percent evaluation will be assigned for a scar on the tip of a finger or toe even though amputation of the part would not warrant a compensable evaluation.	
(See § 4.68 of this part on the amputation rule.)	
7805 Scars, other; Rate on limitation of function of affected part.	
7806 Dermatitis or eczema.	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or less than 5 percent of exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7807 American (New World) leishmaniasis (mucocutaneous, espundia): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	

	Rating
Note: Evaluate non-cutaneous (visceral) leishmaniasis under DC 6301 (visceral leishmaniasis).	
7808 Old World leishmaniasis (cutaneous, Oriental sore): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	
Note: Evaluate non-cutaneous (visceral) leishmaniasis under DC 6301 (visceral leishmaniasis).	
7809 Discoid lupus erythematosus or subacute cutaneous lupus erythematosus: Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability. Do not combine with ratings under DC 6350.	
7811 Tuberculosis luposa (lupus vulgaris), active or inactive: Rate under §§ 4.88c or 4.89, whichever is appropriate.	
7813 Dermatophytosis (ringworm: of body, tinea corporis; of head, tinea capitis; of feet, tinea pedis; of beard area, tinea barbae; of nails, tinea unguium; of inguinal area (jock itch), tinea cruris): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	
7815 Bullous disorders (including pemphigus vulgaris, pemphigus foliaceous, bullous pemphigoid, dermatitis herpetiformis, epidermolysis bullosa acquisita, benign chronic familial pemphigus (Hailey-Hailey), and porphyria cutanea tarda):	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7816 Psoriasis:	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7817 Exfoliative dermatitis (erythroderma):	
Generalized involvement of the skin, plus systemic manifestations (such as fever, weight loss, and hypoproteinemia), and; constant or near-constant systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required during the past 12-month period	100
Generalized involvement of the skin without systemic manifestations, and; constant or near-constant systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required during the past 12-month period	60
Any extent of involvement of the skin, and; systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
Any extent of involvement of the skin, and; systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required for a total duration of less than six weeks during the past 12-month period	10
Any extent of involvement of the skin, and; no more than topical therapy required during the past 12-month period	0
7818 Malignant skin neoplasms (other than malignant melanoma): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or impairment of function.	
Note: If a skin malignancy requires therapy that is comparable to that used for systemic malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the skin, or surgery more extensive than wide local excision, a 100-percent evaluation will be assigned from the date of onset of treatment, and will continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination will be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, evaluation will then be made on residuals. If treatment is confined to the skin, the provisions for a 100-percent evaluation do not apply.	
7819 Benign skin neoplasms: Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or impairment of function.	
7820 Infections of the skin not listed elsewhere (including bacterial, fungal, viral, treponemal and parasitic diseases): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	
7821 Cutaneous manifestations of collagen-vascular diseases not listed elsewhere (including scleroderma, calcinosis cutis, and dermatomyositis):	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30

	Rating
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7822 Papulosquamous disorders not listed elsewhere (including lichen planus, large or small plaque parapsoriasis, pityriasis lichenoides et varioliformis acuta (PLEVA), lymphomatoid papulosus, and pityriasis rubra pilaris (PRP)):	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, and; constant or near-constant systemic medications or intensive light therapy required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy or intensive light therapy required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; systemic therapy or intensive light therapy required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7823 Vitiligo:	
With exposed areas affected	10
With no exposed areas affected	0
7824 Diseases of keratinization (including icthyoses, Darier's disease, and palmoplantar keratoderma):	
With either generalized cutaneous involvement or systemic manifestations, and; constant or near-constant systemic medication, such as immunosuppressive retinoids, required during the past 12-month period	60
With either generalized cutaneous involvement or systemic manifestations, and; intermittent systemic medication, such as immunosuppressive retinoids, required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
With localized or episodic cutaneous involvement and intermittent systemic medication, such as immunosuppressive retinoids, required for a total duration of less than six weeks during the past 12-month period	10
No more than topical therapy required during the past 12-month period	0
7825 Urticaria:	
Recurrent debilitating episodes occurring at least four times during the past 12-month period despite continuous immunosuppressive therapy	60
Recurrent debilitating episodes occurring at least four times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy for control	30
Recurrent episodes occurring at least four times during the past 12-month period, and; responding to treatment with antihistamines or sympathomimetics	10
7826 Vasculitis, primary cutaneous:	
Recurrent debilitating episodes occurring at least four times during the past 12-month period despite continuous immunosuppressive therapy	60
Recurrent debilitating episodes occurring at least four times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy for control	30
Recurrent episodes occurring one to three times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy for control	10
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7827 Erythema multiforme; Toxic epidermal necrolysis:	
Recurrent debilitating episodes occurring at least four times during the past 12-month period despite ongoing immunosuppressive therapy	60
Recurrent episodes occurring at least four times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy	30
Recurrent episodes occurring during the past 12-month period that respond to treatment with antihistamines or sympathomimetics, or; one to three episodes occurring during the past 12-month period requiring intermittent systemic immunosuppressive therapy	10
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7828 Acne:	
Deep acne (deep inflamed nodules and pus-filled cysts) affecting 40 percent or more of the face and neck	30
Deep acne (deep inflamed nodules and pus-filled cysts) affecting less than 40 percent of the face and neck, or; deep acne other than on the face and neck	10
Superficial acne (comedones, papules, pustules, superficial cysts) of any extent	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7829 Chloracne:	
Deep acne (deep inflamed nodules and pus-filled cysts) affecting 40 percent or more of the face and neck	30
Deep acne (deep inflamed nodules and pus-filled cysts) affecting less than 40 percent of the face and neck, or; deep acne other than on the face and neck	10
Superficial acne (comedones, papules, pustules, superficial cysts) of any extent	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7830 Scarring alopecia:	
Affecting more than 40 percent of the scalp	20

	Rating
Affecting 20 to 40 percent of the scalp	10
Affecting less than 20 percent of the scalp	0
7831 Alopecia areata:	
With loss of all body hair	10
With loss of hair limited to scalp and face	0
7832 Hyperhidrosis:	
Unable to handle paper or tools because of moisture, and unresponsive to therapy	30
Able to handle paper or tools after therapy	0
7833 Malignant melanoma: Rate as scars (DC's 7801, 7802, 7803, 7804, or 7805), disfigurement of the head, face, or neck (DC 7800), or impairment of function (under the appropriate body system).	
Note: If a skin malignancy requires therapy that is comparable to that used for systemic malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the skin, or surgery more extensive than wide local excision, a 100-percent evaluation will be assigned from the date of onset of treatment, and will continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination will be subject to the provisions of § 3.105(e). If there has been no local recurrence or metastasis, evaluation will then be made on residuals. If treatment is confined to the skin, the provisions for a 100-percent evaluation do not apply.	

(Authority: 38 U.S.C. 1155)

[FR Doc. 02–19331 Filed 7–30–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AL25

Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters; Notice of Disagreement Requirement

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the regulations of the Department of Veterans Affairs (VA) relating to attorney fees. We are removing the requirement that, in order for an agent or attorney to charge a fee for services provided in a case, there must have been a notice of disagreement filed in the case on or after November 18, 1988. This change is required by a statute enacted in December 2001.

DATES: *Effective Date:* December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits. The Board's Rules of Practice (38 CFR part 20) contain VA's regulations relating to attorney-fee matters.

The issues of whether and how much an agent or attorney may charge for services provided in a case involving a claim for veterans' benefits have always been highly regulated by Congress. From 1864 until 1988, such fees were limited to $10.00. In 1988, Congress passed the ''Veterans' Judicial Review Act'' (VJRA), Pub. L. No. 100–687, Div. A, 102 Stat. 4105, which permitted agents and attorneys to charge a ''reasonable fee'' for services provided in a case when the following three conditions were met:

- The Board made its first final decision in the case;
- The Board's first final decision followed a ''notice of disagreement'' filed with VA on or after the enactment date of the VJRA, i.e., November 18, 1988; and
- The agent or attorney was retained with respect to such case within one year of the date of the Board s first final decision.

38 U.S.C. 5904(c)(1); Pub. L. No. 100–687, Div. A, § 403, 102 Stat. 4105, 4122, *reprinted in* 38 U.S.C.A. 5904 note (Applicability to Attorneys Fees) (notice of disagreement date).

In § 603(b) of the ''Veterans Education and Benefits Expansion Act of 2001'', Pub. L. No. 107–103, 115 Stat. 976, 999 (Dec. 27, 2001), Congress repealed the requirement that, in order for an agent or attorney to charge a fee for services provided in a case, the Board's first final decision must have followed a notice of disagreement filed on or after November 18, 1988. This document implements that change in VA's regulations.

This change does not affect the requirements that, in order for an agent or attorney to charge a fee for services provided in a case, (1) the Board must have made its first final decision in that case, and (2) the agent or attorney must have been retained with respect to such case within one year of the date of the Board's first final decision.

Administrative Procedure Act

Because this rule merely implements a change in the statute, notice and public comment are unnecessary. 5 U.S.C. 553(b)(B). Accordingly, we are publishing this amendment as a final rule.

Unfunded Mandates

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

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

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 amendment will not directly affect any small entities. Only individuals 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 analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.