Implementation

This interim rule will be implemented for any military offender mandatorily released on good time deductions from a federal civilian prison if the offender committed his offense after August 15, 2001.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866. The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Amended Rule

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

Subpart A—United States Code Prisoners and Parolees

2. Section 2.35 is amended by adding the following paragraph (d):

§ 2.35 Mandatory release in the absence of parole.

* * * * *

(d) If the Commission orders a military prisoner who is under the Commission's jurisdiction for an offense committed after August 15, 2001 continued to the expiration of his sentence (or otherwise does not grant parole), the Commission shall place such prisoner on mandatory supervision after release if the Commission determines that such supervision is appropriate to provide an orderly transition to civilian life for the prisoner and to protect the community into which such prisoner is released. The Commission shall presume that mandatory supervision is appropriate for all such prisoners unless case-specific factors indicate that supervision is inappropriate. A prisoner who is placed on mandatory supervision shall be deemed to be released as if on parole, and shall be subject to the conditions of release at § 2.40 until the expiration of the maximum term for which he was sentenced, unless the Commission terminates the supervision early under § 2.43.

Dated: October 31, 2002.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 02–28318 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL20

Service Connection by Presumption of Aggravation of a Chronic Preexisting Disease

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection to reflect a statutory presumption that a chronic disease that preexisted the veteran's entry into military service but was first manifest to a 10-percent degree of disability within a specified period after service was aggravated by the veteran's military service. This amendment is necessary to make the regulations conform with the statute and the Court's decision.

DATES: *Effective Date:* November 7, 2002.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7213.

SUPPLEMENTARY INFORMATION: Section 1112(a), 38 U.S.C., states that, ''a chronic disease becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service * * * shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service.''

In the VA General Counsel Precedent Opinion 14–98 (VAOPGCPREC 14–98 (October 2, 1998)), the General Counsel held that Section 1112(a) of title 38, United States Code, does not establish a presumption of aggravation for a chronic disease that existed prior to service but first became manifest to a compensable degree within the presumptive period following service.

In *Splane* v. *West*, 216 F. 3d 1058 (2000), the United States Court of Appeals for the Federal Circuit concluded, among other things, that the General Counsel's interpretation of 38 U.S.C. 1112(a) was not in accordance with law and was therefore in excess of statutory authority. The Court held that 38 U.S.C. 1112(a) establishes not only a presumption of service incurrence for chronic diseases first manifest after service, but also a presumption of aggravation for chronic diseases that existed prior to service but first became manifest to a degree of disability of 10 percent or more within the presumption period after service. The Court vacated that portion of the General Counsel Precedent Opinion which interpreted 38 U.S.C. 1112(a).

VA regulations currently prohibit establishing service connection for aggravation of a preexisting chronic disease that first becomes manifest to a degree of 10 percent or more following discharge from military service. This prohibition is inconsistent with the statute as interpreted by the United States Court of Appeals for the Federal Circuit. Therefore, we are amending 38 CFR 3.307(a), (c), (d), and 3.309(a), to conform to the plain language of the statute and the conclusions of the Court.

Presently, 38 CFR 3.307(a), (c), and (d) provide only for a presumption of service incurrence. Accordingly, it is necessary to revise those paragraphs to include a presumption of aggravation.

38 CFR 3.307(d) currently states the factors to be considered in determining whether the presumption of service incurrence has been rebutted. The current regulation is based on the invalid conclusion that the presumption is one of service incurrence only. This provision is inconsistent with *Splane* because *Splane* establishes that 38 U.S.C. 1112(a) includes a presumption of aggravation of pre-existing diseases that were not incurred in service. Accordingly, it is necessary to revise 38 CFR 3.307(d) to state separately the criteria for rebutting the presumption of service incurrence (in cases where the chronic disease did not exist prior to service) and the criteria for rebutting the presumption of aggravation (in cases where the chronic disease did exist prior to service).

A current VA regulation, 38 CFR 3.306(a), provides that a presumption of aggravation based on an increase in the severity of a preexisting condition during service may be rebutted by evidence that the increase was due to

the natural progress of the disease. Additionally, section 1113(a) of title 38, United States Code, indicates that a presumption of service connection based on manifestations of disability subsequent to service may be rebutted by affirmative evidence to the contrary or evidence to establish that such disability is due to an intercurrent disease or injury suffered after separation from service. We are revising § 3.307(d) to reflect these principles. Although *Splane* did not discuss the criteria for rebutting the presumption of aggravation, we believe that inclusion of these rebuttal standards is necessary to the implementation of that decision.

Administrative Procedure Act

Changes made by this final rule merely reflect the statutory requirements or the decision of the United States Court of Appeals for the Federal Circuit. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

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).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

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 would 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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: September 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.307 is amended by:

A. In paragraph (a) introductory text, removing ''incurred in'' and adding, in its place, ''incurred in or aggravated by''.

B. In paragraph (c), removing the last sentence ''The consideration of service incurrence provided for chronic diseases will not be interpreted to permit any presumption as to aggravation of a preservice disease or injury after discharge.''.

C. Revising paragraph (d) and the authority citation at the end of the section.

The revision reads as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

* * * * *

(d) *Rebuttal of service incurrence or aggravation.* (1) Evidence which may be considered in rebuttal of service incurrence of a disease listed in § 3.309 will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression ''affirmative evidence to the contrary'' will not be taken to require a conclusive showing, but such showing as would, in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease was not incurred in service. As to tropical diseases the fact that the veteran had no service in a locality having a high incidence of the disease may be considered as evidence to rebut the presumption, as may residence during the period in question in a region where the particular disease is endemic. The known incubation periods of tropical diseases should be used as a factor in rebuttal of presumptive service connection as showing inception before or after service.

(2) The presumption of aggravation provided in this section may be rebutted by affirmative evidence that the preexisting condition was not aggravated by service, which may include affirmative evidence that any increase in disability was due to an intercurrent disease or injury suffered after separation from service or evidence sufficient, under § 3.306 of this part, to show that the increase in disability was due to the natural progress of the preexisting condition.

(Authority: 38 U.S.C 1113 and 1153)

§ 3.309 [Amended]

3. Section 3.309(a) is amended by removing ''incurred in'' and adding, in its place, ''incurred in or aggravated by''.

[FR Doc. 02–28267 Filed 11–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 021031262–2262–01; I.D. 103002A]

RIN 0648–AQ56

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS issues this temporary authorization to allow the use of limited tow times by shrimp trawlers as an alternative to the use of Turtle Excluder Devices (TEDs) in certain waters off Louisiana and Alabama. The exempted area in Louisiana consists of all the Louisiana state waters east of 92° 20′ W. long. (approximately at Fresh Water Bayou in Vermilion Parish, Louisiana); Federal waters are not included. The