to the point of origin, located at Annapolis, MD.

(b) *Definitions.* As used in this section—

*Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing any safety zone described in paragraph (a) of this section.

*Marine equipment* means any vessel, barge or other equipment operated by Smith Marine Towing, Inc. or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. Except for marine equipment, all vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement periods.* (1) Paragraph (a)(1) of this section will be enforced from 5 a.m. to noon on October 19, 2020, or if necessary due to inclement weather on October 19, 2020, from 5 a.m. to noon on October 20, 2020.

(2) Paragraph (a)(2) of this section will be enforced from 7 a.m. on October 20, 2020, through noon on October 22, 2020, or if necessary due to inclement weather, from 7 a.m. on October 20, 2020, through noon on October 23, 2020.

Dated: September 8, 2020.

**Joseph B. Loring,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

[FR Doc. 2020–20153 Filed 9–10–20; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 3

**RIN 2900–AQ80**

## Aggravation Definition

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes its adjudication regulations relating to aggravation of service-connected disabilities to more clearly define ''aggravation'' in service-connection claims. The revisions would explicitly confirm a singular definition of ''aggravation'' that includes the requirement of ''permanent worsening.'' The revisions would also include minor organizational and technical changes.

**DATES:** Comments must be received on or before November 10, 2020.

**ADDRESSES:** Comments may be submitted through *www.Regulations.gov;* or mailed to: Director, Compensation Service, VASRD Program Office, Department of Veterans Affairs, 1800 G St. NW, Room 644, Washington, DC 20006. Comments should indicate that they are submitted in response to ''RIN 2900–AQ80, Aggravation Definition.'' Comments received will be available *Regulations.gov* for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Keronica Richardson, Policy Analyst, VASRD Program Office (210), Compensation Service (21C), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:**

### I. Service Connection Based on Aggravation

For veterans who have injuries or diseases that existed prior to service and worsened during service, VA awards service connection and compensates them for the increase in disability. 38 CFR 3.306. For the purposes of this regulatory preamble, this basis of service connection will be referred to as ''in-service aggravation.'' Likewise, for veterans who have nonservice-connected injuries or diseases that are worsened by service-connected disabilities, VA awards service connection and compensates them for the increase in disability. 38 CFR 3.310. For the purposes of this regulatory preamble, this basis of service connection will be referred to as ''post-service aggravation.''

Both part 3.306 and part 3.310 provide that service connection based on aggravation is limited to situations where there is an increase in disability not caused by the natural progression of the injury or disease. Both regulations also provide that the increase must be measurable from an established baseline, although the burden is on VA to establish the baseline for purposes of in-service aggravation, whereas the burden is on the veteran to submit medical evidence establishing a baseline for purposes of post-service aggravation. *Compare* 38 CFR 3.306(b) *with* 38 CFR 3.310(b); *see also* 71 FR 52,744, 52,745 (Sept. 7, 2006) (final rule amending 38 CFR 3.310).

Section 3.306(a) derives from 38 U.S.C. 1153, which provides that a preexisting injury or disease will be considered to have been ''aggravated'' by active service ''where there is an increase in disability during such service,'' unless the increase is due to the natural progress of the disease.

Section 3.310(b) applies aggravation to the context of what is often called ''secondary'' service connection—when a service-connected disability itself causes a separate disability. Secondary service connection derives from the basic entitlement statutes applicable to disability compensation: 38 U.S.C. 1110 and 1131. As counterparts for wartime and peacetime service, each provides for compensation for ''disability resulting from personal injury suffered or disease contracted in line of duty'' or for ''aggravation of a preexisting injury suffered or disease contracted in line of duty.'' Given that these basic entitlement statutes also reference in-service aggravation, VA proposes to add those references to section 3.306 as well.

### II. The Need for Regulatory Amendment

The primary purpose of this proposed regulatory amendment is to provide a singular definition of ''aggravation'' by clarifying two phrases contained within 38 CFR 3.306 and 3.310; specifically, ''increase in disability'' in section 3.306 and ''any increase in severity'' in section 3.310. These phrases are not currently defined by statute or regulation, but rather by case law.

The premise that ''disability'' refers to impairment of earning capacity is firmly established in 38 U.S.C. 1155 and 38 CFR 4.1. Courts have long and consistently recognized this definition in regard to both in-service and post-service aggravation. *See Davis* v. *Principi,* 276 F.3d 1341, 1344 (2002) (addressing in-service aggravation of a preexisting condition); *Allen* v. *Brown,* 7 Vet. App. 439, 448 (1995) (*en banc*)

(addressing post-service aggravation). Both 38 CFR 3.306 and 3.310 serve the same ultimate goal of compensating veterans for increase in disability, whether based on aggravation of a preexisting disability (in-service context) or aggravation of a nonservice-connected disability (post-service context).

Although these regulations are built on the same fundamental concepts, the differences in their wording have caused confusion over how to apply ''aggravation'' in both contexts. Because the phrases ''increase in disability'' and ''any increase in severity'' are not clearly defined, there has been uncertainty over what standard to use in determining whether ''aggravation'' is demonstrated. The incongruent wording in these two regulations has been a consistent point of confusion and contention in the claims process, including on appeal. Many appellants have argued that the standard for ''aggravation'' of preexisting disabilities that worsened during service (under section 3.306) is different than for ''aggravation'' of post-service disabilities worsened by service-connected disabilities (under section 3.310). Recently, in the case of *Ward* v. *Wilkie,* the United States Court of Appeals for Veterans Claims (Veterans Court) held that the term ''aggravation'' under section 3.310 (as currently drafted) contemplates even temporary flare-ups. 31 Vet. App. 233, 240 (2019).

Although the Veterans Court discussed the current authorizing statutes for 38 CFR 3.306 and 3.310 in order to reach its regulatory holding, its statutory analysis was limited. *See* 31 Vet. App. at 238–39. The Veterans Court noted that the term ''aggravation,'' although present in 38 U.S.C. 1153, ''is not contained in the portions of 38 U.S.C. 1110 and 1131, from which secondary service connection derives.'' 31 Vet. App.at 238. Rather, the Court noted, sections 1110 and 1131 only use that term as pertaining to a pre-existing condition ''aggravated'' during service, which would not be applicable in the context of post-service aggravation. *Id.* However, the Veterans Court did not hold that sections 1110 and 1131 clearly foreclose a permanent worsening requirement in the term ''aggravation.'' Instead, the Veterans Court focused its analysis on interpreting section 3.310 as currently written, which includes the term ''[a]ny increase in severity'' that is not contained in the authorizing statutes. *Id.* at 238–39. VA is proposing to clarify its intent by amending the regulation in response to this interpretation of its regulation.

Specifically, VA intends to clarify, through regulatory amendment, what the term ''aggravation'' means in sections 3.306 and 3.310, and to harmonize those definitions where possible.[1] Thus, VA proposes amending both sections to clarify that the increase in disability must be permanent, not merely temporary or intermittent. The changes to harmonize sections 3.306 and 3.310 reflect the principle that VA's statutory and regulatory scheme should be read as a whole. Further, 38 U.S.C. 1110 and 1131 authorize VA to provide compensation for ''disability''; inherent in that conferred authority is VA's authority to define what constitutes disability (and, it logically follows, ''increase in disability'' for purposes of aggravation). *See, e.g., Wanner* v. *Principi,* 370 F.3d 1124, 1131 (Fed. Cir. 2004) (courts precluded from reviewing ''what should be considered a disability''); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 330 F.3d 1345, 1351 (Fed. Cir. 2003) (''38 U.S.C. 501(a) authorizes the Secretary to promulgate regulations with respect to the nature and extent of proof and evidence necessary to establish entitlement to veterans benefits.''). The reason that VA proposes to require an enduring, permanent increase in disability to establish service connection based on aggravation is that temporary or intermittent symptoms are difficult to rate (and thus prone to confusion and error) as well as time-consuming to identify and rate (resulting in delayed processing times).

VA's proposed changes to section 3.306 are in line with longstanding court precedent. *See, e.g., Davis,* 276 F.3d at 1346–47 (holding that ''evidence of temporary flare-ups symptomatic to an underlying preexisting condition, alone, is not sufficient for a non-combat veteran to show increased disability under 38 U.S.C. [ ] 1153 unless the underlying condition is worsened''). VA's proposed changes to section 3.310 respond to a growing divergence between the two ''aggravation'' standards in recent Veterans Court case law based on imprecise regulatory language. VA did not intend this divergence, and its proposed revisions to realign the two standards of ''aggravation'' will supersede the effect of the Veterans Court's recent holding in *Ward* v. *Wilkie* based on a change in the underlying regulatory text.

When VA last amended section 3.310, it did so to implement the Veterans Court's fundamental holding in *Allen* v. *Brown* that service connection may be awarded based on aggravation when a veteran's nonservice-connected disability is worsened beyond its natural progression due to a service-connected disability. The regulation was amended to allow a veteran entitlement to compensation for the degree of disability (but only that degree) over and above the degree of disability existing prior to aggravation. Prior to the *Allen* holding, section 3.310 only addressed secondary service connection. To conform section 3.310 to the *Allen* decision, VA amended it by moving paragraph (b) to (c) and creating a new paragraph (b). The new paragraph (b), represented by the current text, addressed compensation for the incremental increase in severity of a nonservice-connected disability worsened by a service-connected condition (*i.e.,* post-service aggravation). *See* 62 FR 30,547 (Jun. 4, 1997) (notice of proposed rulemaking); 71 FR 52,744 (Sept. 7, 2006) (final rule). At that time, VA did not consider or address the distinction between temporary flare-ups versus enduring worsening. To the extent that litigation has arisen over the boundaries of ''aggravation'' as defined in section 3.310, VA intends to clarify those boundaries now.

Currently, VA adjudicators must consult case law to understand how ''aggravation'' is defined. By amending 38 CFR 3.306 and 3.310, VA would enable its adjudicators—as well as all affected parties—to clearly identify and apply a singular definition of ''aggravation'' in both regulations.

Finally, VA also proposes amendments to sections 3.306 and 3.310 to use consistent terminology, as well as to make minor, technical changes to section 3.310.

## III. A Singular Definition

In light of the uncertainty that exists as to the meaning of ''aggravation'' in 38 CFR 3.306 and 3.310 and the unintended divergence in meaning of the regulatory terms as interpreted in case law resulting from imprecise wording in these regulations, VA is proposing to amend these regulations to explicitly confirm a singular definition of ''aggravation.'' This singular definition would apply to all claims for service connection, regardless of whether the aggravated condition was a preexisting condition that worsened during service or a nonservice-connected condition that worsened due to a service-connected condition.

[1] VA does not intend to alter the structure of 38 CFR 3.306(b) through (c) or revise the standard for demonstrating aggravation of a preexisting injury or disease for combat and prisoner-of-war veterans under section 3.306(b).

*A. Changes to 38 CFR 3.306(a)*

VA proposes to incorporate the longstanding, case law definition of ''aggravation'' from *Davis* v. *Principi* into 38 CFR 3.306(a). This revision would remove any ambiguity in the existing text and would define what constitutes an ''increase in disability''; the definition would include the requirement of ''permanent worsening.'' Accordingly, VA proposes to amend paragraph 3.306(a) by adding the following two sentences: ''Except as otherwise noted in paragraph (b)(2) in this section, service connection will only be warranted if the increase in disability is permanent and not attributable to the natural progress of the injury or disease. Temporary or intermittent flare-ups do not constitute an increase in disability unless the underlying injury or disease shows permanent worsening.''

*B. Changes to 38 CFR 3.310(a)*

VA proposes to change the introductory heading of 38 CFR 3.310(a) from ''*General*'' to ''*Secondary disabilities*''. The intent behind this change is to clarify the distinction between secondary service connection of a disability that only arose post-service and was caused by a service-connected disability, addressed in subsection (a), and aggravation of a pre-existing disability by a service-connected disability, addressed in subsection (b). Both scenarios are ''secondary'' service connection in the sense that VA is compensating for the downstream consequence of a service-connected disability rather than a disability that itself arose in service. Both scenarios accordingly rely on VA's authority found in 38 U.S.C. 1110 and 1131 to compensate disability that is causally related to service, as well as VA's underlying rulemaking authority in 38 U.S.C. 501.

While both scenarios share this similar legal grounding, VA wishes to highlight the distinction in order to clarify for rating personnel that the concepts are distinct. When an entirely new disability is caused by a service-connected disability, VA rates and compensates for the entire disability. In the scenario where a pre-existing disability is aggravated by a service-connected disability, VA rates and compensates only for the extent of the aggravation.

VA also proposes minor technical corrections to 38 CFR 3.310(a) that include grammatical corrections and use of consistent wording. For example, the current regulation interchangeably uses the terms ''disability'' and ''condition''; VA is proposing to use only the term ''disability'' for consistency. No substantive change to the law of secondary service connection in the non-aggravation context is intended.

*C. Changes to 38 CFR 3.310(b)*

VA proposes to clarify the definition of ''aggravation'' in 38 CFR 3.310(b) to align it with the definition in 38 CFR 3.306(a), which would change the underlying text relied on in the recent *Ward* v. *Wilkie* decision. This revision would remove any ambiguity as to what constitutes aggravation of a nonservice-connected condition by a service-connected condition. For further clarity and organization, VA proposes to revise paragraph 3.310(b) by dividing it into three paragraphs. Paragraph 3.310(b)(1) would provide general guidance and would define what constitutes an ''increase in disability''; this definition would include the requirement of ''permanent worsening.'' paragraph 3.310(b)(2) would describe the requirement of a baseline level of severity. This language is already present in the existing regulation, and VA only proposes to add a title and nomenclature to paragraph 3.310(b)(2). Lastly, paragraph 3.310(b)(3) would describe how to determine the extent of aggravation by deducting the baseline level of severity from the current level of severity. This language is already present in the existing regulation, and VA only proposes to add a title and nomenclature to paragraph 3.310(b)(3).

**Executive Orders 12866, 13563, and 13771**

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

This proposed rule is not expected to be an Executive Order 13771 regulatory or deregulatory action because it is not expected to result in more than *de minimis* costs. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This certification is based on the fact that no small entities or businesses receive or determine entitlement to VA disability compensation. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**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 one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Paperwork Reduction Act**

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

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.102, Compensation for Service Connected Deaths for Veterans' Dependents; and 64.103, Veterans Compensation for Service Connected Disability; 64.110.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Disability benefits, Veterans.

**Signing Authority**

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the

document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Performing the Delegable Duties of the Deputy Secretary, Department of Veterans Affairs, approved this document on April 14, 2020, for publication.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 3 as set forth below:

## 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. Revise § 3.306 paragraph (a) to read as follows:

### § 3.306 Aggravation of preservice disability.

(a) *General.* A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service when there is an increase in disability during such service. Except as otherwise noted in paragraph (b)(2) in this section, service connection will only be warranted if the increase in disability is permanent and not attributable to the natural progress of the injury or disease. Temporary or intermittent flare-ups do not constitute an increase in disability unless the underlying injury or disease shows permanent worsening.

(Authority: 38 U.S.C. 1110, 1131, and 1153)

* * * * *

■ 3. Revise § 3.310 paragraphs (a) and (b) to read as follows:

### § 3.310 Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.

(a) *Secondary disabilities.* Except as provided in § 3.300(c), a disability that is proximately due to or the result of a service-connected disability shall be service connected. When service connection is established for a secondary disability, it shall be considered a part of the original disability.

(b)(1) *Aggravation of Nonservice-Connected Disabilities.* An increase in disability of a nonservice-connected injury or disease that is proximately due to or the result of a service-connected disability will be service connected on the basis of aggravation. Service connection will only be warranted if the increase in disability is permanent and not attributable to the natural progress of the injury or disease. Temporary or intermittent flare-ups do not constitute an increase in disability unless the underlying injury or disease shows permanent worsening.

(2) *Baseline Level of Severity.* VA will not concede that a nonservice-connected injury or disease was aggravated by a service-connected injury or disease unless the baseline level of severity of the nonservice-connected injury or disease is established by medical evidence created before the onset of aggravation or by the earliest medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity of the nonservice connected injury or disease.

(3) *Extent of Aggravation.* The rating activity will determine the baseline and current levels of severity under the Schedule for Rating Disabilities (38 CFR part 4) and determine the extent of aggravation by deducting the baseline level of severity, as well as any increase in severity due to the natural progress of the injury or disease, from the current level.

(Authority: 38 U.S.C. 501, 1110 and 1131)

* * * * *

[FR Doc. 2020–17672 Filed 9–10–20; 8:45 am]

**BILLING CODE 8320–01–P**

## POSTAL REGULATORY COMMISSION

## 39 CFR Part 3050

**[Docket No. RM2020–12; Order No. 5622]**

## Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission initiates an informal rulemaking proceeding to change how the Postal Service determines incremental costs and how it accounts for peak-season costs in its periodic reports. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* September 8, 2020.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents



### I. Introduction

On August 5, 2020, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[1] The Petition identifies the proposed analytical changes filed in this docket as Proposal Five.

### II. Proposal Five

*Background.* Proposal Five relates to the Revenue Piece and Weight (RPW) reporting methodology for measuring the national totals of non-Negotiated Service Agreement (NSA) mailpieces in international outbound product categories bearing PC Postage indicia from postage evidencing systems. Petition, Proposal Five at 1. The international outbound products at issue include Priority Mail International (PMI) and First-Class Package International Service (FCPIS). *Id.* Currently, the Postal Service uses several census sources in combination with statistical sampling estimates from the System for International Revenue and Volume, Outbound, and International Origin Destination Information System (SIRVO) to report the national totals of non-NSA mailpieces in outbound international product categories. *Id.* at 2. The Postal Service also filed a detailed assessment of the impact of the proposal on particular products in a non-public attachment accompanying this proposal.[2]

*Proposal.* The Postal Service's proposal seeks to replace the SIRVO sampling data used in the existing RPW reporting methodology for international

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Five), August 5, 2020 (Petition). The Postal Service also filed a notice of filing of non-public material relating to Proposal Five. Notice of Filing of USPS–RM2020–12–NP1 and Application for Nonpublic Treatment, August 5, 2020.

[2] *See* Library Reference USPS–RM2020–12–NP1.