

**38 CFR Part 3****RIN 2900-AR22****Extension of the Presumptive Period for Compensation for Persian Gulf War Veterans**

AGENCY: Department of Veterans Affairs

ACTION: Interim Final Rule

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to amend its adjudication regulations regarding compensation for disabilities resulting from undiagnosed illnesses suffered by Veterans who served in the Persian Gulf War. This amendment is necessary to extend the presumptive period for qualifying chronic disabilities resulting from undiagnosed illnesses that must manifest to a compensable degree in order to establish entitlement to disability compensation benefits. The intended effect of this amendment is to provide consistency in VA adjudication policy, preserve certain rights afforded to Persian Gulf War Veterans and ensure fairness for current and future Persian Gulf War Veterans.

DATES: *Effective date:* This interim final rule is effective [insert date of publication in the FEDERAL REGISTER].

Applicability date: The provisions of this interim final rule shall apply to all applications for benefits that are received by VA on or after the effective date of this interim final rule or that are pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on the effective date of this interim final rule.

Comments due date: Comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER]

ADDRESSES: Comments may be submitted through www.Regulations.gov.

Comments should indicate that they are submitted in response to “RIN 2900-AR22 - Extension of the Presumptive Period for Compensation for Persian Gulf War Veterans.”

Comments received will be available at www.regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Robert Parks, Chief, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-9540. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

In response to the needs and concerns of Veterans who served in the Southwest Asia theater of operations during the Persian Gulf War, Congress enacted the Persian Gulf War Veterans' Benefits Act, Title I of the Veterans' Benefits Improvement Act of 1994, Public Law 103-446, which was codified in relevant part at 38 U.S.C. 1117. This law provided authority for the Secretary of Veterans Affairs (Secretary) to compensate eligible Persian Gulf War Veterans with a chronic disability resulting from an undiagnosed illness. That illness must have become manifest either during active duty service in the Southwest Asia theater of operations during the Persian Gulf War, or disabling to a degree of 10 percent or more during a period determined by the Secretary and prescribed by regulation. The Secretary would determine this period after reviewing any credible medical or scientific evidence, the historical treatment afforded disabilities for which VA had established such periods, and other pertinent circumstances regarding the experiences of Veterans of the Persian Gulf War.

As required by Public Law 105-368, the National Academy of Sciences (NAS) reviewed, evaluated, and summarized the scientific and medical literature for possible

association between service in the Southwest Asia theater of operations and long-term adverse health effects. Following review of NAS reports on Gulf War and Health, volumes 9, 10, and 11, VA concludes that the evidence remains inconclusive regarding the time of onset of undiagnosed and other illnesses related to Persian Gulf War service. (NAS reports are available at <http://nationalacademies.org>)

II. Extension of Current Deadline

Currently, military operations in the Southwest Asia theater of operations continue. No end date for the Persian Gulf War has been established by Congress or the President. See 38 U.S.C. 101(33) (defining the term “Persian Gulf War”). Because scientific uncertainty remains as to the cause and time of onset of illnesses suffered by Persian Gulf War Veterans and current research studies are inconclusive, limiting entitlement to benefits payable under 38 U.S.C. 1117 due to the expiration of the presumptive period in 38 CFR 3.317(a)(1)(i) would be premature. If extension of the current presumptive period is not implemented, servicemembers whose conditions manifest after December 31, 2021, would be substantially disadvantaged compared to servicemembers whose conditions manifested at an earlier date.

Therefore, VA is extending the presumptive period in 38 CFR 3.317(a)(1)(i) for qualifying chronic disabilities that become manifest to a degree of 10 percent or more through December 31, 2026 (a period of five years), to ensure those benefits established by Congress are fairly administered.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) and (d)(3) to publish this rule without prior opportunity for public comment and to publish this rule with an immediate effective date. Absent extension of the sunset date in the current regulation, VA’s authority to provide benefits in new claims for qualifying chronic disability in Persian Gulf War Veterans will lapse on

December 31, 2021. A lapse of such authority would be contrary to the public interest because it would have a significant adverse impact on veterans disabled due to such disabilities. To avoid such impact, VA is issuing this rule as an interim final rule, effective upon date of publication. However, VA invites public comments on this interim final rule and will fully consider and address any comments received.

Executive Orders 12866 and 13563

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 not a significant regulatory action under Executive Order 12866.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov

Regulatory Flexibility Act

The Secretary hereby certifies that this interim 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).

Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

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 interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final 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 program numbers and titles for this rule are: 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.109, Veterans Compensation for Service-Connected Disability.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 3

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

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on July 26, 2021, 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.

Luvenia Potts
Regulation Development Coordinator
Office of Regulation Policy & Management
Office of General Counsel

Department of Veterans Affairs

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3 – ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity

Compensation

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

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

2. In § 3.317, paragraph (a)(1)(i) is revised to read as follows:

§ 3.317 Compensation for certain disabilities occurring in Persian Gulf veterans.

(a) * * *

(1) * * *

(i) Became manifest either during active military, naval, or air service in the Southwest Asia theater of operations, or to a degree of 10 percent or more not later than December 31, 2026; and

* * * * *

(Authority: 38 U.S.C. 1117, 1118).

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