

adversely affected based on oral information or statements if within 30 days of the date on which VA issues the notification of adverse action the beneficiary or his or her fiduciary asserts that the adverse action was based upon information or statements that were inaccurate or upon information that was not provided by the beneficiary or his or her fiduciary. This will not preclude VA from taking subsequent action that adversely affects benefits.

Authority: 38 U.S.C. 501, 1115, 1506, 5104.

3. In § 3.204(a)(1), the word “written” is removed; and the information collection requirements parenthetical is added immediately preceding the authority citation at the end of the section to read as follows:

§ 3.204 Evidence of dependents and age.

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(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0624.)

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4. A new § 3.217 is added preceding the undesignated center heading “Dependency, Income and Estate”:

§ 3.217 Submission of statements or information affecting entitlement to benefits.

(a) For purposes of this part, unless specifically provided otherwise, the submission of information or a statement that affects entitlement to benefits by e-mail, facsimile, or other written electronic means, will satisfy a requirement or authorization that the statement or information be submitted in writing.

Note to paragraph (a): Section 3.217(a) merely concerns the submission of information or a statement in writing. Other requirements specified in this part, such as a requirement to use a specific form, to provide specific information, to provide a signature, or to provide a certified statement, must still be met.

(b) For purposes of this part, unless specifically provided otherwise, VA may take action affecting entitlement to benefits based on oral or written information or statements provided to VA by a beneficiary or his or her fiduciary. However, VA may not take action based on oral information or statements unless the VA employee receiving the information meets the following conditions:

(1) During the conversation in which the information or statement is provided, the VA employee:

(i) Identifies himself or herself as a VA employee who is authorized to receive the information or statement (these are VA employees authorized to

take actions under §§ 2.3 or 3.100 of this chapter);

(ii) Verifies the identity of the provider as either the beneficiary or his or her fiduciary by obtaining specific information about the beneficiary that can be verified from the beneficiary’s VA records, such as Social Security number, date of birth, branch of military service, dates of military service, or other information; and

(iii) Informs the provider that the information or statement will be used for the purpose of calculating benefit amounts; and

(2) During or following the conversation in which the information or statement is provided, the VA employee documents in the beneficiary’s VA records the specific information or statement provided, the date such information or statement was provided, the identity of the provider, the steps taken to verify the identity of the provider as being either the beneficiary or his or her fiduciary, and that he or she informed the provider that the information would be used for the purpose of calculating benefit amounts.

Authority: 38 U.S.C. 501, 1115, 1506, 5104.

5. Section § 3.256(a) introductory text is amended by removing “in writing”; and the information collection requirements parenthetical at the end of the section is revised to read as follows:

§ 3.256 Eligibility reporting requirements.

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(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0101 and 2900–0624.)

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6. Section § 3.277(b) introductory text is amended by removing “in writing”; and the information collection requirements parenthetical at the end of the section is revised to read as follows:

§ 3.277 Eligibility reporting requirements.

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(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0101 and 2900–0624.)

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[FR Doc. 01–28157 Filed 11–8–01; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK98

Extension of the Presumptive Period for Compensation for Gulf War Veterans’ Undiagnosed Illnesses

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations regarding compensation for disabilities resulting from undiagnosed illnesses suffered by Persian Gulf War veterans. This amendment is necessary to extend the period within which such disabilities must become manifest to a compensable degree in order for entitlement for compensation to be established. The intended effect of this amendment is to ensure that veterans with compensable disabilities due to undiagnosed illnesses that may be related to active service in the Southwest Asia theater of operations during the Persian Gulf War may qualify for benefits.

DATES: Effective date: November 9, 2001. Comment date: Comments must be received by VA on or before January 8, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or electronic mail (e-mail) comments to

OGCRegulations@mail.va.gov.

Comments should indicate that they are submitted in response to “RIN 2900–AK98.” All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT:

Randy A. McKeivitt, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7138.

SUPPLEMENTARY INFORMATION: In response to the needs and concerns of veterans of the Persian Gulf War (Gulf War), Congress enacted the “Persian Gulf War Veterans” Benefits Act,” Title I of the “Veterans” Benefits Improvements Act of 1994,” Pub. L.

103–446. That statute added a new section 1117 to title 38, United States Code, authorizing the Secretary of Veterans Affairs to compensate a Gulf War veteran suffering from a chronic disability resulting from an undiagnosed illness or combination of undiagnosed illnesses that became manifest either during active duty in the Southwest Asia theater of operations during the Gulf War or to a degree of 10 percent or more within a presumptive period, as determined by the Secretary, following service in the Southwest Asia theater of operations during the Gulf War. The statute specified that, in establishing a presumptive period, the Secretary should review any credible scientific or medical evidence, the historical treatment afforded other diseases for which service connection is presumed, and other pertinent circumstances regarding the experience of Gulf War veterans.

In the **Federal Register** of February 3, 1995, VA published a final rule adding a new § 3.317 to title 38, Code of Federal Regulations, to establish the regulatory framework necessary for the Secretary to pay compensation under the authority granted by the Persian Gulf War Veterans' Benefits Act. (See 60 FR 6660) As part of that rulemaking, having determined that there was little or no scientific or medical evidence at that time that would be useful in determining an appropriate presumptive period, VA established a 2-year-post-Gulf-service presumptive period based on the historical treatment of disabilities for which manifestation periods had been established and pertinent circumstances regarding the experiences of Gulf War veterans as they were then known.

Because of concerns regarding the adequacy of the 2-year presumptive period for undiagnosed illnesses, the Secretary determined that the presumptive period should be extended with respect to disabilities due to undiagnosed illnesses that become manifest through December 31, 2001. In the **Federal Register** of April 29, 1997, VA published a final rule amending 38 CFR 3.317 to implement that determination. (See 62 FR 23138)

As required by statute, 38 U.S.C. 1118, the Institute of Medicine (IOM) of the National Academy of Sciences conducted a review of the available scientific literature concerning associations between diseases and exposure in military service to selected risk factors encountered or experienced during the Gulf War. In a report published on September 7, 2000, the IOM noted that research was still ongoing. They suggested additional

areas of possible research and recommended that additional studies be conducted. The IOM will be conducting additional reviews of the scientific literature.

VA continues to receive claims for undiagnosed illnesses. As of January 15, 2001, the number of decided undiagnosed illness claims from veterans who served in the Southwest Asia theater of operations either during the actual conflict or afterwards has been approximately 100 per quarter for the previous 2 years. The number of claims decided from those veterans who served after the end of the actual conflict during that same 2-year period has been about 40 per quarter.

Military operations in the Southwest Asia theater of operations continue to this date. No end date for the Gulf War has been established by Congress or the President. (See 38 U.S.C. 101(33)) The servicemembers who conduct military operations after December 31, 2001, will have served in essentially the same physical conditions in which other servicemembers served from the end of the actual conflict through December 31, 2001. It is anticipated that servicemembers will be serving in the Gulf region after December 31, 2001. Thus, unless the manifestation period is extended, these individuals may be unfairly deprived of the benefits mandated by Congress.

In light of the continuing scientific and medical inquiry into the nature and cause of undiagnosed illnesses suffered by Gulf War veterans, the continuing military operations in the Gulf region, and the new claims still being received from Gulf War veterans, this document extends the presumptive period for disabilities due to undiagnosed illnesses that become manifest to a degree of 10 percent or more through December 31, 2006, a period of 5 years. It is expected that, during this period, at least two additional literature reviews will be conducted by the IOM. By then, it is anticipated, results of ongoing research may shed more light on disabilities resulting from Gulf War service and serve as a guide to future policies.

We are making this amendment effective on the date of publication, on an emergency basis, due to the pending expiration of the current manifestation period (December 31, 2001).

The presumptive period is based primarily on the need for completion of additional research, rather than evidence concerning the manifestation period of undiagnosed illnesses. Although this change has the effect of creating a longer presumptive period for Gulf War veterans who left the Southwest Asia theater of operations in

the past, as compared to those who may be in service there at present, it still provides an ample presumptive period (up to 5 years) for the latter individuals. Further, future extensions of the presumptive period are possible should they prove to be necessary for any group of veterans. Thus, this change does not disadvantage any Gulf War veteran.

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. 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.

OMB Review

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

Paperwork Reduction Act

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

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, Health care, Individuals with disabilities, Pensions, Veterans, Vietnam.

Approved: October 12, 2001.

Anthony J. Principi,

Secretary 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 part 3, subpart A continues to read as follows:

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

§ 3.317 [Amended]

2. In § 3.317, paragraph (a)(1)(i) is amended by removing “December 31, 2001” and adding, in its place, “December 31, 2006”.

[FR Doc. 01–28158 Filed 11–7–01; 8:45 am]

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