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Dated: December 14, 2011.

David S. Ferriero,

Archivist of the United States.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AO09

Extension of Statutory Period for Compensation for Certain Disabilities Due to Undiagnosed Illnesses and Medically Unexplained Chronic Multi-Symptom Illnesses

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 regulation regarding compensation for disabilities suffered by veterans who served in the Southwest Asia Theater of Operations during the Persian Gulf War. This amendment is necessary to extend the period during which disabilities associated with undiagnosed illnesses and medically unexplained chronic multi-symptom illnesses must become manifest in order for a veteran to be eligible for compensation.

DATES: *Effective Date:* This interim final rule is effective *December 29, 2011*. Comments must be received by VA on or before February 27, 2012.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free number). Comments should indicate that they are submitted in response to “RIN 2900-AO09—Extension of Statutory Period for Compensation for Certain Disabilities Due to Undiagnosed Illnesses and Medically Unexplained Chronic Multi-Symptom Illnesses.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the

hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Nancy Copeland, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-9428. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

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 at 38 U.S.C. 1117. This law provided authority for the Secretary of Veterans Affairs (Secretary) to compensate Gulf War veterans with a chronic disability resulting from an undiagnosed illness that became manifest either during service on active duty in the Southwest Asia theater of operations during the Persian Gulf War or to a degree of ten percent or more disabling during a presumptive period determined by the Secretary.

Public Law 103-446 directed the Secretary to prescribe by regulation the period of time, following service in the Southwest Asia theater of operations, determined to be appropriate for the manifestation of an illness warranting payment of compensation. It further directed that the Secretary's determination of a presumptive period be made only following a review of any credible medical or scientific evidence and the historical treatment afforded disabilities for which manifestation periods have been established, taking into account other pertinent circumstances regarding the experiences of veterans of the Persian Gulf War.

To implement 38 U.S.C. 1117, VA published a final rule to add 38 CFR 3.317, which established the framework for the Secretary to pay compensation under the authority granted by the Persian Gulf War Veterans' Benefits Act. See 60 FR 6660, February 3, 1995. As part of that rulemaking, VA established a 2 year, post-Gulf War service presumptive period based primarily on the historical treatment of disabilities for which manifestation periods have been established and pertinent facts known regarding service in the

Southwest Asia theater of operations during the Persian Gulf War. VA determined that there was little or no scientific or medical evidence, at that time, useful in determining an appropriate presumptive period for undiagnosed illnesses.

Due to the continuing lack of medical and scientific evidence about the nature and cause of the illnesses suffered by Gulf War veterans and the inadequacy of a designated presumptive period for undiagnosed illnesses, the Secretary established December 31, 2001, as the date by which an undiagnosed illness must become manifest for purposes of claims based on service in the Southwest Asia theater of operations during the Persian Gulf War. In 2001, VA further extended the period from December 31, 2001, to December 31, 2006.

In December 2001, section 202(a) of Public Law 107-103 amended 38 U.S.C. 1117 by revising the term “chronic disability” to include the following (or any combination of the following): (a) An undiagnosed illness; (b) a medically unexplained chronic multi-symptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs and symptoms; or (c) any diagnosed illness that the Secretary determines warrants a presumption of service connection. The revised term “qualifying chronic disability,” has broadened the scope of those health outcomes the Secretary may include under the presumption of service connection. Under 38 U.S.C. 1117, a chronic disability must still occur during service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of ten percent or more disabling during the prescribed presumptive period following such service. VA amended 38 CFR 3.317 to reflect these changes. See 68 FR 34539, June 10, 2003.

As required by Public Law 105-277, the National Academy of Sciences (NAS) conducts ongoing review, evaluation, and summarization of the scientific and medical literature for peer review regarding the possible association between service in the Southwest Asia theater of operations and long-term adverse health effects. Due to the inconclusive nature of the scientific and medical evidence concerning the manifestation period for the subject illnesses, in December 2007, VA published a final rule to further extend the manifestation period from December 31, 2006 (previously extended), to December 31, 2011. See 72 FR 68507-01. Additionally, on October 13, 2010, Congress enacted section 806

of Public Law 111–275, which directed NAS to continue to review, evaluate, and summarize scientific and medical literature associated with Persian Gulf War service and broadly expanded the time frame for NAS to complete this research, since military operations in the Southwest Asia Theater of Operations continue, including Operation Iraqi Freedom, and no end date for the Gulf War has been established by Congress. See 38 U.S.C. 101(33).

In a report published in 2010 titled *Gulf War and Health, Volume 8: Update of Health Effects of Serving in the Gulf War*, NAS evaluated the available scientific and medical literature regarding the prevalence of chronic multi-symptom illnesses in Gulf War veterans. Consistent with its prior findings, NAS concluded, based on multiple studies, that there is sufficient evidence of an association between deployment to the Gulf War and chronic multi-symptom illness. NAS analyzed two follow-up studies that surveyed veterans who served in the Gulf War in 1991 in order to determine whether the increased prevalence of chronic multi-symptom illness persisted several years after such service. One study, conducted 10 years after the 1991 Gulf War, involved conducting detailed examinations and medical histories of veterans deployed to the Gulf War and non-deployed veterans of the same era. The study found that, 10 years after the 1991 Gulf War, chronic multi-symptom illness was nearly twice as prevalent in veterans deployed to the Gulf War (present in 28.9 percent of such veterans) than in the non-deployed veterans (15.8 percent). The study found that the prevalence of chronic multi-symptom illness decreased gradually over time, but remained significantly elevated 10 years after service. The other follow-up study involved a 2005 survey of veterans deployed to the 1991 Gulf War and their non-deployed counterparts of that era. That study found that 36.5 percent of the deployed veterans reported experiencing symptoms of chronic multi-symptom illness in 2005, compared to 11.7 percent of the non-deployed veterans. While this report is limited in that it is based on self-reports, the results are statistically significant and are consistent with the other follow-up report.

The currently available scientific and medical literature thus suggests that, while the prevalence of chronic multi-symptom illness may decrease over time following deployment to the Gulf War, the prevalence remains significantly elevated among deployed veterans more

than a decade after deployment. At present, there is not a sufficient basis to identify the point, if any, at which the increased risk of chronic multi-symptom illness may abate. Further follow-up studies may provide additional information relevant to this issue in the future.

Section 501(a) of Title 38, United States Code, provides that the Secretary of Veterans Affairs “[h]as authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department and are consistent with those laws.” Because scientific uncertainty remains as to the cause of illnesses suffered by Persian Gulf War veterans and the time period in which such veterans have an increased risk of chronic multi-symptom illness, and because scientific studies and NAS reviews are ongoing, in order to ensure that benefits established by Congress are fairly administered, VA is further amending 38 CFR 3.317 to extend the evaluation period from December 31, 2011, to December 31, 2016.

Administrative Procedures Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(3)(B) to publish this rule without prior opportunity for public comment. Absent extension of the sunset date in the current regulation, VA’s authority to provide benefits in new claims for qualifying chronic disability in Gulf War veterans will lapse on December 31, 2011. A lapse of such authority would have significant adverse impact on veterans disabled due to such disabilities. To avoid such impact, VA is issuing this rule as an interim final rule. However, VA invites public comments on this interim final rule and will fully consider and address any comments received.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this 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 rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866.

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

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are: 64.109, Veterans

Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, 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. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 28, 2011, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: December 22, 2011.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

■ 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), remove the date “December 31, 2011” and add, in its place, “December 31, 2016”.

[FR Doc. 2011–33222 Filed 12–28–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0032; FRL–9613–3]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP) that was submitted by the Governor of New

Mexico to EPA on December 15, 2010. This SIP revision modifies Albuquerque/Bernalillo County’s Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Albuquerque/Bernalillo County’s PSD permitting requirements for their greenhouse gas (GHG) emissions. EPA is fully approving the Albuquerque/Bernalillo County, New Mexico December 15, 2010 PSD SIP revision because the Agency has determined that this PSD SIP revision is in accordance with section 110 and part C of the Federal Clean Air Act and EPA regulations regarding PSD permitting for GHGs.

DATES: This final rule will be effective January 30, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2011–0032. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the Local Air Agency listed below during official business hours by appointment:

Albuquerque Environmental Health Department, Suite 3023, 3rd floor, One Civic Plaza, 400 Marquette Avenue NW., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today’s final rule, please contact Mr. Mike Miller (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–7550. Mr. Miller can also be reached via electronic mail at miller.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA. This supplementary information section is arranged as follows:

- I. What is the background for this action?
- II. What final action is EPA taking?
- III. Statutory and Executive Order Reviews

I. What is the background for this action?

The background for EPA’s national actions pertaining to GHG’s as well as today’s action is discussed in detail in our September 26, 2011 proposal (76 FR 59334). The comment period was open for thirty days and no comments were received.

II. What final action is EPA taking?

We are fully approving Albuquerque/Bernalillo County’s December 15, 2010, SIP submittal, relating to PSD requirements for GHG-emitting sources in Albuquerque/Bernalillo County. Specifically, the SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA’s Tailoring Rule. We are approving this SIP revision because it is in accordance with the Clean Air Act (CAA) and EPA regulations regarding PSD permitting for GHGs.

As explained in our proposed approval of the Albuquerque/Bernalillo County December 15, 2010, SIP revision, 76 FR 59334 (September 26, 2011), since we are approving Albuquerque/Bernalillo County’s changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into its SIP, then paragraph (e) in Section 52.1634 of 40 CFR part 52, as included in EPA’s SIP Narrowing Rule—which codifies EPA’s limiting its approval of Albuquerque/Bernalillo County’s PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds—is no longer necessary. In today’s action, we are also amending Section 52.1634 of 40 CFR part 52 to remove this unnecessary regulatory language.