

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 3**

RIN 2900-AM47

**Extension of the Presumptive Period for Compensation for Gulf War Veterans**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

**SUMMARY:** This document affirms an amendment to the Department of Veterans Affairs (VA) adjudication regulation 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 become manifest to a compensable degree in order that entitlement for compensation be established. The intended effect of this amendment is to provide consistency in VA adjudication policy and preserve certain rights afforded to Persian Gulf War veterans and ensure fairness for current and future Persian Gulf War veterans.

**DATES:** *Effective Date:* December 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Rhonda F. Ford, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7210. (This is not a toll-free number).

**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, Public Law 103-446, which was codified in relevant part at 38 U.S.C. 1117. This law provided authority to 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 10 percent or more during a presumptive period determined by the Secretary. Section 1117 directs the Secretary to prescribe by regulation the presumptive period following service in the Southwest Asia theater of operations determined to be appropriate for the manifestation of an illness warranting payment of compensation. On December 18, 2006,

we published an interim final rule extending the presumptive period in 38 CFR 3.317 to December 31, 2011 (71 FR 75669). We provided a 60-day comment period that ended February 16, 2007.

We received one comment from a concerned individual and one comment from The American Legion. The individual commented that it was important to acknowledge an undiagnosed illness as a real medical condition. We will make no change based on this comment. We note that both statute and regulation authorize payment of compensation for specific disabilities resulting from undiagnosed illnesses, thus recognizing the existence of undiagnosed illnesses for purposes of VA benefits. Moreover, we believe that the extension of the presumptive period and other existing regulations regarding disabilities and illnesses related to the Gulf War will continue 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.

The American Legion commented that, because military operations continue in the Persian Gulf, research into Gulf War illnesses remains ongoing, and VA continues to receive disability claims for disabilities due to undiagnosed illnesses, the presumptive period should be extended indefinitely, not just to December 31, 2011. We will make no change based on this comment. Section 102(7) of the Persian Gulf War Veterans' Benefits Act states Congress' finding that further research must be undertaken to determine the causes of Gulf War veterans illnesses and that "pending the outcome of such research, veterans who are seriously ill as the result of such illnesses should be given the benefit of the doubt and be provided compensation to offset the impairment in earning capacities they may be experiencing." In 38 U.S.C. 1118, Congress has prescribed an ongoing process for investigating the nature and causes of Gulf War veterans' illnesses and for prescribing presumptions of service connection for specific conditions associated with Gulf War service. The statutory scheme reflects the hope that further research and the procedures mandated by section 1118 may eventually diminish the need for the presumptions in section 1117. Accordingly, we believe that extending the presumptive period for a significant, but not indefinite period to permit further investigation is consistent with the goals of this statutory scheme.

In 38 U.S.C. 1117(b), Congress provided the Secretary with discretion

to prescribe a presumptive period based upon, among other things, a review of credible medical or scientific evidence. As stated in the interim final rule, the Secretary is extending the presumptive period to December 31, 2011 in order to provide more time for scientific and medical research regarding diseases and illnesses that may be related to service in the Southwest Asia theater of operations. Based on the current lack of scientific certainty surrounding the cause of illnesses suffered by Gulf War veterans, the Secretary's decision to extend the presumptive period until December 31, 2011, is within the discretion given to him by 38 U.S.C. 1117. Before the expiration of the presumptive period established by this rule, the Secretary may extend the presumptive period further if scientific uncertainty remains regarding the causes of Gulf War veterans illnesses.

We appreciate the comments submitted on the interim final rule. Based on the rationale set forth in the interim final rule and in this document, we now affirm as a final rule the amendments made by the interim final rule.

**Administrative Procedure Act**

This document without any changes affirms amendments made by an interim final rule that is already in effect. Accordingly, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with a delayed effective date based on the conclusion that such procedure is impracticable, unnecessary, and contrary to the public interest.

**Paperwork Reduction Act**

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

**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 final rule would not affect any small entities. Only VA beneficiaries 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 analysis requirements of sections 603 and 604.

**Executive Order 12866**

Executive Order 12866 directs agencies to assess all 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, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, 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 the Executive Order.

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

#### 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 an 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 final 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 numbers and titles for the programs affected by this document are 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

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

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

Approved: August 27, 2007.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

■ Accordingly, the interim final rule amending 38 CFR part 3 that was published at 71 FR 75669 on December 18, 2006, is adopted as a final rule without change.

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**BILLING CODE 8320-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2006-1021; FRL-8501-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions to sulfur dioxide (SO<sub>2</sub>) requirements for Northern States Power Company, doing business as Xcel Energy, Inver Hills Generating Plant (Inver Hills), located in Inver Grove Heights, Dakota County, Minnesota. The revisions make the limits of the sulfur content in its fuel and its sulfur dioxide emissions more stringent, and prohibit the burning of residual fuel oil. The revisions allow the facility to use simpler methods to analyze the sulfur content of its fuel. Because the sulfur dioxide emission limits are being reduced, the air quality of Dakota County will be protected.

**DATES:** This direct final rule will be effective February 4, 2008, unless EPA receives adverse comments by January 4, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-1021, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: mooney.john@epa.gov.
3. *Fax*: (312) 886-5824.
4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air

Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2006-1021. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure 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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 am to 4:30 pm, Monday