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National Veterans Affairs and Rehabilitation Commission

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Presumptions of Service Connection for Persian Gulf Service

On March 18, 2010, the Department of Veterans Affairs (VA) published a proposed regulation in the Federal Register to establish presumption of service connection for nine diseases. This action is necessary to implement the decision of the Secretary of Veterans Affairs that there is a positive association between service in the Southwest Asia theater of operations and Afghanistan during certain periods and the subsequent development of the following infectious diseases:

- Brucellosis
- Campylobacter jejuni
- Coxiella burnetii (Q fever)
- Malaria
- Mycobacterium tuberculosis
- Nontyphoid Salmonella
- Shigella
- Visceral leishmaniasis
- West Nile virus


The Secretary's decision to establish presumptive service connection for these conditions is based on the findings of an October 2006 report of the Institute of Medicine (IOM) of the National Academy of Sciences titled "Gulf War and Health Volume 5." Authority to establish presumptive service connection is provided in title 38 United States Code (USC) § 1118. The nine diseases listed above are the first conditions for which presumption of service connection under § 1118 will be established. Three of the nine conditions (tuberculosis, leishmaniasis, and malaria) are already covered under current statutory presumptions but tuberculosis and leishmaniasis would have open-ended presumptive periods under the new regulation. The presumptive period for malaria under the new regulation would be the same as it is under 38 USC § 1112(a)(2), which requires malaria to become manifest within one year of service or at a

time when standard or accepted treatises indicate that the incubation period commenced during service. VA proposes to establish one year presumptive periods for the other six conditions.

The proposed regulation also identifies several secondary health effects potentially associated with each of the nine diseases but does not establish presumptions of service connection for these conditions. The proposed regulation does, however, direct VA to determine, in cases where the veteran has or had one of the nine presumptive conditions and also has one of the identified long-term health effects, whether, based on the evidence in each case, the identified secondary condition was caused by the presumptive condition for the purpose of paying disability compensation.

The new presumptive conditions will apply to veterans who served in the Southwest Asia theater of operations, as currently defined under title 38 Code of Federal Regulations (CFR) § 3.317(d), and to veterans who served in Afghanistan on or after September 19, 2001, the date specified in Executive Order 13239 as the date combatant activities commenced in that country. As Congress has not officially ended the period of the "Persian Gulf War," this proposed regulatory change applies to all veterans who served in the Southwest Asia theater of operations from August 2, 1990 to the present.

Written comments regarding this proposed regulation must be received by VA on or before May 17, 2010. A final regulation will be published in the Federal Register after VA considers all of the comments received during the public comment period. The proposed regulation may be accessed on the Federal Register web site at <http://www.gpoaccess.gov/fr/browse.html>.


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