Collection of Information

This temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this temporary rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This temporary rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007, a temporary § 165.T13–040 is added to read as follows:

§ 165.T13–040 Safety Zone: New Tacoma Narrows Bridge Construction Project, Construction Barge ''MARMACK 12''.

(a) *Location.* The following is a safety zone: All waters of the Tacoma Narrows, Washington State, within 500 feet of the construction barge ''MARMACK 12'', official number 1024657.

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in the zone except for those persons involved in the construction of the new Tacoma Narrows Bridge, supporting personnel, or other vessels authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

(c) *Applicable dates.* This section applies from 12:01 a.m. November 16, 2006 to 11:59 p.m. January 16, 2007.

Dated: November 15, 2006.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. E6–21456 Filed 12–15–06; 8:45 am]

BILLING CODE 4910–15–P

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: 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 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:* This interim final rule is effective December 18, 2006. Comments must be received by VA on or before February 16, 2007.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AM47—Extension of the Presumptive Period for Compensation for Gulf War Veterans.'' All 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) 273–9515 for an appointment. In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Rhonda F. Ford, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION:

I. Establishing a Presumptive Period

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 in title 38, United States Code, section 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 10 percent degree or more during a presumptive period determined by the Secretary.

Public Law 103–446 directed the Secretary to prescribe by regulation the period of time (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. 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 and taking into account other pertinent circumstances regarding the experiences of veterans of the Persian Gulf War.

II. Background

To implement 38 U.S.C. 1117, VA published a final rule adding a new § 3.317 to title 38, Code of Federal Regulations. This regulation established the framework necessary 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 consensus concerning the inadequacy of the 2-year presumptive period for undiagnosed illnesses, the Secretary determined the presumptive period should be extended to include illnesses manifest to a 10 percent degree not later than December 31, 2001. On April 29, 1997, VA published a final rule amending 38 CFR 3.317 to implement this decision. See 62 FR 23138.

In 1998, Congress enacted Public Law 105–277 requiring VA to collaborate with the National Academy of Sciences (NAS) to review and evaluate available scientific evidence regarding associations between illnesses and exposure to hazards of Gulf War service. Section 1603(i)(3) of Public Law 105–277 required NAS to issue reports, which are produced by the Institute of Medicine's (IOM) Committee on Gulf War and Health, every 2 years to review scientific research on Gulf War toxic exposures.

In 2001, the Secretary extended the presumptive period for undiagnosed illnesses suffered by Persian Gulf War veterans from December 31, 2001, to December 31, 2006, based upon ongoing research that would require review by the Secretary. VA published an interim final rule amending 38 CFR 3.317 to extend the presumptive period to December 31, 2006 (an additional 5 years). See 66 FR 56614, November 9, 2001.

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 multisymptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs or 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 qualifying chronic disability must still occur during service on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10 percent or more during the presumptive period prescribed following such service. Accordingly, VA amended 38 CFR 3.317 to reflect these changes. See 68 FR 34539, June 10, 2003.

III. Current Research

The NAS' Committee on Gulf War and Health has several meetings planned during 2006 in support of current research projects. One such research project is Physiologic, Psychologic, and Psychosocial Effects of Deployment Related Stress. The objective of this project is to comprehensively review, evaluate, and summarize the scientific and medical literature for peer review regarding the association between stress and long-term adverse health effects in the Gulf War.

The NAS study is not limited to veterans of the Persian Gulf War deployments of the early 1990s but also includes veterans of current conflicts, such as Operation Iraqi Freedom, occurring in part, within the Southwest Asia theater of operations.

In addition to the above-referenced report, we anticipate that the NAS will prepare other reports relevant to Gulf War veterans' health, including reports required by Public Law 105–277 to be prepared every 2 years through October 1, 2010. These research projects have the potential of bringing much needed information to the Secretary regarding the establishment of a new, more definitive, presumptive period for Gulf War veterans with qualifying chronic disabilities. These NAS research projects have begun and are currently ongoing.

Presently, VA continues to receive claims for qualifying chronic disabilities. In 2005 for example, VA received 2,241 new claims with diagnostic codes that would be affected by this final rule, and we continue to receive such claims during 2006.

Conclusion

Currently, military operations in the Southwest Asia theater of operations continue, including Operation Iraqi Freedom. No end date for the Gulf War has been established by Congress or the President. See 38 U.S.C. 101(33). Because scientific uncertainty remains as to the cause of illnesses suffered by Persian Gulf War veterans and current IOM research studies are incomplete, limiting entitlement to benefits payable under 38 U.S.C. 1117 due to the expiration of the presumptive period in 38 CFR 3.317 is premature. If extension of the current presumptive period is not implemented, servicemembers conducting military operations in the Southwest Asia theater of operations after December 31, 2006, could be substantially disadvantaged compared to servicemembers who previously served in the same theater of operations.

Therefore, VA is extending the presumptive period in 38 CFR 3.317 for qualifying chronic disabilities that become manifest to a degree of 10 percent or more through December 31, 2011 (a period of 5 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)(3)(B), to publish this rule without prior opportunity for public comment. In light of the fast approaching expiration date of the current presumptive period of December 31, 2006, the Secretary finds delay for the purpose of soliciting public comment impracticable, and because expiration of this rule would prohibit VA's delivery of important benefits to some veterans of the Gulf War and Operation Iraqi Freedom, further delay would be contrary to public interest. For the foregoing reasons, the Secretary of Veterans Affairs is issuing this rule as an interim final rule. The Secretary will consider and address comments that are received on or before February 16, 2007.

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 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, 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.

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. VA has examined the economic, legal, and policy implications of this Interim final rule and has concluded that it is 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 given year. This rule would have no such effect on State, local, and tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing-Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116,Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing-Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans, Vietnam.

Approved: September 26, 2006.

Gordon H. Mansfield,

Deputy 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, 2006'' and adding, in its place, ''December 31, 2011''.

[FR Doc. E6–21531 Filed 12–15–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AM12

Transfer of Montgomery GI Bill-Active Duty Entitlement to Dependents

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rule amends Department of Veterans Affairs (VA) regulations to implement VA's authority under the National Defense Authorization Act for Fiscal Year 2002 and the Bob Stump National Defense Authorization Act for Fiscal Year 2003 to provide educational assistance to dependents eligible for transferred Montgomery GI Bill-Active Duty (MGIB) entitlement. The legislation authorized the Department of Defense (DoD) to offer individuals in the Armed Forces, who have critical military skills, the option to transfer up to 18 months of their MGIB entitlement to their dependents as a reenlistment incentive. In addition, the rule implements a provision in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, which increased the maximum amount of benefits payable under DoD's college fund program.

DATES: *Effective Date:* This final rule is effective December 18, 2006.

Applicability Dates. VA will apply the amendments in this final rule in accordance with the effective dates specified by Congress for the statutory changes. Therefore, the transfer of entitlement provisions of this rule will apply to individuals, who are eligible, on or after December 28, 2001, the date of enactment of the National Defense Authorization Act for Fiscal Year 2002. The provisions of this rule addressing the maximum monthly amount payable under DoD's college fund program will apply to individuals, who are eligible, on or after October 1, 1998, the date of enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. VA will apply the increased maximum college fund amount to individuals first entering the Armed Forces after September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Lynn M. Nelson (225C), Education Advisor, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–273–7294.

SUPPLEMENTARY INFORMATION: This document amends VA's regulations set forth in 38 CFR part 21 concerning the MGIB program to implement provisions permitting the transfer of MGIB entitlement to dependents and to reflect the maximum amount of additional educational assistance payable under DoD's college fund program.

I. Transfer of MGIB Entitlement

Section 654 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107), added section 3020 to title 38, United States Code, authorizing DoD to permit certain individuals to transfer some of their MGIB entitlement to their dependents. The Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314) amended 38 U.S.C. 3020 to clarify the rate of payment of educational assistance allowance to dependents in receipt of transferred entitlement. VA is amending its regulations to implement the provisions in 38 U.S.C. 3020 as described in this final-rule notice. Section 3020 authorizes the Secretary of each service department, or the Secretary of Defense with respect to the Coast Guard or the Secretary of Homeland Security when the Coast Guard is not operating as a service in the Navy, at such Secretary's sole discretion, to permit a servicemember, who is entitled to MGIB, to transfer up to 18 months of his or her MGIB entitlement to his or her eligible dependents. The statute further provides the—

- Eligibility criteria for both the individual transferring the entitlement and the dependent;
- Limits on months of entitlement that may be transferred;
- Administrative provisions (including designations, revocations, and modifications of transferred entitlement); and
- Special provisions in the event of an overpayment of educational assistance allowance.

These statutory changes are being incorporated in VA's existing regulations governing the MGIB program by adding new 38 CFR 21.7080.

Since 38 U.S.C. 3020(h) provides that a dependent transferee has the same MGIB entitlement as the transferor, new 38 CFR 21.7080(a) lists the regulations in 38 CFR part 21 that apply to individuals in receipt of transferred entitlement.

As it is at the discretion of the Secretary concerned to approve transfer entitlement, and not every servicemember will be permitted to do so, VA must have some evidence of the approval prior to payment of benefits. Thus, § 21.7080(b) provides that VA will accept a copy of the reenlistment contract attachment (DD Form 2366–2) that DoD issues to individuals granted the transferability option or any other comparable document issued and signed by an appropriate service department official.

Section 3020 of title 38, United States Code, permits the transfer of entitlement to an approved servicemember's child or children. A stepchild meets the definition of child for VA purposes if the stepchild is a member of the veteran's household (38 U.S.C. 101(4); 38 CFR 3.57). Section 21.7080(c)(4) provides that a stepchild, who is a member of the servicemember's household or who has maintained normal family ties while temporarily absent from the household, is an eligible transferee.

Section 3032(a)(1) of title 38, United States Code, places limitations on educational assistance for individuals who are on active duty. However, section 3020(h)(3)(A) specifically provides that these limitations do not apply to eligible dependents. Nonetheless, VA is not allowing an individual, who is eligible for the Selected Reserve ''kicker,'' to transfer the ''kicker'' to his or her dependent because there are no provisions in title 10, United States Code, that authorize such a transfer. The Selected Reserve kicker is an amount of money that DoD authorizes for certain Selected Reserve members under the authority of 10 U.S.C. 16131(i)(2) and is a benefit provided in addition to the amount otherwise payable under 38 U.S.C. 3015. Based on the lack of statutory authority in title 10, we will not include the transferor's ''Selected Reserve kicker'' when determining the amount payable to a dependent under 38 CFR 21.7080(k). However, if the dependent is eligible for a Selected Reserve kicker based on his or her own Selected Reserve service, we will increase the MGIB educational assistance transferred to the dependent by the amount of the