



VA Now Processing Gulf War Veterans' Disability Claims for New Respiratory Presumptive Conditions

August 16, 2021

Background

On August 2, 2021, the Department of Veterans Affairs (VA) [announced](#) it will begin processing disability claims for [asthma](#), [rhinitis](#), and [sinusitis](#) on a presumptive basis due to presumed exposure to particulate matter (such as burn pit emissions) during servicemembers' deployment to Southwest Asia and certain other countries. This update in presumptive conditions comes after VA Secretary Denis McDonough [informed Congress on June 16, 2021](#), that he has "recommended initiation of rulemaking to establish a presumption of service connection for respiratory conditions related to exposure to particulate matter and other airborne hazards, which may conclude [*sic*] such conditions as asthma, rhinitis, and sinusitis for [Gulf War Veterans](#). This decision was based on the first iteration of a newly formed internal VA process to review scientific evidence relating to exposures." Less than two months later, on August 5, 2021, VA began to adjudicate veterans' claims for the aforementioned conditions.

Veterans and Conditions Covered

VA [published an interim final rule](#) on August 5, 2021, amending its [adjudication regulations](#) to establish presumptive service connection for specific respiratory conditions due to a servicemember's exposure to [particulate matter](#). VA's decision resulted from internal procedures outlined in [VA Directive 0215](#) to review the evidence and analysis of scientific reports including those from the National Academies of Science (NAS). VA reviewed the following reports:

- National Research Council's 2010 [Review of the Department of Defense Enhanced Particulate Matter Surveillance Program Report](#);
- Institute of Medicine's 2011 report on [Long-Term Consequences of Exposure to Burn Pits in Iraq and Afghanistan](#); and
- NAS's 2020 report on [Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations](#).

Congressional Research Service

<https://crsreports.congress.gov>

IN11724

In addition, VA conducted further [analysis of VA respiratory claims data](#) for veterans who deployed to Southwest Asia compared to a similar group of veterans with respiratory claims who had never deployed. Based upon VA's review of scientific evidence and analysis of its own data, VA decided to grant presumptions, including them in [Title 38, Section 3.320, of the Code of Federal Regulations, "Claims Based on Exposure to Particulate Matter."](#) **Table 1** summarizes the eligibility requirements for the veterans as well as the health conditions included in the new regulation. Those veterans with any health condition(s) mentioned in **Table 1**, and manifested to a degree of 10% or more within 10 years after separation from active military service, shall be presumed to have such health conditions incurred or aggravated in service, even if there is no evidence of such disease during service.

Table 1. Eligibility Requirements and Health Conditions

Effective August 5, 2021

Location of Service	Time Period	Health Conditions
Southwest Asia Theater of Operations ^a	During Persian Gulf War ^b	<ul style="list-style-type: none"> • Asthma • Rhinitis • Sinusitis, to include Rhinosinusitis (Any one of these conditions must have manifested itself within 10 years of separation from active military service.)
Afghanistan	On or after September 19, 2001, during the Persian Gulf War	
Syria	On or after September 19, 2001, during the Persian Gulf War	
Djibouti	On or after September 19, 2001, during the Persian Gulf War	
Uzbekistan	On or after September 19, 2001, during the Persian Gulf War	

Source: [38 C.F.R. §3.320](#) and Department of Veterans Affairs, "Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter," *86 Federal Register* [42724, 42732](#), August 5, 2021.

Notes:

- a. As defined by [38 C.F.R. §3.317\(e\)\(2\)](#): Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, United Arab Emirates, Oman, Gulf of Aden, Gulf of Oman, Persian Gulf, Arabian Sea, Red Sea, and the airspace above these locations.
- b. As defined by [38 C.F.R. §3.2\(i\)](#): August 2, 1990, through date to be prescribed by presidential proclamation or law.

Adjudicating Claims

According to the interim final rule, the effective date for [VA to apply the provisions](#) for the new presumptions based on specific military service is August 5, 2021. This date will apply for claims in two situations:

1. Claims received by VA on or after August 5, 2021; and
2. Claims pending before VA or before the U.S. Court of Appeals for Veterans Claims or U.S. Court of Appeals for the Federal Circuit on August 5, 2021.

VA updated three sections of its M21-1 *Adjudication Procedures Manual* providing guidance on processing claims to reflect the new presumptions. [Part VIII.ii.2.A](#) provides general information on granting presumptive service connection for disabilities resulting from exposure to "fine, particulate matter under 38 U.S.C. §3.320." [Part VIII.ii.2.B](#) and [Part VIII.ii.2.C](#) provide guidance for identifying claims for these presumptions and how to rate, award, or deny claims for service connection, respectively.

VA [announced that no action](#) is required for veterans with pending claims for one or more of these new presumptions, because VA is automatically reviewing these claims and will send the veteran a decision

notice upon completion of the review. For veterans and their survivors who are in various stages of the claims process and believe they are now eligible for benefits, VA [announced](#):

- Veterans who disagree with the initial decision on service connection of these three conditions are able to request a new claim review. Veterans should complete [VA Form 20-0995](#) for a supplemental claim and submit it to the VA processing center or regional office listed on the initial decision form.
- Veterans who are filing an initial claim can do so by completing [VA Form 21-526EZ](#) and mailing it to the VA claims intake center at the address listed on the form. Veterans are also able to [submit a claim electronically](#) through the Fully Developed Claim system.

For additional information on the presumptive conditions of asthma, rhinitis, and sinusitis and the claims process, see VA's [Airborne Hazards and Burn Pit Exposures](#) or VA's [Exposure to Specific Environmental Hazards](#) webpages. Congressional offices with specific constituent questions can contact VA's [Office of Congressional and Legislative Affairs](#).

Author Information

Heather M. Salazar
Analyst in Veterans Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.