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**This is supplemental material  
for Book B of your set of  
Federal Regulations**

Title 38, Part 3

*Adjudication*

**Veterans Benefits Administration**

Supplement No. 99

Covering period of *Federal Register* issues  
through January 1, 2012

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# GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

## Supplemental Materials for *Book B*

Code of Federal Regulations

Title 38, Part 3

*Adjudication*

## Veterans Benefits Administration

Supplement No. 99

5 January 2012

Covering the period of Federal Register issues  
through January 1, 2012

When **Book B** was originally prepared, it was current through final regulations published in the *Federal Register* of 9 August 1991. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which begins on page B-5 of Book B, *Adjudication*.

**To ensure accuracy and timeliness of your materials,  
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page B-5) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page B-4.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page B-5)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
5. Always retain the filing instructions (simply insert them at the back of the book) as a backup record of filing and for reference in case of a filing error.
6. Be certain that you *permanently discard* any pages indicated for removal in the filing instructions in order to avoid confusion later.

To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

<b>FILING INSTRUCTIONS</b>
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**Book B, Supplement No. 99  
January 5, 2012**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
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**Do not file this supplement until you confirm that  
all prior supplements have been filed**

3.316-1 to 3.317-1	3.316-1 to 3.317-1	§3.317
3.317-6 to 3.317-7	3.317-6 to 3.317-7	§3.317

**Be sure to complete the  
*Supplement Filing Record* (page B-5)  
when you have finished filing this material.**

## HIGHLIGHTS

### Book B, Supplement No. 99 January 5, 2012

**Note:** Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

**Supplement frequency:** This Book B (*Adjudication*) was originally supplemented four times a year, in February, May, August, and November. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

### **Modifications in this supplement include the following:**

1. On 29 December 2011, the VA published an interim final rule, effective that same day, 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. Change:

- In §3.317, revised the date in paragraph (a)(1)(i).



**§3.316 Claims based on chronic effects of exposure to mustard gas.**

(a) Except as provided in paragraph (b) of this section, exposure to the specified vesicant agents during active military service under the circumstances described below together with the subsequent development of any of the indicated conditions is sufficient to establish service connection for that condition:

(1) Full-body exposure to nitrogen or sulfur mustard during active military service together with the subsequent development of chronic conjunctivitis, keratitis, corneal opacities, scar formation, or the following cancers: Nasopharyngeal; laryngeal; lung (except mesothelioma); or squamous cell carcinoma of the skin.

(2) Full-body exposure to nitrogen or sulfur mustard or Lewisite during active military service together with the subsequent development of a chronic form of laryngitis, bronchitis, emphysema, asthma or chronic obstructive pulmonary disease.

(3) Full-body exposure to nitrogen mustard during active military service together with the subsequent development of acute nonlymphocytic leukemia.

(b) Service connection will not be established under this section if the claimed condition is due to the veteran's own willful misconduct (See §3.301(c)) or there is affirmative evidence that establishes a nonservice-related supervening condition or event as the cause of the claimed condition (See §3.303).

[57 FR 33877, July 31, 1992, as amended at 59 FR 42499, Aug. 18, 1994]

**Supplement *highlights* reference:** 12(8)

**§3.317 Compensation for certain disabilities due to undiagnosed illnesses.**

(a) *Compensation for disability due to undiagnosed illness and medically unexplained chronic multisymptom illnesses.*

(1) Except as provided in paragraph (a)(7) of this section, VA will pay compensation in accordance with chapter 11 of title 38, United States Code, to a Persian Gulf veteran who exhibits objective indications of a qualifying chronic disability, provided that such disability:

(i) Became manifest either during active military, naval, or air service in the Southwest Asia theater of operations, or to a degree of 10 percent or more not later than December 31, 2016; and

(ii) By history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.

(2) (i) For purposes of this section, a *qualifying chronic disability* means a chronic disability resulting from any of the following (or any combination of the following):

(A) An undiagnosed illness;

(B) A medically unexplained chronic multisymptom illness that is defined by a cluster of signs or symptoms, such as:

(1) Chronic fatigue syndrome;

(2) Fibromyalgia;

(3) Functional gastrointestinal disorders (excluding structural gastrointestinal diseases).

**Note to paragraph (a)(2)(i)(B)(3):** Functional gastrointestinal disorders are a group of conditions characterized by chronic or recurrent symptoms that are unexplained by any structural, endoscopic, laboratory, or other objective signs of injury or disease and may be related to any part of the gastrointestinal tract. Specific functional gastrointestinal disorders include, but are not limited to, irritable bowel syndrome, functional dyspepsia, functional vomiting, functional constipation, functional bloating, functional abdominal pain syndrome, and functional dysphagia. These disorders are commonly characterized by symptoms including abdominal pain, substernal burning or pain, nausea, vomiting, altered bowel habits (including diarrhea, constipation), indigestion, bloating, postprandial fullness, and painful or difficult swallowing. Diagnosis of specific functional gastrointestinal disorders is made in accordance with established medical principles, which generally require symptom onset at least 6 months prior to diagnosis and the presence of symptoms sufficient to diagnose the specific disorder at least 3 months prior to diagnosis.

(ii) For purposes of this section, the term *medically unexplained chronic multisymptom illness* means a diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue, pain,

- Visceral leishmaniasis
- Delayed presentation of the acute clinical syndrome.
  - Post-kala-azar dermal leishmaniasis *if manifest within 2 years of the infection.*
  - Reactivation of visceral leishmaniasis in the context of future immunosuppression.
- West Nile virus
- Variable physical, functional, or cognitive disability.

(e) *Service.* For purposes of this section:

(1) The term *Persian Gulf veteran* means a veteran who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War.

(2) The *Southwest Asia theater of operations* refers to Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations. (Authority: 38 U.S.C. 1117, 1118).

[60 FR 6665, Feb. 3, 1995, as amended at 62 FR 23139, Apr. 29, 1997; 63 FR 11122, Mar. 6, 1998; 66 FR 56615, Nov. 9, 2001; 67 FR 78979, Dec. 27, 2002; 68 FR 34541, June 10, 2003; 71 FR 75672, Dec. 18, 2006; 72 FR 68507, Dec. 5, 2007; 75 FR 59970, Sept. 29, 2010; 75 FR 61356, Oct. 5, 2010; 75 FR 61997, Oct. 7, 2010; 76 FR 41698, July 15, 2011; 76 FR 81836, Dec. 29, 2011]

**Supplement *Highlights* references:** 14(5), 29(1), 48(2), 57(1), 74(3), 75(1), 77(1), 93(1), 94(1), 96(1), 99(1).

Reserved