illnesses could be related to Persian Gulf service, it is possible that complaints that have been made have gone unreported to VA regional offices in connection with claims for compensation.

When a veteran files a claim for compensation, the regional office of jurisdiction obtains all pertinent VA, military, and private medical records. Whether or not an examining physician agreed with the veteran's belief that his or her illness was the result of service in the Persian Gulf, it is likely that documentation of the complaint exists, since the physician would have been obligated to record it. If the complaint was made within the 2-year presumptive period, that record will serve as documentation to establish potential entitlement to compensation.

Three commenters recommended that VA measure the presumptive period from a date other than the date of a veteran's last service in the Southwest Asia theater of operations. They separately recommended that the presumptive period run from the effective date of Public Law 103–446, the date VA's Persian Gulf Health registry was established, or the date of a veteran's separation from service.

VA does not agree. Since the statute presumes that these health concerns are related to Persian Gulf service, it is reasonable that the presumptive period be measured from the date service in the Gulf ended, and the statute itself specifically indicates that the presumptive period will be so measured. Furthermore, measuring the presumptive period from the last date of Gulf service is consistent with other presumptive periods, such as those for diseases related to radiation or herbicide exposure, which are measured from the last date on which exposure could have occurred. Finally, if the presumptive period were to be measured from the date a veteran was separated from service, veterans who remained on active duty for several years after they left the Persian Gulf would be unfairly advantaged.

Another commenter felt that, where the undiagnosed illnesses of Persian Gulf veterans are eventually diagnosed, the regulation should also allow a 2-year presumptive period for the diagnosed conditions

VA does not agree. The undiagnosed illness provisions of Public Law 103–446, as implemented by § 3.317, were specifically intended to relieve the unique situation in which certain Persian Gulf War veterans found themselves unable to establish entitlement to VA compensation because their illnesses currently cannot

be diagnosed. There is already a wellestablished statutory and regulatory framework for compensating disabilities resulting from diagnosed diseases, which Congress could have revised if it had chosen to do so. Compensation may be awarded when the evidence establishes that a disease was incurred directly during active duty or that a preexisting disease was aggravated by active duty, so long as any increase in severity was not due to the natural progress of the disease. Compensation may also be paid on a presumptive basis for certain chronic diseases that appear within a statutory presumptive period, generally one year. If the undiagnosed illnesses of Persian Gulf veterans are eventually identified and this current legal framework for compensation proves to be inadequate, that will be an issue for VA and the Congress to consider at that time.

VA wishes to thank the commenters for their thoughtful remarks. The rule is hereby adopted as proposed with the revisions to § 3.317(a) mentioned in the preamble.

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 directly affect 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 §§ 603 and 604.

This final rule has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

(The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.)

List of Subjects in 38 CFR Part 3

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

Approved: January 25, 1995.

Jesse Brown.

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.

2. Section 3.317 is added to read as follows:

§ 3.317 Compensation for certain disabilities due to undiagnosed illnesses.

(a)(1) Except as provided in paragraph (c) of this section, VA shall pay compensation in accordance with chapter 11 of title 38, United States Code, to a Persian Gulf veteran who exhibits objective indications of chronic disability resulting from an illness or combination of illnesses manifested by one or more signs or symptoms such as those listed in paragraph (b) of this section, provided that such disability:

(i) became manifest either during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10 percent or more not later than two years after the date on which the veteran last performed active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War; and

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

(2) For purposes of this section, "objective indications of chronic disability" include both "signs," in the medical sense of objective evidence perceptible to an examining physician, and other, non-medical indicators that are capable of independent verification.

- (3) For purposes of this section, disabilities that have existed for 6 months or more and disabilities that exhibit intermittent episodes of improvement and worsening over a 6-month period will be considered chronic. The 6-month period of chronicity will be measured from the earliest date on which the pertinent evidence establishes that the signs or symptoms of the disability first became manifest.
- (4) A chronic disability resulting from an undiagnosed illness referred to in this section shall be rated using evaluation criteria from part 4 of this chapter for a disease or injury in which the functions affected, anatomical localization, or symptomatology are similar.
- (5) A disability referred to in this section shall be considered service connected for purposes of all laws of the United States.
- (b) For the purposes of paragraph (a)(1) of this section, signs or symptoms which may be manifestations of undiagnosed illness include, but are not limited to:
- (1) fatigue
- (2) signs or symptoms involving skin