



441 G St. N.W.
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January 30, 2017

The Honorable Johnny Isakson
Chairman
The Honorable Jon Tester
Ranking Member
Committee on Veterans' Affairs
United States Senate

The Honorable Phil Roe
Chairman
The Honorable Tim Walz
Ranking Member
Committee on Veterans' Affairs
House of Representatives

Subject: *Department of Veterans Affairs: Diseases Associated With Exposure to Contaminants in the Water Supply at Camp Lejeune*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Veterans Affairs (VA) entitled "Diseases Associated With Exposure to Contaminants in the Water Supply at Camp Lejeune" (RIN: 2900-AP66). We received the rule on January 13, 2017. It was published in the *Federal Register* as a final rule on January 13, 2017. 82 Fed. Reg. 4173. It is effective on March 14, 2017.

The final rule amends VA's adjudication regulations regarding presumptive service connection, adding certain diseases associated with contaminants present in the base water supply at U.S. Marine Corps Base Camp Lejeune (Camp Lejeune), North Carolina, from August 1, 1953, to December 31, 1987. The final rule establishes that veterans, former reservists, and former National Guard members, who served at Camp Lejeune for no less than 30 days (consecutive or nonconsecutive) during this period, and who have been diagnosed with any of eight associated diseases, are presumed to have incurred or aggravated the disease in service for purposes of entitlement to VA benefits. In addition, the final rule establishes a presumption that these individuals were disabled during the relevant period of service for purposes of establishing active military service for benefits purposes. According to VA, under this presumption, affected former reservists and National Guard members have veteran status for purposes of entitlement to some VA benefits. This amendment implements a decision by the Secretary of Veterans Affairs that service connection on a presumptive basis is warranted for claimants who served at Camp Lejeune during the relevant period and for the requisite amount of time and later develop certain diseases.

Enclosed is our assessment of VA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that VA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Michael P. Shores
Acting Director, Office of Regulatory Policy
and Management
Department of Veterans Affairs

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF VETERANS AFFAIRS
ENTITLED
“DISEASES ASSOCIATED WITH EXPOSURE TO CONTAMINANTS
IN THE WATER SUPPLY AT CAMP LEJEUNE”
(RIN: 2900-AP66)

(i) Cost-benefit analysis

The Department of Veterans Affairs (VA) states that it has examined the economic, interagency, budgetary, legal, and policy implications of the final rule, and it has been determined to be a significant regulatory action because it is likely to result in a rule that may have an annual effect on the economy of \$100 million or more and may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12,866. VA states that its impact analysis can be found as a supporting document at <http://www.regulations.gov>. Additionally, a copy of this rulemaking and its impact analysis are available on VA’s Web site at <http://www.va.gov/orpm/> by following the link for “VA Regulations Published from FY 2004 Through Fiscal Year to Date.”

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

VA certified that the final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA. VA determined that the final rule amendments will directly affect only individuals and will not directly affect small entities. Therefore, VA stated that the rulemaking is exempt from the regulatory flexibility analysis requirements of sections 603 and 604.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

VA determined that the final rule will not result in the expenditure by state, local, or tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On September 9, 2016, VA published a notice of a proposed rulemaking in the *Federal Register*. 81 Fed. Reg. 62,419. The proposed rule was to amend 38 C.F.R. 3.307 and 3.309 to establish presumptive service connection for certain diseases associated with contaminants present in the base water supply at U.S. Marine Corps Base Camp Lejeune, North Carolina, from August 1, 1953, to December 31, 1987. VA provided a 30-day public comment period, which ended on October 11, 2016, and received 290 comments on the proposed rule, one of which was received after the comment period. VA states that although it is not legally required to consider late-filed comments, it reviewed, considered, and addressed all comments received in the interest of maximizing public dialogue to further serve veterans, claimants, and authorized

representatives. VA received comments from various organizations and individuals, including Disabled American Veterans, Veterans of Foreign Wars, Vietnam Veterans of America, National Organization of Veterans' Advocates, C-123 Veterans Association, Fort McClellan Veterans Stakeholders Group, Reserve Officers Association, Marine Corps Reserve Association, United Parkinson's Advocacy Council, Legal Counsel for the Elderly, Project on Government Oversight, a Member of Congress, and other interested persons. VA states that it has acted expeditiously to consider these public comments and prepare a final rulemaking.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

VA states that the final rule contains no provisions constituting a collection of information under PRA.

Statutory authorization for the rule

The final rule was promulgated under the authority of section 501 (a)(1) of title 38 of the United States Code, and that it is further consistent with Public Law 112-154, the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 (Camp Lejeune Act), 38 U.S.C. § 101 note, and 38 U.S.C. § 1710.

Executive Order No. 12,866 (Regulatory Planning and Review)

VA examined the economic, interagency, budgetary, legal, and policy implications of the rule, and it determined that it is a significant regulatory action under Executive Order 12,866 because it is likely to result in a rule that may have an annual effect on the economy of \$100 million or more and may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order.