

# ISSUE: Resolving Differences in Definitions of Persian Gulf War Veteran

Last Updated: June 23, 2017

**Background:** There remains an injustice surrounding the differences between the Persian Gulf War geographic areas of inclusion specified by the U.S. Department of Defense (for receipt of the Southwest Asia Service Medal (SWASM)) and for purposes of U.S. Department of Veterans Affairs (VA) benefits.

Despite that fact that both the military medal and VA's Gulf War benefits are based on service in the same war, there remains a discrepancy in that each have different geographic areas to qualify, resulting in the injustice that a small number of 1991 Gulf War veterans are eligible for the medal for their Gulf War service but are not eligible for VA benefits provisions specific to Gulf War veterans.

Thus, Persian Gulf War veterans who served in **Israel, Egypt, Turkey, Syria, and Jordan (including their airspace and territorial waters)** are eligible for the definitive Gulf War medal -- the Southwest Asia Service Medal (SWASM) -- but not for VA's Gulf War benefits, which exclude these veterans from qualifying for Gulf War-specific benefits. This puts some Gulf War veterans in the bizarre position of being authorized the Southwest Asia Service Medal for their Persian Gulf War service (they "are" Gulf War veterans) but simultaneously being ineligible for Persian Gulf War benefits from the VA.

**Impact of this issue:** Affected veterans have been denied their Gulf War Illness (GWI) claims under 38 CFR 3.317 (CMI, UDX) based on their area of geographic service. VA grants special priority access to VA healthcare for Persian Gulf War veterans under Priority Group 6 ("Veterans of the Persian Gulf War who served between August 2, 1990 and November 11, 1998"). It remains unclear why neither Congress nor VA have ever updated the VA's more narrow geographic definition of the Persian Gulf War theatre of operations to provide equal benefits to these "other" Gulf War veterans.

**Number of veterans affected by the proposed change:** Given the small numbers of Persian Gulf War veterans whose sole service would have been in these geographic areas (many Persian Gulf War troops who served in Turkey deployed there directly from Saudi Arabia, and many served inside northern Iraq, where they would have become eligible under both DoD and VA criteria specifying the Southwest Asia Theatre of Operations), it also seems likely that this measure would have a very low CBO score.

Below is the statutory and regulatory background on this enduring injustice.

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## VA Benefits for Persian Gulf War Veterans

Authority to determine the geographic areas of the Southwest Theatre of Operations for the purposes of VA benefits was granted in 1994 law, which specified that the Secretary of Veterans Affairs would determine the geographic area by regulation. Sec. 106 of the Veterans Benefits Improvement Act of 1994 ([PL 103-446](#)) specified:

*"(b) The Secretary [of Veterans Affairs] shall prescribe by regulation the period Regulations, of time following service in the Southwest Asia theater of operations during the Persian Gulf War that the Secretary determines is appropriate for presumption of service connection for purposes of this section. The Secretary's determination of such period of time shall be made following a review of any available credible medical or scientific evidence and the historical treatment afforded disabilities for which manifestation periods have been established and shall take into account other pertinent circumstances regarding the experiences of veterans of the Persian Gulf War.*

*(c)(1) The Secretary shall prescribe regulations to carry out this section.*

*(2) Those regulations shall include the following:*

*(A) A description of the period and geographical area or areas of military service in connection with which compensation under this section may be paid.*

*(B) A description of the illnesses for which compensation under this section may be paid.*

*(C) A description of any relevant medical characteristic (such as a latency period) associated with each such illness.*

*(d) A disability for which compensation under this subchapter is payable shall be considered to be service connected for purposes of all other laws of the United States.*

*(e) For purposes of this section, the term 'Persian Gulf veteran' means a veteran who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War."*

To fulfill its regulatory obligations under the 1994 law, including defining the geographic area for Gulf War veterans' claims, the VA proposed the following, subject to a 30-day public comment period, in Federal Register Volume 59, Number 235 (Thursday, December 8, 1994), [FR Doc No: 94-30133](#):

*"In response to the needs and concerns of Persian Gulf veterans, Congress enacted the ``Persian Gulf War Veterans' Benefits Act," Title I of the ``Veterans' Benefits*

*Improvements Act of 1994," Public Law 103-446. That statute added a new section 1117 to title 38, United States Code, authorizing the Secretary of Veterans Affairs to compensate any Persian Gulf veteran suffering from a chronic disability resulting from an undiagnosed illness or combination of undiagnosed illnesses that became manifest either during active duty in the Southwest Asia theater of operations during the Persian Gulf War or to a degree of 10 percent or more within a presumptive period, as determined by the Secretary, following service in the Southwest Asia theater of operations during the Persian Gulf War. The statute directs that VA's implementing regulations should address: (1) The nature, period, and geographical areas of military service in connection with which compensation may be paid; (2) the illnesses for which compensation may be paid; and (3) any relevant medical characteristic associated with each such illness. The statute further provides that a disability for which compensation is payable under Sec. 1117 shall be considered service connected for the purposes of all laws of the United States."*

...

*"We propose to define Southwest Asia theater of operations to include 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. This definition follows Executive Order 12744 of January 21, 1991, in which President Bush designated the combat zone of the Persian Gulf War."*

An executive order by then-President George H.W. Bush, governing the Persian Gulf War theatre of operations, designated the combat zone area on which this VA regulation is based. "[Executive Order 12744](#)—**Designation of Arabian Peninsula Areas, Airspace, and Adjacent Waters as a Combat Zone**," dated January 21, 1991, specified:

*By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 I hereby designate, for purposes of that section, the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:*

- the Persian Gulf*
- the Red Sea*
- the Gulf of Oman*
- that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude*
- the Gulf of Aden*
- the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.*

*For the purposes of this order, the date of the commencing of combatant activities in such zone is hereby designated as January 17, 1991.*

The VA's proposed rule was made final as announced in the Federal Register [Federal Register Volume 60, Number 23 (Friday, February 3, 1995), Rules and Regulations, Pages 6660-6666, [FR Doc No: 95-2764](#), with an effective date of November 2, 1994, the effective date of Title I of the "Veterans' Benefits Improvements Act of 1994," Public Law 103-446 [38 U.S.C. 501(a)]].

The geographic area for VA benefits was thus codified in regulation by VA, where it remains unchanged ever since, at [38 CFR 3.317](#):

*“(d) 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 includes 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.”*

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## **DOD – Southwest Asia Service Medal for Persian Gulf War Veterans**

The award of the Southwest Asia Service Medal (SWASM) comes from a second Persian Gulf war-related executive order by then-President Bush in March 1991, which broadly defined the geographic area of eligibility. Department of Defense regulations for the medal added greater specificity.

This second executive order governing the Persian Gulf War theatre of operations was specifically to authorize the Southwest Asia Service Medal and generally authorized a broader geographic area of Southwest Asia (Persian Gulf War) service. “[Executive Order 12754](#)—**Establishing the Southwest Asia Service Medal**,” dated March 12, 1991, stated:

*By the authority vested in me as President by the Constitution and the laws of the United States of America, including my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:*

*Section 1. There is established, with suitable appurtenances, the Southwest Asia Service Medal. It may be awarded to members of the Armed Forces of the United States who participated in military operations in Southwest Asia or in the surrounding contiguous*

waters or air space on or after August 2, 1990, and before a terminal date to be prescribed by the Secretary of Defense.

*Sec. 2. The Southwest Asia Service Medal may be awarded posthumously to any person covered by, and under the circumstances described in, section 1 of this order.*

*Sec. 3. The Secretaries of the Military Departments, with the approval of the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, are directed to prescribe uniform regulations governing the award and wearing of the Southwest Asia Service Medal.*

The award of the Southwest Asia Service Medal (SWASM) is governed by federal regulation, [32 CFR 578.27](#), based on that second Persian Gulf War executive order; its second paragraph includes additional geographic areas beyond those for which the VA extends its Persian Gulf War benefits:

***32 CFR § 578.27 Southwest Asia Service Medal.***

*(a) The Southwest Asia Service Medal (SWASM) was established by Executive Order 12754, March 12, 1991. It is awarded to all members of the Armed Forces of the United States serving in Southwest Asia and contiguous waters or airspace thereover, on or after August 2, 1990 to November 30, 1995. Southwest Asia and contiguous waters, as used herein, is defined as an area which includes the Persian Gulf, Red Sea, Gulf of Oman, Gulf of Aden, that portion of the Arabian Sea that lies north of 10 degrees N. latitude and west of 68 degrees E. longitude, as well as the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and United Arab Emirates.*

*(b) Members of the Armed Forces of the United States serving in Israel, Egypt, Turkey, Syria, and Jordan (including the airspace and territorial waters) between January 17, 1991 and April 11, 1991, will also be eligible for this award. Members serving in these countries must have been under the command and control of U.S. Central Command or directly supporting military operations in the combat theater.*

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## **Proposed Solution**

One way to resolve this discrepancy would be to enact legislation directing VA to expand through regulation VA's definition of "Southwest Asia Theatre of Operations", currently contained in **38 CFR § 3.317(d)**, to include the additional Gulf War veterans specified in **32 CFR § 578.27(b)**.

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## SOURCES:

- Executive Order 12744, January 21, 1991: <http://www.presidency.ucsb.edu/ws/?pid=23583>
- Executive Order 12754, March 12, 1991: <http://www.presidency.ucsb.edu/ws/?pid=23593>
- Public Law 103-446: <https://www.gpo.gov/fdsys/pkg/STATUTE-108/pdf/STATUTE-108-Pg4645.pdf>
- FR Doc No: 94-30133: <https://www.gpo.gov/fdsys/pkg/FR-1994-12-08/html/94-30133.htm>
- FR Doc No: 95-2764: <https://www.gpo.gov/fdsys/pkg/FR-1995-02-03/html/95-2764.htm>
- 32 CFR 578.27: <https://www.gpo.gov/fdsys/pkg/CFR-2006-title32-vol3/pdf/CFR-2006-title32-vol3-sec578-27.pdf>
- 38 CFR 3.317: [https://www.ecfr.gov/cgi-bin/text-idx?SID=4a5b9a7df43cb7a73d24ccc53aaa9e97&node=se38.1.3\\_1317&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=4a5b9a7df43cb7a73d24ccc53aaa9e97&node=se38.1.3_1317&rgn=div8)

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Point of Contact: Anthony Hardie • [anthony@veteransforcommonsense.org](mailto:anthony@veteransforcommonsense.org)