#### Department of Veterans Affairs M21-1, Part IV, Subpart ii

**Veterans Benefits Administration December 30, 2015**

**Washington, DC 20420**

#### Key Changes

|  |  |
| --- | --- |
| Changes Included in This Revision | The table below describes the changes included in this revision of Veterans Benefits Manual M21-1, Part IV, “Compensation, DIC, and Death Compensation Benefits,” Subpart ii, “Compensation.”  ***Notes***:   * Unless otherwise noted, the term “claims folder” refers to the official, numbered, Department of Veterans Affairs (VA) repository – whether paper or electronic – for all documentation relating to claims that a Veteran and/or his/her survivors file with VA. * Minor editorial changes have also been made to * update incorrect or obsolete references * reassign alphabetical designations to individual blocks, where necessary, to account for new and/or deleted blocks within a topic * update the labels of individual blocks and the titles of sections and topics to more accurately reflect their content, and * bring the document into conformance with M21-1 standards. |

|  |  |
| --- | --- |
| Reason(s) for the Change | Citation |
| To relocate information on contaminated drinking water at Camp Lejeune to a more logical location within the topic. | [M21-1, Part IV, Subpart ii, Chapter 2, Section C, Topic 5, Block o (IV.ii.2.C.5.o)](#blocko) |
| * To remove and relocate guidance on deciding claims for Camp Lejeune claims. * To add additional relevant references. | [IV.ii.2.C.5.p](#_p.__Requesting) |
| To add new guidance on deciding for Camp Lejeune claims. | [IV.ii.2.C.5.q](#blockq) |
| To add new guidance on processing Camp Lejeune appeals. | [IV.ii.2.C.5.r](#blockr) |

|  |  |
| --- | --- |
| Rescissions | None |

|  |  |
| --- | --- |
| Authority | By Direction of the Under Secretary for Benefits |

|  |  |
| --- | --- |
| Signature | Thomas J. Murphy, Director  Compensation Service |

|  |  |
| --- | --- |
| Distribution | LOCAL REPRODUCTION AUTHORIZED |

### Section C. Service Connection (SC) for Disabilities Resulting From Exposure to Environmental Hazards or Service in the Republic of Vietnam (RVN)

#### Overview

|  |  |
| --- | --- |
| In This Section | This section contains the following topics: |

|  |  |
| --- | --- |
| Topic | Topic Name |
| 1 | SC for Disabilities Resulting From Exposure to Ionizing Radiation |
| 2 | SC for Disabilities Resulting From Exposure to Asbestos |
| 3 | SC for Disabilities Resulting From Exposure to Certain Herbicide Agents or Based on Service in the RVN |
| 4 | Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicides |
| 5 | SC for Disabilities Resulting From Exposure to Other Specific Environmental Hazards |
| 6 | Claims Based on Participation in the Shipboard Hazard and Defense (SHAD) Project |
| 7 | Claims Based on Chemical Biological Radiological Nuclear and Explosives (CBRNE) Testing |

#### 1. SC for Disabilities Resulting From Exposure to Ionizing Radiation

|  |  |
| --- | --- |
| Introduction | This topic contains information on SC for disabilities resulting from exposure to ionizing radiation, including   * provisions of * *Public Law (PL) 98-542*, and * *PL 102-86* * history of time limits for disease manifestation for presumptive purposes under 38 CFR 3.309(d), and * list of disabilities under 38 CFR 3.309(d) for which SC is presumed. |

|  |  |
| --- | --- |
| Change Date | December 13, 2005 |

|  |  |
| --- | --- |
| a. Provisions of PL 98-542 | Under *Public Law (PL) 98-542*, which was enacted on October 24, 1984, the following claims that were denied *prior* to October 24, 1984, are entitled to a *de novo* review:   * claims for service connection (SC) based upon exposure to ionizing radiation as a consequence of service with the occupation forces of Hiroshima or Nagasaki, Japan, or * claims for SC based upon exposure to ionizing radiation in connection with nuclear testing.   ***Notes***:   * A *de novo* review is a new and complete review of an issue with no deference given to the previous decision. * It is not necessary for the claimant to submit new and material evidence to reopen these claims. |

|  |  |
| --- | --- |
| b. Provisions of PL 102-86 | *PL 102-86*, effective August 14, 1991, extended eligibility to presumptive SC to individuals engaged in a radiation-risk activity during   * active duty for training, or * inactive duty training. |

|  |  |
| --- | --- |
| c. History of Time Limits for Disease Manifestation for Presumptive Purposes Under 38 CFR 3.309(d) | Originally, in order to establish presumptive SC, the time limit for a disease listed under [38 CFR 3.309(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8) to become manifest to a degree of 10 percent or more was   * 30 years for leukemia, and * 40 years for all other diseases.   Then, the presumptive period was extended to 40 years for leukemia effective August 14, 1991.  Effective October 1, 1992, a time limit for manifestation is *not* specified or required for any disease listed under [38 CFR 3.309(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8). |

|  |  |
| --- | --- |
| d. List of Disabilities Under 38 CFR 3.309(d) for Which SC Is Presumed | The table below lists the disabilities for which SC is presumed based on a Veteran’s exposure to ionizing radiation under [38 CFR 3.309(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8). |

|  |  |
| --- | --- |
| PL or Federal Register Citation | Presumptive Disabilities Under 38 CFR 3.309(d) |
| *PL 100-321* effective May 1, 1988 | * Cancer of the * bile ducts * breast * esophagus * gallbladder * pancreas * pharynx * small intestine * stomach, and * thyroid * leukemia, other than chronic lymphocytic leukemia (CLL) * lymphomas, except Hodgkin’s disease * multiple myeloma, and * primary liver cancer, except if cirrhosis or hepatitis B is indicated. |
| *PL 102-578* effective October 1, 1992 | Cancer of the   * salivary gland, and * urinary tract.   ***Note***: The term ***urinary tract*** refers to the   * kidneys * renal pelves * ureters * urinary bladder, and * urethra. |
| *67 FR 3612-3616*  effective March 26, 2002 | * Bronchiolo-alveolar carcinoma, and * cancer of the * bone * brain * colon * lung, and * ovary. |

#### 2. SC for Disabilities Resulting From Exposure to Asbestos

|  |  |
| --- | --- |
| Introduction | This topic contains information on SC for disabilities resulting from exposure to asbestos, including   * the definition of asbestos * the general effects of asbestos exposure * prevalence of specific diseases resulting from exposure to asbestos * occupational exposure to asbestos * exposure to asbestos during World War II (WWII) in insulation and shipyard workers to include Navy Veterans * the latent period for development of disease due to exposure to asbestos * the diagnostic indicators of asbestosis * considering SC for disabilities claimed to result from exposure to asbestos during service, and * determining the diagnostic code (DC) when rating disabilities caused by exposure to asbestos. |

|  |  |
| --- | --- |
| Change Date | August 7, 2015 |

|  |  |
| --- | --- |
| a. Definition: Asbestos | ***Asbestos*** is a fibrous form of silicate mineral of varied chemical composition and physical configuration, derived from serpentine and amphibole ore bodies.  Common materials that may contain asbestos include   * steam pipes for heating units and boilers * ceiling tiles * roofing shingles * wallboard * fire-proofing materials, and * thermal insulation.   ***Note***: Due to concerns about the safety of asbestos, the use of materials containing asbestos has declined in the U.S. since the 1970s. |

|  |  |
| --- | --- |
| b. General Effects of Asbestos Exposure | Asbestos fiber masses have a tendency to break easily into tiny dust particles that can float in the air, stick to clothes, and may be inhaled or swallowed.  Inhalation of asbestos fibers can produce   * fibrosis, the most commonly occurring of which is interstitial pulmonary fibrosis, or asbestosis * tumors * pleural effusions and fibrosis * pleural plaques (scars of the lining that surrounds the lungs) * mesotheliomas of pleura and peritoneum, and * cancers of the * lung * bronchus * gastrointestinal tract * larynx * pharynx, and * urogenital system, except the prostate.   ***Note***: The biological actions of the various fibers differ in some respects, in that   * chrysotile products * have their initial effects on the small airways of the lung * cause asbestosis more slowly, and * result in lung cancer more often, and * crocidolite and amosite * have more initial effects on the small blood vessels of the lung, alveolar walls, and pleura, and * result more often in mesothelioma. |

|  |  |
| --- | --- |
| c. Prevalence of Specific Diseases Resulting From Exposure to Asbestos | Specific diseases that may result from exposure to asbestos include   * lung cancer that * originates in the lung parenchyma rather than the bronchi, and * eventually develops in about 50 percent of persons with asbestosis * gastrointestinal cancer that develops in 10 percent of persons with asbestosis * urogenital cancer that develops in 10 percent of persons with asbestosis, and * mesothelioma that develops in 17 percent of persons with asbestosis.   ***Important***:   * All persons with significant asbestosis develop cor pulmonale (enlargement of the right ventricle of the heart) and heart disease secondary to disease of the lung or its blood vessels. Those persons who do not die from cancer often die from heart failure secondary to cor pulmonale. * Disease-causing exposure to asbestos may be * brief, and/or * indirect.   ***Notes***:   * Current smokers who have been exposed to asbestos face an increased risk of developing bronchial cancer. * Mesotheliomas are not associated with cigarette smoking. |

|  |  |
| --- | --- |
| **d. Occupational Exposures to Asbestos** | Some of the major occupations involving exposure to asbestos include   * mining * milling * work in shipyards * insulation work * demolition of old buildings * carpentry and construction * manufacture and servicing of friction products, such as clutch facings and brake linings, and * manufacture and installation of products, such as * roofing and flooring materials * asbestos cement sheet and pipe products, and * military equipment.   ***Note***: Exposure to any simple type of asbestos is unusual except in mines and mills where the raw materials are produced.  ***Reference***: For a list of Military Occupational Specialties (MOSs) with their probability of asbestos exposure, see M21-1, Part IV, Subpart ii, 1.I.3.c. |

|  |  |
| --- | --- |
| **e. Exposure to Asbestos During WWII in Insulation and Shipyard Workers to Include Navy Veterans** | High exposure to asbestos and a high prevalence of disease have been noted in insulation and shipyard workers.  During World War II (WWII), several million people employed in U.S. shipyards and U.S. Navy Veterans were exposed to chrysotile products as well as amosite and crocidolite since these varieties were used extensively in military ship construction.  ***Important***: Many of these people have only recently come to medical attention because of the potentially long latent period between first exposure and development of disease. |

|  |  |
| --- | --- |
| f. Latent Period for Development of Disease Due to Exposure to Asbestos | Many people with asbestos-related diseases have only recently come to medical attention because the latent period for development of disease due to exposure to asbestos ranges from 10 to 45 or more years between first exposure and development of disease.  ***Note***: The exposure may have been direct or indirect; the extent and duration of exposure is not a factor. |

|  |  |
| --- | --- |
| g. Diagnostic Indicators of Asbestosis | A clinical diagnosis of asbestosis requires a history of exposure and radiographic evidence of parenchymal lung disease. Diagnostic indicators include   * dyspnea on exertion * end-respiratory rales over the lower lobes * compensatory emphysema * clubbing of the fingers at late stages, and * pulmonary function impairment and cor pulmonale that can be demonstrated by instrumental methods. |

|  |  |
| --- | --- |
| h. Considering SC for Disabilities Claimed to Result From Exposure to Asbestos During Service | When deciding a claim for SC for a disability claimed to result from exposure to asbestos during service, the rating activity should   * determine whether or not service records demonstrate the Veteran was exposed to asbestos during service * ensure that development is accomplished to determine whether or not the Veteran was exposed to asbestos either before or after service, and * determine whether or not a relationship exists between exposure to asbestos and the claimed disease, keeping in mind latency and exposure factors.   ***Notes***:   * As always, resolve reasonable doubt in the claimant’s favor. * If assistance in deciding a case is needed, contact the Compensation Service Policy Staff (211).   ***References***: For more information on   * development procedures to be performed in claims based on asbestos exposure, see M21-1, Part IV, Subpart ii, 1.I.3, and * need for a medical nexus to service in asbestos-related claims, see [VAOPGCPREC 4-2000](http://www.va.gov/ogc/opinions/2000precedentopinions.asp), and * requesting assistance from Compensation Service, see M21-1, Part III, Subpart vi, 1.A. |

|  |  |
| --- | --- |
| i. Determining the DC When Rating Disabilities Caused by Exposure to Asbestos | Use the information below to determine the diagnostic code (DC) to assign when rating disabilities caused by exposure to asbestos. |

|  |  |
| --- | --- |
| If the condition is … | Then rate … |
| asbestosis | under DC 6833. |
| * pleural effusions * fibrosis, or * pleural plaques | analogous to asbestosis under DC 6833. |
| cancer | under the DC for the appropriate body system. |
| mesothelioma of pleura | analogous to DC 6819. |
| mesothelioma of peritoneum | analogous to DC 7343. |

#### 3. SC for Disabilities Resulting From Exposure to Certain Herbicide Agents or Based on Service in the RVN

|  |  |
| --- | --- |
| Introduction | This topic contains information on SC for disabilities resulting from exposure to herbicides or based on service in the RVN, including   * presumptive SC based on herbicide exposure * the definition of an herbicide agent * rebutting the 38 CFR 3.307(a) presumption by affirmative evidence to the contrary * presuming exposure to an herbicide agent * the definition of service in the RVN * the time limits for disease manifestation for presumptive purposes under 38 CFR 3.309(e) * determining the last date of herbicide exposure * considering direct SC when entitlement to presumption does not exist * date disabilities became subject to presumptive SC under 38 CFR 3.309(e) * processing claims based on early-onset peripheral neuropathy * conditions determined to have no positive association with herbicide exposure * metastasis of a cancer and presumptive SC under 38 CFR 3.307(a) * considering claims based on service aboard ships offshore the RVN * SC for non-Hodgkin’s lymphoma (NHL) under 38 CFR 3.313 based on service in the RVN during the Vietnam Era * subcategories of NHL qualifying for presumptive SC, and * benefits previously awarded under pre-Haas policies. |

|  |  |
| --- | --- |
| Change Date | December 18, 2015 |

|  |  |
| --- | --- |
| a. Presumptive SC Based on Herbicide Exposure | Under [38 CFR 3.307](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1307&rgn=div8), when there is     * in-service exposure to an herbicide agent, and * a diagnosis of a condition listed in [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8) within a defined time period   a presumption arises that the diagnosis is     * related to the exposure, and * incurred in or aggravated by service.   The presumption removes the need to prove a nexus between the current diagnosis and the in-service exposure. Therefore, when the evidence is sufficient for the presumption to arise, SC is established (assuming that generally applicable requirements such as Veteran status based on a qualifying discharge have been met) *unless* other evidence rebuts the presumption.  ***References***: For more information on   * the definition ofherbicide agent, see M21-1, Part IV, Subpart ii, 2.C.3.b * rebutting the [38 CFR 3.307(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1307&rgn=div8) presumption by affirmative evidence to the contrary, see M21-1, Part IV, Subpart ii, 2.C.3.c * presuming exposure to an herbicide agent, see M21-1, Part IV, Subpart ii, 2.C.3.d, and * presumptive SC generally, see [38 CFR 3.307](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1307&rgn=div8). |

|  |  |
| --- | --- |
| b. Definition: Herbicide Agent | Per [38 CFR 3.307(a)(6)(i)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1307&rgn=div8), ***herbicide agent*** means a harmful defoliant chemical, such as Agent Orange, used in support of U.S. and allied military operations in the Republic of Vietnam (RVN) during the period beginning on January 9, 1962, and ending on May 7, 1975, that contained the following components   * 2,4,5-T and its contaminant, TCDD (dioxin) * 2,4-D * cacodylic acid, and * picloram.   ***Examples***:   * Agent Orange (2,4,5-T and 2,4-D) * Agent White (2,4-D and picloram), and * Agent Blue (cacodylic acid).   ***Note***: Under [38 U.S.C. 1116](https://www.law.cornell.edu/uscode/text/38/1116), the National Academy of Science’s (NAS’s) Institute of Medicine (IOM) is authorized to conduct biennial surveys of studies related to Agent Orange exposure and report to VA any scientific association found between exposure and specific diseases. |

|  |  |
| --- | --- |
| c. Rebutting the 38 CFR 3.307(a) Presumption by Affirmative Evidence to the Contrary | The [38 CFR 3.307(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1307&rgn=div8) presumption of a nexus between a [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8) disability and established in-service exposure to an herbicide agent can be rebutted by evidence that the disability was not caused by the exposure.  The standard in [38 CFR 3.307(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1307&rgn=div8) is *affirmative evidence to the contrary*. The regulation does not specifically define the standard but notes that it means less than conclusive proof and requires sound medical reasoning and consideration of all evidence of record.  ***Important***:   * Although the regulation permits rebuttal, in practice evidence will infrequently support it. The presumptions were created based on a finding by the Secretary that a positive association exists between the disorders listed in [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8) and herbicide exposure. This finding in turn was based on a study by NAS’s IOM. * A conclusory medical statement that a condition listed in [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8) is not related to demonstrated or presumed herbicide exposure does not meet the sound medical reasoning requirement. There must be competent, credible, and persuasive medical evidence supported by all of the other pertinent evidence of record that the individual’s diagnosed disorder is more likely than not related to a specific non-service related cause.   ***References***: For more information on   * evaluating evidence, see M21-1, Part III, Subpart iv, 5 * requiring further development, see M21-1, Part III, Subpart iv, 5.7, and * the requirement for competent medical evidence in the claims folder to support medical conclusions, see M21-1, Part III, Subpart iv, 5.3.j. |

|  |  |
| --- | --- |
| d. Presuming Exposure to an Herbicide Agent | *Public Law (PL) 104-275* ([38 U.S.C. 1116](https://www.law.cornell.edu/uscode/text/38/1116)) provided guidance related to the *presumption of exposure to herbicide agents* for a Veteran who, during active military, naval, or air service served in the RVN during the period beginning on January 9, 1962, and ending on May 7, 1975.  [38 CFR 3.307(a)(6)(iii) and (iv)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1307&rgn=div8) provided further guidance related to the  *presumption of exposure* to *herbicide agents* for Veterans who served in Vietnam and also established a presumption for units that, as determined by the Department of Defense (DoD), operated in or near the Korean Demilitarized Zone (DMZ) between April 1, 1968, and August 31, 1971.  ***Notes***:   * For any contention of in-service exposure to herbicide agents in times or locations other than those specified above, it is the *claimant’s burden* to *factually establish his or her exposure*. * The Vietnam era, as defined in [38 CFR 3.2(f)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_12&rgn=div8), began on February 28, 1961, for any Veteran who served in the RVN during that period. However, herbicide agents by definition were not used in the RVN until January 9, 1962, and the presumption of herbicide exposure cannot be utilized for service in the RVN that was entirely prior to that date. * The regulation provides that presumption of exposure to herbicide agents during qualifying service will be rebutted by affirmative evidence that the Veteran was not exposed to any such agent during qualifying service. However, the probability that specific evidence will exist showing that a person in one of the qualifying locations during a qualifying period had no herbicide exposure is low.   ***References***: For more information on   * verifying herbicide exposure, see M21-1, Part IV, Subpart ii, 1.H, and * using Army Post Office (APO) numbers to verify service in the RVN, see M21-1, Part IV, Subpart ii, 1.H.1.d. |

|  |  |
| --- | --- |
| e. Definition: Service in the RVN | For the purposes of the presumption of exposure to herbicide agents under [38 CFR 3.307(a)(6)(iii)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1307&rgn=div8) and [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=f97bef91876080300247e2290a6ca2b2&mc=true&node=se38.1.3_1309&rgn=div8), ***service in the RVN*** includes   * on land in the RVN * aboard a vessel operating on the inland waterways of RVN * aboard vessels docked to a pier or shore of the RVN and the claimant provides a statement of personally going ashore * aboard vessels on the offshore waters of the RVN, if the conditions of service involved duty or visitation on the ground in the RVN, or * other locations, if the conditions of service involved duty or visitation on the ground in the RVN.   The term service in the RVN does not include service of a Vietnam Era Veteran whose only contact with Vietnam was flying high-altitude missions in Vietnamese airspace. In addition, there is no presumption of exposure based on documentation of service in the offshore waters (blue water) of the RVN or in locations other than those listed above.  ***Exception***: The regulation explains that any duty or visitation in the RVN (as defined above) will qualify as service in the RVN notwithstanding that service was primarily or predominantly in the offshore waters or in other locations.  ***Important***: This is only intended to clearly communicate Department of Veterans Affairs’ (VAs’) long-standing legal interpretation, which was held to be permissible by the Federal Circuit in [*Haas v. Peake*, 535 F.3d 1168 (Fed. Cir. 2008)](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh). It does not represent any substantive change in VA’s existing policy or practice.  ***Reference*s**: For more information on   * service in the RVN, see * [38 CFR 3.313](http://www.ecfr.gov/cgi-bin/text-idx?SID=ae01201b55309fa8f5aa6b0d40050352&mc=true&node=se38.1.3_1313&rgn=div8) * [VAOPGCPREC 27-97](http://www.va.gov/ogc/opinions/1997precedentopinions.asp), and * [VAOPGCPREC 07-93](http://www.va.gov/ogc/opinions/1993precedentopinions.asp) * required development for claims based on service aboard ships offshore of the RVN or on inland waterways, see M21-1, Part IV, Subpart ii, 1.H.2 * considering claims based on exposure to herbicides during service aboard ships that operated on the offshore waters of the RVN, see M21-1, Part IV, Subpart ii, 2.C.3.m, and * verifying service in the RVN in connection with claims involving exposure to herbicides, see M21-1, Part IV, Subpart ii, 1.H. |

|  |  |
| --- | --- |
| f. Time Limits for Disease Manifestation for Presumptive Purposes Under 38 CFR 3.309(e) | In order to establish presumptive SC, the following diseases listed in [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8) must become manifest to a degree of 10 percent or more within one year of the *last date of exposure* to herbicides   * chloracne or other acne-form disease consistent with chloracne * porphyria cutanea tarda (PCT), and * early-onset peripheral neuropathy (PN).   ***Notes***:   * There is no time limit for the other listed presumptive diseases in [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=2e5c76c208b1756392a6977c7ac7ad92&mc=true&node=se38.1.3_1309&rgn=div8). * Previously, respiratory cancers (cancers of the lung, bronchus, larynx, and trachea) had to become manifest within 30 years of last exposure. *PL 107-103* eliminated this requirement effective January 1, 2002.   ***Reference***: For more information on time limits for manifestation of diseases subject to presumptive SC, see [38 CFR 3.307(a)(6)(ii)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1307&rgn=div8). |

|  |  |
| --- | --- |
| g. Determining the Last Date of Herbicide Exposure | Under [38 CFR 3.307(a)(6)(iii)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1307&rgn=div8), the ***last date of herbicide exposure*** is the last date on which the Veteran served in the RVN during the Vietnam Era. |

|  |  |
| --- | --- |
| h. Considering Direct SC When Entitlement to Presumption Does Not Exist | If entitlement to presumptive SC based on herbicide exposure does not exist, consider entitlement to SC on a direct, facts-found basis.  Under [38 CFR 3.303(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=153e89209bb95bdd7fc32a497117a512&mc=true&node=se38.1.3_1303&rgn=div8), the presumptive provisions of the statute and VA regulations implementing them are intended as liberalizations that allow for another basis of SC. Therefore, these provisions do *not* preclude direct SC, where appropriate. |

|  |  |
| --- | --- |
| i. Date Disabilities Became Subject to Presumptive SC Under 38 CFR 3.309(e) | The table below shows the dates on which the diseases listed in [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8) became subject to presumptive SC. |

|  |  |
| --- | --- |
| Disability | Effective Date |
| * Chloracne or other acne-form disease consistent with chloracne, and * soft-tissue sarcoma, *other than* * osteosarcoma * chondrosarcoma * Kaposi’s sarcoma, or * mesothelioma | February 6, 1991  ***Note***: Originally, September 25, 1985, under 38 CFR 3.311a. |
| Non-Hodgkin’s lymphoma (NHL) | February 6, 1991  ***Note***: Originally, August 5, 1964, under 38 CFR 3.313. |
| * Porphyria cutanea tarda, and * Hodgkin’s disease | February 3, 1994 |
| * Respiratory cancers of the * lung * bronchus * larynx, or * trachea, and * multiple myeloma | June 9, 1994 |
| * Prostate cancer, and * acute and subacute PN | November 7, 1996 |
| Type 2 diabetes mellitus (DM) | May 8, 2001 |
| CLL | October 16, 2003 |
| AL amyloidosis | May 7, 2009 |
| * Ischemic heart disease (IHD) * chronic B-cell leukemia, and * Parkinson’s disease | August 31, 2010 |
| Early-onset PN | September 6, 2013 |

|  |
| --- |
| ***Important***: The table above includes reference to acute and subacute PN becoming subject to presumptive SC on November 7, 1996, for historical purposes. The covered disease was revised to early-onset PN by change effective September 6, 2013. For claims on or after September 6, 2013, entitlement to presumptive SC based on PN only exists when the Veteran meets qualifying service requirements specified at M21-1, Part IV, Subpart ii, 2.C.3.e and medical evidence establishes a confirmed diagnosis of early-onset PN.  ***Note***: Unless an earlier effective date is determined pursuant to the *Nehmer* stipulation under [38 CFR 3.816](http://www.ecfr.gov/cgi-bin/text-idx?SID=730552af9f371c1ffbf4acea2daa806b&node=se38.1.3_1816&rgn=div8), the provisions pertaining to retroactive payment under [38 CFR 3.114(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1114&rgn=div8) apply.  ***Reference***: For more information on the *Nehmer* stipulation, see M21-1, Part IV, Subpart ii, 2.C.4. |

|  |  |
| --- | --- |
| **j. Processing Claims Based on Early-Onset PN** | A change to [38 CFR 3.307(a)(6)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1307&rgn=div8) and [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8) ([78 FR 54763](http://www.gpo.gov/fdsys/pkg/FR-2013-09-06/html/2013-21674.htm)) effective September 6, 2013, removed requirements that neuropathy must resolve within two years.  Do not deny presumptive SC for early-onset PN solely because the condition persisted for more than two years after initial diagnosis.  ***Important***:   * The regulatory amendment does not change that PN must manifest to a compensable degree of 10 percent or more within one year of the date of last herbicide exposure during active military, naval, or air service. * Claims of SC for later-occurring onset of PN can only be evaluated under other bases (for example, direct or secondary). NAS has determined that evidence does not support an association between herbicide exposure and delayed-onset PN, which NAS defined as having its onset more than one year after exposure.   ***Reference***: For more information on conditions determined to have no positive association with herbicide exposure, see M21-1, Part IV, Subpart ii, 2.C.3.k. |

|  |  |
| --- | --- |
| k. Conditions Determined to Have No Positive Association With Herbicide Exposure | Under the Agent Orange Act of 1991, the Secretary receives from the NAS periodic reviews and summaries of the scientific evidence concerning the association between exposure to herbicides and diseases suspected to be associated with those exposures.  Based on cumulative scientific data reported by the NAS since 1993, the Secretary has determined that a positive association does not exist between herbicide exposure and the following conditions and that a presumption of SC is not warranted for any of the conditions.   * Cancers * bone and joint * brain and nervous system (including eye) * breast * digestive (including esophagus, stomach, colon-rectum, small intestine, and anus) * endocrine (including thyroid and thymus) * hepatobiliary (liver, gallbladder, and bile ducts) and pancreatic * leukemia (***excluding*** chronic B-cell leukemias such as CLL and hairy cell) * nasal cavity (including ears and sinuses) * oral cavity (including lips and tongue) * pharynx (including tonsils) * pleura, mediastinum, and other unspecified sites within the respiratory system and intrathoracic organs * renal (kidney and renal pelvis) * skin (including melanoma, basal cell carcinoma, and squamous cell carcinoma) * reproductive (including the cervix, uterus, ovary, testes, and penis, but ***excluding*** prostate) * urinary bladder, and * any cancers for which the Secretary has not already established a presumption. * Other * bone conditions * circulatory disorders (***but excluding*** IHD) * cognitive and neuropsychiatric effects * endometriosis * eye problems * gastrointestinal, metabolic, and digestive disorders (including changes in liver enzymes, lipid abnormalities, and ulcers) * hearing loss * immune system disorders (immune suppression, allergy, and autoimmunity) * neurobehavioral (cognitive and neuropsychiatric) disorders * neurodegenerative diseases (including amyotrophic lateral sclerosis (ALS), but ***excluding*** Parkinson's disease) * conditions affecting offspring of exposed persons (including neonatal death, infant death, stillborn, low birth weight, birth defects ***other than*** spina bifida, and childhood cancer such as acute myeloid leukemia) * chronic peripheral nervous system disorders such as late-onset PN (***but*** ***excluding*** early-onset PN) * reproductive effects, such as abnormal sperm parameters and infertility * respiratory disorders (***but excluding*** covered respiratory cancers) such as asthma and chronic obstructive pulmonary disease (COPD), and * effects on thyroid homeostasis.   ***Note***: No positive association means that the evidence for an association does not equal or outweigh the evidence against association. |

|  |  |
| --- | --- |
| **l. Metastasis of a Cancer and Presumptive SC Under 38 CFR 3.307(a)** | Do not establish presumptive SC on the basis of herbicide exposure under [38 U.S.C. 1116](https://www.law.cornell.edu/uscode/text/38/1116) and [38 CFR 3.307(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=7f2b5aa07ce723e019ae7382e4df5dac&mc=true&node=se38.1.3_1307&rgn=div8) for a cancer listed in [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=7f2b5aa07ce723e019ae7382e4df5dac&mc=true&node=se38.1.3_1309&rgn=div8) when medical evidence factually shows that the cancer developed as the result of metastasis of a cancer located at a primary site that is not recognized by the VA as associated with herbicide exposure.  ***Note***: Such evidence constitutes affirmative evidence to rebut the presumption of SC based on herbicide exposure. |

|  |  |
| --- | --- |
| m. Considering Claims Based on Service Aboard Ships Offshore the RVN | When a Veteran claims exposure to herbicides during service aboard a Navy or Coast Guard ship, establish exposure on a presumptive basis if   * evidence shows the ship * operated primarily on the inland waterways of the RVN, such as river patrol boats * operated temporarily on the inland waterways of the RVN * docked to a pier or shore of the RVN and the claimant provides a statement of personally going ashore * operated on the offshore waters of the RVN, if the conditions of service involved duty or visitation on the ground in the RVN, or * operated in other locations, if the conditions of service involved duty or visitation on the ground in the RVN. * evidence places the Veteran onboard the ship at the time the ship docked to the shore or pier or operated in inland waterways, ***and*** * the Veteran has stated that he/she went ashore when the ship docked or operated on close coastal waters for extended periods, if the evidence shows the ship docked to the shore or pier or that crew members were sent ashore when the ship operated on close coastal waters.   ***Notes***:   * Service aboard a ship that *anchored* in an open deep-water harbor, such as Da Nang, Vung Tau, or Cam Ranh Bay, along the RVN coast does not constitute inland waterway service or qualify as docking to the shore and is not sufficient to establish presumptive exposure to herbicides, unless the evidence of record confirms the Veteran went ashore during anchorage. * Veterans who served aboard large ocean-going ships that operated on the offshore waters of the RVN are often referred to as “blue water” Veterans because of the blue color of the deep offshore waters. They are distinguished from “brown water” Veterans who served aboard smaller patrol vessels or their supply vessels that operated on the brown-colored rivers, canals, estuaries, and delta areas making up the inland waterways of the RVN. * Brown water Navy and Coast Guard Veterans who served on inland waterways receive the same presumption of herbicide exposure as Veterans who served on the ground in the RVN.   ***References***: For more information on   * Navy vessels that docked to the shore or pier of the RVN, traveled on inland waterways, or operated on close coastal waters for extended periods, see the Compensation Service [Vietnam Era Navy Ship Agent Orange Exposure Development Site](http://vbaw.vba.va.gov/bl/21/rating/VENavyShip.htm) * presumption of exposure to herbicides with verified service on inland waterways, see M21-1, Part IV, Subpart ii, 1.H.2.c, and * claims based on herbicide exposure due to transport, storage or use of herbicide agents on board the ship, see M21-1, Part IV, Subpart ii, 1.H.2.g-h. |

|  |  |
| --- | --- |
| **n. SC for NHL Under 38 CFR 3.313 Based on Service in RVN During the Vietnam Era** | VA regulations at [38 CFR 3.313](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1313&rgn=div8) provide for a presumption of SC for NHL based on service in the RVN during the Vietnam Era.  ***Important***: Exposure to herbicides is not a prerequisite for entitlement under [38 CFR 3.313](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1313&rgn=div8). The claimant needs only to show service in the RVN, which includes the waters offshore. |

|  |  |
| --- | --- |
| o. Subcategories of NHL Qualifying for Presumptive SC | When [38 CFR 3.313](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1313&rgn=div8) was promulgated, the U.S. Center for Disease Control identified a number of subcategories that are manifestations of NHL.  Extend the presumption of SC to a Veteran who claims SC for NHL if   * the Veteran had service in the RVN during the Vietnam Era, including naval service in the offshore waters of the RVN, and * the medical evidence shows a diagnosis of any of the subcategories of low, intermediate, or high-grade lymphoma listed in the table below. |

|  |  |  |
| --- | --- | --- |
| Low Grade Lymphoma | Intermediate Grade Lymphoma | High Grade Lymphoma |
| Small lymphocytic with plasmacytoid features | Diffuse, small and large | Diffuse, small and large |
| Small lymphocytic lymphoma and B-cell CLL  ***Note***: Small lymphocytic lymphoma and B-cell CLL are considered slightly different forms of the same disease. | Diffuse, small cleaved | Lymphoblastic |
| Intermediate cell | Diffuse, large cleaved | Immunoblastic |
| Follicular, mixed small and large | Diffuse, large non-cleaved | Burkitt’s |
| Mantle zone | Diffuse, large | --- |
| Follicular, small cleaved | Follicular, large | --- |
| Waldenstrom’s macroglobulinemia | --- | --- |
| Mycosis fungoides  ***Reference***: For more information on considering claims for SC for mycosis fungoides, see M21-1, Part III, Subpart iv, 4.I.4.j. | --- | --- |

|  |  |
| --- | --- |
| **p. Benefits Previously Awarded Under Pre-Haas Policies** | Before the *Haas* case entered the court system, there was a period of time when a Veteran’s receipt of the Vietnam Service Medal (VSM) or service in the offshore waters of Vietnam was sufficient to establish a presumption of herbicide exposure. This broad policy, which had been in effect since November 8, 1991, was subsequently narrowed as of February 27, 2002, so that service on the ground in Vietnam or on its inland waterways was required to receive a presumption of exposure. The *Haas* case was initiated as a challenge to this revised policy. Although the final judicial decision in *Haas* supported VA’s revised policy, that decision cannot be applied retroactively to Veterans who were evaluated under the original broad policy.  When reviewing new claims from VSM Veterans or Blue Water Veterans, **do not**   * propose to sever SC for the disabilities previously awarded when the presumption of herbicide exposure was conceded under former policies, or * concede herbicide exposure for any newly claimed disabilities unless evidence is presented that otherwise establishes the Veteran’s exposure based on current evidentiary requirements.   ***References***: For more information on   * new interpretations of the law and CUE, see * [*Berger v. Brown*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmb), 10 Vet. App. 166 (1997), and * [*Jordan v. Nicholson*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmj),401 F.3d 1296(Fed. Cir. 2005), and * Blue Water Navy Veterans and herbicide exposure, see [*Haas v. Peake*, 535 F.3d 1168 (Fed. Cir. 2008)](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmh). |

#### 4. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicides

|  |  |
| --- | --- |
| Introduction | This topic contains information on the payment under the *Nehmer* stipulation, 38 CFR 3.816, for disabilities resulting from exposure to herbicides, including   * the *Nehmer* stipulation background * the *Nehmer* class member categories * the definition of a covered herbicide disease * entitlement to benefits under 38 CFR 3.816 * effective dates of awards of disability compensation under 38 CFR 3.816 * examples of establishing a retroactive effective date under *Nehmer* * handling claims for a covered disease that do not specifically mention herbicide exposure * claim requirements and *Nehmer* * an example of establishing an effective date for a claim in which exposure to herbicides is not specifically mentioned * handling claims for type 2 DM as related to herbicide exposure * examples of claims for SC for type 2 DM * information to include in the rating decision for any *Nehmer* rating * information to include in the rating decision when awarding retroactive benefits under *Nehmer* * consideration of entitlement to a rating for total disability based on individual unemployability (TDIU) in claims in which pension was previously awarded, and * second signature requirement for *Nehmer* rating decisions. |

|  |  |
| --- | --- |
| Change Date | August 7, 2015 |

|  |  |
| --- | --- |
| a. Nehmer Stipulation Background | The historical version of 38 CFR 3.311a, which became effective on September 25, 1985, was the first VA regulation to provide guidance for the adjudication of claims based on exposure to dioxin.  In February 1986, a class action suit entitled *Nehmer v. United States Veterans Administration*, No*.* C86-6160 THE (N.D. Cal.), was filed in the U.S. District Court for the Northern District of California.  On May 3, 1989, the District Court invalidated a portion of the historical 38 CFR 3.311a. All denials after September 24, 1985, that were based on 38 CFR 3.311a were voided, and a moratorium was placed on further denials. The moratorium was lifted on February 15, 1994.  On September 24, 2003, a new regulation, [38 CFR 3.816](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1816&rgn=div8), was added to provide guidance in the adjudication of claims under the *Nehmer* litigation. |

|  |  |
| --- | --- |
| b. Nehmer Class Member Categories | *Nehmer* class members under [38 CFR 3.816](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1816&rgn=div8) include a   * Veteran who * served in the RVN during the Vietnam Era, and * has a covered herbicide disease, and * surviving spouse, child, or parent of a deceased Veteran who * served in the RVN during the Vietnam era, and * died as the result of a covered herbicide disease.   ***References***: For more information on   * the definition of service in the RVN, see * [38 CFR 3.313](http://www.ecfr.gov/cgi-bin/text-idx?SID=ae01201b55309fa8f5aa6b0d40050352&mc=true&node=se38.1.3_1313&rgn=div8), and * M21-1, Part IV, Subpart ii, 2.C.3.e, and * considering claims based on service aboard ships offshore of the RVN, see M21-1, Part IV, Subpart ii, 2.C.3.m. |

|  |  |
| --- | --- |
| c. Definition: Covered Herbicide Disease | A ***covered herbicide disease*** under [38 CFR 3.816](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1816&rgn=div8) means a disease for which VA has established a presumption of SC under the *Agent Orange Act of 1991*.  ***Exception***: Chloracne is *not* a covered herbicide disease under [38 CFR 3.816](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1816&rgn=div8).  The covered herbicide diseases under [38 CFR 3.816](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1816&rgn=div8) are   * amyloid light-chain (AL) amyloidosis * IHD (including, but not limited to, acute, subacute, and old myocardial infarction (MI); atherosclerotic cardiovascular disease (ASCVD) including coronary artery disease (CAD) (including coronary spasm) and coronary bypass surgery; and stable, unstable, and Prinzmetal’s angina * all chronic B-cell leukemias (including, but not limited to, hairy-cell leukemia and CLL) * Parkinson’s disease * early-onset PN * Hodgkin’s disease * multiple myeloma * NHL * PCT * prostate cancer * respiratory cancers (cancer of the lung, bronchus, larynx, or trachea) * soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi’s sarcoma, or mesothelioma), as defined in [38 CFR 3.309(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8), and * type 2 diabetes, also known as type II DM or adult-onset diabetes. |

|  |  |
| --- | --- |
| d. Entitlement to Benefits Under 38 CFR 3.816 | A *Nehmer* class member is entitled to compensation under [38 CFR 3.816](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1816&rgn=div8) if a claim for SC for a covered herbicide disease, or Dependency Indemnity Compensation (DIC) based on death caused by a covered herbicide disease, was   * denied in a decision issued between September 25, 1985, (or a date prior if the claim was pending or on appeal on that date) and the date VA published the final regulation * pending on the date of the final regulation * inferred between September 25, 1985, (or a date prior if the claim was pending or on appeal on that date) and the date VA published the final regulation, or * received between September 25, 1985, (or a date prior if the claim was pending or on appeal on that date) and the date VA published the final regulation, and * the evidence establishes a diagnosis of a covered herbicide disease.   ***Important***:   * By definition, if a case falls under *Nehmer*, it means that the first claim (expressed or inferred by the evidence) of SC for the condition at issue was received before the condition was added to the list of herbicide-related disabilities and the effective date for the award of SC will also be before the condition was added to the list of herbicide-related disabilities. * If a claim of SC for the condition was received after the disease was added to the presumptive list, it is not a *Nehmer* case. In those cases, [38 CFR 3.114(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=947dea7679e9781ad78ce64e50959e4e&mc=true&node=se38.1.3_1114&rgn=div8) applies and the earliest effective date that can be awarded under [38 CFR 3.114(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=947dea7679e9781ad78ce64e50959e4e&mc=true&node=se38.1.3_1114&rgn=div8) is the date on which the liberalizing legislation was effective (i.e., the date on which the condition was added to [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=947dea7679e9781ad78ce64e50959e4e&mc=true&node=se38.1.3_1309&rgn=div8) or one-year prior to date of claim, whichever is later). |

|  |  |
| --- | --- |
| e. Effective Dates of Awards of Disability Compensation Under 38 CFR 3.816 | The effective date of disability compensation under [38 CFR 3.816](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1816&rgn=div8) is the date of receipt of the claim on which the prior denial was based or the date entitlement arose, whichever is later.  ***Exception***: If VA received the prior claim for compensation within one year after the Veteran’s separation from service, the effective date of compensation would be governed by [38 CFR 3.400(b)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1400&rgn=div8).  ***Important***: In addition to reviewing claims based on prior denial of a covered disease, review the claims folder for rating decisions that previously awarded SC to a Veteran for a covered disease on a basis other than *Nehmer* entitlement prior to the date of the regulation adding presumptive SC for that covered disease. In such cases, consider entitlement to an earlier effective date in accordance with *Nehmer*.Review the previous decision for evidence of   * an award of benefits for a covered disease as secondary to a service-connected (SC) condition in which effective date provisions applicable to *Nehmer* cases were not considered * an award of benefits for a covered disease on the basis of aggravation of the previously non-service-connected covered disease by an existing SC disability in which effective date provisions applicable to *Nehmer* cases were not considered or in which entitlement to an increased evaluation is warranted on *Nehmer* grounds due to previous reduction based on the aggravation basis, and * an award of benefits for a covered disease on a direct basis in which effective date provisions applicable to *Nehmer* cases were not considered.   ***Notes***:   * The provisions of [38 CFR 3.114(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1114&rgn=div8), which limit effective dates to no earlier than the date of a liberalizing law or issue, do not apply to benefits awarded under [38 CFR 3.816](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1816&rgn=div8). * Whatever the effective date, the actual payment of benefits commences on the first day of the following month in accordance with [38 CFR 3.31](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_131&rgn=div8). * In all cases, the condition must have been present on the effective date from which we award SC. An award of SC is not allowed prior to a confirmed diagnosis of the covered disease. |

|  |  |
| --- | --- |
| f. Example 1 on Establishing a Retroactive Effective Date Under Nehmer: Initial Claim Denied After September 25, 1985 | ***Situation***: The Veteran’s initial claim for SC for lung cancer was received on August 4, 1985, and denied on November 19, 1985. Medical evidence showed a diagnosis of lung cancer in July 1985. The Veteran reopened his claim in March 2001.  ***Result***: Establish SC for lung cancer effective the date the initial claim was received, August 4, 1985.  ***Rationale***: Since the initial claim for SC for a covered herbicide disease was denied after September 25, 1985, and the evidence establishes a diagnosis prior to the date the initial claim was received, SC may be established from the date the initial claim was received, per [38 CFR 3.816](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1816&rgn=div8).  ***Note***: If the claim had been denied, to include any appeals, before September 25, 1985, it would be unaffected by the *Nehmer* stipulation, and the effective date would be governed by [38 CFR 3.114(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1114&rgn=div8). |

|  |  |
| --- | --- |
| g. Example 2 on Establishing a Retroactive Effective Date Under Nehmer: Initial Claim Received Prior to the Effective Date of the Law Establishing a Presumption of SC | ***Situation***: The Veteran’s initial claim for SC for lung cancer was received on October 14, 1992, and denied on December 23, 1992. Medical evidence showed a diagnosis of lung cancer in September 1992. The Veteran reopened his claim in March 2001.  ***Result***: Establish SC for lung cancer effective the date the initial claim was received, October 14, 1992.  ***Rationale***: Since the claim was received prior to June 9, 1994, the effective date of the law establishing a presumption of SC for lung cancer under [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8), and the evidence establishes a diagnosis prior to the date the initial claim was received, SC may be established from the date the initial claim was received, per [38 CFR 3.816](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1816&rgn=div8). |

|  |  |
| --- | --- |
| h. Example 3 on Establishing a Retroactive Effective Date: Claim for DIC Benefits Received Within One Year of the Veteran’s Death | ***Situation***: On November 3, 1986, a Veteran who served in the RVN during the Vietnam era died from Hodgkin’s disease. His surviving spouse’s claim for DIC benefits was received on December 10, 1986, and denied on February 12, 1987. The surviving spouse reopened her claim on March 15, 1993.  ***Result***: Establish entitlement to DIC benefits from November 1, 1986, the first day of the month in which the Veteran died.  ***Rationale***: Since the claim for DIC benefits was received within one year of the Veteran’s death, the effective date is governed by [38 CFR 3.400(b)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1400&rgn=div8). |

|  |  |
| --- | --- |
| i. Handling Claims for a Covered Disease That Do Not Specifically Mention Herbicide Exposure | Under a February 11, 1999, order by the District Court, a claim for disability compensation or DIC that is received from a *Nehmer* class member for a covered disease does not have to specifically mention herbicide exposure or assert that the condition was caused by exposure to herbicides in order to qualify as a *Nehmer* claim. |

|  |  |
| --- | --- |
| **j. Claim Requirements and Nehmer** | There is no requirement that a *Nehmer* class member file a new claim or a claim for an earlier effective date in order for VA to award a retroactive effective date under *Nehmer* when a new presumptive condition is added by a regulation.  VA must search its records for prior rating decisions that   * denied SC for a covered disease or a disease that can reasonably be construed as a covered disease, and * were completed prior to the effective date of the regulation that added presumptive SC for the covered disease.   When evidence of decisions meeting the above criteria exists, VA will identify eligible claimants and award benefits, without action on the claimant’s part.  ***Important***: Retroactive SC may still be awarded under the *Nehmer* stipulation for a condition when a prior claim did not include an explicit claim for the condition in question, but   * the condition in question appears as a denial on the code sheet of the rating decision, and * the medical records show a diagnosis of the condition. |

|  |  |
| --- | --- |
| **k. Example: Establishing an Effective Date for a Claim in Which Exposure to Herbicides Is Not Specifically Mentioned** | ***Situation***: A Veteran who served in the RVN during the Vietnam Era filed a claim in 1994, expressly alleging that his prostate cancer was caused by exposure to ionizing radiation before the Veteran’s service in Vietnam. VA denied the claim in 1995. The Veteran reopened the claim in 1997 and SC was established on the basis of herbicide exposure.  ***Result***: Based on these facts, the effective date must relate back to the 1994 claim, even though the Veteran alleged a different basis for SC. |

|  |  |
| --- | --- |
| l. Handling Claims for Type 2 DM as Related to Herbicide Exposure | Effective May 8, 2001, type 2 DM became subject to presumptive SC under [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1309&rgn=div8). Retroactive benefits under the *Nehmer* review may be warranted for claims filed or denied during the period September 25, 1985, to May 7, 2001.  If a prior claim did not involve SC for type 2 DM, there generally exists no basis for assigning an earlier effective date. However, a lack of specificity in the initial claim may be clarified by later submissions. |

|  |  |
| --- | --- |
| m. Example 1: Claim for SC for Type 2 DM | ***Situation***: In January 1987, a Veteran filed a claim for SC for hyperglycemia. In developing the claim, VA obtained medical records indicating that the Veteran was diagnosed with type 2 DM in February 1987.  ***Result***: Based on these facts, it would be reasonable to treat the January 1987 claim as a claim for SC for type 2 DM.  ***Rationale***: Under *Nehmer*, benefits may be paid retroactive to the date the initial claim was received or the date the disability arose as determined by the facts of the case, whichever is later. |

|  |  |
| --- | --- |
| n. Example 2: Claim for SC for Type 2 DM | ***Situation***: In 1995, a Veteran filed a claim for SC for hyperglycemia. Medical records obtained by VA indicated that the Veteran did not have type 2 DM. In 2001, the Veteran filed a second claim for SC for type 2 DM, submitting evidence showing that the condition was diagnosed in 1996.  ***Result***: Based on these facts, the 1995 claim is not considered a claim for SC for type 2 DM.  ***Rationale***: Neither the claim nor the evidence of record (when the 1995 claim was processed) indicated the Veteran had been diagnosed with type 2 DM. |

|  |  |
| --- | --- |
| **o. Information to Include in the Rating Decision for Any Nehmer Rating** | When completing a rating decision under the *Nehmer* guidelines, include the following entry in the *Evidence* part  *All evidence contained in the claims file prior to [date], which is the earliest date a claim for Nehmer purposes was received in VA.*  In the decision narrative, include the following  *“The VA has conducted a de novo review of your entire claims file to determine the earliest date of claim per 38 Code of Federal Regulations 3.816 pertaining to awards under the Nehmer Court Order. The evidence of record shows the earliest claim for Nehmer purposes was [cite controlling claim document] received by VA on [cite date of record]. No evidence in the record received prior to [cite date of record] relates to any claimed disability that could reasonably be construed as an Agent Orange-related disability affected by the Nehmer Court Order.* |

|  |  |
| --- | --- |
| **p. Information to Include in the Rating Decision When Awarding Retroactive Benefits Under Nehmer** | In all *Nehmer* claims in which the claimant is entitled to a retroactive award, insert the following language in the diagnosis text in the coded conclusion of the rating decision: *(Nehmer granted)*.  ***Example***: 7005 Coronary Artery Disease (Nehmer granted) |

|  |  |
| --- | --- |
| **q. Consideration of Entitlement to a Rating for TDIU in Claims in Which Pension Was Previously Awarded** | Consider entitlement to a rating for total disability based on individual unemployability (TDIU) in *Nehmer* claims in which Veterans Pension was previously awarded. In making the determination of entitlement to TDIU, review the claims folder to determine if the *Nehmer* presumptive condition is the primary reason for the Veteran being unemployable/entitled to Veterans Pension.  TDIU should be awarded in the following instances without additional development   * Veterans who are currently in receipt of Veterans Pension are shown to be considered not gainfully employed on account of the *Nehmer* disability, and * Veterans who are currently in receipt of Social Security Administration benefits or Social Security disability for a *Nehmer* disability.   ***Important***: If it is unclear whether or not the Veteran is gainfully employed, it is necessary to confirm his/her employment history prior to awarding a rating for TDIU.  ***Reference***: For more information on TDIU, see   * [38 CFR 4.16](http://www.ecfr.gov/cgi-bin/text-idx?SID=04c30064e1e2674f1aeb43d07ba685e2&mc=true&node=se38.1.4_116&rgn=div8), and * M21-1, Part IV, Subpart ii, 2.F. |

|  |  |
| --- | --- |
| **r. Second Signature Requirement for Nehmer Rating Decisions** | All *Nehmer* rating decisions require two signatures and must undergo a review by a subject matter expert (SME) prior to being processed. |

#### 5. SC for Disabilities Resulting From Exposure to Other Specific Environmental Hazards

|  |  |
| --- | --- |
| Introduction | This topic contains information on SC for disabilities resulting from exposure to other specific environmental hazards, including   * locations of specific environmental hazards identified by DoD * examples of burned waste products * bases throughout Iraq, Afghanistan, and Djibouti on the Horn of Africa that utilize burn pits * definition of particulate matter (PM) * description of the sulfur fire at Mishraq State Sulfur Mine Near Mosul, Iraq * recognizing constrictive bronchiolitis in the 101st Airborne Division as related to the Mishraq State Sulfur Mine Fire * findings common in constrictive bronchiolitis * rating constrictive bronchiolitis * National Guard (NG) exposure to Chromium VI at Qarmat Ali Water Treatment Plant in Basrah, Iraq * details on pollutants from a waste incinerator near naval air facility in Atsugi, Japan * using alternate evidence to establish exposure to environmental hazards * considering lay statements in verifying exposure to environmental hazards * what to include in VA examination and/or medical opinion requests in environmental hazard claims * applying the provisions of 38 CFR 3.317 in claims based on exposure to environmental hazards in Southwest Asia * details on contaminated drinking water on the Marine Corps Base at Camp Lejeune, North Carolina * requesting exams for Camp Lejeune claims * deciding Camp Lejeune claims, and * processing Camp Lejeune appeals. |

|  |  |
| --- | --- |
| Change Date | December 30, 2015 |

|  |  |
| --- | --- |
| a. Locations of Specific Environmental Hazards Identified by DoD | DoD has identified a number of specific environmental hazards at military installations in Iraq, Afghanistan, and elsewhere that could present health risks.  These hazards include   * large burn pits throughout Iraq, Afghanistan, and Djibouti on the Horn of Africa * particulate matter in Iraq, Afghanistan, and Djibouti on the Horn of Africa * a large sulfur fire at Mishraq State Sulphur Mine near Mosul, Iraq * hexavalent chromium exposure at the Qarmat Ali Water Treatment Plant at Basrah, Iraq * contaminated drinking water at Camp LeJeune, North Carolina, 1953 to 1987, and * pollutants from a waste incinerator near the Naval Air Facility (NAF) at Atsugi, Japan.   ***Reference***: For more information on developing claims based on exposure to environmental hazards, see M21-1, Part IV, Subpart ii, 1.I. |

|  |  |
| --- | --- |
| **b. Examples of Burned Waste Products** | Some examples of burned waste products include   * polycyclic aromatic hydrocarbons formed during the incomplete burning of coal, oil and gas, garbage, or other organic substances * volatile organic compounds (VOCs) emitted as gases from certain solids or liquids, and * toxic organic halogenated dioxins and furans to include those associated with tactical herbicide use in Vietnam. |

|  |  |
| --- | --- |
| **c. Bases Throughout Iraq, Afghanistan, and Djibouti on the Horn of Africa That Utilize Burn Pits** | In Iraq, Afghanistan, and Djibouti on the Horn of Africa from approximately 2001 to the present, the U.S. military has utilized large burn pits to dispose of waste at every location wherein the military has positioned a forward operating base (FOB).  ***Example***: Joint Base Balad, also known as Logistic Support Area (LSA) Anaconda located in Northern Iraq approximately 68 kilometers (km) north of Baghdad and 1.5 km from the Tigris River. |

|  |  |
| --- | --- |
| **d. Definition: Particulate Matter** | ***Particulate matter*** is a complex mixture of extremely small particles and liquid droplets that results from primary sources of dust storms and emissions from local industries. Particulate matter is made up of a number of components to include   * acids (such as nitrates and sulfates) * organic chemicals * metals, and * soil or dust particles.   ***Notes***:   * Although particulate matter emissions from natural and man-made sources are generally found worldwide, the particulate matter levels in Southwest Asia and Djibouti on the Horn of Africa are naturally higher and may present a health risk to service members. * Particles that are typically a health concern include those with a diameter less than or equal to 10 microns and those with a diameter of 2.5 microns and smaller. The smaller particles are considered more harmful as the particles can pass through the throat and nose and enter the lungs.   ***Reference***: For more information on developing claims for particulate matter exposure, see M21-1, Part IV, Subpart ii, 1.I. |

|  |  |
| --- | --- |
| **e. Description of the Sulfur Fire at Mishraq State Sulfur Mine Near Mosul, Iraq** | On June 24, 2003, a fire ignited at the Mishraq State Sulfur Mine Plant in Northern Iraq. The fire burned for approximately 3 weeks and caused the release of roughly 42 million pounds of sulfur dioxide (SO2) per day as well as release of hydrogen sulfide (H2S). Field sampling data showed that the levels of SO2/H2S were not solely located in the immediate vicinity of the fire. Other areas found to be affected included   * Qayyarah Airfield West (Camp Q West), which is 25 km to the south and is a major military supply airstrip as well as the primary area of deployment for the 101st Airborne Division, and * the area approximately 50 km to the north up to the Mosul Airfield area.   ***Important***: A roster of firefighters and support elements that participated in controlling the fire identifies involved individuals as primarily from the 101st Airborne Division – 52nd Engineer Battalion, 326th Engineer Battalion, and 887th Engineer Battalion. |

|  |  |
| --- | --- |
| **f. Recognizing Constrictive Bronchiolitis in the 101st Airborne Division as Related to the Mishraq State Sulfur Mine Fire** | From late 2004 through February 2007, 41 soldiers with prior exposure to the Mishraq State Sulfur Mine Fire from the U.S. base for the 101st Airborne Division located in Fort Campbell, Kentucky, reported unexplained shortness of breath on exertion and were referred to a pulmonary specialist at the Vanderbilt Medical Center for evaluation. As of February 2007, 19 personnel were diagnosed with constrictive bronchiolitis by open lung biopsy.  ***Constrictive bronchiolitis*** (also known as ***bronchiolitis obliterans***) is an inflammatory and fibrotic lesion of the terminal bronchioles of the lungs. Possible causes include inhalation exposures, organ transplantation, certain drugs, and collagen vascular disorders. |

|  |  |
| --- | --- |
| **g. Findings Common in Constrictive Bronchiolitis** | In most cases of constrictive bronchiolitis, affected soldiers are comfortable at rest and are able to perform activities of daily living. Soldiers can have normal or near-normal pulmonary function tests (PFTs) and normal x-rays but, at the same time, become short of breath on slight physical exertion, experience inability to meet physical training requirements, and even be considered unfit for deployment. In some cases, symptoms can be incorrectly attributed to asthma or COPD. |

|  |  |
| --- | --- |
| **h. Rating Constrictive Bronchiolitis** | PFTs are the usual standard for rating respiratory disabilities. Therefore, utilize an appropriate analogous DC (such as 6600-6604) since constrictive bronchiolitis does not have its own DC.  ***Note***: Consider extra-schedular evaluations in cases when there is evidence that a Veteran’s employment is affected.  ***References***: For more information on   * rating respiratory disabilities, see * [38 CFR 4.97](http://www.ecfr.gov/cgi-bin/text-idx?SID=04c30064e1e2674f1aeb43d07ba685e2&mc=true&node=se38.1.4_197&rgn=div8), and * M21-1, Part III, Subpart iv, 4.D, and * extra-schedular evaluations, see * [38 CFR 3.321](http://www.ecfr.gov/cgi-bin/text-idx?SID=0088bb497de8487e18ef86a111427160&mc=true&node=se38.1.3_1321&rgn=div8), and * M21-1, Part III, Subpart iv, 6.B.4. |

|  |  |
| --- | --- |
| **i. NG Exposure to Chromium VI at Qarmat Ali Water Treatment Plant in Basrah, Iraq** | From approximately April through September 2003, Army NG personnel from Indiana, West Virginia, South Carolina, and Oregon served at the Qarmat Ali Water Treatment Plant in Basrah, Iraq, and were assigned to guard contract workers who were restoring the plant.  At that time, testing verified that sodium dichromate, a source of hexavalent chromium (Chromium VI), that was previously used as a corrosion-preventing chemical by former Iraqi plant workers, was found on the ground and measured in the air.  Chromium VI in sodium dichromate is a lung carcinogen through inhalation and an acidic compound that can cause immediate irritation to the eyes, nose, sinuses, lungs, and skin. The Army could not specifically trace symptoms to the chromium exposure. Research into the effects of the exposure is ongoing.  If a Veteran served in an NG unit located in Indiana, West Virginia, South Carolina, or Oregon between April and September 2003, DoD has confirmed that the Veterans served at the Qarmat Ali Water Treatment Plant in Basrah, Iraq. Therefore, exposure can be conceded for these personnel. |

|  |  |
| --- | --- |
| **j. Details on Pollutants From a Waste Incinerator Near Naval Air Facility in Atsugi, Japan** | Between 1985 and 2001, personnel at NAF Atsugi were exposed to environmental contaminants due to an off-base waste incinerator business known as the Jinkanpo or Shinkampo Incinerator Complex, which was owned and operated by a private Japanese company. Identified chemicals included   * chloroform * 1, 2-DCE * methylene chloride * TCE * chromium * dioxins and furans, and * other particulate matter.   ***Important***: Handle disability claims based on exposure to environmental airborne contaminants at NAF Atsugi on a case-by-case basis. Actual service at the installation during the timeframe of environmental contaminants must be established. |

|  |  |
| --- | --- |
| k. Using Alternate Evidence to Establish Exposure to Environmental Hazards | Thoroughly review military personnel records and service treatment records (STRs) (to include the *Post-Deployment Health Assessment (PDHA)* and *Discharge Examination*) for evidence that corroborates the Veteran’s statement of exposure. The *PDHA* includes specific questions relating to exposure incidents. In addition, because military service records will not verify all incidents of exposure, it is important to consider alternate evidence in establishing whether the Veteran participated in or was affected by an in-service environmental hazard exposure incident.  Alternate evidence includes   * personal statements * buddy statements * unit histories * news articles, and * other lay evidence.   Concede exposure to the claimed environmental hazard if the statements provided by the Veteran and/or others are consistent with the facts, places, and circumstances of the Veteran’s service.  ***Reference***: For more information on considering evidence in claims for disability compensation, see   * [38 U.S.C. 1154(a)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00001154----000-.html), and * [38 CFR 3.303(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1303&rgn=div8). |

|  |  |
| --- | --- |
| **l. Considering Lay Statements in Verifying Exposure to Environmental Hazards** | The Veteran’s lay statement of exposure to an environmental hazard or statements provided by others can be used to verify exposure to the claimed environmental hazard if the statements provided by the Veteran and/or others are consistent with the facts, places, and circumstances of the Veteran’s service.  ***Example***: A Veteran’s lay statement of burn pit exposure, together with evidence verifying that the Veteran served in Iraq, Afghanistan, or Djibouti, generally will be sufficient to establish the occurrence of such exposure.  ***Reference***: For more information on considering lay statements, see M21-1, Part III, Subpart iv, 5.6. |

|  |  |
| --- | --- |
| m. What to Include in VA Examination and/or Medical Opinion Requests in Environmental Hazard Claims | When requesting a medical examination and/or medical opinion for a claim based on exposure to an environmental hazard listed in M21-1, Part IV, Subpart ii, 2.C.5.a, review M21-1, Part IV, Subpart ii, 1.I.6.f for guidance on what to include in the VA examination and/or medical opinion request. |

|  |  |
| --- | --- |
| n. Applying the Provisions of 38 CFR 3.317 in Claims Based on Exposure to Environmental Hazards in Southwest Asia | Apply the provisions of [38 CFR 3.317](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1317&rgn=div8) when rating claims for disabilities resulting from exposure to environmental hazards during service in Southwest Asia if   * the medical evidence reveals the presence of * an undiagnosed illness, or * a medically unexplained chronic multisymptom illness, and * the medical evidence does not provide a sufficient link between this illness and the Veteran’s military service.   ***Note***: Many Veterans suffering from illnesses such as those related to the  respiratory, cardiopulmonary, neurological, autoimmune, and/or skin systems  may not associate such illnesses with burn pit exposure or be aware of which  toxins were released by burn pits. Actively review claims by recognizing  potential exposure issues whenever they are reasonably raised by the record  and then process those claims in accordance with these provisions.  ***Reference***: For guidance on the Southwest Asia development procedures to follow if both criteria stated above are met, see   * M21-1, Part IV, Subpart ii, 1.E, and * M21-1, Part IV, Subpart ii, 2.D. |

|  |  |
| --- | --- |
| **o. Details on Contaminated Drinking Water on the Marine Corps Base at Camp Lejeune, North Carolina** | Between 1953 to 1987, persons residing or working at the U.S. Marine Corps Base at Camp Lejeune, North Carolina, were potentially exposed to drinking water contaminated with VOCs. Contaminants included   * tricholoroethylene (TCE) * perchloroethylene (PCE) * benzene * vinyl chloride, and * other VOCs.   SC for any disease alleged to have been caused by contaminated water at Camp Lejeune requires evidence of   * a current disease * evidence of service at Camp Lejeune during the period of contamination, and * a medical nexus between the two, justified with a rational scientific explanation.   ***Important***:   * Adjudication of claims based on contaminated drinking water on the Marine Corps Base at Camp Lejeune, North Carolina, has been centralized to the Louisville, Kentucky, Regional Office. * Handle disability claims based on exposure to contaminated drinking water at Camp Lejeune on a case-by-case basis. Actual service at the installation during the timeframe of water contamination must be established.   ***Reference***:For more information on   * Camp Lejeune water contamination, see <http://www.atsdr.cdc.gov/sites/lejeune/index.html>, * developing Camp Lejeune claims, see M21-1, Part IV, Subpart ii, 1.I.6, and * deciding Camp Lejeune claims, see M21-1, Part IV, Subpart ii, 2.C.5.q. |

|  |  |
| --- | --- |
| p. Requesting Exams for Camp Lejeune Claims | The following is a non-exclusive list of diseases potentially associated with exposure to contaminants present in the Camp Lejeune water supply between 1953 and 1987   * esophageal cancer * lung cancer * breast cancer * bladder cancer * kidney cancer * adult leukemia * multiple myeloma * myelodysplastic syndromes * renal toxicity * hepatic steatosis * female infertility * miscarriage, with exposure during pregnancy * scleroderma, and * neurobehavioral effects.   ***Notes***:   * Manifestation of any of these diseases in a Veteran with verified Camp Lejeune service between 1953 and 1987 is sufficient to * initiate a VA medical examination, and * request an opinion regarding its relationship to Camp Lejeune service. * There are currently no presumptive diseases attributed to service at Camp Lejeune by statute, regulation, or VA policy. Therefore, this listing is only meant to serve as a guide for determining when a VA examination should be scheduled.   ***References***: For more information on   * developing Camp Lejeune claims, see M21-1, Part IV, Subpart ii, 1.I.6 * deciding Camp Lejeune claims, see M21-1, Part IV, Subpart ii, 2.C.5.q * obtaining medical opinions, see * [38 CFR 3.159(c)(4)](http://www.ecfr.gov/cgi-bin/text-idx?SID=055c1bf4970910e4b257cfd824ce0b59&node=se38.1.3_1159&rgn=div8), and * M21-1, Part III, Subpart iv, 3.A.7, and * obtaining service information for claims involving exposure to contaminated water at Camp Lejeune, see M21-1, Part III, Subpart iii, 2.E.7. |

|  |  |
| --- | --- |
| **q. Deciding Camp Lejeune Claims** | VA is considering presumptions of SC for certain conditions associated with exposure to Camp Lejeune water sources that were contaminated with industrial solvents from 1953 to 1987.  Denials of SC for the following claimed conditions based on exposure to the Camp Lejeune contaminated water are stayed until further notice   * kidney cancer * non-Hodgkin’s lymphoma * multiple myeloma * leukemias * liver cancer * Parkinson’s disease * systematic sclerosis/scleroderma, and * aplastic anemia / myelodysplastic syndromes   Follow the instructions in the table below to process Camp Lejeune cases that are ready for decision. |

|  |  |
| --- | --- |
| **If the Camp Lejeune claim …** | **Then …** |
| contains sufficient evidence to establish SC | award SC and process as usual.  ***Note***: Do not grant SC unless a competent medical authority, based on the Veteran’s individual case, has determined that it is at least as likely as not that the claimed disease or disability has resulted from exposure to the contaminated water. |
| * is for one of the stayed conditions, and * would be denied under normal Camp Lejeune claims processing | * do *not* issue a decision on the Camp Lejeune disability * establish end product (EP) 339 with a date of claim (DOC) as the date VA received the Camp Lejeune claim * attach the Environmental Hazard – Camp Lejeune special issue indicator to the contention(s), and * inform the Veteran/Survivor of the reason for deferral of the decision using the following language   *A final decision is being deferred until a final regulation creating a presumption of service connection is published in the Federal Register.*  ***Notes***:   * Decide any concurrent issues not affected by the stay in an intermediate rating decision under the rating EP. * If the only claimed condition(s) is affected by the stay, PCHG the rating EP to an EP 339.   ***Reference***: For more information on intermediate rating decisions and deferred issues, see M21-1, Part III, Subpart iv, 6.A. |
| * is for any other condition not affected by the stay, and * would be denied under normal Camp Lejeune claims processing | deny SC and provide appeal rights. |

|  |  |
| --- | --- |
| **r. Processing Camp Lejeune Appeals** | Follow the instructions in the table below to process Camp Lejeune appeals. |

|  |  |
| --- | --- |
| **If the appealed Camp Lejeune claim …** | **Then…** |
| contains sufficient evidence to establish SC | process the appeal as a full grant under normal procedures.  ***Reference***: For more information on the definition of a full grant of an appeal, see M21-1, Part I, 5.A.1.h. |
| * is for one of the stayed conditions, and * requires a continued denial through a statement of the case (SOC) or supplemental statement of the case (SSOC) | * do *not*issue an SOC or SSOC * establish EP 339 with a DOC as the date VA received the * notice of disagreement (NOD), or * substantive appeal if an SOC had already been issued * attach the Environmental Hazard – Camp Lejeune special issue indicator to the contention(s) * enter the following note into VBMS   *The Camp Lejeune contentions are pending as part of an appeal of the Camp Lejeune rating decision dated* [RATING DECISION DATE]   * inform the appellant of the reason for deferral of the decision using the following language   *A final decision is being deferred until a final regulation creating a presumption of service connection is published in the Federal Register*, and   * follow the guidance in the table below for the Veterans Appeals Control and Locator System (VACOLS) record.  |  |  | | --- | --- | | **If a VACOLS record …** | **Then …** | | exists for the Camp Lejeune contention | use an OTHER diary to indicate the pending appeal is on hold until further notice | | is not already established | * do *not* establish a VACOLS record solely for Camp Lejeune contentions on appeal, and * control these issues under an EP 339 |   ***Note***: Decide any concurrent appeal issues not affected by the stay under normal procedures.  ***Reference***: For more information on VACOLS, see   * the [*VACOLS User’s Guide*](http://vbaw.vba.va.gov/bl/21/publicat/Users/Index.htm#bmv), and * M21-1, Part I, 5.K. |
| * is for any other condition not affected by the stay, and * requires a continued denial through an SOC or SSOC | issue an SOC or SSOC under normal appeal procedures.  ***Reference***: For more information on issuing an SOC or SSOC, see M21-1, Part I, 5.D. |

**6. Claims Based on Participation in the SHAD Project**

|  |  |
| --- | --- |
| **Introduction** | This topic contains information on claims based on participation in the SHAD Project, including   * background on the SHAD Project * considering SC on direct and presumptive bases, and * identification of SHAD Project claimed issues on the *Codesheet*. |

|  |  |
| --- | --- |
| **Change Date** | August 7, 2015 |

|  |  |
| --- | --- |
| **a. Background on the SHAD Project** | From 1962 to 1974, the DoD conducted the Shipboard Hazards and Defense (SHAD) Project to identify the vulnerabilities of U.S. warships to chemical and biological warfare agents.  ***Reference***: For more information on development and other considerations for claims based on participation in the SHAD Project, see M21-1, Part IV, Subpart ii, 1.I.7. |

|  |  |
| --- | --- |
| **b. Considering SC on Direct and Presumptive Bases** | The determination of whether to award SC for a disease or injury claimed as related to participation in the SHAD Project is not limited to an evaluation on that basis. SC should also be considered on other bases to include on a direct basis.  ***Note***: There are no presumptive conditions or disabilities recognized as common to the SHAD Project. DoD used more than 140 agents in testing with differing durations, dosage, and methods of exposure and noted that an IOM study conducted between the years of 1982 and 1985 found no significant long-term health effects in participants.  ***Important***: While the DoD study conducted between 1982 and 1985 found no significant long-term health effects of exposure, if a Veteran asserts exposure/testing outside of the dates recognized as potential dates with likely exposure, ensure that proper development to DoD has been completed in accordance with M21-1, Part IV, Subpart ii, 1.I.7 prior to performing rating action. |

|  |  |
| --- | --- |
| **c. Identification of SHAD Project Claimed Issues on the Codesheet** | When completing the SUBJECT LINE field on the ISSUE MANAGEMENT screen in the Veterans Benefits Management System-Rating (VBMS-R), end the description of the disability with *[SHAD]* regardless of whether the issue is being awarded or denied. This will clearly identify the SHAD Project claimed issues, or those issues which the decision maker has decided are related to the Project 112/SHAD Project, on the *Codesheet*.  **Example**: *Scar, Residual of SHAD Project [SHAD]*. |

#### 7. Claims Based on CBRNE Testing

|  |  |
| --- | --- |
| **Introduction** | This topic contains information on claims based on CBRNE testing, including   * a definition of CBRNE claims * lack of presumptive conditions associated with CBRNE testing * reviewing an examination and medical opinion for claims based on CBRNE testing, and * identification of CBRNE claimed issues on the *Codesheet*. |

|  |  |
| --- | --- |
| **Change Date** | August 7, 2015 |

|  |  |
| --- | --- |
| **a. Definition: CBRNE Claims** | ***Chemical Biological Radiological Nuclear and Explosives (CBRNE)*** claims are claims in which a Veteran claims that a disease or injury resulted from participation in any test, chemical or biological, regardless of location, other than those tests discussed at M21-1, Part IV, Subpart ii, 1.I and tests involving mustard gas.  ***Reference***: For more information on development and other considerations for CBRNE claims, see M21-1, Part IV, Subpart ii, 1.I.8. |

|  |  |
| --- | --- |
| **b. Lack of Presumptive Conditions Associated With CBRNE Testing** | There are no presumptive conditions or disabilities recognized as common to CBRNE testing. DoD used more than 140 agents in testing with differing durations, dosage, and methods of exposure and noted that an IOM study conducted between the years of 1982 and 1985 found no significant long-term health effects in participants. |

|  |  |
| --- | --- |
| **c. Reviewing an Examination and Medical Opinion for Claims Based on CBRNE Testing** | When reviewing an examination and medical opinion for claims based on CBRNE testing, ensure that the examiner has specifically stated whether it is at least as likely as not that a relationship exists between the claimed disability or disease and CBRNE participation.  ***Note***: “At least as likely as not” is the lowest threshold of certainty the examiner can express that will support an award of SC.  ***Important***:   * Opinions that do not address whether a condition is at least as likely as not related to participation but instead indicate that “effects of exposure are unknown,” “an exposure could be a contributor,” or “an exposure may have a relationship” are insufficient to justify an award of SC. * If the examiner does not review the claims folder, the examination report is insufficient and should be returned. * A medical opinion without a supporting rationale carries no probative value and the claims folder should be returned to the examiner for a supporting rationale. |

|  |  |
| --- | --- |
| **d. Identification of CBRNE Claimed Issues on the Codesheet** | When completing the SUBJECT LINE field on the ISSUE MANAGEMENT screen in VBMS-R, end the description of the disability with *[CBRNE]* regardless of whether the issue is being awarded or denied. This will clearly identify the CBRNE claimed issues, or those issues which the decision maker has decided are related to CBRNE testing, on the *Codesheet*.  ***Example***: *Scar, Residual of Chemical Tests [CBRNE]*. |