The American Legion

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bulletin

National Veterans Affairs and Rehabilitation Commission
1608 K Street, N.W. • Washington, D.C. 20006
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# VA Publishes Proposed Agent Orange Presumption Regulation

On October 13, 2009, the Secretary of the Department of Veterans Affairs (VA) announced his decision to establish presumption of service connection for three additional illnesses (Parkinson's disease, ischemic heart disease, and B cell leukemia) associated with Agent Orange/herbicide exposure in Vietnam. Please see VA&R Bulletins 25-09, dated October 16, 2009, and 27-09, dated November 2, 2009, for additional information.

On March 25, 2010, VA published a proposed regulation in the Federal Register as part of the process to implement the Secretary's decision to add these three diseases to the list of presumptive conditions related to Agent Orange/herbicide exposure. The Secretary determined that there is good cause to limit the public comment period, which is normally 60 days, to 30 days for this proposed rule. Written comments must be received by VA on or before April 26, 2010. A final regulation will be published in the Federal Register after VA reviews all public comments received during the comment period.

The final regulation will affect a large number of Vietnam veterans, estimated to be at least 200,000 veterans. This is an important step forward in ensuring that Vietnam veterans are justly compensated for the adverse effects suffered by exposure to Agent Orange during their service to our country. As discussed in previous bulletins, it is important that service officers file presumptive claims now for these conditions without waiting for the completion of the regulation process. Filing these claims prior to the publication of the final regulation is important for effective purposes and it also allows VA to start the claims development process (conducting VA examinations, requesting supporting evidence, etc.) to allow for timely adjudication once the final regulation has been published.

Veterans Affairs and Rehabilitation (VA&R) staff are in the process of reviewing the proposed regulation for public comment. A more detailed VA&R Bulletin containing effective date and other information will be issued following the publication of the final regulation. In the

meantime, please direct questions or concerns to Ian de Planque, Assistant Director for Claims Service, VA&R, at ideplanque@legion.org or (202) 263-5762.

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BARRY A. SEARLE, Director
National Veterans Affairs and
Rehabilitation Commission

# Frequently Asked Questions

- **What are the Presumptions within VA associated with Agent Orange?**
    - VA has two presumptions associated with Agent Orange:
        - The Presumption of Exposure—VA concedes that any veteran who set foot on the ground—the so called "Boots on the Ground" rule—has been exposed to the chemical herbicide Agent Orange between the dates of January 9, 1962, and ending on May 7, 1975.

          The presumption of exposure relieves the veteran of the need to provide direct proof of being exposed to Agent Orange. Simply having boots on the ground during the affected period is enough for VA to concede exposure.

          Recently, VA has liberalized the means of proving exposure for Navy veterans. For a long time there has been debate as to whether or not "Blue Water" Navy veterans should qualify for exposure. The American Legion has a resolution stating that the presumption of exposure should apply to Navy veterans who served on ships located in the territorial waters of Vietnam.

          Although VA maintains that Blue Water Navy veterans must prove they actually set foot on ground in Vietnam in order to be afforded the presumption of exposure, it has relaxed restrictions in two instances. So called "Brown Water" Navy veterans, those veterans whose vessels traveled the inland waterways of Vietnam, are eligible for this presumption and VA is compiling a database of all vessels which meet this qualification. Furthermore, Blue Water Navy veterans whose vessels actually tied up to a dock in Vietnam no longer need to prove that they disembarked from the ships, such as for shore leave. The simple act of docking in Vietnam is enough to entitle a veteran to this presumption.

        - The Presumption of Service Connection—VA concedes service connection for certain diseases and disorders found to be associated with Agent Orange without the need for a separate medical opinion linking the condition to exposure to the herbicide. Normally in the process of service connection, a veteran must have a medical opinion (called a "nexus opinion") linking their present medical condition with an incident in service. The VA maintains a list of conditions which qualify for a presumption of service connection related to Agent Orange which can be found here: http://www.publichealth.va.gov/exposures/agentorange/diseases.asp

          VA regularly adds new conditions to the list of diseases and conditions for which there is a presumption of service connection. VA is in the process of adding three new conditions to this list.

- **What are the New Conditions that VA has added to the Agent Orange Presumptive List?**
    - In October 2009, VA Secretary Eric Shinseki made a decision to add three illnesses to the current list of diseases for which service connection for Vietnam Veterans is presumed. The illnesses are B cell leukemias, such as hairy cell leukemia; Parkinson's disease; and ischemic heart disease. On March 25, 2010, VA published a proposed regulation providing for the implementation of the addition of these diseases on the presumptive list.

- **What is the difference between a Proposed Regulation and a Final Regulation?**

    - The procedure for updating the Code of Federal Regulations requires VA to publish in the Federal Register a proposed regulation for a period of public comment. The procedure generally calls for a period of comment lasting 60 calendar days from the publishing of the proposed regulation, followed by a final regulation taking into account the public commentary thirty days after the public comment period has ended for a total time period of no more than 90 days from the publishing of the proposed regulation. In this case, VA has decided to provide only a 30 day period for public comment, for the stated purpose of "…facilitate[ing] expeditious issuance of final regulations and to promote rapid action on affected benefits claims…"

- **How is a condition added to VA's list of Presumptive Disorders?**

    - Every two years, the Institute of Medicine (IOM) of the National Academy of Sciences (NAS) reviews the body of peer reviewed scientific data about a wide variety of medical conditions and determines what, if any, causative link can be made between these conditions and the herbicide Agent Orange. The findings of the IOM are published in the "Veterans and Agent Orange Update".

      Conditions can be found to fall under several categories including: Sufficient Evidence of an Association, Limited or Suggestive Evidence of an Association, and Inadequate or Insufficient Evidence to Determine an Association. Conditions previously found to be classified in a category can be upgraded to a higher category if later peer reviewed research supports the classification.

      In the report Veterans and Agent Orange Update: 2008, IOM found B cell leukemias, such as hairy cell leukemia to meet the criteria for Sufficient Evidence of an Association, while Parkinson's Disease and Ischemic Heart Disease met the criteria for Limited or Suggestive Evidence of an Association.

      VA is required to respond to the reports from the IOM, and to determine from the reports whether the addition of any condition mentioned in the reports merits addition to the list of presumptive service connected disabilities.

- **What, exactly, is "Ischemic Heart Disease"?**

    - Ischemic Heart Disease is defined by VA's proposed regulation as "…a condition in which there is an inadequate supply of blood and oxygen to a portion of the myocardium; it typically occurs when there is an imbalance between myocardial oxygen supply and demand. Therefore, for purposes of this regulation, the term ``IHD'' includes, but is not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable and Prinzmetal's angina. Since the term refers only to heart disease, it does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke…"

      This is the proposed definition, and subject to change in the final regulation.

- **I believe I have one of these conditions, what should I do?**

    - If you have not already filed a claim for service connection for one of these disabilities and you have a medical diagnosis of the condition, The American Legion recommends filing for service connection with VA. Delays could result in a loss of back pay benefits, and could result in further delays in the processing of your claim. For help in filing a claim, you should contact your American Legion Department Service Officer (DSO), contact information for a DSO in your home state can be found at: http://www.legion.org/departmentofficers

Again: The American Legion strongly recommends that veterans who believe that they are entitled to service connection for one of these conditions contact their DSO as soon as possible.

- **When will VA process my claim?**
    - VA will not adjudicate/ issue decisions on the claims for the three new presumptive disorders until the final regulation is in place. Given the estimates of time associated with the procedure for regulations, this should take place this summer in June or July. If you have already filed a claim, VA can initiate development (conduct exams, request evidence, etc.) of the claim so it can be quickly adjudicated once the new regulation is in place.

- **I have previously filed a claim for one of these conditions and been denied, how will this affect my claim?**
    - Veterans who have previously filed for one of these conditions and been denied under the previous law should be eligible to receive back pay up possibly up to the date of their original claim. This is related to a previous lawsuit called *Nehmer* and its effect on the laws regarding calculation of effective date of claim. VA's proposed regulations state that all of the principles regarding effective date involved in the *Nehmer* ruling will apply to these conditions.