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

Overview

In this Section

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11	Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicides	2-C-30
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8. Service Connection for Disabilities Resulting From Exposure to Ionizing Radiation

Introduction This topic contains information on service connection for disabilities resulting from exposure to ionizing radiation, including the

- provisions of
- *Public Law (PL) 98-542*, and
- *PL 102-86*, and
- history of time limits for disease manifestation, and
- list of presumptive disabilities under 38 CFR 3.309(d).

Change Date

December 13, 2005

a. Provisions of PL 98-542

Under *Public Law (PL) 98-542*, the “*Veterans’ Dioxin and Radiation Exposure Compensation Standards Act*,” 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 based upon exposure to ionizing radiation as a consequence of service with the occupation **forces** of Hiroshima or Nagasaki, Japan, or
- claims for service connection 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 service connection to individuals engaged in a radiation-risk activity during

- active duty for training, or
- inactive duty training.

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8. Service Connection for Disabilities Resulting From Exposure to Ionizing Radiation, Continued

c. History of Time Limits for Disease Manifestation

Originally, in order to establish presumptive service connection, the time limit for a disease listed under [38 CFR 3.309\(d\)](#) 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 under listed [38 CFR 3.309\(d\)](#).

d. List of Disabilities Under 38 CFR 3.309(d) for Which Service Connection Is Presumed

The table below lists the disabilities for which service connection is presumed based on a veteran's exposure to ionizing radiation under [38 CFR 3.309\(d\)](#).

Public Law or Federal Register Citation	Presumptive Disabilities Under 38 CFR 3.309(d)

<p><i>PL 100-321</i> effective May 1, 1988</p>	<ul style="list-style-type: none"> ● Cancer of the ● bile ducts ● breast ● esophagus ● gall bladder ● pancreas ● pharynx ● small intestine ● stomach, and ● thyroid ● leukemia, other than chronic lymphocytic leukemia ● lymphomas, except Hodgkin's disease ● multiple myeloma, and ● primary liver cancer, except if cirrhosis or hepatitis B is indicated.
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8. Service Connection for Disabilities Resulting From Exposure to Ionizing Radiation, Continued

d. List of Disabilities Under 38 CFR 3.309(d) for Which Service Connection Is Presumed (continued)

Public Law or Federal Register Citation	Presumptive Disabilities Under 38 CFR 3.309(d)
<p><i>PL 102-578</i> effective October 1, 1992</p>	<p>Cancer of the</p> <ul style="list-style-type: none"> ● salivary gland, and ● urinary tract. <p><i>Note:</i> The term <i>urinary tract</i> refers to the</p> <ul style="list-style-type: none"> ● 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.

9. Service Connection for Disabilities Resulting From Exposure to Asbestos

Introduction This topic contains information on service connection for disabilities resulting from exposure to asbestos, including

- the definition of *asbestos*
- the general effects of asbestos exposure
- specific details on disease resulting from exposure to asbestos
- occupational exposure and exposure during World War II (WWII)
- the latent period for development of disease
- the diagnostic indicators of asbestosis
- considering service connection for exposure to asbestos during service, and
- rating disabilities caused by exposure to asbestos.

Change Date

December 13, 2005

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 United States since the 1970s.

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9. Service Connection for Disabilities Resulting From Exposure to Asbestos, Continued

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
- mesotheliomas of pleura and peritoneum
- cancers of the
 - lung
 - bronchus
 - gastrointestinal tract
 - larynx
 - pharynx, and
 - urogenital system, except the prostate.

Notes: 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.

Continued on next page

9. Service Connection for Disabilities Resulting From Exposure to Asbestos, Continued

c. Specific Details on Diseases Resulting From Exposure to Asbestos Specific effects of 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, heart disease secondary to disease of the lung or its blood vessels, and those 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 exposure face an increased risk of developing bronchial cancer.
- Mesotheliomas are not associated with cigarette smoking.

d. Latent Period for Development of Disease 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.

e. Diagnostic Indicators of Asbestosis

A clinical diagnosis of asbestosis requires a history of exposure and radiographic evidence of parenchymal lung disease. Symptoms and signs 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.

Continued on next page

9. Service Connection for Disabilities Resulting From Exposure to Asbestos, Continued

f. 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.

g. Exposure to Asbestos During WWII 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.

Continued on next page

9. Service Connection for Disabilities Resulting From Exposure to Asbestos, Continued

h. Considering Service Connection for Disabilities Resulting From Exposure to Asbestos During Service When deciding a claim for service connection for a disability resulting from exposure to asbestos

- 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 and Pension (C&P) Service Policy Staff (211).

i. 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.
<ul style="list-style-type: none"> • 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.

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN)

Introduction This topic contains information on service connection for disabilities resulting from exposure to herbicides or based on service in the Republic of Vietnam (RVN), including

- the definitions of a *herbicide agent* and *service in the Republic of Vietnam* (RVN)
- presuming exposure to a herbicide agent
- determining the last date of exposure
- the time limits for disease manifestation
- when to consider direct service connection
- the definition of *acute* and *subacute peripheral neuropathy*
- handling claims based on acute and subacute peripheral neuropathy and later-occurring peripheral neuropathy
- the date of presumptive service connection under 38 CFR 3.309(e)
- conditions determined to have no positive association with herbicide exposure
- considering claims based on service aboard ships offshore the RVN
- U.S. Army and Joint Services Records Research Center (JSRRC) memorandum – Herbicide Exposure During Naval Service
- exposure to herbicides during service aboard the USS Ingersoll
- verifying herbicide exposure on a factual basis in locations other than in RVN
- exposure to herbicides along the demilitarized zone in Korea
- exposure to herbicides in Thailand during the Vietnam Era
- memorandum for the record on herbicide use Thailand
- storage of herbicides on Johnston Island
- Fact Sheet: Storage of Agent Orange on Johnston Island, and
- service connection for non-Hodgkin's lymphoma (NHL) under 38 CFR 3.313 based on

service in the RVN.

Change Date

July 20, 2009

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10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

a. Definition: Herbicide Agent Under [38 CFR 3.307\(a\)\(6\)\(i\)](#), a *herbicide agent* is a chemical used in support of the U.S. and allied military operations in the Republic of Vietnam (RVN) during the Vietnam Era, specifically

- 2,4-D
- 2,4,5-T and its contaminant, TCDD (dioxin)
- cacodylic acid, and
- picloram.

b. Definition: Service in the RVN For the purposes of establishing service connection under [38 CFR 3.307\(a\)\(6\)](#) and [38 CFR 3.309\(e\)](#), *service in the Republic of Vietnam* (RVN) means

- service in the RVN or its inland waterways, or
- service in other locations if the conditions of service involved duty or visitation in the RVN.

Reference: For more information on the definition of service in the RVN, see [VAOPGCPREC 27-97](#).

Continued on next page

c. Presuming Exposure to a Herbicide Agent

Presume that a veteran who served on active duty in the RVN during the Vietnam Era was exposed to a herbicide agent *unless* there is affirmative evidence to the contrary.

Note: Any exposure to herbicide agents during service in locations other than the RVN *must* be established on a factual basis.

Reference: For more information on verifying exposure to herbicides in locations other than the RVN, see [M21-1MR, Part IV, Subpart ii, 2.C.10.n through q.](#)

d. Determining the Last Date of Exposure Under [38 CFR 3.307\(a\)\(6\)\(iii\)](#), the last date of exposure is the last date on which the veteran served in the RVN during the Vietnam Era.

Continued on next page

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

e. Time Limits for Disease Manifestation In order to establish presumptive service connection, the following diseases listed in [38 CFR 3.309\(e\)](#) 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, and
- acute and subacute peripheral neuropathy.

Notes:

- There is no time limit for the other listed diseases.
- 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 service connection, see [38 CFR 3.307\(a\)\(6\)\(ii\)](#).

f. When to Consider Direct Service Connection Under [38 CFR 3.303\(d\)](#) the requirements for presumptive service connection do *not* preclude consideration of direct service connection when a medical nexus (link, relationship, or association) has been provided.

g. Definition: Acute and Subacute Peripheral Neuropathy *Acute peripheral neuropathy* and *subacute peripheral neuropathy* are *transient* peripheral neuropathies that

- appeared within one year of last exposure to an herbicide agent
- resolved within two years of the date of onset, and
- do not include chronic peripheral neuropathy.

Continued on next page

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

h. Handling Claims Based on a History of Acute and Subacute Peripheral Neuropathy and Later-Occurring Peripheral Neuropathy

Do not assign a “0-percent” evaluation based on a history of acute and subacute peripheral neuropathy that

- manifested within one year of the date of last exposure, and
- resolved within two years of the date of onset.

Rationale: There can be no valid claim without proof of a present disability.

Reference: For more information on what constitutes a valid claim for service connection, see [Brammer v. Derwinski](#), 3 Vet. App. 223 (1992).

Claims of service connection for later occurring peripheral neuropathy should be evaluated under the ordinary standards governing direct service connection.

Note: Because any acute or subacute peripheral neuropathy will, by definition, resolve within a short time after exposure do *not* presume any later occurring peripheral neuropathy, whether transient or chronic, to be related to the

- prior herbicide exposure, or
- previously-resolved acute or subacute peripheral neuropathy.

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10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

i. Date Disabilities Became Subject to Presumptive Service Connection

The table below shows the dates on which the diseases listed in [38 CFR 3.309\(e\)](#) became subject to presumptive service connection.

Disability	Effective Date
<ul style="list-style-type: none"> • Chloracne or other acne-form disease consistent with chloracne, and • soft-tissue sarcoma, <i>other than</i> • osteosarcoma • chondrosarcoma • Kaposi's sarcoma, or • mesothelioma 	February 6, 1991 <i>Note:</i> Originally, September 25, 1985, under 38 CFR 3.311a .

Non-Hodgkin's lymphoma	February 6, 1991 <i>Note:</i> Originally, August 5, 1964, under 38 CFR 3.313 .
<ul style="list-style-type: none"> ● Porphyria cutanea tarda, and ● Hodgkin's disease 	February 3, 1994
<ul style="list-style-type: none"> ● Respiratory cancers, such as cancer of the ● lung ● bronchus ● larynx, or ● trachea, and ● multiple myeloma 	June 9, 1994

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10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

i. Date Disabilities Became Subject to Presumptive Service Connection (continued)

Disability	Effective Date
<ul style="list-style-type: none"> ● Prostate cancer, and ● acute and subacute peripheral neuropathy 	November 7, 1996
Type 2 diabetes mellitus	May 8, 2001
Chronic lymphocytic leukemia	October 16, 2003
AL amyloidosis	May 7, 2009

Note: Unless an earlier effective date is determined pursuant to the *Nehmer* stipulation, the provisions pertaining to retroactive payment under [38 CFR 3.114\(a\)](#) apply.

Reference: For more information on the *Nehmer* stipulation, see [M21-1MR, Part IV, Subpart ii, 2.C.11](#).

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10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

j. Conditions Determined to Have No Positive Association With Herbicide Exposure

Under the Agent Orange Act of 1991, the Secretary receives from the National Academy of Science (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 there is no positive association between herbicide exposure and the following conditions:

- bone cancers
- brain tumors
- breast cancer
- circulatory disorders
- cognitive and neuropsychiatric effects
- female reproductive system cancers
- gastrointestinal and digestive disease, other than Type 2 diabetes mellitus
- gastrointestinal tract tumors
- hepatobiliary cancers
- immune system disorders
- leukemia
- lipid and lipoprotein disorders
- nasal and nasopharyngeal cancer
- Parkinson's disease
- chronic persistent peripheral neuropathy
- renal cancer
- reproductive effects, such as abnormal sperm parameters and infertility
- respiratory disorders, other than certain respiratory cancers
- skin cancer
- testicular cancer, and
- urinary bladder cancer.

Note: No positive association means that the evidence for an association does not equal or outweigh the evidence against association.

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10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

k. 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 that operated on the offshore waters of the RVN, establish exposure on a presumptive basis if

- evidence shows the ship
- docked on the shores of the RVN, or
- operated temporarily on the RVN inland waterways
- evidence places the veteran onboard the ship at the time the ship docked on the shore or operated in inland waterways, and
- if the veteran claims the ship docked on the shore, the veteran has stated that he/she went ashore after the ship docked.

Important: In all cases where a veteran claims exposure to herbicides during service aboard a ship in offshore waters, regional offices should place a copy of the U.S. Army and Joint Services Records Research Center's (JSRRC's) memorandum shown in [M21-1MR, Part IV, Subpart ii, 2.C.10.1](#) in the veteran's claim folder. This document will

- substitute for individual inquiries to the Compensation and Pension Service's Agent Orange mailbox and to the JSRRC, and
- establish that the JSRRC has no evidence to support a claim of herbicide exposure during shipboard service.

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. Evidence of shore docking is required in order to concede the possibility that the veteran's service involved duty or visitation in the RVN.

- 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 river patrol and swift boats 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 receive the same presumption of herbicide exposure as veterans who served on the ground in the RVN.

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10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

I. JSRRC Memorandum – Herbicide Exposure During Naval Service

Shown below is the JSRRC's memorandum confirming it has no evidence to support a veteran's claim of herbicide exposure during naval service offshore the RVN.

DEPARTMENT OF THE ARMY

U.S. ARMY & JOINT SERVICES RECORDS RESEARCH CENTER

7701 TELEGRAPH ROAD

KINGMAN BUILDING, ROOM 2C08

ALEXANDRIA, VA 22315-3828

AAHS-RDC 01 May 09

MEMORANDUM FOR RECORD

SUBJECT: Joint Services Records Research Center Statement on Research Findings Regarding Navy and Coast Guard Ships During the Vietnam Era

1. In the course of its research efforts, the JSRRC has reviewed numerous official military documents, ships histories, deck logs, and other sources of information related to Navy and Coast Guard ships and the use of tactical herbicide agents, such as Agent Orange, during the Vietnam Era.
2. To date, the JSRRC has found no evidence that indicates Navy or Coast Guard ships transported tactical herbicides from the United States to the Republic of Vietnam or that ships operating off the coast of Vietnam used, stored, tested, or transported tactical herbicides. Additionally, the JSRRC cannot document or verify that a shipboard veteran was exposed to tactical herbicides based on contact with aircraft that flew over Vietnam or equipment that was used in Vietnam.
3. Therefore, the JSRRC can provide no evidence to support a veteran's claim of exposure to tactical herbicide agents while serving aboard a Navy or Coast Guard ship during the Vietnam era.

/s/

Domenic A. Baldini

Director

Continued on next page

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

m. Exposure to Herbicides During Service Aboard the USS Ingersoll

The National Archives and Records Administration (NARA) has confirmed that the Navy destroyer USS Ingersoll (DD 652) traveled into the inland waterways of RVN on October 24 and 25, 1965. Therefore, according to [38 CFR 3.307](#), concede exposure to herbicides for crewmembers that served aboard the USS Ingersoll on these dates.

If a veteran alleges herbicide exposure based on duty aboard the USS Ingersoll, request Navy personnel records via the Personnel Information Exchange System (PIES) (request code O19).

If personnel records are unavailable, or do not confirm a specific shipboard assignment during this timeframe, send a request for a review of NARA records to C&P Service via e-mail at VAVBAWAS/CO/211/AGENTORANGE. This request should include the veteran's

- name
- date of birth
- VA claim number
- Social Security number (SSN), and
- service number, if different than SSN.

Continued on next page

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

n. Verifying Herbicide Exposure on a Factual Basis in Locations Other Than in RVN

The table below shows how to verify herbicide exposure on a factual basis in locations *other than* in the RVN during the Vietnam Era.

Step	Action								
1									
	<table border="1"> <thead> <tr> <th>If the veteran alleges exposure ...</th> <th>Then ...</th> </tr> </thead> <tbody> <tr> <td>along the demilitarized zone (DMZ) in Korea</td> <td>see M21-1MR, Part IV, Subpart ii, 2.C.10.o.</td> </tr> <tr> <td>in Thailand</td> <td>see M21-1MR, Part IV, Subpart ii, 2.C.10.p.</td> </tr> <tr> <td>in other locations</td> <td>go to Step 2.</td> </tr> </tbody> </table>	If the veteran alleges exposure ...	Then ...	along the demilitarized zone (DMZ) in Korea	see M21-1MR, Part IV, Subpart ii, 2.C.10.o.	in Thailand	see M21-1MR, Part IV, Subpart ii, 2.C.10.p.	in other locations	go to Step 2.
If the veteran alleges exposure ...	Then ...								
along the demilitarized zone (DMZ) in Korea	see M21-1MR, Part IV, Subpart ii, 2.C.10.o.								
in Thailand	see M21-1MR, Part IV, Subpart ii, 2.C.10.p.								
in other locations	go to Step 2.								
2	Ask the veteran for the approximate dates, location, and nature of the alleged exposure.								
3	<p>Did the veteran furnish this information within 30 days?</p> <ul style="list-style-type: none"> • If <i>yes</i>, go to Step 4. • If <i>no</i> • refer the case to the JSRRC coordinator to make a formal finding that sufficient information required to verify herbicide exposure does not exist. (<i>Note:</i> For a sample of a formal finding, see M21-1MR, Part IV, Subpart ii, 1.D.16.c.), and • decide the claim based on the evidence of record. 								
4	<ul style="list-style-type: none"> • Furnish the veteran's detailed description of exposure to C&P Service via e-mail at VAVBAWAS/CO/211/AGENTORANGE, and • request a review of DoD's inventory of herbicide operations to determine whether herbicides were used as alleged. 								

Continued on next page

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

n. Verifying Herbicide Exposure on a Factual Basis in Locations Other Than in RVN (continued)

Step	Action
5	<p>Did C&P Service’s review confirm that herbicides were used as alleged?</p> <ul style="list-style-type: none"> • If <i>yes</i>, determine whether service connection is otherwise in order. • If <i>no</i>, go to Step 6.
6	<p>Has the veteran provided sufficient information to permit a search by the JSRRC?</p> <ul style="list-style-type: none"> • If <i>yes</i>, send a request to the JSRRC for verification of exposure to herbicides. • If <i>no</i> • refer the case to the JSRRC coordinator to make a formal finding that sufficient information required to verify herbicide exposure does not exist. (<i>Note</i>: For a sample of a formal finding, see M21-1MR, Part IV, Subpart ii, 1.D.16.c.), • decide the claim based on the evidence of record.

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10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

o. Exposure to Herbicides Along the DMZ in Korea

The Department of Defense (DoD) has identified specific units that served in areas along the DMZ in Korea where herbicides were used between April 1968 and July 1969.

Concede exposure to herbicides on a factual basis if a veteran

- alleges service along the DMZ in Korea, and
- was assigned to one of the units shown in the table below between April 1968 and July 1969.

Combat Brigade of the 2nd Infantry Division	Division Reaction Force	3rd Brigade of the 7th Infantry Division
1 st Battalion, 38 th Infantry	4 th Squadron, 7 th Cavalry, Counter Agent Company	1 st Battalion, 17 th Infantry

2 nd Battalion, 38 th Infantry		1 st Battalion, 31 st Infantry
1 st Battalion, 23 rd Infantry		1 st Battalion, 32 nd Infantry
2 nd Battalion, 23 rd Infantry		2 nd Battalion, 10 th Cavalry
3 rd Battalion, 23 rd Infantry		2 nd Battalion, 17 th Infantry
2 nd Battalion, 31 st Infantry		2 nd Battalion, 31 st Infantry
<i>Note:</i> Service records may show assignment to either the 2 nd or the 7 th Infantry Division.		<i>Note:</i> Service records may show assignment to either the 2 nd or the 7 th Infantry Division.
		2 nd Battalion, 32 nd Infantry
3 rd Battalion, 32 nd Infantry		3 rd Battalion, 32 nd Infantry
<i>Note:</i> Service records may show assignment to either the 2 nd or the 7 th Infantry.		<i>Note:</i> Service records may show assignment to either the 2 nd or the 7 th Infantry.
1 st Battalion, 9 th Infantry		13 th Engineer Combat Battalion
2 nd Battalion, 9 th Infantry		
1 st Battalion, 72 nd Armor		
2 nd Battalion, 72 nd Armor		
1 st Battalion, 12 th Artillery		
1 st Battalion, 15 th Artillery		
7 th Battalion, 17 th Artillery		

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10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN), Continued

o. Exposure to Herbicides Along the DMZ in Korea (continued)

Combat Brigade of the 2nd Infantry Division	Division Reaction Force	3rd Brigade of the 7th Infantry Division
5 th Battalion, 38 th Artillery		
6 th Battalion, 37 th Artillery		
United Nations Command Security Battalion-Joint Security Area (UNCSB-JSA)		

Crew of the *USS Pueblo*

Note: Use the table in [M21-1MR, Part IV, Subpart ii, 1.D.15.b](#) to determine how to verify the location of a veteran's unit when the veteran

- alleges service along the DMZ between April 1968 and July 1969, and
- was assigned to a unit other than one listed in the table above.

p. Exposure to Herbicides in Thailand

Follow the steps in the table below when a veteran alleges exposure to herbicides in Thailand during the Vietnam Era.

Step	Action
1	Place in the veteran's claims file a copy of Compensation and Pension (C&P) Service's "Memorandum for the Record" shown in M21-1MR, Part IV, Subpart ii, 2.C.10.q . Note: This document will substitute for an individual inquiry to C&P Service's Agent Orange mailbox.
2	Ask the veteran for the approximate dates, location, and nature of the alleged exposure.
3	Did the veteran furnish this information within 30 days? <ul style="list-style-type: none"> • If <i>yes</i>, go to Step 4. • If <i>no</i> • refer the case to the JSRRC coordinator to make a formal finding that sufficient information required to verify herbicide exposure does not exist. (Note: For a sample of a formal finding, see M21-1MR, Part IV, Subpart ii, 1.D.16.c.), and • decide the claim based on the evidence of record.
4	Review the information provided by the veteran together with the "Memorandum for the Record."

Continued on next page

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

p. Exposure to Herbicides in Thailand (continued)

Step	Action
5	Can the issue of exposure to herbicides be resolved on the basis of this review? <ul style="list-style-type: none"> • If <i>yes</i>, decide the claim based on the evidence of record. • If <i>no</i>, go to Step 6.
6	Has the veteran provided sufficient information to permit a search by the JSRRC? <ul style="list-style-type: none"> • If <i>yes</i>, send a request to the JSRRC for verification of exposure to herbicides. • If <i>no</i> • refer the case to the JSRRC coordinator to make a formal finding that sufficient information required to verify herbicide exposure does not exist. (<i>Note:</i> For a sample of a formal finding, see M21-1MR, Part IV, Subpart ii, 1.D.16.c.), • decide the claim based on the evidence of record.

Continued on next page

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

q. Memorandum for Record – Herbicide Use in Thailand

Shown below is C&P Service’s “Memorandum for the Record” on herbicide use in Thailand during the Vietnam Era.

Memorandum for the Record

Subject: Herbicide use in Thailand during the Vietnam Era

The Compensation and Pension Service has reviewed a listing of herbicide use and test sites outside Vietnam provided to our office by the Department of Defense (DoD). This list contains

71 sites within the U.S. and in foreign countries where tactical herbicides, such as Agent Orange, were used, tested, or stored. Testing and evaluations of these tactical herbicides were conducted by or under the direction of the U.S. Army Chemical Corps, Fort Detrick, Maryland. The list does not contain names of individuals. Additionally, it does not contain any references to routine base maintenance activities such as range management, brush clearing, weed killing, etc., because these vegetation control activities were conducted by the Base Civil Engineer and involved the use of commercial herbicides approved by the Armed Forces Pest Control Board. The application of commercial herbicides on military installations was conducted by certified applicators. DoD has advised us that commercial herbicides were routinely purchased by the Base Civil Engineer under federal guidelines and that records of these procurements were generally kept no longer than two years. We have also reviewed a series of official DoD monographs describing in detail the use, testing, and storage of herbicides at various foreign and domestic locations. In addition, the *Project CHECO Southeast Asia Report: Base Defense in Thailand*, produced during the Vietnam era, has been reviewed.

Regarding your veteran claimant with Thailand service, the DoD list indicates only that limited testing of tactical herbicides was conducted in Thailand from 2 April through 8 September 1964. Specifically, the location identified was the Pranburi Military Reservation associated with the Replacement Training Center of the Royal Thai Army, near Pranburi, Thailand. The Report of these tests noted that 5 civilian and 5 military personnel from Fort Detrick, Maryland conducted the spray operations and subsequent research. This location was not near any U.S. military installation or Royal Thai Air Force Base.

Tactical herbicides, such as Agent Orange, were used and stored in Vietnam, not Thailand. We received a letter from the Department of the Air Force stating that, other than the 1964 tests on the Pranburi Military Reservation, there are no records of tactical herbicide storage or use in Thailand. There are records indicating that commercial herbicides were frequently used for vegetation control within the perimeters of air bases during the Vietnam era, but all such use required approval of both the Armed Forces Pest Control Board and the Base Civil Engineer. In Vietnam, tactical herbicides were aerially applied by UC-123 aircraft in Operation RANCH HAND or by helicopters under the control of the U.S. Army Chemical Corps. Base Civil Engineers were not permitted to purchase or

apply tactical herbicides.

Continued on next page

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

q. Memorandum for Record – Herbicide Use in Thailand (continued)

There are no records of tactical herbicide spraying by RANCH HAND or Army Chemical Corps aircraft in Thailand after 1964, and RANCH HAND aircraft that sprayed herbicides in Vietnam were stationed in Vietnam, not in Thailand. However, there are records indicating that modified RANCH HAND aircraft flew 17 insecticide missions in Thailand from 30 August through 16 September 1963 and from 14–17 October 1966. The 1966 missions involved the spraying of malathion insecticide for the “control of malaria carrying mosquitoes.” These facts are not sufficient to establish tactical herbicide exposure for any veteran based solely on service in Thailand.

While the Thailand CHECO Report does not report the use of tactical herbicides on allied bases in Thailand, it does indicate sporadic use of non-tactical (commercial) herbicides within fenced perimeters. Therefore, if a veteran’s MOS (military occupational specialty) or unit is one that regularly had contact with the base perimeter, there was a greater likelihood of exposure to commercial pesticides, including herbicides. Security police units were known to have walked the perimeters, especially dog handlers. However, as noted above, there are no records to show that the same tactical herbicides used in Vietnam were used in Thailand. Please consider this information when you evaluate the veteran’s claim.

If the veteran’s claim is based on servicing or working on aircraft that flew bombing missions over Vietnam, please be advised that there is no presumption of “secondary exposure” based on being near or working on aircraft that flew over Vietnam or handling equipment once used in Vietnam. Aerial spraying of

tactical herbicides in Vietnam did not occur everywhere, and it is inaccurate to think that herbicides covered every aircraft and piece of equipment associated with Vietnam. Additionally, the high altitude jet aircraft stationed in Thailand generally flew far above the low and slow flying UC-123 aircraft that sprayed tactical herbicides over Vietnam during Operation RANCH HAND. Also, there are no studies that we are aware of showing harmful health effects for any such secondary or remote herbicide contact that may have occurred.

If the veteran's claim is based on general herbicide use within the base, such as small-scale brush or weed clearing activity along the flight line or around living quarters, there are no records of such activity involving tactical herbicides, only the commercial herbicides that would have been approved by the Armed Forces Pest Control Board and sprayed under the control of the Base Civil Engineer. Since 1957, the Armed Forces Pest Control Board (now the Armed Forces Pest Management Board) has routinely provided listings of all approved herbicides and other pesticides used on U.S. Military Installations worldwide.

The Compensation and Pension Service cannot provide any additional evidence beyond that described above to support the veteran's claim. Therefore, unless the claim is inherently incredible, clearly lacks merit, or there is no reasonable possibility that further VA assistance would substantiate the claim [see 38 CFR 3.159(d)], regional offices should send a request to JSRRC for any information that this organization can provide to corroborate the veteran's claimed exposure.

Continued on next page

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN), Continued

r. Storage of Herbicides on Johnston Island

Herbicides were stored in drums on Johnston Island in the north Pacific between April 1972 and September 1977. Because military contractors were responsible for the inventory, few military personnel who served on Johnston Island had duties involving the direct handling of herbicides.

If a veteran alleges exposure to herbicides during service on Johnston Island, obtain verification of exposure on a factual basis.

References: For more information on

- verifying exposure to herbicides on a factual basis, see [M21-1MR, Part IV, Subpart ii, 2.C.10.n](#), and
- storage of herbicides on Johnston Island, see [M21-1MR, Part IV, Subpart ii, 2.C.10.s](#).

Continued on next page

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

s. Fact Sheet: Storage of Agent Orange on Johnston Island

Below is a fact sheet on the storage of the herbicide Agent Orange on Johnston Island.

FACT SHEET: STORAGE OF AGENT ORANGE ON JOHNSTON ISLAND

- Approximately 1.5 million gallons of Agent Orange (AO) were stored on Johnston Island (JI) between April 1972 and September 1977, when it was incinerated at sea.
- There were approximately 25 thousand 55-gallon drums stored in rows stacked three high on about 3.5 acres on the NW corner of the island. The storage location was selected because the east-to-west trade winds would rapidly disburse any airborne AO into the Pacific.

- Military contractors (and not U.S. military personnel) were solely responsible for site monitoring and redrumming and dedrumming activities. The storage area was fenced and off limits from a distance.
- The entire inventory of AO was screened for leaks daily. Leaking drums were re-drummed on a weekly basis. Fresh spillage was absorbed, and surface soil was scraped and sealed.
- Leakage of drums began in 1974. Between 1974 and 1977, the equivalent of the contents of 405 drums was leaked.
- The floor of the storage site was comprised of dense coral. Because of the composition and properties of coral, leaked AO was literally bound to the coral, providing little opportunity for AO to become airborne.
- A 1974 Air Force report found that the condition of the storage area provided evidence of the rapid identification of leaking drums, as few spill areas were observed.
- Soil samples in 1974 revealed that herbicide contamination was not detected outside of the storage yard except in close proximity to the redrumming operation.
- Water samples were collected and analyzed twice per month from 10 different locations.
- A 1978 Air Force Land Based Environmental Monitoring study concluded that no adverse consequences of the minimal release of AO into the JI environment during the dedrumming operation were observed. The report further stated that “exposure to (land-based operations) workers to airborne 2,4-D and 2,4,5-T were well below permissible levels.”

10. Service Connection for Disabilities Resulting From Exposure to Herbicides or Based on Service in the Republic of Vietnam (RVN),

Continued

t. Service Connection for NHL Under 38 CFR 3.313 Based on Service in RVN

VA regulations at [38 CFR 3.313](#) provide for a presumption of service connection for non-Hodgkin’s lymphoma (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](#). The claimant needs only to show service in the RVN, which includes the waters offshore.

u. Subcategories of NHL Qualifying for Presumptive Service Connection

When [38 CFR 3.313](#) was promulgated, the U.S. Center for Disease Control identified in its 1990 report, “The Association of Selected Cancers With Service in the U.S. Military in Vietnam,” a number of subcategories that are manifestations of NHL.

Extend the presumption of service connection to a veteran who claims service connection 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	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	

11. 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 background of the *Nehmer* stipulation
- categories of *Nehmer* class members
- the definition of a *covered herbicide disease*
- entitlement to benefits under 38 CFR 3.816
- effective dates of awards under 38 CFR 3.816
- examples of establishing a retroactive effective date
- handling claims that do not specifically mention herbicide exposure
- an example of a claim in which exposure to herbicides was not specifically mentioned
- handling claims for service connection for
- porphyria cutanea tarda (PCT), and
- Type 2 diabetes mellitus, and
- examples of claims for service connection for Type 2 diabetes mellitus.

Change Date

July 20, 2009

a. Background of the Nehmer Stipulation 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 United States District Court for the Northern District of California.

On May 3, 1989, the district court invalidated a portion of 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](#), was added to provide guidance in the adjudication of claims under the *Nehmer* litigation.

Continued on next page

11. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicides, Continued

b. Categories of Nehmer Class Members

Nehmer class members under [38 CFR 3.816](#) include a

- veteran who
- served in the Republic of Vietnam during the Vietnam era, and
- has a covered herbicide disease, and
- surviving spouse, child, or parent of a deceased veteran who
- served in the Republic of Vietnam during the Vietnam era, and
- died as the result of a covered herbicide disease.

c. Definition: Covered Herbicide Disease

A *covered herbicide disease* under [38 CFR 3.816](#) means a disease for which VA has established a presumption of service connection before October 1, 2002, under the “Agent Orange Act of 1991.”

Exception: Chloracne is *not* a covered herbicide disease under [38 CFR 3.816](#).

The covered herbicide diseases under [38 CFR 3.816](#) are

- acute and subacute peripheral neuropathy
- Hodgkin's disease
- multiple myeloma
- non-Hodgkin's lymphoma
- porphyria cutanea tarda
- prostate cancer
- respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)
- soft-tissue sarcoma, as defined in [38 CFR 3.309\(c\)](#), and
- Type 2 diabetes, also known as type II diabetes mellitus or adult-onset diabetes.

Continued on next page

11. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicides, Continued

d. Entitlement to Benefits Under 38 CFR 3.816

A *Nehmer* class member is entitled to compensation under [38 CFR 3.816](#) if a claim for service connection for a covered herbicide disease, or DIC based on death caused by a covered herbicide disease, was

- denied in a decision issued between September 25, 1985, and May 3, 1989
- pending on May 3, 1989, or
- received between
- May 3, 1989, and
- the effective date of the regulation establishing a presumption of service connection for the covered disease.

e. Effective Dates of Awards Under 38 CFR 3.816 The effective date of disability compensation or DIC benefits under [38 CFR 3.816](#) is the date of receipt of the claim on which the prior denial was based or the date entitlement arose, whichever is later.

Exceptions:

- 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\(b\)\(2\)](#).
- If VA received the prior claim for DIC within one year after the veteran's death, the effective date of DIC would be governed by [38 CFR 3.400\(c\)](#).

Notes:

- The provisions of [38 CFR 3.114\(a\)](#), 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](#).
- 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](#).

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11. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicides, Continued

f. Example 1: Initial Claim Denied After September 25, 1985

Situation: The veteran's initial claim for service connection 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 service connection for lung cancer effective the date the initial claim was received, August 4, 1985.

Rationale: Since the initial claim for service connection for a covered herbicide disease was denied after September 25, 1985, service connection may be established from the date the initial claim was received, per [38 CFR 3.816](#).

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\(a\)](#).

g. Example 2: Initial Claim Received Prior to the Effective Date of the Law Establishing a Presumption of Service Connection

Situation: The veteran's initial claim for service connection 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 service connection 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 service connection for lung cancer under [38 CFR 3.309\(e\)](#), service connection may be established from the date the

initial claim was received, per [38 CFR 3.816](#).

h. Example 3: 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\(b\)\(2\)](#).

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11. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicides, Continued

i. Handling Claims in Which Exposure to Herbicides Is Not Specifically Mentioned

In its February 11, 1999, order, the district court held that a *Nehmer* class member's claim for disability compensation or DIC need only include a request for service connection for a covered herbicide disease to qualify as a *Nehmer* claim.

It is not necessary for the claimant to assert the condition was caused by exposure to herbicides.

j. Example: Establishing an Effective Date When Exposure to Herbicides Is Not Specifically Mentioned in the Claim

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 service connection was established.

Result: Based on these facts, the effective date must relate back to the 1994 claim, even though the veteran alleged a different basis for service connection.

k. Handling Claims for Service Connection for Porphyria Cutanea Tarda

Under [38 CFR 3.311a\(d\)](#), which was published on October 21, 1991, sound scientific and medical evidence did *not* establish a significant statistical association between exposure to herbicides and the development of porphyria cutanea tarda (PCT).

When determining the effective date for the establishment of service connection for PCT

- do not assign an earlier effective date under the *Nehmer* stipulation, since a denial of service connection for PCT under [38 CFR 3.311a](#) after October 20, 1991, is valid, and
- consider an earlier effective date under the *Nehmer* stipulation for a claim for service connection for PCT that was denied between September 24, 1985, and October 21, 1991.

Continued on next page

11. Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicides, Continued

l. Handling Claims for Service Connection for Type 2 Diabetes Mellitus

Effective May 8, 2001, Type 2 diabetes mellitus became subject to presumptive service connection under [38 CFR 3.309\(e\)](#). 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 service connection for Type 2 diabetes mellitus, 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 Service Connection for Type 2 Diabetes Mellitus

Situation: In January 1987, a veteran filed a claim for service connection for hyperglycemia. In developing the claim, VA obtained medical records indicating that the veteran was diagnosed with Type 2 diabetes mellitus in February 1987.

Result: Based on these facts, it would be reasonable to treat the January 1987 claim as a claim for service connection for Type 2 diabetes mellitus.

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 Service Connection for Type 2 Diabetes Mellitus

Situation: In 1995, a veteran filed a claim for service connection for hyperglycemia. Medical records obtained by VA indicated that the veteran did not have Type 2 diabetes mellitus. In 2001, the veteran filed a second claim for service connection for Type 2 diabetes mellitus, submitting evidence showing that the condition was diagnosed in 1996.

Result: Based on these facts, the 1995 claim is not considered a claim for service connection for Type 2 diabetes mellitus.

Rationale: Neither the claim nor the evidence of record

(when the 1995 claim was processed) indicated the veteran had been diagnosed with Type 2 diabetes mellitus.

12. Payment to the Survivors or Estate of a Nehmer Class Member

Introduction This topic contains information on payment to the survivors or estate of a *Nehmer* class member, including

- identifying the appropriate payee
- the action when an appropriate payee cannot be located, and
- identifying other survivors.

Change Date

July 20, 2009

a. Identifying the Appropriate Payee If a *Nehmer* class member entitled under [38 CFR 3.816\(c\) and \(d\)](#) dies before receiving the payment of retroactive benefits, VA will award the unpaid benefits to the first individual or entity in existence in the following order:

- spouse
- child or children, divided into equal shares if more than one child exists, regardless of age or marital status
- parents, divided in half if both parents are alive, and
- estate.

Note: The survivor or estate of a *Nehmer* class member is not required to file an application in order to receive unpaid benefits.

b. Action When Appropriate Payee Cannot Be Located

Use all available information in the folder to determine an appropriate payee if

- a class member is deceased, and
- the claims folder does not contain sufficient information to identify an eligible survivor.

Example: If an authorized representative or relative is identified in the claims folder, contact this person for information on the existence of a surviving spouse, children, parents, or estate. If this effort fails to identify an appropriate payee, annotate the rating decision, stating that it was not possible to locate any payee eligible for payment under *Nehmer*.

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12. Payment to the Survivors or Estate of a Nehmer Class Member, Continued

c. Identifying Other Survivors Before awarding benefits to an identified payee, ask the payee to state whether or not there are any other survivors of the class member who may have an equal or greater entitlement to unpaid benefits.

Once benefits have been awarded in full to a payee, do not pay any portion of the amount to any other individual, unless the payment previously released can be recovered.