

(13) TRAINEE HANDOUT

TRAINING VSO LESSON THIRTEEN AGENT ORANGE-RELATED CLAIMS

PREREQUISITE TRAINING	Prior to this training, you must have completed all previous TRIP lessons.
PURPOSE OF LESSON	The purpose of this lesson is to teach you the complexities of claims for service connection for disabilities alleged to be the result of exposure to Agent Orange, and ways that you can best assist your clients in developing and presenting these claims to VBA.
TIME REQUIRED	2.0 hours
INSTRUCTIONAL METHOD	Participatory discussion and practical exercise.
REFERENCES	<ul style="list-style-type: none">▪ 38 CFR 3.307(a)(6)▪ 38 CFR 3.309(e)▪ 38 CFR 3.313▪ 38 CFR 3.814▪ 38 CFR 3.815▪ 38 CFR 3.816▪ 38 CFR 4.115(b)▪ 38 CFR 4.119▪ M21-1, Part VI, Chaps. 7 and 11▪ M21-1MR, Part VI, Chap. 2▪ 38 USC Chap. 18
MATERIALS/ TRAINING AIDS	<p>Classroom or private area where a discussion may be held. Chairs and writing surfaces are required.</p> <p>Large writing surface such as—easel pad, chalkboard, dry erase board, overhead projector, etc., with appropriate markers, or computer with projection equipment and PowerPoint software.</p> <ul style="list-style-type: none">▪ <i>Agent Orange-Related Claims</i> Trainee Handout▪ <i>Agent Orange-Related Claims</i> PowerPoint presentation

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WHAT IS AGENT ORANGE?

The term “Agent Orange” is a generic term used to describe herbicide agents that were used widely in the Republic of Vietnam by American and allied forces to defoliate areas of the jungle and landscape during the period defined by regulation as beginning on 1/9/62 and ending on 5/7/75. Specifically, it is a dioxin compound - 2,4-D; 2,4,5-T and its contaminant TCDD; cacodylic acid; and picloram.

It came to be known as “Agent Orange” because of its distinctive orange colorant, the orange stripe that was painted on the drum that held it, and the fact that no one could remember or pronounce its real name!

Although primarily used in Vietnam (and most associated with the Vietnam War), there is some later confirmation of its use in certain specific instances and areas along the demilitarized line (DMZ) dividing North and South Korea between 4/68 and 7/69.

Additionally, there have been instances of its use, by both military and civilian authorities, as a general defoliant and weed killer in various applications.

HOW “EXPOSURE” IS VERIFIED

There are three ways in which a veteran can be shown to have been “exposed” to Agent Orange:

- Meet the legal definition of having performed “service in Vietnam”;
- Be shown by official records to have been attached to certain specific Army units stationed along the DMZ in South Korea from 4/68-7/69;
- Be shown by official records to actually have been exposed to Agent Orange.

As with all other presumptive disabilities, before service connection can be considered, the conditions surrounding the presumption must first be established. For veterans seeking service connection for disabilities recognized as presumptive based on exposure to Agent Orange, VA must verify the exposure. In the first two circumstances shown above, exposure is “conceded” if the requisite service is verified. In the third circumstance, the veteran must be shown by official records to actually have been exposed.

38 CFR 3.307(a)(6) and 38 CFR 3.313(a) both specify define the term “*service in Vietnam*” to include “service in the waters offshore and service in other locations if the service involved duty or visitation in the Republic of Vietnam”. Thus, in order to meet the legal definition of having performed “service in Vietnam”, it must be shown by official records that the veteran had actually been *in* the Republic of Vietnam. Service in Vietnam can be established by several methods. The easiest way is where Vietnam service is shown on the DD-214. Decorations or awards for valor or combat involvement (e.g., CIB, Purple Heart Medal, Combat Action Ribbon,

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Bronze Star with Combat “V”) will be accepted as proof of in-country service so long as the DD-214 confirms Vietnam service and the decorations were awarded for that service. However, some Air Force veterans may require additional verification of in-country service, as it was possible for some of those decorations to be awarded based on flight operations OVER the country, not IN the country. It is very important to know that so-called “Theater Decorations” do NOT verify in-country service. Various branches of service awarded these ribbons or awards, such as the Vietnam Service Medal, to persons who served in the theater of operations, but NOT in the country of Vietnam. Another relatively simple method to confirm Vietnam service is a review of the SMR’s. If SMR entry(ies) show that any treatment was provided by a medical facility, aid station, etc. in Vietnam, that entry or entries will be sufficient confirm Vietnam service. Official orders *may* confirm Vietnam service so long as they provide sufficient identifying data (i.e., names, dates, specific places, duty assignments, etc.). Travel orders *might* confirm in-country service, but they *must* show that the veteran actually disembarked the ship or plane and physically was in the country itself. In all other cases where Vietnam service is not conclusively shown by available evidence, then this in-country service must be verified by means of a PIES request to the National Personnel Records Center (NPRC) in St. Louis MO.

Once “in-country” Vietnam service is conclusively established, “exposure” is thus conceded, and the veteran may be granted S/C for any disability shown by 38 CFR 3.309(e) as presumptively related to such exposure

Official records document that Agent Orange was also used in certain specific areas along the Demilitarized Zone (DMZ) in South Korea from 4/68-7/69. M21-1, Part VI, 7.20(b)(2) contains a listing of specific Army units assigned to that area during that established time-frame. This list is repeated on Page 10 of the Handout. If official records can confirm that the veteran was assigned to one of those specific units during those dates, exposure to Agent Orange will be conceded, and the veteran may be granted S/C for those disabilities presumed to be the result of such exposure.

Only those two conditions above (service in Vietnam or in the specified units near the Korean DMZ) result in the presumption or concession of exposure to Agent Orange. In any other instance where the claimant might state that he/she was exposed to Agent Orange, such as in landscape maintenance where it is alleged that it was used as a weed-killer, or in situations where the veteran who did not serve in Vietnam alleges exposure based on transport or storage of Agent Orange or maintenance of aircraft used in its distribution, no such presumption or concession of exposure exists in the law. A claim from someone who was not in Vietnam, but who has documentation in his service records that he was personally involved with handling or loading defoliants on aircraft, could meet this criteria. It is not sufficient that the records show that the veteran and Agent Orange were both present in the same place; it must be shown that the veteran actually *had personal contact* with it. However, in most cases, documentation does not exist that the veteran was personally exposed, and these cases are seldom successful.

Remember, “exposure” to Agent Orange must be established in order for the presumptive provisions of 38 CFR 3.307 and 3.309 to apply to a claim for service connection. In the absence of conceded or confirmed “exposure”, claims for S/C for those disabilities can only be considered on a direct basis (i.e., incurred in or aggravated by service and shown in SMR’s or diagnosed to a compensable degree within one year of discharge).

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WHAT “IN-COUNTRY” SERVICE MEANS

The definition of “in-country” service is really quite straightforward – it means that it must be established by official records that at least one of the veteran’s feet must have touched the ground of the Republic of Vietnam (aka South Vietnam) during the period beginning on 1/9/62 and ending on 5/7/75. Perhaps there are more legalistic ways of phrasing this requirement, but none that are more cogent or clear. Other than the small number of veterans who may be able to document their official attachment to one of the specifically named Army units stationed at the Korean DMZ from 4/68-7/69, the ONLY way that exposure to Agent Orange can be legally conceded is by having their physical presence ON THE GROUND in Vietnam be documented by official records. Because the potential consequences of such a finding are significant, both from the VA’s standpoint as well as the claimant, it is very important that you fully understand the concept. Literally hundreds of thousands of veterans who served during the Vietnam Era were stationed at some point during their service in Southeast Asia, yet were never actually “in-country” in Vietnam. Examples of such service are: duty stations in Thailand or Cambodia, the Republic of the Philippines, air support activities on Guam, or on naval vessels in the waters off shore of the Republic of Vietnam. Such service, regardless of its merit, contribution to the war effort that it may have represented, proximity to Vietnam, or even the degree of hazardous service, is NOT included in the laws that relate to presumptive service connection. It is important that you understand this, so that you will be able to better advise your clients and explain to them why they may not be eligible for presumptive service connection.

Remember, the FIRST hurdle that must be addressed (and overcome) in claims for presumptive disabilities claimed as a result of exposure to Agent Orange in Vietnam is the verification of this required “in-country” service. Once you receive such a claim from your client, this is the *first* thing that should be addressed. One of the major causes for delays in claims processing for claims of this type is the verification of this service. The SO should insure that any and all evidence that their client may have in their possession that would verify “in-country service” should accompany the claim.

PRESUMPTIVE DISABILITIES BASED ON AGENT ORANGE EXPOSURE

Refer to Page 11 of Handout for a complete list of the disabilities established by law as being recognized as related to exposure to Agent Orange. With the exception of chloracne, porphyria cutanea tarda (PCT), and acute and subacute peripheral neuropathy, all of the listed disabilities have an unlimited period of presumption (meaning that if they develop to a compensable degree at any time following discharge, S/C can be established once exposure is confirmed and the other requirements of 38 CFR 3.307 are met).

Just like the other “exposure-related disabilities” in the previous lesson on Specific Development Issues, ongoing studies being conducted by the VA, National Academy of Sciences, and other agencies, often find a relationship between Agent Orange exposure and new disabilities. Thus, the lists shown on Pages 11 and 12 of the Handout should not be considered as all-inclusive. As

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new disabilities are added to the list, an effective date for consideration of that new disability is usually established as well. (See M21-1, Part VI, 7.20 for the current list of effective dates.)

Don't get overwhelmed by the plethora of different descriptions of the various "soft tissue sarcoma's" shown in the handout; that the only thing they need to remember is that "soft tissue sarcoma" is a presumptive disability, and the specific type will be ascertained by medical evidence and examination.

In spite of the number of disabilities shown on the list, the overwhelming majority of the claims that you will encounter will be for diabetes, prostate cancer, and lung cancer; which will be specifically addressed in the following topic of this lesson.

Unlike all other "exposure-related" issues, Agent Orange exposure issues have a specific list of disabilities which are found **NOT** to be the result of such exposure. Refer to Page 12 of the Handout for the complete listing. As SO's, while you may not be able to decline to assist a veteran in a claim for such disabilities, you should be aware of the list to put yourself in a position to try to dissuade such claims from being filed for that reason. Claims for S/C for those disabilities as a result of Agent Orange exposure are never successful.

Do not file claims for "Agent Orange exposure"; this is not a disability. A specific disability must be claimed. Include evidence of a current disability, usually a medical diagnosis. Once the "exposure" has been confirmed, and a diagnosis of a disability on the list of presumptive disabilities based on such exposure is of record, the claim is very straightforward from that point. All that is needed is an examination to ascertain the current level of the disability.

PROSTATE CANCER

Prostate cancer was added to the list contained in 38 CFR 3.309(e) of disabilities recognized as being related to Agent Orange exposure effective 11/7/96. S/C can seldom be established for prostate cancer earlier than that date on a presumptive basis (Agent Orange exposure). However, the effective date of benefits *could* be impacted by the settlement that was part of court action from several years ago (see 38 CFR 3.816); the VA will determine the correct effective date under this settlement.

Prostate cancer is common in the male population, over 50% of males will be diagnosed with prostate cancer at some point during their lifetimes. The virulence of prostate cancer differs dramatically by age of diagnosis. Prostate cancer first diagnosed under age 40 is usually a rapidly spreading, highly virulent cancer with death rates well over 50% except in cases where it is found early and treated aggressively. A diagnosis between the ages of 50-65 usually results in a much more slowly-developing cancer that is most amenable to treatment (surgery, radiation, or chemotherapy, or in combination) with survival rates well over 95% when diagnosed and treated early. Prostate cancers diagnosed over the age of 65 are usually very slow growing, and are more often than not treated by "watchful waiting" rather than intervention. In almost every case where prostate cancer is diagnosed over the age of 65, the person ultimately dies **WITH** prostate cancer, and not **OF** prostate cancer.

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HOW PROSTATE CANCER IS RATED

When first diagnosed as an active disease process, prostate cancer is rated under Diagnostic Code 7528, and, like other active cancers, carries a 100% evaluation during and for 6 months following surgery and/or radiation and chemotherapeutic treatment. If the treatment is the implant of radioactive seeds, the active treatment is considered to be one year after the date of the implant. At the end of that six-month period, the disability is rated on its residuals under Diagnostic Code 7527, as either voiding dysfunction or urinary tract infection, whichever scale is more determinative of the residual disability. The former ranges from 20%-60%; the latter from 10%-30%. Of course, in either case if there are no discernable residuals, a non-compensable (0%) evaluation would be assigned.

The VA recognizes that, in most instances following surgery (radical prostatectomy), impotence results. Accordingly, VA will assign a Special Monthly Compensation under 38 USC 1114(k) (known as SMC "K") for loss of use of a creative organ in addition to the evaluation for prostate cancer itself in all cases where S/C is established for prostate cancer and this surgical procedure is performed as a result. In cases where the treatment for prostate cancer is other than surgery (radiation, chemotherapy, etc.), consideration for the SMC will be on a case-by-case basis, depending upon the medical evidence presented. If impotency results from the treatment of the veteran's prostate cancer, the treating physician should note it in the treatment, and submit those records with the claim, or complete a VA Form 21-4142 for the VA to obtain those records.

By far, the most commonly presented prostate cancer case is the diagnosis of prostate cancer, followed by surgery (radical or suprapubic prostatectomy), with an uncomplicated recovery. Assuming that the claim was received within regulatory time-frames, those cases would be rated at 100% from date of diagnosis through 6 months following surgery, and reduced to a 0% evaluation (no residuals) plus the assignment of SMC "K". If the claim was not timely filed, the 100% evaluation would be moot, and the evaluation assigned would be determined by the post-surgical residuals plus the SMC where indicated.

TYPE II DIABETES

Type II Diabetes was added to the list of presumptive disabilities based on Agent Orange exposure effective 5/8/2001. But, as described in the previous topic on prostate cancer, the effective date of a grant of S/C could be affected by the provisions of 38 CFR 3.816. Remember, as with other Agent Orange-related disabilities, before the presumptive provisions of the law can apply, the veteran must, by official records, be shown to have been either "in country" in Vietnam or otherwise be objectively shown to have been personally exposed to Agent Orange.

Type II Diabetes is also known as "adult-onset" diabetes (as opposed to Type I Diabetes or "juvenile" diabetes). The term is significant, as only the former is recognized as presumptive based on Agent Orange exposure. The basic difference between the two is the age of onset; Type

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I is generally prior to age 12, and always prior to age 21; Type II is generally after age 18. The clinical difference between the two is that, for Type I, the pancreas is incapable of producing *any* insulin, and in Type II, the pancreas is incapable of producing *sufficient* insulin. Since the topic of this lesson is disabilities related to Agent Orange exposure, only Type II Diabetes will be included.

Over the past 20 years, the incidence of diabetes in the general population has increased some 50%; the cause of the increase has not been fully determined, but it is considered to be related to the concurrent increase in obesity in the general population by the National Institutes of Health. Regardless of those studies, if Type II Diabetes is diagnosed to a compensable degree any time following discharge in a veteran who has been exposed to Agent Orange, service connection can be established on that basis.

Diabetes is an insidious disease, with many complications associated with it, and can be fatal if untreated. Mild cases can be managed by a regimen of diet and exercise alone, without the need for added insulin. Moderate cases can be controlled by doses of insulin and/or other drugs; severe cases are very difficult to treat and manage because of the complications associated with the degree of severity.

There are many recognized complications of diabetes. The more common ones are cardiovascular complications such as hypertension or strokes, peripheral neuropathy (particularly of the lower extremities), ocular complications (most often diabetic retinopathy), renal complications, and ulcerations or non-healing wounds of the lower extremities, often resulting in amputations. Since many of these complications can have unrelated origins, a medical opinion is often required before they can be associated with the diabetes itself. For example, if a veteran was diagnosed with hypertension well before diabetes was diagnosed, it would be virtually impossible to find the hypertension to be secondary to the diabetes.

The grant of service connection for Type II Diabetes is *not* automatic for all Agent Orange-exposed veterans. There are circumstances where it is clear that the onset of the diabetes was unrelated to service or exposure, such as in the instance of a “surgical diabetic”. In this circumstance, due to pancreatic surgery, that part of the organ that produces the insulin is removed. Unless the disability resulting in the surgery was, itself, service-connected, the resulting diabetes could not be.

HOW DIABETES IS RATED

Type II Diabetes is rated under Diagnostic Code 7913, which provides for evaluations ranging from 10% to 100%, depending upon the severity of the symptoms. A confirmed diagnosis of diabetes that is controlled by diet alone, would warrant a 10% evaluation under the provisions of that diagnostic code. Where insulin is required (or an oral hypoglycemic agent) in combination with dietary restrictions, a 20% evaluation would be warranted. More restrictions and complications warrant higher evaluations.

Recognized complications of diabetes that are non-compensable in and of themselves, are not rated separately, but rather included in the 7913 diagnostic code but are considered in the

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evaluation assigned. Complications that are compensable in and of themselves are rated separately, so long as they are not used as a basis for assignment of a 100% evaluation under DC 7913.

Below are some examples of diabetes cases that would be commonly seen.

1. Veteran has diabetes requiring insulin as well as restricted diet and activities, and has been diagnosed with beginning diabetic retinopathy which does not affect visual acuity to a compensable degree. The rating would show DC 7913 as Diabetes with diabetic retinopathy: 40%.
2. Same scenario, but the visual acuity meets the requirements for a 10% evaluation. The rating would show DC 7913 as Diabetes - 40%, and would show a separate disability (linked by Code 37 signifying “due to or as a result of”) DC 6079 - Diabetic Retinopathy – 10%.
3. Veteran has diabetes as above, and has had an amputation of the right leg, found to be the result of complications from an unhealed diabetic ulcer of the right foot. The rating would show DC 7913 as Diabetes – 40%, and would show a separate disability (again linked by Code 37) as DC 5165 - Amputation, right leg – 40%. In this case, the veteran would also be entitled to SMC “K” for loss of one leg.
4. Veteran has significant diabetes with residuals of a stroke found to be related to the diabetes that results in significant restriction of occupational and recreational activities. The overall disability picture would warrant a 100% evaluation under Diagnostic Code 7913. However, since the cardiovascular complications were used in the assignment of the 100% evaluation under DC 7913, they would not be evaluated separately. To do so would be, in effect, rating the same disability twice; known as “pyramiding”. The rating would show 7913 – Diabetes with residuals CVA – 100%.

CHAPTER 18 BENEFITS (SPINA BIFIDA AND BIRTH DEFECTS)

This is the only instance (except for survivor’s benefits) that VA pays benefits directly to a person who is NOT a veteran.

It is very important to understand that the “children” referred to in this topic are defined by law as biological children ONLY. Step-children or adopted children are not included, since the disability for which payment may be made is a birth defect. It is also very important to understand that, since the birth defects are presumed to be the result of exposure to Agent Orange, only those biological children who were conceived *after* the exposure are covered by this law.

ALL claims for benefits under Chapter 18 are handled by the Denver Regional Office, and that a specific application form (VA Form 21-0304) is required.

Be reassured that claims for Chapter 18 benefits are uncommon, and this topic is only meant as a tool to familiarize you with the benefit and the claims process.

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Male Veterans Exposed to Agent Orange

Biological children of male veterans who were exposed to Agent Orange may be entitled to benefits under 38 USC Chapter 18 (as defined by 38 CFR 3.814) if they are diagnosed with a specific birth defect called *spina bifida*. This is the ONLY disability that is covered in the law for natural children of male veterans, and is narrowly defined. A similar disability, *spina bifida occulta*, is specifically EXCLUDED under this law.

There are three different levels of benefit payment, depending upon the degree of disability found in the individual child. Benefits are paid to the child directly, but for children under the age of 18, are paid to the child's custodian. This benefit payment is unrelated to any other benefit that may be paid to the veteran or surviving spouse, and the receipt of this benefit will not affect any other benefit payment except educational benefits payable to the child under Chapter 35, and only then if the Chapter 18 benefits are paid for vocational training, where the law precludes dual receipt.

Benefits are paid to (or for) the child for life, but may be reduced or even terminated if the degree of disability improves over time.

Female Veterans Exposed to Agent Orange

Biological children of female veterans who were exposed to Agent Orange may be entitled to benefits under 38 USC Chapter 18 (as defined by 38 CFR 3.815) if they are diagnosed with *spina bifida* or any of the other birth defects listed in Page 13 of the Handout. Refer to that list, but don't be overly concerned by the length and complexity of the list – it is provided simply for your reference and information, you are certainly not expected to remember them all. Likewise, be advised that the law specifically *excludes* a number of specific birth defects, mostly of a familial, genetic, chromosomal, or related origins, and that list is provided in Pages 14-15 of the Handout. Refer to that list, and note that it is even longer than the list of *included* birth defects!

While the benefits payable for children of male veterans under 38 CFR 3.814 have only three different levels of payment, benefits payable to children of female veterans under 38 CFR 3.815 have five different payment levels, again dependent upon the disability picture presented. Otherwise, the payment and conditions of payment are the same.

How Claims Are Processed

The Denver Regional Office handles all claims for Chapter 18 benefits. Application is made on VA Form, 21-0304, "Application for Benefits for Certain Children with Disabilities Born of Vietnam Veterans".

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Each Regional Office has a Chapter 18 Coordinator, who is responsible for the initial review of incoming Chapter 18 claims. He/she reviews the claim for completeness, prepares an extract from the claims folder that provides proof of Vietnam service (or the lack thereof), proof of dependency, character of the veteran's service, and the like. Then, he/she forwards the claim package to Denver. Once the claim is received in Denver, all remaining claims processing is done there. If there is no basic entitlement, the claim will be denied on that basis. If there is basic entitlement, a permanent Chapter 18 sub-folder will be created and established in the BIRLS system. That folder will be permanently retained by the Denver office, and all records relating to that claim will be housed in that folder.

The Service Officer's Role in Developing Claims Secondary to Agent Orange Exposure

In the majority of these claims, development is straightforward; establish in-country Vietnam service and get a diagnosis of one of the listed conditions, and you have a solid claim.

Where veterans need assistance in most cases is in instances where their DD-214 does not show Vietnam service. In these cases, you must look for alternative evidence to establish the veteran's presence in Vietnam. Veterans of Vietnam are proud of their service there and do not want to hear that their service is in question or that their Vietnam Service Medal does not conclusively establish in-country service, so you will need to be sensitive to these reactions. If the DD-214 shows service during the Vietnam period and an individual award, such as the Combat Infantryman's Badge or Purple Heart, Vietnam service will be conceded. If you can't get any documentation, at least get the dates of Vietnam service and the unit name from the veteran, and explain that the claim will be delayed while the VA verifies his service.

The other thing you need is evidence of a current disability. The best evidence to submit is a medical diagnosis of the claimed condition.

Once these are received in the VA, your client should expect to be called in for a VA examination. Go over the criteria in the rating schedule for your client's disability and have him/her be ready to explain their symptoms to the examiner. Be sure to list any known complications on the claim.

Agent Orange Exposure In Korea

Exposure Along the DMZ in Korea. Agent Orange was used along the southern boundary of the demilitarized zone (DMZ) in Korea between April 1968 and July 1969. The Department of Defense (DoD) has identified specific units that were assigned or rotated to areas along the DMZ where it was used. Exposure to Agent Orange will be conceded for veterans who allege service along the DMZ in Korea and were assigned to one of the units shown below between April 1968 and July 1969.

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Combat Brigades of the 2 nd Infantry Division	Division Reaction Force	3 rd Brigade of the 7 th 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		2 nd Battalion, 17 th Infantry
1 st Battalion, 23 rd Infantry		1 st Battalion, 73 rd Armor
2 nd Battalion, 23 rd Infantry		2 nd Squadron, 10 th Cavalry
3 rd Battalion, 23 rd Infantry		
2 nd Battalion, 31 st Infantry Note: Service records may show assignment to either the 2 nd or the 7 th Infantry Division.		2 nd Battalion, 31 st Infantry Note: Service records may show assignment to either the 2 nd or the 7 th Infantry Division.
3 rd Battalion, 32 nd Infantry Note: Service records may show assignment to either the 2 nd or the 7 th Infantry Division.		3 rd Battalion, 32 nd Infantry Note: Service records may show assignment to either the 2 nd or the 7 th Infantry Division.
1 st Battalion, 9 th Infantry		
2 nd Battalion, 9 th Infantry		
1 st Battalion, 72 nd Infantry		
2 nd Battalion, 72 nd Infantry		
United Nations Command Security Battalion-Joint Security Area (UNCSB-JSA)		

Note: If a veteran was assigned to a unit other than one listed in the table above and alleges service along the DMZ between April 1968 and July 1969, the Center for Unit Records Research (CURR) must be contacted by VA for verification of the location of the veteran's unit.

PRESUMPTIVE DISABILITIES BASED ON AGENT ORANGE EXPOSURE

- Chloracne or other acneform disease consistent with chloracne
- Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes)
- Hodgkin's disease
- Chronic lymphocytic leukemia
- Multiple myeloma
- Non-Hodgkin's lymphoma

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- Acute and subacute peripheral neuropathy (*see Note 2 below*)
- Porphyria cutanea tarda
- Prostate cancer
- Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)
- Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

Note 1: The term soft-tissue sarcoma includes the following:

- Adult fibrosarcoma
- Dermatofibrosarcoma protuberans
- Malignant fibrous histiocytoma
- Liposarcoma
- Leiomyosarcoma
- Epithelioid leiomyosarcoma (malignant leiomyoblastoma)
- Rhabdomyosarcoma
- Ectomesenchymoma
- Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)
- Proliferating (systemic) angioendotheliomatosis
- Malignant glomus tumor
- Malignant hemangiopericytoma
- Synovial sarcoma (malignant synovioma)
- Malignant giant cell tumor of tendon sheath
- Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas
- Malignant mesenchymoma
- Malignant granular cell tumor
- Alveolar soft part sarcoma
- Epithelioid sarcoma
- Clear cell sarcoma of tendons and aponeuroses
- Extraskkeletal Ewing's sarcoma
- Congenital and infantile fibrosarcoma
- Malignant ganglioneuroma

Note 2: The term acute and subacute peripheral neuropathy means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset.

DISABILITIES SPECIFICALLY NOT RELATED TO AGENT ORANGE EXPOSURE

Under the Agent Orange Act of 1991, the Secretary receives periodic reviews and summaries of the scientific evidence concerning the association between exposure to herbicides and diseases suspected to be associated with those exposures from the National Academy of Sciences (NAS). To the extent possible, NAS determines: (1) whether there is a statistical association between

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specific diseases and herbicide exposure; (2) the increased risk of disease among individuals exposed to herbicides in the Republic of Vietnam during the Vietnam Era; and (3) whether there is a plausible biological mechanism or other evidence that herbicide exposure causes specific diseases. Based on cumulative scientific data reported by NAS since 1993, the Secretary has determined that there is no positive association (i.e., the evidence for an association does not equal or outweigh the evidence against an association) between herbicide exposure and the following conditions:

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

QUALIFYING BIRTH DEFECTS FOR BENEFITS UNDER CHAPTER 18

(38 CFR 3.815)

Covered birth defects include, but are not limited to, the following (however, if a birth defect is determined to be familial in a particular family, it will not be a covered birth defect):

- Achondroplasia;
- Cleft lip and cleft palate;
- Congenital heart disease;
- Congenital talipes equinovarus (clubfoot);
- Esophageal and intestinal atresia;

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- Hallerman-Streiff syndrome;
- Hip dysplasia;
- Hirschprung's disease (congenital megacolon);
- Hydrocephalus due to aqueductal stenosis;
- Hypospadias;
- Imperforate anus;
- Neural tube defects (including spina bifida, encephalocele, and anencephaly);
- Poland syndrome;
- Pyloric stenosis;
- Syndactyly (fused digits);
- Tracheoesophageal fistula;
- Undescended testicle; and
- Williams syndrome.

NON-QUALIFYING BIRTH DEFECTS FOR BENEFITS UNDER CHAPTER 18

(38 CFR 3.815)

Conditions that are congenital malignant neoplasms are not covered birth defects. These include, but are not limited to, the following:

- Medulloblastoma;
- Neuroblastoma;
- Retinoblastoma;
- Teratoma; and
- Wilm's tumor.

Conditions that are chromosomal disorders are not covered birth defects. These include, but are not limited to, the following:

- Down syndrome and other Trisomies;
- Fragile X syndrome;
- Klinefelter's syndrome; and
- Turner's syndrome.

Conditions that are due to birth-related injury are not covered birth defects. These include, but are not limited to, the following:

- Brain damage due to anoxia during or around time of birth;
- Cerebral palsy due to birth trauma,
- Facial nerve palsy or other peripheral nerve injury;
- Fractured clavicle; and
- Horner's syndrome due to forceful manipulation during birth.

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Conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. These include, but are not limited to, the following:

- Asthma and other allergies;
- Effects of maternal infection during pregnancy, including but not limited to, maternal rubella, toxoplasmosis, or syphilis;
- Fetal alcohol syndrome or fetal effects of maternal drug use;
- Hyaline membrane disease;
- Maternal-infant blood incompatibility;
- Neonatal infections;
- Neonatal jaundice;
- Post-infancy deafness/hearing impairment (onset after the age of one year);
- Prematurity; and
- Refractive disorders of the eye.

Conditions that are developmental disorders are not covered birth defects. These include, but are not limited to, the following:

- Attention deficit disorder;
- Autism;
- Epilepsy diagnosed after infancy (after the age of one year);
- Learning disorders; and
- Mental retardation (unless part of a syndrome that is a covered birth defect).

Conditions that do not result in permanent physical or mental disability are not covered birth defects. These include, but are not limited to:

- Conditions rendered non-disabling through treatment;
- Congenital heart problems surgically corrected or resolved without disabling residuals;
- Heart murmurs unassociated with a diagnosed cardiac abnormality;
- Hemangiomas that have resolved with or without treatment; and
- Scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.