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Fact Sheet

Information for Veterans on VA's Peripheral Neuropathy Related to Agent Orange Exposure Final Rule Change

Under Secretary Shinseki's leadership, the Department of Veterans Affairs (VA) remains committed to ensuring Vietnam Veterans receive the benefits they have earned through their service. On August 31, 2010, the Department of Veterans Affairs (VA) amended its regulations to add ischemic heart disease, hairy cell leukemia and other chronic B-cell leukemias, and Parkinson's disease to the list of diseases presumed to be related to exposure to Agent Orange, and other herbicides used in Vietnam.

Currently, 14 diseases are on the presumptive list for Agent Orange, including Acute and Sub-acute peripheral neuropathy. On August 10, 2012, the Department of Veterans Affairs posted a Federal Register Notice which included a proposed rule that would relax the requirements of the presumptive conditions associated with exposure to [Agent Orange and other herbicides used in Vietnam](#) under 38 C.F.R. §3.309(e) from Acute or Sub-acute Peripheral Neuropathy to Early Onset Peripheral Neuropathy. A final rule implementing this change was published in the Federal Register will be published on September 6, 2013.

Changes to disability compensation rules are based on the most current medical science as reported by the Institute of Medicine of the National Academy of Sciences.

The Institute of Medicine's 2010 update to [Veterans and Agent Orange](#) provided sufficient medical evidence to support a positive association for Early-Onset Peripheral Neuropathy.

Previous Rule (in plain language): Peripheral neuropathy is presumed to be associated with exposure to Agent Orange or other herbicides used in Vietnam if it is diagnosed *within one year*¹ of the last exposure to such herbicides AND the condition resolves within two years of diagnosis.²

New Rule (in plain language): Peripheral neuropathy is presumed to be associated with exposure to Agent Orange or other herbicides used in Vietnam if there is evidence showing

¹ Although 3.309(e) defines the condition as arising within weeks or months of exposure, 3.307(a)(6) makes clear the presumption applies if PN is manifest within 1 year of exposure; this aspect of the rule is not a change.

² The previous rule is found at 38 C.F.R. §§ 3.307(a)(6) and 3.309(e).

it was diagnosed within 1 year of the last exposure to such herbicides, *regardless of whether the condition resolves or persists.*

While scientific study supports expanding what is covered as a presumptive condition following exposure to Agent Orange and other herbicides used in Vietnam exposure, the new rule change should not significantly impact the current inventory of claims.

Claims for peripheral neuropathy related to Agent Orange exposure that were previously denied fall under 38 C.F.R. 3.816 (*Nehmer processing*).

- Consistent with *Nehmer*, when VA issues a new presumptive condition, or changes the definition of a presumptive condition, it must re-adjudicate the claims of Veterans or eligible survivors who previously filed for compensation or death benefits and were denied and must compensate them retroactively to the date of receipt of the prior denied claim.³ As this rule expands the types of peripheral neuropathy covered by the presumption, VA will apply the *Nehmer* criteria.
 - Approximately 67,000 Vietnam Veterans were previously denied service connection for peripheral neuropathy. VA plans to have the previously denied claims screened to determine which claims present a potential basis for entitlement to benefits based on the addition of this new presumption. Such claims will then be readjudicated using the *Nehmer* criteria.
 - Under the new rule, a Veteran will need to show evidence that peripheral neuropathy was diagnosed within a year of herbicide exposure, or that there were symptoms within the first year that led to a diagnosis of peripheral neuropathy, and that peripheral neuropathy has persisted from the time of onset of symptoms to the present to gain service connection.
 - VA estimates that estimates that a relatively small number of Veterans (approximately 1,000) will be eligible for compensation benefits under the new rule and that about 400 will receive increased monthly compensation as a result of this rule.

Many Veterans who were exposed to Agent Orange and other herbicides used in Vietnam, are already service connected for peripheral neuropathy since peripheral neuropathy is often a condition of diabetes.

- Diabetes Mellitus Type II is a condition already presumed to be associated with exposure to Agent Orange and other herbicides used in Vietnam.
- VA will service connect any condition caused by another service-connected condition, known as secondary service connection. Secondary conditions are rated exactly like traditional compensation claims.

³ *Nehmer v. Veterans' Admin.*, 284 F.3d 1158, 1161-62 (9th Cir.2002) (Nehmer III)

Potentially eligible Veterans include those who were exposed based on duty or visitation in Vietnam or on its inland waterways between January 9, 1962, and May 7, 1975; exposed along the demilitarized zone in Korea between April 1, 1968, and August 31, 1971; or, in appropriate cases, exposed due to herbicide tests and storage at military bases within and outside of the United States.

14 diseases are currently on the presumptive list for Agent Orange, including Acute and Sub-acute peripheral neuropathy:

- AL amyloidosis
- Chlorance
- Type II Diabetes
- Hodgkin's disease
- Chronic lymphocytic leukemia
- Multiple myeloma
- Non-Hodgkin's lymphoma
- Acute peripheral neuropathy
- Porphyria cutanea tarda
- Prostate Cancer
- Respiratory cancers
- Soft-tissue Sarcoma
- Ischemic heart disease
- Parkinson's disease