

# EXHIBIT

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the service department using request code O99 *only* if a claim for DIC or death pension is received and it has been determined that death was not in line of duty or was the result of willful misconduct.

(1) In the free text section, enter the statement: "Please verify 2 years honorable active service on enlistment prior to death."

(2) Request verification of service using request code S01 for any prior period of service, if not already of record, to determine if qualifying service existed prior to the serviceperson's final enlistment.

d. **Insanity.** If insanity is an issue (part IV, para., 11.05), develop the case by obtaining all service medical records that are in any way pertinent. Obtain complete transcripts of any court-martial or board proceedings that may be relevant. Use the free text request O99 and enter the following statement: "The issue of insanity has been raised."

e. **Verifying Vietnam Service for Claims Involving Exposure to Herbicide Agents.**

(1) It may be necessary to determine if a veteran had "service in Vietnam" in connection with claims based on exposure to herbicide agents. A veteran must have actually served on land within the Republic of Vietnam (RVN) to qualify for the presumption of exposure to herbicides. 38 CFR Sec. 3.307(a)(6). The fact that a veteran has been awarded the Vietnam Service Medal *does not* prove that he or she was "in country." Service members who were stationed on ships off shore, or who flew missions over Vietnam, but never set foot in-country, were sometimes awarded the Vietnam Service Medal. To verify service in RVN, you should review the veteran's DD-214 to determine if it shows such service (e.g., "Foreign Service: Republic of Vietnam"). If not, you may need to obtain and review the veteran's other personnel records (e.g., Department of the Army Form 20 or equivalent). (VAOPGCPREC 7-93.)

(2) If a veteran claims service connection for exposure to herbicide agents, and alleges service on a ship in the waters offshore of Vietnam, review the record for evidence that the ship was in the waters off Vietnam and that the veteran's service involved duty or visitation on land. If the veteran cannot produce evidence of this, request verification from the Navy:

Naval Historical Center  
Ships' History Branch  
Washington Navy Yard  
901 M St., SE  
Washington, DC 20374-5060

Furnish the name and number of the ship (e.g., USS Galveston (CLG 3)), and the dates that it is alleged to have been in the waters offshore of Vietnam. Follow-up telephone calls may be made after 30 days to (202) 433-3643.

f. **Verification of Service of Affiants (Buddy Statements).** If it is necessary to verify the evidence of an affiant who alleges personal knowledge of certain occurrences while in active service with the veteran, submit the PIES request with the original veteran's information on Page 1 of the PIES request and the affiant's name and service information on Page 2. Use request code O99 and state:

"Do the records of the department indicate that (name of affiant), (rank, organization and service number, if available), was present with his or her organization at or near (place) on or about (date)? Do the records of (name of hospital, vessel, dressing station, etc.) indicate that (name of veteran) (rank and organization) was receiving treatment for (disease or injury) on or about (date)?"



## Section H. Claims for Service Connection for Other Diseases and Disabilities

### Overview

**In this Section** This section contains the following topics:

<b>Topic</b>	<b>Topic Name</b>	<b>See Page</b>
26	Developing Claims for Service Connection for Positive Tuberculin Reactions	1-H-2
27	Developing Claims for Service Connection for Chronic or Tropical Diseases	1-H-4
28	Developing Claims for Service Connection for Disabilities Resulting From Exposure to Herbicides Containing 2, 3, 7, 8 Tetrachlorodibenzo-P-Dioxin (TCDD) During Service in the Republic of Vietnam (RVN)	1-H-7
29	Developing Claims for Service Connection for Asbestos-Related Diseases	1-H-12
30	Developing Claims for Service Connection for Acquired Immune Deficiency Syndrome (AIDS)	1-H-14

## 26. Developing Claims for Service Connection for Positive Tuberculin Reactions

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**Introduction** This topic contains information on developing claims for service connection for positive tuberculin reactions. It includes information on the

- action to take on a claim for service connection for a
  - positive tuberculin reaction only, or
  - positive tuberculin reaction and other disabilities, and
- the reporting responsibilities of the Department of Veterans Affairs (VA) outpatient clinics and VA medical centers (VAMCs).

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**Change Date** September 5, 2008

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**a. Action to Take on a Claim for Service Connection for a Positive Tuberculin Reaction Only** If *VA Form 21-526, Veteran's Application for Compensation and/or Pension*, is received claiming *only* a positive tuberculin reaction, refer the claim to the rating activity for a determination as to whether or not a disability is present.

**Reference:** For more information on claims for service connection for a positive tuberculin reaction, see [M21-1MR, Part III, Subpart v, 7.A.10](#).

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**b. Action to Take on a Claim for Service Connection for a Positive Tuberculin Reaction and Other Disabilities** If *VA Form 21-526* indicates that a positive tuberculin reaction is claimed together with other disabilities

- complete any appropriate development required for the other disabilities, and
- refer the file to the rating activity for rating of all the claimed disabilities.

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## 26. Developing Claims for Service Connection for Positive Tuberculin Reactions, Continued

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**c. Reporting Responsibilities of VA Outpatient Clinics and Medical Centers**

As provided in [M21-1MR, Part III, Subpart v, 7.A.10](#), a Department of Veterans Affairs (VA) outpatient clinic or VA medical center (VAMC) will furnish a report of the follow-up examination made at the expiration of the 12-month period of chemotherapy for discharged personnel who have had a tuberculin test conversion from negative to positive during service.

Refer the file to the rating activity if a VA outpatient clinic or VAMC report or any other evidence indicates the presence of tuberculous disease.

The rating activity will consider establishing service connection by way of presumption under [38 CFR 3.307](#) and [M21-1MR, Part IV, Subpart ii, 1.H.27.d](#).

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## 27. Developing Claims for Service Connection for Chronic or Tropical Diseases

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**Introduction** This topic contains information on developing claims for service connection for chronic or tropical diseases. It includes information on

- the definition of a *chronic disease*
  - establishing whether a disease is chronic
  - considering
    - service connection for a chronic or tropical disease, and
    - presumptive service connection
  - the locations of lists of chronic and tropical diseases, and
  - the action to take if a disease was
    - treated in service, or
    - not treated in service.
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**Change Date** December 13, 2005

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**a. Definition:  
Chronic  
Disease**

A *chronic disease* is a disease

- of prolonged duration, producing incapacitating symptoms of varying degree
  - that may undergo remission, and
  - that is seldom entirely cured with all residuals of damage being completely eradicated.
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**b. Establishing  
Whether a  
Disease Is  
Chronic**

If a diagnosis is prefaced with the word “chronic,” that does *not* necessarily establish the disease as chronic.

**Important:** Whether a disease is chronic is a matter for a factual determination dependent on the nature of the disease and its manifestations. Some diseases are inherently chronic, such as multiple sclerosis, while others, such as bronchitis, may be either acute or chronic.

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## 27. Developing Claims for Service Connection for Chronic or Tropical Diseases, Continued

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**c. Considering Service Connection for a Chronic or Tropical Disease**

When deciding any claim for service connection for a chronic or tropical disease, it is also necessary to consider

- service connection based on manifestation of the claimed disease during service, and
  - service connection based on a presumption that the disease, which was first manifested following discharge from service, is nevertheless related to service.
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**d. Considering Presumptive Service Connection**

Once a substantially complete claim is of record, the following conditions apply:

- the possibility of entitlement to presumptive service connection exists when the veteran alleges inception within the limiting periods contained in
    - [38 U.S.C. 1112](#), or
    - [38 U.S.C. 1133](#), when appropriate
  - the veteran does not need to establish that the disease in question was definitely diagnosed within the presumptive period, and
  - the evidence should show that manifestations of the condition, disabling to the degree of at least 10 percent, became apparent prior to the expiration of the presumptive period shown in [38 CFR 3.307](#).
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**e. Locations of Lists of Chronic and Tropical Diseases**

The conditions listed in

- [38 U.S.C. 1101\(3\)](#) and [38 CFR 3.309\(a\)](#) are chronic diseases, and
  - [38 U.S.C. 1101\(4\)](#) and [38 CFR 3.309\(b\)](#) are tropical diseases.
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**f. Action to Take if a Condition Was Treated in Service**

If service records show the veteran was treated for a chronic or tropical disease, refer the case to the rating activity.

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## 27. Developing Claims for Service Connection for Chronic or Tropical Diseases, Continued

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**g. Action to  
Take If a  
Disease Was  
Not Treated in  
Service**

Even though certain chronic and tropical diseases were not treated during service, service connection may still be established on a presumptive basis under the provisions of

- [38 U.S.C. 1112](#)
- [38 U.S.C. 1133](#), or
- [38 U.S.C. 1137](#).

*Reference:* For information on the diseases for which service connection may be established on a presumptive basis and the service requirements that must be met, see [38 CFR 3.307](#).

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## 28. Developing Claims for Service Connection for Disabilities Resulting From Exposure to Herbicides Containing 2, 3, 7, 8 Tetrachlorodibenzo-P-Dioxin (TCDD) During Service in the Republic of Vietnam (RVN)

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<b>Introduction</b>	<p>This topic contains information on developing claims for service connection for disabilities resulting from exposure to 2, 3, 7, 8 Tetrachlorodibenzo-P-Dioxin (TCDD) during service in the Republic of Vietnam (RVN). It includes information on</p> <ul style="list-style-type: none"> <li>• the definition of <i>service in the RVN</i></li> <li>• the time period during which exposure may be presumed</li> <li>• considering <ul style="list-style-type: none"> <li>– qualifying length of service, and</li> <li>– proof of service in the RVN</li> </ul> </li> <li>• the diseases for which service connection may be presumed under the Agent Orange Act of 1991</li> <li>• initial correspondence with the veteran</li> <li>• the action to take when no disability is claimed, and</li> <li>• considering claims for birth defects.</li> </ul>
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<b>Change Date</b>	September 5, 2008
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<b>a. Definition: Service in the RVN</b>	<p>For the purposes of establishing service connection under <a href="#">38 CFR 3.307(a)(6)</a> and <a href="#">38 CFR 3.309(e)</a>, <i>service in the Republic of Vietnam</i> (RVN) means</p> <ul style="list-style-type: none"> <li>• service in the RVN or its inland waterways, or</li> <li>• service in other locations if the conditions of service involved duty or visitation in the RVN.</li> </ul> <p><b>References:</b> For</p> <ul style="list-style-type: none"> <li>• more information on the definition of service in the RVN, see <a href="#">VAOPGCPREC 27-97</a></li> <li>• information on exposure to herbicides along the demilitarized zone in Korea, see <a href="#">M21-1MR, Part IV, Subpart ii, 2.C.10.1.</a></li> </ul>

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## 28. Developing Claims for Service Connection for Disabilities Resulting From Exposure to Herbicides Containing 2, 3, 7, 8 Tetrachlorodibenzo-P-Dioxin (TCDD) During Service in the Republic of Vietnam (RVN), Continued

**b. Time Period During Which Exposure May Be Presumed** *Public Law (PL) 104-275 (38 U.S.C. 1116)* provides that effective January 1, 1997, the time period during which exposure to herbicides in the RVN may be presumed is January 9, 1962, to May 7, 1975.

*Notes:*

- Qualifying skin conditions *must* have become manifest to a degree of 10 percent or more within one year of the last date of service within the RVN.
- 2, 3, 7, 8 Tetrachlorodibenzo-P-Dioxin (TCDD) is a herbicide commonly referred to as “Agent Orange.”

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**c. Considering Qualifying Length of Service**

There is no requirement for a specified length of service, duty, or visitation in the RVN under [38 CFR 3.313](#).

**Rationale:** Even a few hours in the RVN during the Vietnam era may be sufficient to establish service connection for subsequently developed diseases based on a presumption of exposure to herbicides.

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**d. Considering Proof of Service in the RVN**

If the claimant alleges service in the RVN, review the *DD Form 214*, *Certificate of Release or Discharge from Active Duty*, or other evidence in the claims folder to confirm such service.

If necessary

- submit a request for verification through PIES, using request code O34, and
- ask the claimant to submit evidence, including “buddy statements,” to confirm service in Vietnam.

**Important:** A claim may not be denied solely because service in the RVN cannot be verified

- until the end of the initial 30-day and 30-day follow-up response periods, and/or
- (in cases where Federal records are needed to verify service in the RVN) until the requested Federal records are received or a formal response is received that the records are unavailable.

**Reference:** For information on verifying service on a ship in the waters offshore of the RVN, see [M21-1MR, Part III, Subpart iii, 2.E.33.c](#).

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## 28. Developing Claims for Service Connection for Disabilities Resulting From Exposure to Herbicides Containing 2, 3, 7, 8 Tetrachlorodibenzo-P-Dioxin (TCDD) During Service in the Republic of Vietnam (RVN), Continued

### e. Diseases for Which Service Connection May Be Presumed Under the Agent Orange Act of 1991

The Agent Orange Act of 1991, *PL 102-4*, established a presumption of service connection for veterans with service in the RVN during the Vietnam era who subsequently develop, to a degree of 10 percent or more

- Hodgkin's disease
- multiple myeloma
- non-Hodgkin's lymphoma (NHL)
- acute and subacute peripheral neuropathy
- porphyria cutanea tarda
- prostate cancer
- respiratory cancers, such as cancers of the
  - lung
  - bronchus
  - larynx, or
  - trachea
- soft-tissue sarcoma
- chloracne or other acneiform disease consistent with chloracne
- type 2 diabetes mellitus, and
- chronic lymphocytic leukemia.

*Note:* Under [38 CFR 3.313](#), a regulation not based on exposure to herbicides, service in the RVN, in its inland waterways, or in the waters offshore, together with the development of NHL after service, is sufficient to establish service connection. NHL does *not* have to be at least 10 percent disabling. Entitlement under [38 CFR 3.313](#), *unlike entitlement under 38 CFR 3.307(a)(6)*, does not require service on land in the RVN or in its inland waterways.

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## 28. Developing Claims for Service Connection for Disabilities Resulting From Exposure to Herbicides Containing 2, 3, 7, 8 Tetrachlorodibenzo-P-Dioxin (TCDD) During Service in the Republic of Vietnam (RVN), Continued

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### f. Initial Correspondence With the Veteran

When initially corresponding with a veteran claiming disability resulting from exposure to herbicides while in the RVN

- inform the veteran of the availability of hospital examinations and treatment, or
- if the veteran has already had the herbicide examination or been treated for herbicide exposure, request that the veteran submit
  - a copy of the examination or treatment report, or
  - the name of the VA facility performing the examination or treatment so that the regional office (RO) may obtain a copy of the report.

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### g. Action to Take When No Disability Is Claimed

A claim is not substantially complete if a veteran alleges exposure to herbicides during service, but does not claim service connection for a specific disability. In cases such as this

- inform the veteran that he/she *must* identify a specific disability, since exposure in and of itself is not a disability, and
- ask the veteran to identify the disability(ies) that resulted from exposure to herbicides during service.

#### ***Important:***

- Do not
  - process the claim as a denial, or
  - establish end product (EP) control for the incomplete claim.
- Whenever possible, telephone the veteran to obtain the information needed to substantiate the claim.

***Reference:*** For more information on what constitutes a substantially complete application, see

- [38 CFR 3.159\(a\)\(3\)](#), and
- [M21-1MR, Part I, 1.B.3.a.](#)

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## 28. Developing Claims for Service Connection for Disabilities Resulting From Exposure to Herbicides Containing 2, 3, 7, 8 Tetrachlorodibenzo-P-Dioxin (TCDD) During Service in the Republic of Vietnam (RVN), Continued

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### h. Considering Claims for Benefits Based on Birth Defects

#### Claims for

- benefits for a child suffering from spina bifida and other birth defects are discussed in [M21-1MR, Part VI](#), and
- additional benefits for female Vietnam veterans due to certain birth defects of a natural child have been authorized under *PL 106-419*.

**Important:** The law limits the birth defects for which VA may pay benefits. Deny claims for compensation for the following on the basis that it is not authorized by law:

- birth defects resulting from a familial disorder
- a birth-related injury, or
- a fetal or neonatal infirmity, with well-established, unrelated causes.

**Reference:** For more information on claims for benefits for birth defects from children of Vietnam veterans, see

- [M21-1MR, Part VI](#)
  - [38 CFR 3.814](#)
  - [38 CFR 3.815](#), and
  - [38 U.S.C. Chapter 18](#).
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## 29. Developing Claims for Service Connection for Asbestos-Related Diseases

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**Introduction** This topic contains information on developing claims for service connection for asbestos-related diseases, including information on

- considering the latent period and type of asbestos exposure
  - the responsibilities of the rating activity, and
  - the action to take when no disability is claimed.
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**Change Date** September 29, 2006

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**a. Considering the Latent Period and Type of Asbestos Exposure** Many people with asbestos-related diseases have only recently come to medical attention because the latent period varies from 10 to 45 or more years between the first exposure and development of a disease.

*Note:* The exposure may have been direct or indirect; the extent and duration of exposure is not a factor.

*Reference:* For more information on asbestos-related diseases, see [M21-1MR, IV, Subpart ii, 2.C.9.](#)

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**b. Responsibilities of the Rating Activity** The rating activity is responsible for

- determining whether or not the evidence of record confirms the veteran was exposed to asbestos during service, and
- ensuring that development is accomplished to determine whether the veteran was exposed to asbestos (as a result of his/her occupation, for example) before or after service.

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## 29. Developing Claims for Service Connection for Asbestos-Related Diseases, Continued

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### c. Action to Take When No Disability Is Claimed

A claim is not substantially complete if a veteran alleges exposure to asbestos during service, but does not claim service connection for a specific disability. In cases such as this

- inform the veteran that exposure, in and of itself, is not a disability, and
- ask the veteran to identify the disability(ies) that resulted from exposure to asbestos during service.

#### ***Important:***

- Do not
  - process the claim as a denial, or
  - establish end product (EP) control for the incomplete claim.
- Whenever possible, telephone the veteran to obtain the information needed to substantiate the claim.

***Reference:*** For more information on what constitutes a substantially complete application, see

- [38 CFR 3.159\(a\)\(3\)](#), and
  - [M21-1MR, Part I, 1.B.3.a.](#)
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### 30. Developing Claims for Service Connection for Acquired Immune Deficiency Syndrome (AIDS)

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**Introduction** This topic contains information on developing claims for service connection for acquired immune deficiency syndrome (AIDS). It includes information on

- the definition of *AIDS*
- the causative agent of AIDS
- the tests available to verify AIDS
- obtaining medical records, and
- when to send the claim to the rating activity.

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**Change Date** September 5, 2008

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**a. Definition: AIDS** *Acquired immune deficiency syndrome (AIDS)* is defined by the Centers for Disease Control (CDC) as “a disease at least moderately predictive of a defect in cell-mediated immunity occurring in a person with no known cause for diminished resistance to that disease.”

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**b. Causative Agent of AIDS** AIDS is caused by the human immunodeficiency virus (HIV).

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**c. Tests Available to Verify AIDS** The most commonly used lab test for AIDS is the HIV antibody test.  
The following two HIV antibody tests are available:

- the screening enzyme-linked immunosorbent assay (ELISA) test, and
- the confirmatory Western Blot test.

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### 30. Developing Claims for Service Connection for Acquired Immune Deficiency Syndrome (AIDS), Continued

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**d. Obtaining Medical Records**

Request

- service treatment records (STRs) if they are not in the claims folder, and
- records of treatment from a VAMC or VA outpatient clinic, if the veteran indicates that he/she received treatment at one of these facilities.

Send the veteran *VA Form 21-4142, Authorization and Consent to Release Information to the Department of Veterans Affairs (VA)*, if he/she

- reports treatment by a private hospital or physician, but
  - does not furnish the treatment records.
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**e. When to Send the Claim to the Rating Activity**

If a substantially complete claim exists, send the claim to the rating activity.

**Reference:** For information on what constitutes a substantially complete claim, see

- [M21-1MR, Part I, 1.B.3.a](#), and
  - [38 CFR 3.159\(a\)\(3\)](#).
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