



# Recent Developments Regarding the Presumption of Exposure to Agent Orange



# Background

- During the Vietnam War, Agent Orange was sprayed by C-123 Provider Aircraft as part of Operation Ranch Hand.
- After spraying operations ended, between 1972 and 1982, these aircraft were used for routine cargo and medical evacuation missions.
- Approximately 1,500-2,100 Air Force Reservists trained and worked on these aircraft during this period.



# Background

- In January 2015, the IOM released a report finding that:
  - C-123s that sprayed Agent Orange continued to have Agent Orange residue on their interior surfaces years after returning to the U.S.
  - Air Force Reservists would have been exposed to Agent Orange residue when working inside the aircraft, and some of them “quite likely experienced non-trivial increases in their risks of adverse health outcomes.”



# VA's New Rule

- On June 19, 2015, VA updated its Agent Orange rules based on the IOM's findings.
  - VA determined that this exposure may have occurred during a longer period than initially identified by the IOM—1969 through 1986.
  - VA also found that some active duty Air Force personnel, in addition to Reservists, may have been exposed.



# VA's New Rule

- VA now presumes that a person who served in the Air Force or Air Force Reserve and “regularly and repeatedly operated, maintained, or served onboard C-123 aircraft known to have been used to spray an herbicide agent during the Vietnam era” was exposed to Agent Orange.



# Who Qualifies?

The individual must have:

1. Been assigned to an Air Force or Air Force Reserve squadron when the squadron was permanently assigned one of the affected aircraft, AND
2. Had an Air Force Specialty Code (AFSC) indicating duties as a flight, ground maintenance, or medical crew member on one of these aircraft.

# Qualifying Reserve Units

- **Pittsburgh International Airport, Pennsylvania, USAF Reserve Station**
- Dates: 1972-1982
  - 758th Airlift Squadron
  - 911th Aeromedical Evacuation Squadron
  - 911th Aircraft Maintenance Squadron
- **Westover AFB (Westover Air Reserve Base) and Hanscom Field AFB, Massachusetts**
- Dates: 1972-1982
  - 731st Tactical Airlift Squadron
  - 74th Aeromedical Evacuation Squadron
  - 901st Organizational Maintenance Squadron
- **Lockbourne/Rickenbacker AFB, Ohio (USAF Reserves, Rickenbacker Air National Guard Base)**
- Dates: 1969-1986
  - 355th Tactical Airlift Squadron
  - 356th Tactical Airlift Squadron
  - 4413th Combat Crew Tactical Wing [Ferry Flights]

# Qualifying Active Duty Units (U.S.)

- **Hurlburt Auxiliary Field, Eglin AFB, Florida**
- Dates: 1970-1973
  - 1st Special Operations Wing
  - 4410th Combat Crew Tactical Wing [Ferry Flights]
- **Langley AFB, Virginia**
- Dates: 1970-1973
  - 4500th Air Base Wing [Aerial Spray Flights]
- **Luke AFB, Arizona**
- Dates: 1970-1973
  - 56th Air Base Wing



# Qualifying Active Duty Units (Overseas)

- **Tainan Air Field, Taiwan**
- Dates: 1969-1970
  - 309th Special Operations Squadron
  - 310th Special Operations Squadron
- **Howard AFB, Panama**
- Dates: 1970-1973
  - 24th Special Operations Wing

# Qualifying Active Duty Units (Overseas)

- **Osan Air Base, South Korea**
- Dates: 1970-1973
  - 51st Air Base Wing
- **Clark AFB, Philippines**
- Dates: 1969-1970
  - 405th Fighter Wing

# Qualifying Air Force Specialty Codes

- **Officer AFSCs**
  - Pilot/Copilot, Transport and Tactical Airlift: 1043-1055
  - Flight Nurse: 9761-9766
- **Enlisted AFSCs**
  - Flight Engineer/Aircraft Loadmaster: 1130-1149
  - Aircrew Life Support Specialist: 1220-1229
  - Aircraft Maintenance Specialist / Flight Technicians: 4313-4359



## Claim Advice

- On the VA claim form, annotate “(C-123)” immediately after listing any disability claimed as being caused by Agent Orange exposure.
- Include with the claim form:
  - Discharge, separation papers, (DD Form 214 or equivalent)
  - USAF Form 2096 (unit where assigned at the time of the training action)
  - USAF Form 5 (aircraft flight duties)
  - USAF Form 781 (aircraft maintenance duties)
  - Dependency records (marriage cert., birth cert.)
  - Medical evidence

# “Veteran” Status / Presumptive SC

- People do not generally qualify for presumptions of service connection based on periods of active duty for training and inactive duty training.
- VA made an exception for people exposed to Agent Orange while working on C-123s.

# “Veteran” Status / Presumptive SC

- If exposure occurred during active duty for training or inactive duty training, the exposure constitutes an injury for purposes of establishing “veteran” status.
- If the exposed veteran develops a disease VA recognizes as presumptively caused by Agent Orange, VA will presume the person became disabled during that period of service, which VA will consider to be “active” service.



# Effective Dates for Benefits

- VA has no published guidance on effective dates related to C-123 claims.
- VA's Compensation Office has verbally informed NVLSP how effective dates will be assigned.



# Effective Date for Benefits

- For claims pending on 6/19/2015:
  - If veteran was on active duty: **Date of claim.** (effective date can predate date of regulation)
  - If veteran was on active duty for training or inactive duty training: **6/19/2015.**
  - If veteran was on active duty for training or inactive duty training, but had previously established “veteran” status based on the period of service when exposed: **Date of claim** (effective date can predate date of regulation).



# Effective Dates for Benefits

- If claim filed 6/19/2015 to 6/19/2016, and veteran had disease on 6/19/2015: **6/19/2015.**
- If claim filed after 6/19/2016, and veteran had disease on 6/19/2015: **1 year prior to date of claim.**
- If claim filed after 6/19/2015, but veteran did not have disease until after 6/19/2015: **Date of claim.**



# Additional Information

- These rules apply to claims pending with the VA on or after June 19, 2015.
- All claims are processed at the St. Paul, MN, VARO.
- It is not expected that these new rules will affect a large number of veterans.

# Authorities

- Presumption of Herbicide Exposure and Presumption of Disability During Service For Reservists Presumed Exposed to Herbicide, 80 Fed. Reg. 35,246 (June 19, 2015) (Interim Final Rule).
- 38 C.F.R. § 3.307(a)(6)(v) (2015).
- Institute of Medicine of the National Academies, Post-Vietnam Dioxin Exposure in Agent Orange-Contaminated C-123 Aircraft (2015).
- Institute of Medicine of the National Academies, Post-Vietnam Dioxin Exposure in Agent Orange-Contaminated C-123 Aircraft, Key Findings (2015), <http://www.iom.edu/~media/Files/Report%20Files/2015/C-123/C-123%20findings.pdf>
- U.S. Department of Veterans Affairs, *Agent Orange Residue on Post-Vietnam War Airplanes*, <http://www.publichealth.va.gov/exposures/agentorange/locations/residue-c123-aircraft/index.asp>.



# Questions?