to the required degree, followed without unreasonable time lapse by definite
diagnosis. Symptomatology shown in the prescribed period may have no par-
ticular significance when first observed, but in the light of subsequent
developments it may gain considerable significance. Cases in which a chronic
condition is shown to exist within a short time following the applicable presump-
tive period, but without evidence of manifestations within the pe-
riod, should be developed to determine whether there was symptomatology
which in retrospect may be identified and evaluated as manifestation of the
chronic disease to the required 10-per-
cent degree.

(d) Rebuttal of service incurrence or ag-
gravation. (1) Evidence which may be
considered in rebuttal of service incurrence
of a disease listed in §3.309 will be any evidence of a nature usually ac-
cepted as competent to indicate the
time of existence or inception of dis-
 ease, and medical judgment will be ex-
ercised in making determinations rel-
ative to the effect of intercurrent in-
jury or disease. The expression “af-
firmative evidence to the contrary”
will not be taken to require a conclu-
sive showing, but such showing as
would, in sound medical reasoning and
in the consideration of all evidence of
record, support a conclusion that the
disease was not incurred in service. As
to tropical diseases the fact that the
veteran had no service in a locality
having a high incidence of the disease
may be considered as evidence to rebut
the presumption, as may residence dur-
ing the period in question in a region
where the particular disease is en-
demic. The known incubation periods
of tropical diseases should be used as a
factor in rebuttal of presumptive serv-
ice connection as showing inception be-
fore or after service.

(2) The presumption of aggravation
provided in this section may be rebut-
ted by affirmative evidence that the
preexisting condition was not aggra-
vated by service, which may include af-
firmative evidence that any increase in
disability was due to an intercurrent
disease or injury suffered after separa-
tion from service or evidence suffi-
cient, under §3.306 of this part, to show
that the increase in disability was due
to the natural progress of the pre-
existing condition.

(Authority: 38 U.S.C 1113 and 1153)

§3.309 Disease subject to presumptive
service connection; peacetime service before Janu-
ary 1, 1947.

(a) Chronic disease. There is no provi-
sion for presumptive service connection
for chronic disease as distin-
guished from tropical diseases referred
to in paragraph (b) of this section
based on peacetime service before January 1, 1947.

(b) Tropical disease. In claims based
on peacetime service before January 1,
1947, a veteran of 6 months or more
service who contracts a tropical dis-
ease listed in §3.309(b) or a resultant
disorder or disease originating because
of therapy administered in connection
with a tropical disease or as a prevent-
ative, will be considered to have in-
curred such disability in service when
it is shown to exist to the degree of 10
percent or more within 1 year after
separation from active service, or at a
time when standard and accepted trea-
tises indicate that the incubation pe-
riod commenced during active service.

(Authority: 38 U.S.C. 1133)

§3.308 Presumptive service connec-
tion; peacetime service before Janu-
ary 1, 1947.

38 CFR Ch. I (7–1–14 Edition)
26 FR 1581, Feb. 24, 1961, as amended at 35
FR 18281, Dec. 1, 1970; 39 FR 34530, Sept. 26,
1974; 43 FR 45347, Oct. 2, 1978; 47 FR 11655,
Mar. 18, 1982; 58 FR 29109, May 19, 1993; 59 FR
5106, Feb. 3, 1994; 59 FR 29724, June 9, 1994; 61
FR 57586, Nov. 7, 1996; 62 FR 35422, July 1,
1997; 67 FR 67793, Nov. 7, 2002; 68 FR 34541,
June 10, 2003; 76 FR 4248, Jan. 25, 2011; 78 FR
54766, Sept. 6, 2013]
service on or after January 1, 1947, provided the rebuttable presumption provisions of §3.307 are also satisfied.

Anemia, primary.
Arteriosclerosis.
Arthritis.
Atrophy, progressive muscular.
Brain hemorrhage.
Brain thrombosis.
Bronchiectasis.
Calculi of the kidney, bladder, or gall-bladder.
Cardiovascular-renal disease, including hypertension. (This term applies to combination involvement of the type of arteriosclerosis, nephritis, and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the 1-year period will be given the same benefit of service connection as any of the chronic diseases listed.)

Cirrhosis of the liver.
Coccidioidomycosis.
Diabetes mellitus.
Encephalitis lethargica residuals.
Endocarditis. (This term covers all forms of valvular heart disease.)
Endocrinopathies.
Epilepsies.
Hansen’s disease.
Hodgkin’s disease.
Leukemia.
Lupus erythematosus, systemic.
Myasthenia gravis.
Myelitis.
Myocarditis.
Nephritis.
Other organic diseases of the nervous system.
Osteitis deformans (Paget’s disease).
Osteomalacia.
Palay, bulbar.
Paralysis agitans.
Psychoses.
Purpura idiopathic, hemorrhagic.
Raynaud’s disease.
Sarcoidosis.
Scleroderma.
Sclerosis, amyotrophic lateral.
Sclerosis, multiple.
Syringomyelia.
Thromboangiitis obliterans (Buerger’s disease).
Tuberculosis, active.
Tumors, malignant, or of the brain or spinal cord or peripheral nerves.
Ulcers, peptic (gastric or duodenal) (A proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an adequate basis for a differential diagnosis from other conditions with like symptomatology: in short, where the preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroborating the clinical data.

(b) Tropical diseases. The following diseases shall be granted service connection as a result of tropical service, although not otherwise established as incurred in service if manifested to a compensable degree within the applicable time limits under §3.307 or §3.308 following service in a period of war or following peacetime service, provided the rebuttable presumption provisions of §3.307 are also satisfied.

Amebiasis.
Blackwater fever.
Cholera.
Dracunculiasis.
Dysentery.
Filaria.
Leishmaniasis, including kala-azar.
Loiasis.
Malaria.
Onchocerciasis.
Oroya fever.
Pinta.
Plague.
Schistosomiasis.
Yaws.
Yellow fever.
Resultant disorders or diseases originating because of therapy administered in connection with such diseases or as a preventative thereof.

(c) Diseases specific as to former prisoners of war. (1) If a veteran is a former prisoner of war, the following diseases shall be service connected if manifested to a degree of disability of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of §3.307 are also satisfied.

Psychosis.
Any of the anxiety states.
Dysthymic disorder (or depressive neurosis).
Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite.
Post-traumatic osteoarthritis.
Atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure, arrhythmia). Stroke and its complications.

On or after October 10, 2008, Osteoporosis, if the Secretary determines that the veteran has posttraumatic stress disorder (PTSD).

(2) If the veteran:
   (i) Is a former prisoner of war and;
   (ii) Was interned or detained for not less than 30 days, the following diseases shall be service connected if manifest to a degree of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of § 3.307 are also satisfied.

   Avitaminosis.
   Beriberi (including beriberi heart disease).
   Chronic dysentery.
   Helminthiasis.
   Malnutrition (including optic atrophy associated with malnutrition).
   Pellagra.
   Any other nutritional deficiency.
   Irritable bowel syndrome.
   Peptic ulcer disease.
   Peripheral neuropathy except where directly related to infectious causes.
   Cirrhosis of the liver.

On or after September 28, 2009, Osteoporosis.

(Authority: 38 U.S.C. 1112(b))

(d) Diseases specific to radiation-exposed veterans. (1) The diseases listed in paragraph (d)(2) of this section shall be service-connected if they become manifest in a radiation-exposed veteran as defined in paragraph (d)(3) of this section, provided the rebuttable presumption provisions of § 3.307 of this part are also satisfied.

(2) The diseases referred to in paragraph (d)(1) of this section are the following:
   (i) Leukemia (other than chronic lymphocytic leukemia).
   (ii) Cancer of the thyroid.
   (iii) Cancer of the breast.
   (iv) Cancer of the pharynx.
   (v) Cancer of the esophagus.
   (vi) Cancer of the stomach.
   (vii) Cancer of the small intestine.
   (viii) Cancer of the pancreas.
   (ix) Multiple myeloma.
   (x) Lymphomas (except Hodgkin’s disease).
   (xi) Cancer of the bile ducts.
   (xii) Cancer of the gall bladder.
   (xiii) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).
   (xiv) Cancer of the salivary gland.
   (xv) Cancer of the urinary tract.
   (xvi) Bronchiolo-alveolar carcinoma.
   (xvii) Cancer of the bone.
   (xviii) Cancer of the brain.
   (xix) Cancer of the colon.
   (xx) Cancer of the lung.
   (xxi) Cancer of the ovary.

(Authority: 38 U.S.C. 1112(c)(2))

(3) For purposes of this section:
   (i) The term radiation-exposed veteran means either a veteran who while serving on active duty, or an individual who while a member of a reserve component of the Armed Forces during a period of active duty for training or inactive duty training, participated in a radiation-risk activity.

   (ii) The term radiation-risk activity means:

   (A) Onsite participation in a test involving the atmospheric detonation of a nuclear device.

   (B) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.

   (C) Internment as a prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II which resulted in an opportunity for exposure to ionizing radiation comparable to that of the United States occupation forces in Hiroshima or Nagasaki, Japan, during the period beginning on August 6, 1945, and ending on July 1, 1946.

   (D) Internment as a prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II which resulted in an opportunity for exposure to ionizing radiation comparable to that of the United States occupation forces in Hiroshima or Nagasaki, Japan, during the period beginning on August 6, 1945, and ending on July 1, 1946.

   (D)(i) Service in which the service member was, as part of his or her official military duties, present during a total of at least 250 days before February 1, 1992, on the grounds of a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or the area identified as K25 at Oak Ridge, Tennessee, if, during such service the veteran:

   (i) Was monitored for each of the 250 days of such service through the use of
dosimetry badges for exposure at the plant of the external parts of veteran’s body to radiation; or
(ii) Served for each of the 250 days of such service in a position that had exposures comparable to a job that is or was monitored through the use of dosimetry badges; or
(2) Service before January 1, 1974, on Amchitka Island, Alaska, if, during such service, the veteran was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.
(3) For purposes of paragraph (d)(3)(ii)(D) of this section, the term “day” refers to all or any portion of a calendar day.
(E) Service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384(l)(14)).
(iii) The term atmospheric detonation includes underwater nuclear detonations.
(iv) The term onsite participation means:
(A) During the official operational period of an atmospheric nuclear test, presence at the test site, or performance of official military duties in connection with ships, aircraft or other equipment used in direct support of the nuclear test.
(B) During the six month period following the official operational period of an atmospheric nuclear test, presence at the test site or other test staging area to perform official military duties in connection with completion of projects related to the nuclear test including decontamination of equipment used during the nuclear test.
(C) Service as a member of the garrison or maintenance forces on Eniwetok during the periods June 21, 1951, through July 1, 1952, August 7, 1956, through August 7, 1957, or November 1, 1958, through April 30, 1959.
(D) Assignment to official military duties at Naval Shipyards involving the decontamination of ships that participated in Operation Crossroads.
(v) For tests conducted by the United States, the term operational period means:
(A) For Operation TRINITY the period July 16, 1945 through August 6, 1945.
(B) For Operation CROSSROADS the period July 1, 1946 through August 31, 1946.
(C) For Operation SANDBOY the period April 15, 1948 through May 20, 1948.
(D) For Operation RANGER the period January 27, 1951 through February 6, 1951.
(E) For Operation GREENHOUSE the period April 8, 1951 through June 20, 1951.
(F) For Operation BUSTER-JANGLE the period October 22, 1951 through December 20, 1951.
(G) For Operation TUMBLER-SNAPPER the period April 1, 1952 through June 20, 1952.
(H) For Operation IVY the period November 1, 1952 through December 31, 1952.
(I) For Operation UPSHOT-KNOT-HOLE the period March 17, 1953 through June 20, 1953.
(J) For Operation CASTLE the period March 1, 1954 through May 31, 1954.
(K) For Operation TEAPOT the period February 18, 1955 through June 10, 1955.
(L) For Operation WIGWAM the period May 14, 1955 through May 15, 1955.
(M) For Operation REDWING the period May 5, 1956 through August 6, 1956.
(N) For Operation PLUMBOB the period May 28, 1957 through October 22, 1957.
(O) For Operation IVY the period November 1, 1952 through December 31, 1952.
(P) For Operation CASTLE the period March 1, 1954 through May 31, 1954.
(Q) For Operation TEAPOT the period February 18, 1955 through June 10, 1955.
(R) For Operation WIGWAM the period May 14, 1955 through May 15, 1955.
(S) For Operation REDWING the period May 5, 1956 through August 6, 1956.
(T) For Operation PLUMBOB the period May 28, 1957 through October 22, 1957.
(vi) The term “occupation of Hiroshima or Nagasaki, Japan, by United States forces” means official military
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duties within 10 miles of the city limits of either Hiroshima or Nagasaki, Japan, which were required to perform or support military occupation functions such as occupation of territory, control of the population, stabilization of the government, demilitarization of the Japanese military, rehabilitation of the infrastructure or deactivation and conversion of war plants or materials.

(vii) Former prisoners of war who had an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in the occupation of Hiroshima or Nagasaki, Japan, by United States forces shall include those who, at any time during the period August 6, 1945, through July 1, 1946:

(A) Were interned within 75 miles of the city limits of Hiroshima or within 150 miles of the city limits of Nagasaki, or

(B) Can affirmatively show they worked within the areas set forth in paragraph (d)(3)(vii)(A) of this section although not interned within those areas, or

(C) Served immediately following internment in a capacity which satisfies the definition in paragraph (d)(3)(vi) of this section, or

(D) Were repatriated through the port of Nagasaki.

(Authority: 38 U.S.C. 1110, 1112, 1131)

(e) Disease associated with exposure to certain herbicide agents. If a veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service-connected if the requirements of §3.307(a)(6) are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of §3.307(d) are also satisfied.

AL amyloidosis
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
Ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable and Prinzmetal’s angina)
All chronic B-cell leukemias (including, but not limited to, hairy-cell leukemia and chronic lymphocytic leukemia)
Multiple myeloma
Non-Hodgkin’s lymphoma
Parkinson’s disease
Early-onset peripheral neuropathy
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 protuberosa
Malignant fibrous histiocytoma
Lipoosarcoma
Leiomyosarcoma
Epithelioid leiomyosarcoma (malignant leiomyoblastoma)
Rhabdomyosarcoma
Ectomesenchymoma
Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)
Proliferating angioendotheliomatosis (systemic)
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), and glial and epithelioid malignant schwannomas
Malignant mesenchymoma
Malignant granular cell tumor
Alveolar soft part sarcoma
Epithelioid sarcoma
Clear cell sarcoma of tendons and aponeuroses
Extraskelatal Ewing’s sarcoma
Congenital and infantile fibrosarcoma
Malignant ganglioneuroma

Note 2: For purposes of this section, the term ischemic heart disease does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke, or any other condition that does not qualify within the generally accepted medical definition of ischemic heart disease.

(Authority: 38 U.S.C. 501(a) and 1112(b))

[41 FR 55873, Dec. 23, 1976]

Editorial Note: For Federal Register citations affecting §3.309, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.