

The background of the slide is a stylized, slightly faded American flag with a wavy texture. The stars are white on a blue field, and the stripes are red and white.

# PACT Act Overview

---

VSO Conference

April 20, 2023

Sara Fahrnbruch



# Promise to Address Comprehensive Toxics

- The full name of the Act is the Public Law 117-168 Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022.



# Outline

- Impact of the PACT Act
- TERA
- Herbicides
- Gulf War/MUCMI
- BPOT Presumptives

The background of the image is a dark, textured American flag. The stars in the canton are a light, muted color, and the stripes are a dark red and a dark grey. A white, hand-drawn style border frames the entire image. Centered in the middle of the flag is the text "Impact of the PACT Act" in a white, sans-serif font. Below the text is a short, white, wavy horizontal line.

# Impact of the PACT Act

The top of the slide features a stylized American flag with stars on the left and stripes on the right. The title 'The PACT Act' is centered over this graphic in a dark blue, serif font.

# The PACT Act

- The PACT Act, is a new public law that expands VA healthcare and benefits for Veterans exposed to burn pits and other toxic substances.
- Signed into law on August 10, 2022

# The Impact of the PACT Act

- As a result of the PACT Act,
  - New procedures are required for non-presumptive claims based on toxic exposure
  - New presumptive conditions associated with herbicide exposure and locations associated with herbicide exposure have been expanded
  - Presumptive conditions based on exposure to burn pits and other toxins have been added
  - The definition of Persian Gulf Veteran has been expanded and existing presumptives have been amended, and
  - Locations associated with radiation exposure have been expanded

The image features a dark, textured American flag as a background. The flag's stars and stripes are visible but muted in color, appearing in shades of dark blue, grey, and dark red. The texture is grainy and slightly wrinkled. A white, hand-drawn style rectangular border frames the central portion of the flag. In the center of this frame, the word "TERA" is written in a clean, white, sans-serif font. Below the text, a thin, white, wavy horizontal line is drawn across the width of the text.

TERA

# TERA – General

- Toxic Exposure Risk Activity
  - Defined in 38 USC 1710(e)(4)
  - The statutory definition is extremely broad and requires claims processors to consider all evidence of record when determining if a Veteran was subject to a TERA and regardless of whether the Veteran specifically claims an exposure(s) as the basis of their claim.



# TERA – Non-Presumptive Disability

- Non-presumptive disability for the purposes of TERA refers to conditions for which service connection cannot be granted on a presumptive basis in the specific claim being worked.
- Reasons may include: ·
  - the condition is not listed on any presumptive list
  - presumptive exposure is not established
  - the condition is not compensable, when required, or
  - the condition did not manifest within the required time frame.

# TERA – General

- § 1168(a) directs that VA will provide an examination and medical opinion when
  - the Veteran
    - submits a claim for compensation and
    - has evidence of a disability, and
    - has evidence of participation in a TERA, and
  - such evidence is not sufficient to establish service connection for the disability.

# TERA – Claims identification

- TERA claims can be both explicit or implicit
- Explicit – Veteran claims disability as a result of toxic exposure on application or lay statement
- Implicit –
  - Evidence shows veteran served in a location associated with toxic exposure
  - Veteran’s military occupation is associated with toxic exposure
  - ILER or other military record shows participation in a TERA
  - A documented concession of exposure in a prior claim is shown
  - Medical records from Veterans Health Administration

# TERA – Exceptions

- 38 USC § 1168(b) provides that TERA examination requirements do not apply if the Secretary determines there is no indication of an association between the disability claimed by the Veteran and participation in the TERA.
  - Non-presumptive claims based on physical trauma.
  - Mental disorders
  - Conditions determined to have no positive association with herbicide exposure
  - Claims for disabilities that manifested during military service or with an etiology not associated with toxic exposure

# TERA – Exceptions

- Non-presumptive claims based on physical trauma.
  - Examples: blunt force trauma, trauma due to repetitive use, penetrating trauma, etc.
  - Claims for joint conditions will be assumed to be related to physical trauma unless there is competent medical or scientific evidence of record to the contrary.
  - Hearing loss is not considered a physical trauma

# TERA – Exceptions

- Mental disorders
  - This includes any condition contained in 38 CFR 4.130, the mental disorders section of the VA rating schedule

# TERA – Exceptions

- Conditions determined to have no positive association with herbicide exposure
  - These are conditions determined by the Secretary based on cumulative scientific data reported by the National Academies of Science since 1993.
  - Claims processors must still consider all evidence and complete the Toxic Exposure Risk Activity Memorandum as there may be a record of a different TERA (other than herbicides).

# TERA – Exceptions (Herbicide)

- Melanoma
- Nonmelanoma skin cancer (basal cell and squamous cell)
- Hepatobiliary cancer (liver, gallbladder and bile ducts) and pancreatic cancer
- Cancers of the pleura, mediastinum, and other unspecified sites within the respiratory system and infrathoracic organs
- Osteoporosis
- Farmer's lung
- Chronic obstructive pulmonary disease
- Circulatory disorders (other than hypertension, IHD and stroke)
- Disease of the eye
- Bone and connective tissue cancer
- Endocrine cancers (including thyroid and thymus)
- Cancers of the reproductive organs (cervix, uterus, ovary, testes and penis, excluding prostate)
- Cancers of the digestive organs (esophageal cancer; stomach cancer; colorectal cancer (including small intestine and anus))
- Asthma
- Hearing loss
- Neurobehavioral disorders
- Neurodegenerative disease (including ALS but excluding Parkinson's and Parkinsonism)
- Renal cancer (kidney and pelvis)
- Cancers of the brain and nervous system (including eye)
- leukemia (other than all chronic B-cell leukemias including chronic lymphocytic leukemia and hairy cell leukemia)
- Cancers of the oral cavity (including lips and tongue), pharynx (including tonsils), and nasal cavity (including ears and sinuses)
- Gastrointestinal, metabolic and digestive disorders
- Chronic peripheral nervous systems disorders (other than early-onset PN)
- Immune system disorders
- Endometriosis



# TERA – Exceptions

- Claims for disabilities that manifested during military service or with an etiology not associated with toxic exposure
  - This exception applies to conditions that manifested during service for which a medical nexus opinion would not be needed to decide service connection on a direct basis (evidence of chronicity or continuity is of record) and to claims where the evidence of record indicates that the claimed condition is clearly related to an etiology that is not associated with toxic exposure (to include post-service event).

Department of  
Veterans Affairs

# Memorandum

Claimant Name: [Redacted]

File Number: [Redacted]

Date: [Redacted]

SUBJ: Toxic Exposure Risk Activity (TERA) Memorandum

**Question 1. Does the Veteran qualify for a presumption of exposure(s) for one or more of the following hazards during military service?** (If Yes, provide details below.)

- No
- Yes, the Veteran was exposed to the following (select all that apply):
  - Herbicide Agent - 2,3,7,8 - Tetrachlorodibenzodioxin (TCDD)
  - Radiation - Ionizing
  - Mustard Gas - Nitrogen, Sulfur Mustard or Lewisite
  - Camp Lejeune Water Contamination - Perchloroethylene (PCE), trichloroethylene (TCE), vinyl chloride, benzene

Evidence of exposure (include the subject and date of receipt of the cited documents):

[Redacted]

**Question 2A. Is there an Individual Longitudinal Exposure Record (ILER) entry for the Veteran?** (If Yes, answer 2B and ensure that the *Individual Exposure Summary* is uploaded into VBMS.)

- No
- Yes

**Question 2B. Is there any evidence of exposure over permissible limits in the ILER report?** (If Yes, ensure that pertinent evidence is bookmarked or annotated in VBMS.)

- No
- Yes

**Question 3A. Does the Veteran's VBMS eFolder contain the *Persian Gulf War Service - Sec. 1117* flash and/or 1117 memo?** (If No, answer 3B as well.)

- No
- Yes

**Question 3B. Is there evidence of record verifying that the Veteran served in a 38 C.F.R. § 3.317(e)(2) and/or Sec. 1117 location?** (If Yes, provide details below.)

- No
- Yes

Evidence of service in a 38 C.F.R. § 3.317(e)(2) and/or Sec. 1117 location (include the subject and date of receipt of the cited documents):

[Redacted]

**Question 4A. Does the Veteran's VBMS eFolder contain the *Toxic Exposure - Sec. 1119 Covered* Veteran flash and/or 1119 memo?** (If No, answer 4B as well.)

- No
- Yes

**Question 4B. Is there evidence of record verifying that the Veteran served in a 38 C.F.R. § 3.320 and/or Sec. 1119 location?** (If Yes, provide details below.)

- No
- Yes

Evidence of service in a 38 C.F.R. § 3.320 and/or Sec. 1119 location (include the subject and date of receipt of the cited documents):

[Redacted]

**Question 5A. Is there evidence of other deployment related exposure in the eFolder and/or ILER (not already depicted in the questions above) which is consistent with the circumstances of the Veteran's service?** (If Yes, provide details below and answer 5B as well.)

- No
- Yes

Evidence and details about deployment related exposure (include the subject and date of receipt of the cited documents):

[Redacted]

**Question 5B. Where in the eFolder does the deployment information exist (e.g., ILER, VIS, military personnel record)?** (Ensure that the pertinent evidence is bookmarked or annotated in VBMS.)

[Redacted]

**Question 6. Is there evidence of non-deployment related exposure in the eFolder and/or ILER which is consistent with the circumstances of the Veteran's service?** (If Yes, provide details below.)

- No
- Yes

Evidence and details about non-deployment related exposure (such as Military Occupational Specialty; other military duties; garrison exposures; any relevant location, dates, and length of each exposure, etc.):

[Redacted]

**CONCLUSION. Did the Veteran participate in a TERA during active military service?** (If Yes was answered to any of the above questions, then "Yes, the Veteran participated in a TERA" should be selected.)

- Yes, the Veteran participated in a TERA
- No, the Veteran did not participate in a TERA

[Redacted]

Employee signature

# TERA – Effective Dates

- The PACT Act was signed into law on August 10, 2022, so any grant based on the new examination threshold under § 1168 cannot precede this date.

The image features a dark, textured American flag as a background. The flag is framed by a white, hand-drawn, irregular border. The stars and stripes are visible but muted due to the dark color scheme and texture. The word "Herbicides" is centered in white text, with a white wavy underline beneath it.

# Herbicides

# New Herbicide Locations

Thailand at any United States or Royal Thai base, without regard to where on the base the Veteran was located or what MOS the Veteran performed	January 9, 1962, to June 30, 1976
Laos	December 1, 1965, to September 30, 1969
Cambodia at Mimot or Krek, Kampong Cham Province	April 16, 1969, to April 30, 1969
Guam or in the territorial waters thereof	January 9, 1962, to July 31, 1980
American Samoa or in the territorial waters thereof	January 9, 1962, to July 31, 1980
Served on Johnston Atoll or on a ship that called at Johnston Atoll	January 1, 1972, to September 30, 1977

# Herbicides – New Presumptive Conditions

- Hypertension
- Monoclonal gammopathy of undetermined significance (MGUS) – a form of asymptomatic multiple myeloma
- There is no requirement for these disabilities to manifest to a compensable degree.
- Nehmer does not apply to these newly recognized conditions


# Herbicides – Effective dates

## **If the award involves a ...**

- New presumptive condition, and/or
- New PACT Act location

## **Then ...**

- The effective date cannot be prior to August 10, 2022



# Undiagnosed Illnesses and MUCMIs

---





# UnDx/MUCMI - Overview

---

- Undiagnosed illness
- Medically Unexplained Chronic Multi-symptom Illness (MUCMI)
  - Diagnosed illness without conclusive pathophysiology or etiology, characterized by overlapping symptoms and signs
  - Chronic multi-symptom illnesses of partially understood etiology and pathophysiology will not be considered medically unexplained

# UnDx/MUCMI -What Changed?

<b>Presumptive Provision</b>	<b>Before the PACT Act</b>	<b>After the PACT Act (effective August 10, 2022)</b>
Qualifying Service/Updated Definition of Persian Gulf Veteran	Limited to Southwest Asia Theater of Operations (defined in 38 CFR 3.317)	Also includes Afghanistan, Israel, Egypt, Turkey, Syria and Jordan
Degree of Disability	Manifest to a degree of 10 percent or more	Manifest to any degree (including non-compensable)
Authority	38 CFR 3.317 effective 11/02/1994 for undiagnosed illnesses and 03/01/2002 for MUCMIs	38 USC 1117 effective 08/10/2022



## UnDx/MUCMI - Notes

---

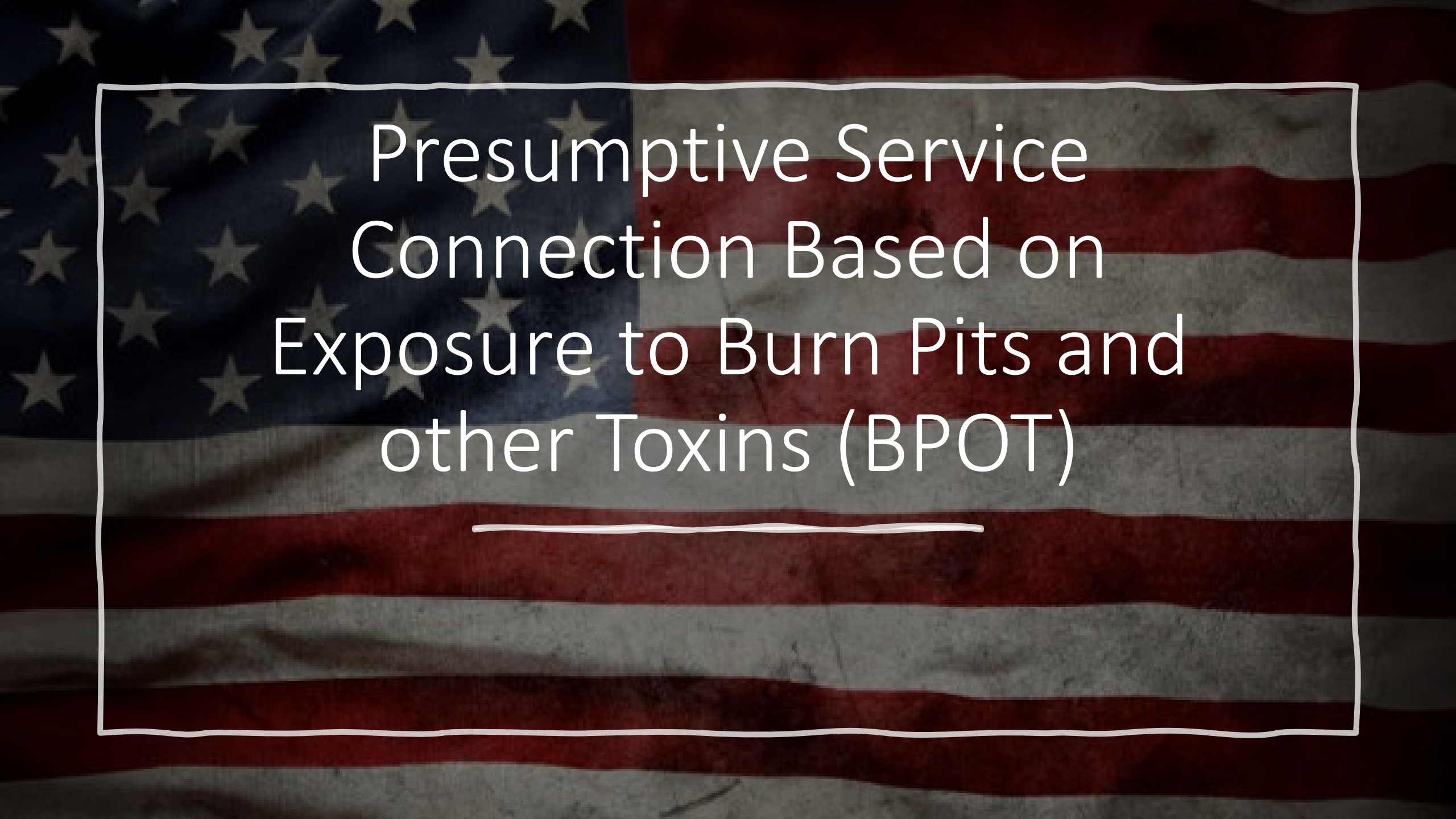
- If the condition is a diagnosable chronic multi-symptom illness with a partially explained etiology or disease with a clear and specific etiology then a TERA opinion will be requested
- The PACT Act did not change qualifying service or the other regulatory requirements for infectious diseases.



## UnDx/MUCMI – Effective Dates

---

- If granting service connection under a PACT act authority either based on a newly recognized location under 38 USC 1117 or non-compensable condition, effective date cannot precede August 10, 2022.



Presumptive Service  
Connection Based on  
Exposure to Burn Pits and  
other Toxins (BPOT)

---

# BPOT-What Changed?

Presumptive Provision	Before the PACT Act	After the PACT Act (effective August 10, 2022)
Qualifying Service	Southwest Asia Theater of Operations (defined in 38 CFR 3.317(e)(2))	Adds service on or after August 2, 1990, in, including airspace above Somalia
	Afghanistan, Syria, Djibouti, or Uzbekistan on or after September 19, 2001	Extends beginning date for these locations to September 11, 2001 and adds service on or after September 11, 2001 in, or airspace above: Egypt, Lebanon, Yemen and Syria
Recognized Disabilities	Asthma, rhinitis, or sinusitis to include rhinosinusitis effective August 5, 2021 and rare respiratory cancers effective April 26, 2022	Added new presumptive disabilities in 38 USC 1120 effective August 10, 2022
Manifestation period	Manifest within 10 years of service.	Manifest at any time.
Authority	38 CFR 3.320	38 USC 1119 and 1120

# BPOT – New Presumptives

- Head cancer
- Gastrointestinal cancer
- Lymphomatic cancer
- Melanoma
- Chronic obstructive pulmonary disease (COPD)
- Granulomatous disease
- Sarcoidosis
- Glioblastoma
- Neck cancer
- Reproductive cancer
- Kidney cancer
- Pancreatic cancer
- Constrictive bronchiolitis or obliterative bronchiolitis
- Pleuritis
- Chronic sinusitis
- Respiratory cancer
- Lymphoma cancer
- Brain cancer
- Chronic bronchitis
- Emphysema
- Pulmonary fibrosis
- Chronic rhinitis

# BPOT – Effective Dates

If the award involves a ...	And the condition ...	Then ...
current 38 CFR 3.320(a)(2) condition (sinusitis/rhinitis/asthma) and current 38 CFR 3.320 location	manifest greater than 10 years	the effective date cannot be prior to August 10, 2022
	manifest less than 10 years	the effective date cannot be prior to August 5, 2021
current 38 CFR 3.320(a)(3) condition (rare respiratory cancers) and current 38 CFR 3.320 location	N/A	the effective date cannot be prior to April 26, 2022
new PACT Act location (Somalia, Egypt, Lebanon, Jordan, and Yemen) (38 USC 1119) OR new PACT ACT BPOT presumptive condition under 38 USC 1120	N/A	the effective date cannot be prior to August 10, 2022





# Review

- Impact of the PACT Act
- TERA
- Herbicides
- Gulf War/MUCMI
- BPOT Presumptives

The image features a dark, textured American flag as a background. The flag is framed by a white, hand-drawn, irregular border. The stars and stripes are visible but muted due to the dark color scheme and texture. The word "Questions?" is centered in white, sans-serif font, with a white underline beneath it.

Questions?