

No. 17-1679

**In the
Supreme Court of the United States**

ROBERT H. GRAY,
Petitioner,

v.

ROBERT WILKIE,
SECRETARY OF VETERANS AFFAIRS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT

JOINT APPENDIX

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CERTIORARI GRANTED NOVEMBER 2, 2018

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ITEMS PREVIOUSLY REPRODUCED

In accordance with Supreme Court Rule 26.1, the following items have been omitted in printing this joint appendix because they appear on the following pages of the appendix to the Petition for a Writ of Certiorari (June 19, 2018):

Opinion of the United States Court of Appeals for the Federal Circuit, *Gray v. Secretary of Veterans Affairs*, 875 F.3d 1102 (Fed. Cir. 2017).....1a

Opinion of the United States Court of Appeals for the Federal Circuit Denying Rehearing, *Gray v. Secretary of Veterans Affairs*, 884 F.3d 1379 (Fed. Cir. 2018).....29a

Excerpt of *Adjudication Procedures Manual, M21-1*, Part IV, Subpart ii, Chapter 1, Section H (last revised Mar. 27, 2018), https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000014940/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-H-Developing-Claims-for-Service-Connection-SC-Based-on-Herbicide-Exposure46a

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RELEVANT DOCKET ENTRIES**U.S. Court of Appeals for the Federal Circuit
Case No. 2016-1782**

Date Filed	#	Docket Text
03/31/2016	1	Appeal docketed. Received: 03/28/2016. [323127] Fee/IFP due on 04/14/2016. Entry of Appearance due 04/14/2016. Certificate of Interest is due on 04/14/2016. Docketing Statement due 05/02/2016. Certified List due on 05/10/2016. [FMS] [Entered: 03/31/2016 12:32 PM] * * *
04/28/2016	12	Note to file: 16-1793 (COMPANION started 04/28/2016) with 16-1782. These cases shall be considered companion cases and assigned to the same merits panel for oral argument. [330461] [FMS] [Entered: 04/28/2016 03:51 PM] * * *
05/27/2016	19	Notice from Respondent Secretary of Veterans Affairs of Filing of Rule 17 Index of Record and Attached Index. Service: 05/27/2016 by email. [338990] [Eric Bruskin] [Entered: 05/27/2016 10:45 AM]

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Date Filed	#	Docket Text
		* * *
08/04/2016	30	CORRECTED BRIEF FILED for Petitioner Robert H. Gray [29]. Number of Pages: 29. Service: 08/04/2016 by email. Pursuant to Fed. Cir. R. 31(b), filer is directed to file six copies of the brief in paper format. The paper copies of the brief should be received by the court on or before 08/10/2016. Respondent Secretary of Veterans Affairs brief is due 09/09/2016. [356554] [JCA] [Entered: 08/05/2016 03:08 PM]
		* * *
11/15/2016	39	BRIEF FILED for Respondent Secretary of Veterans Affairs [37]. Number of Pages: 53. Service: 11/15/2016 by email. The paper copies of the brief should be received by the court on or before 11/21/2016. Petitioner Robert H. Gray reply brief is due 12/02/2016. [383606] [FMS] [Entered: 11/16/2016 11:20 AM]
		* * *
12/19/2016	45	REPLY BRIEF FILED for Petitioner Robert H. Gray [44]. Number of Pages: 16. Service: 12/19/2016 by email. The paper

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Date Filed	#	Docket Text
		<p>copies of the brief should be received by the court on or before 12/27/2016. Appendix is due 12/27/2016. [392814] [FMS] [Entered: 12/20/2016 03:31 PM]</p> <p>* * *</p>
12/23/2016	48	<p>APPENDIX FILED for Robert H. Gray [47]. Number of Pages: 153. Service: 12/23/2016 by email. The paper copies of the brief should be received by the court on or before 01/03/2017. [394524] [FMS] [Entered: 12/27/2016 12:59 PM]</p> <p>* * *</p>
04/24/2017	57	<p>ORDER consolidating 16-1782 and 16-1793 for the purpose of oral argument. Each petitioner will have 15 minutes of argument time. Respondent will have 30 minutes of argument time. By: Merits Panel (Per Curiam). Service as of this date by Clerk of Court. [426625] [16-1782, 16-1793] [JAB] [Entered: 04/24/2017 02:55 PM]</p>
05/05/2017	58	<p>Submitted after ORAL ARGUMENT by Michael E. Wildhaber for Robert H. Gray and Eric Peter Bruskin for Secretary of Veterans Affairs.</p>

Date Filed	#	Docket Text
		Panel: Judge: Prost, Judge: Dyk, Judge: O'Malley. [429392] [JAB] [Entered: 05/05/2017 02:21 PM] * * *
11/16/2017	59	OPINION and JUDGMENT filed. The judgment or decision is: Dismissed. (Precedential Opinion); denying as moot motions to supplement index of record [345493-2] [355518-2] filed by Petitioner Blue Water Navy Vietnam Veterans Association in 16-1793 (For the Court: Prost, Chief Judge; Dyk, Circuit Judge and O'Malley, Circuit Judge). Opinion dissenting-in-part and concurring in the judgment filed by Circuit Judge Dyk. [476079] [16-1782, 16-1793] [SMJ] [Entered: 11/16/2017 10:17 AM]
12/13/2017	66	Petition for panel rehearing, for en banc rehearing filed by Petitioner Robert H. Gray. Service: 12/13/2017 by email. <i>The paper copies of the petition must be filed within two business days (see Fed. Cir. R. 35(c)(4). The required paper copies should be received by the court on or before 12/15/2017</i> [482339] [Roman Martinez] [Entered: 12/13/2017 01:29 PM]

Date Filed	#	Docket Text
		* * *
12/18/2017	68	The court invites a response from Respondent Secretary of Veterans Affairs to the petition for panel rehearing filed by Petitioner in 16-1782, petition for en banc rehearing filed by Petitioner in 16-1782. The response is due on or before 01/02/2018. [483230] [JAB] [Entered: 12/18/2017 10:21 AM] * * *
01/03/2018	77	CORRECTED AMICUS BRIEF FILED on Petition for DAV [76]. Pages: 5. The filer is directed to submit the appropriate number of copies within two days, see Fed. Cir. R. 25(c). [487145] [SMJ] [Entered: 01/03/2018 03:45 PM] * * *
01/04/2018	87	AMICUS BRIEF FILED on Petition for Military Officers Association of America, National Law School Veterans Clinic Consortium, National Organization of Veterans Advocates, Inc., NVLSP, Veterans of Foreign Wars of the United States and Vietnam Veterans of America[81]. Pages: 11. The filer is directed to submit the appropriate number of copies

Date Filed	#	Docket Text
		<p>within two days, see Fed. Cir. R. 25(c). [487417] [SMJ] [Entered: 01/04/2018 03:45 PM]</p> <p>* * *</p>
01/12/2018	90	<p>RESPONSE of Respondent Secretary of Veterans Affairs to the petition for panel rehearing [66] filed by Petitioner Robert H. Gray in 16-1782 , petition for en banc rehearing [66] filed by Petitioner Robert H. Gray in 16-1782. Service: 01/12/2018 by email. [489289] [Eric Bruskin] [Entered: 01/12/2018 12:09 PM]</p> <p>* * *</p>
01/19/2018	93	<p>REPLY of Petitioner Robert H. Gray to response filed by Respondent in 16-1782, Doc. No [90]. Service: 01/18/2018 by email. [491139] [SMJ] [Entered: 01/19/2018 05:28 PM]</p> <p>* * *</p>
03/21/2018	97	<p>ORDER filed denying [66] petition for panel rehearing filed by Robert H. Gray in 16-1782, denying [482979-3] petition for panel rehearing filed by Blue Water Navy Vietnam Veterans Association in 16-1793; denying [66] petition for en banc rehearing</p>

Date Filed	#	Docket Text
		filed by Robert H. Gray in 16-1782, denying [482979-2] petition for en banc rehearing filed by Blue Water Navy Vietnam Veterans Association in 16-1793. By: En Banc (Per Curiam). Service as of this date by the Clerk of Court. [506850] [16-1782, 16-1793] [SMJ] [Entered: 03/21/2018 09:28 AM]
03/28/2018	98	Mandate issued to the Department of Veterans Affairs. Service as of this date by the Clerk of Court. [508570] [JAB] [Entered: 03/28/2018 10:49 AM]
06/21/2018	99	Petition for writ of Certiorari filed on 06/19/2018, placed on the docket 06/20/2018, in the Supreme Court of the United States. Supreme Court #: 17-1679, Robert H. Gray v. Secretary of Veterans Affairs. [531305] [SMJ] [Entered: 06/21/2018 03:20 PM]
11/05/2018	100	The petition for writ of certiorari, [17-1679], filed on 06/19/2018, was Granted on 11/02/2018. [562733] [JAB] [Entered: 11/05/2018 04:59 PM]

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**In the
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

ROBERT H. GRAY, Petitioner

v.

ROBERT A. McDONALD,
in his official capacity as
Secretary of Veterans Affairs,

and

THOMAS J. MURPHY,
in his official capacity as
Compensation Service
Director Respondents.

**PETITION FOR REVIEW OF
VETERANS AFFAIRS RULEMAKING
PURSUANT TO 38 U.S.C. § 502**

Pursuant to 38 U.S.C. § 502, Federal Rules of Appellate Procedure Rule 15(a), and Federal Circuit Rules 15 and 47.12, Petitioner Robert H. Gray hereby petitions the Court to review the substantive validity of a final rule of the Department of Veterans Affairs (hereinafter “VA”), entitled “Key Changes” to “Section H. Developing Claims for Service Connection (SC) Based on Herbicide Exposure” (hereinafter “Final Rule”), which was issued by Respondents in the VETERANS BENEFITS MANUAL M21 1, Part IV, Subpart ii. The Final Rule became effective on February 5,

2016, the date it was issued. A copy of the Final Rule is attached hereto as Exhibit A.

THE COURT'S JURISDICTION

This Court has jurisdiction over this petition pursuant to 38 U.S.C. § 502. Section 502 provides this Court with exclusive jurisdiction to review, in accordance with the Administrative Procedures Act (hereinafter “APA”), direct challenges to the Secretary’s rulemaking process and rules adopted by the VA. *Military Order of the Purple Heart v. Sec’y of Veterans Affairs*, 580 F.3d 1293, 1295 (Fed. Cir. 2009). The Final Rule challenged here by the Petitioner meets the definition of a “rule” as defined by the APA because it is both a “statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy. . . .” *See id.* at 1296 (citing 5 U.S.C. § 551(4)). The Final Rule challenged in this petition affects the substantive rights to VA benefits of all veterans generally as well as the Petitioner particularly. *Id.*; *see cf., Paralyzed Veterans of Am. v. Sec’y of Veterans Affairs*, 308 F.3d 1262, 1266-67 (Fed. Cir, 2002) (case specific General Counsel opinion not intended for general applicability or future effect in other cases was not a “rule” pursuant to the APA). Both the APA provisions set forth at 5 U.S.C. § 552(a)(1)(D) and § 553(b) are implicated by Respondents having issued the Final Rule.

PARTS OF THE FINAL RULE REQUIRING REVIEW

Background

The circumstances which initiated the Respondents’ promulgation of the Final Rule now challenged in this petition was the decision of the

United States Court of Appeals for Veterans Claims (hereinafter “Veterans Court”) in *Gray v. McDonald*, 27 Vet.App. 313 (2015). At issue in *Gray* was the veteran appellant’s entitlement to compensation for disabilities presumed to be associated with exposure to herbicides used during the Vietnam war. 38 U.S.C. § 1116(a). A predicate condition to such entitlement is that the veteran had “served in the Republic of Vietnam” during the period of the Vietnam war. *See id.* at § 1116(a)(1)(A). “Service in the Republic of Vietnam’ includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.” *See Gray*, 27 Vet.App. at 319 (citing to 38 C.F.R. § 3.307(a)(6)(iii) (2014)).

Further, VA has specified that the necessary service “in the Republic of Vietnam” includes service in the “inland waters” of Vietnam. *See* VA ADJUDICATION PROCEDURES MANUAL, M21-1MR, Part IV, Subpart II, Ch. 1, Section H.28.a (Definition: Service in the RVN). Pertinent to this petition, the Veterans Court in *Gray*, *ibid.*, invalidated the Respondents’ policy of excluding from the definition of “inland waterways” various “open deep-water coastal ports and harbors where there is no evidence of herbicide use.” *See* 27 Vet.App. at 321-22 (citing Letter from the Director of VA C&P Service, February 2009; December 2008 C&P Service Bulletin; Training Letter 10-06). In the group of coastal ports and harbors excluded from the definition of “inland waterways” was Da Nang Harbor, a location where it is conceded the Petitioner served during the Vietnam war. *Id.* at 322. In *Gray* the Veterans Court held that VA’s exclusion of Da Nang Harbor from the category of Vietnam’s “inland waterways” was invalid because

it was “irrational” and not the product of VA exercising its “fair and considered judgment.” *See id.* at 326-27.

The basis for the Veterans Court’s holding in *Gray* was that VA’s determination to exclude Da Nang Harbor from the “inland waterways” category was not based on consideration of the intent of the underlying statute and regulation. *See id.* at 324-26. The Veterans Court explained that the intent of the statute and regulation was “providing compensation to veterans based on the likelihood of [their] exposure to herbicides.” *See id.* at 322 (citing *Haas v. Peake*, 525 F.3d 1168 (Fed. Cir. 2008), *cert. denied*, 555 U.S. 1149 (2009)). Instead, the Secretary’s exclusion of Da Nang Harbor from the category of “inland waterways” was based on its “depth and ease of entry—and not on spraying”, *id.* at 324, which the Veterans Court found to be contrary to law and “irrational.” *Id.* at 323-24.

Consequently, the Veterans Court in *Gray* vacated the underlying Board decision on appeal “as arbitrary and capricious because the decision was based on VA’s flawed interpretation of [the regulation].” *Id.* at 326. The remedy the Court in *Gray* then imposed on VA was for it

... to reevaluate its definition of inland waterways—particularly as it applies to Da Nang Harbor—and exercise its fair and considered judgment to define inland waterways in a manner consistent with the regulation’s emphasis on the probability of exposure [to herbicides].

Id. at 326-27. Now, the Final Rule challenged in this petition (at Exhibit A, attached), is the Respondents’ response to the Veterans Court’s instruction that it

“reevaluate its definition of inland waterways” such that it “exercise its fair and considered judgment to define inland waterways in a manner consistent with the regulation’s emphasis on the probability of exposure.” *Id.*

Failure to Publish for Notice and Comment

Section H.2.c of the Final Rule removes two locations in the Republic of Vietnam from the category of “inland waterways” which Respondents previously had conceded should be included. These are “Qui Nhon Bay Harbor” and “Ganh Rai Bay.” This change to the Respondents’ previously existing rule effectively denies all adversely affected veterans entitlement to compensation benefits under 38 U.S.C. § 1116(a), to which they were otherwise entitled prior to the change. This outcome establishes that the change is a “substantive rule of general applicability”, which eliminated the substantive rights of those affected. Thus, pursuant to the APA this change should have been published in the Federal Register for a period of public notice and comment prior to its implementation. *See* 5 U.S.C. § 552(a)(1)(D), § 553(b). Respondents’ failure to comply with the requirements of the APA warrants this Court’s action to invalidate the Final Rule.

Failure to Consider Probability of Exposure to Herbicides

Judicial review of the Final Rule also is sought with respect to the general provisions of Sections H.2.a through H.2.d. These provisions purport to provide, respectively,

- a. the “Definition of Inland Waterways”,
- b. the “Definition of Offshore Waters”,

- c. the “Specific Geographic Locations Determined to Be Offshore Waters”, and
- d. the “Specific Geographic Locations Determined to Be Inland Waterways.”

See Final Rule (attached as Exhibit A). Generally, the Final Rule defines inland waterways as “fresh water” bodies of water inland from the ocean, with the demarcation point being “determined by drawing a straight line across each opening in the landmass leading to the open ocean.” See Final Rule, Section H.2.a & d. The Final Rule also generally defines “offshore waters” as any body of water “containing salty or brackish water and subject to regular tidal influence.” See Final Rule, Section H.2.b. As well, among the “Specific Geographic Locations Determined to Be Offshore Waters” the Final Rule specifies that Da Nang Harbor is part of Vietnam’s “offshore waters.” See Final Rule, Section H.2.c. In contrast, the Final Rule specifies that “inland waterways” are bodies of water such as rivers, streams, canals, and navigable waterways inland from the shoreline. In part, these bodies of water are described as “inside the perimeter of land-type vegetation (e.g., trees and grasses, but not seaweed or kelp).” Final Rule, Section H.2.d.

This Court should invalidate the foregoing definitions of what constitutes “inland waterways” and “offshore waters” of the Republic of Vietnam because, *once again*, they are “irrational” and “not consistent” with the intent of the authorizing statute and regulation that such locations be defined based on “the probability of exposure [to herbicides].” See *Gray, supra*. None of the new definitions in the Final Rule for either what constitutes “inland waterways”

or “offshore waters” address the likelihood of whether any of these locations were sprayed or contaminated with herbicides. Instead, to the extent that Respondents explain the basis for defining these terms in the Final Rule, it is clear that factors entirely unrelated to the probability of exposure or contamination with herbicides were considered. These factors that are irrelevant to the likelihood of exposure to herbicides include whether the subject body of water contains “fresh” or “brackish” water, is “subject to regular tidal influence”, or contains “land-type vegetation” as opposed to “seaweed or kelp.” See Final Rule, Section H.2.a. - d.

Further demonstrating that the definition of inland waterways stated in the Final Rule is invalid is the proposition that such waterways are to be “demarcated”—not by evidence of herbicide spraying or contamination—but rather by “drawing a straight line across each opening in the landmass leading to the open ocean.” See Final Rule, Section H.2.a. Not only is this factor devoid of any rational connection to herbicide use or contamination, it is inherently inconsistent with the other factors cited in the Final Rule in support of the challenged definitions. These other factors include, for example, whether the water is “fresh” or “brackish” and “subject to regular tidal influence.” The mixing of fresh and brackish water or the ebb and flow of the tide at the point where bodies of inland water meet the ocean shore are not conducive to any “demarcation” by the drawing of “a straight line.”

Accordingly, the Respondents’ utterly failed to “reevaluate its definition” of inland waterways in a manner consistent with the specific instructions stated by the Veterans Court’s in the *Gray* case. See

27 Vet.App. at 326-27. The Court in *Gray* directed that VA was to link any definition to the likelihood that such waterways were contaminated with herbicides. It is clear from a plain reading of the Final Rule that Respondents did not consider *any* evidence or other factors that addressed whether the locations incorporated into VA's new definition of "inland waterways" were sprayed or otherwise contaminated by herbicides. Therefore, this Court should invalidate the Final Rule issued by VA as authorized by 38 U.S.C. § 502.

**PETITIONER ROBERT H. GRAY AND
OTHER VETERANS SIMILARLY
SITUATED ARE ADVERSELY AFFECTED**

The Petitioner Robert H. Gray has standing to petition this Court for review of the Final Rule pursuant to 38 U.S.C. § 502 because he is a U.S. Navy veteran of the Vietnam war who served on the inland waterways thereof. As such, he is adversely affected by the Final Rule issued by Respondents. As well, he is the named appellant in *Gray v. McDonald, supra*. Moreover, the Final Rule adversely affects all similarly situated U.S. Navy veterans, and explicitly excludes Da Nang Harbor from the category of "inland waterways", a location in Vietnam where it is conceded the Petitioner served during the Vietnam war.

If the Final Rule is left in place, the Petitioner and similarly situated U.S. Navy veterans cannot establish the predicate element required by 38 U.S.C. § 1116(a) for the award of benefits under this statute, i.e., the presumption that these veterans have been exposed to herbicides during their Vietnam service. This outcome effectively denies Petitioner and other

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veterans like him entitlement to compensation for their various disabilities which VA otherwise has determined are associated with such herbicide exposure. *See id.* at § 1116(b).

Respectfully submitted

s/ Michael E. Wildhaber

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March 28, 2016 Counsel for Petitioner Robert
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**Department of
Veterans Affairs
Veterans Benefits
Administration
Washington, DC 20420**

**M21-1, Part IV
Subpart ii
February 5, 2016**

Key Changes

Changes Included in This Revision The table below describes the changes included in this revision of Veterans Benefits Manual M21-1, Part IV, “Compensation DIC, and Death Compensation Benefits,” Subpart ii, “Compensation.”

Notes:

- The term “regional office” (RO) also includes pension management center (PMC), where appropriate
- Unless otherwise noted, the term “claims folder” refers to the official, numbered, Department of Veterans Affairs (VA) repository – whether paper or electronic – for all documentation relating to claims that a Veteran and/or his/her survivors file with VA.
- Minor editorial changes have also been made to
 - update incorrect or obsolete references
 - reassign alphabetical designations to individual blocks, where necessary, to account for new

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and/or deleted blocks within a topic,
and
– bring the document into
conformance with M21-1 standards.

Reason(s) for the Change	Citation
To clarify language about determining a Veteran's duty or visitation from a ship in Vietnam.	M21-1, Part IV, Subpart ii, Chapter 2, Section C, Topic 3, Block m (IV.ii.2.C.3.m)
To add a new Block n containing guidance on assigning effective dates based on duty or visitation in Vietnam.	IV.ii.2.C.3.n

Rescissions None

Authority By Direction of the Under Secretary
for Benefits

Signature

Thomas J. Murphy, Director
Compensation Service

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**Section C. Service Connection (SC) for
Disabilities Resulting From Exposure to
Environmental Hazards or Service in the
Republic of Vietnam (RVN)**

Overview

In This Section This section contains the following topics:

Topic	Topic Name
1	SC for Disabilities Resulting From Exposure to Ionizing Radiation
2	SC for Disabilities Resulting From Exposure to Asbestos
3	SC for Disabilities Resulting From Exposure to Certain Herbicide Agents or Based on Service in the RVN
4	Payment Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicides

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5	SC for Disabilities Resulting From Exposure to Other Specific Environmental Hazards
6	Claims Based on Participation in the Shipboard Hazard and Defense (SHAD) Project
7	Claims Based on Chemical Biological Radiological Nuclear and Explosives (CBRNE) Testing

3. SC for Disabilities Resulting From Exposure to Certain Herbicide Agents or Based on Service in the RVN

Intro- duction

This topic contains information on SC for disabilities resulting from exposure to herbicides or based on service in the RVN, including

- presumptive SC based on herbicide exposure
- the definition of an herbicide agent
- rebutting the 38 CFR 3.307(a) presumption by affirmative evidence to the contrary
- presuming exposure to an herbicide agent
- the definition of service in the RVN
- the time limits for disease manifestation for presumptive purposes under 38 CFR 3.309(e)
- determining the last date of herbicide exposure
- considering direct SC when entitlement to presumption does not exist
- date disabilities became

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subject to presumptive SC under 38 CFR 3.309(e)

- processing claims based on early-onset peripheral neuropathy
- conditions determined to have no positive association with herbicide exposure
- metastasis of a cancer and presumptive SC under 38 CFR 3.307(a)
- considering claims based on service aboard ships offshore the RVN
- effective dates based on service aboard ships in the RVN
- SC for non-Hodgkin's lymphoma (NHL) under 38 CFR 3.313 based on service in the RVN during the Vietnam Era
- subcategories of NHL qualifying for presumptive SC, and
- benefits previously awarded under pre-Haas policies.

**Change
Date**

~~December 18, 2015~~ February
5, 2016

**a.
Presump-
tive SC
Based on
Herbicide
Exposure**

Under [38 CFR 3.307](#), when there is

- in-service exposure to an herbicide agent, and
- a diagnosis of a condition listed in [38 CFR 3.309\(e\)](#) within a defined time period

a presumption arises that the diagnosis is

- related to the exposure, and
- incurred in or aggravated by service.

The presumption removes the need to prove a nexus between the current diagnosis and the in-service exposure. Therefore, when the evidence is sufficient for the presumption to arise, SC is established (assuming that generally applicable requirements such as Veteran status based on a qualifying discharge have been met) *unless* other evidence rebuts the presumption.

References: For more information on

- the definition of herbicide agent, see M21-1, Part IV,

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Subpart ii, 2.C.3.b

- rebutting the 38 CFR 3.307(a) presumption by affirmative evidence to the contrary, see M21-1, Part IV, Subpart ii, 2.C.3.c
 - presuming exposure to an herbicide agent, see M21-1, Part IV, Subpart ii, 2.C.3.d, and
 - presumptive SC generally, see 38 CFR 3.307.
-

b.
Definition:
Herbicide
Agent

Per 38 CFR 3.307(a)(6)(i), *herbicide agent* means a harmful defoliant chemical, such as Agent Orange, used in support of U.S. and allied military operations in the Republic of Vietnam (RVN) during the period beginning on January 9, 1962, and ending on May 7, 1975, that contained the following components

- 2,4,5-T and its contaminant, TCDD (dioxin)
- 2,4-D
- cacodylic acid, and
- picloram.

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Examples:

- Agent Orange (2,4,5-T and 2,4-D)
- Agent White (2,4-D and picloram), and
- Agent Blue (cacodylic acid).

Note: Under [38 U.S.C. 1116](#), the National Academy of Science's (NAS's) Institute of Medicine (IOM) is authorized to conduct biennial surveys of studies related to Agent Orange exposure and report to the Department of Veterans Affairs (VA) any scientific association found between exposure and specific diseases.

**c.
Rebutting
the 38 CFR
3.307(a)
Presump-
tion by
Affirmative
Evidence to
the
Contrary**

The [38 CFR 3.307\(a\)](#) presumption of a nexus between a [38 CFR 3.309\(e\)](#) disability and established in-service exposure to an herbicide agent can be rebutted by evidence that the disability was not caused by the exposure.

The standard in [38 CFR 3.307\(d\)](#) is *affirmative evidence to the contrary*. The regulation does not

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specifically define the standard but notes that it means less than conclusive proof and requires sound medical reasoning and consideration of all evidence of record.

Important:

- Although the regulation permits rebuttal, in practice evidence will infrequently support it. The presumptions were created based on a finding by the Secretary that a positive association exists between the disorders listed in [38 CFR 3.309\(e\)](#) and herbicide exposure. This finding in turn was based on a study by NAS's IOM.
- A conclusory medical statement that a condition listed in [38 CFR 3.309\(e\)](#) is not related to demonstrated or presumed herbicide exposure does not meet the sound medical reasoning requirement. There must be competent, credible, and persuasive medical evidence supported by all of the other pertinent evidence of record that the

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individual's diagnosed disorder is more likely than not related to a specific non-service related cause.

References: For more information on

- evaluating evidence, see M21-1, Part III, Subpart iv, 5
- requiring further development, see M21-1, Part III, Subpart iv, 5.7, and
- the requirement for competent medical evidence in the claims folder to support medical conclusions, see M21-1, Part III, Subpart iv, 5.3.j.

**d.
Presuming
Exposure to
an
Herbicide
Agent**

Public Law (PL) 104-275 (38 U.S.C. 1116) provided guidance related to the *presumption of exposure to herbicide agents* for a Veteran who, during active military, naval, or air service served in the RVN during the period beginning on January 9, 1962, and ending on May 7, 1975.

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[38 CFR 3.307\(a\)\(6\)\(iii\)](#) and [\(iv\)](#) provided further guidance related to the *presumption of exposure to herbicide agents* for Veterans who served in Vietnam and also established a presumption for units that, as determined by the Department of Defense (DoD), operated in or near the Korean Demilitarized Zone (DMZ) between April 1, 1968, and August 31, 1971.

Notes:

- For any contention of in-service exposure to herbicide agents in times or locations other than those specified above, it is the *claimant's burden* to *factually establish his or her exposure*.
- The Vietnam era, as defined in [38 CFR 3.2\(f\)](#), began on February 28, 1961, for any Veteran who served in the RVN during that period. However, herbicide agents by definition were not used in the RVN until January 9, 1962, and the presumption of herbicide exposure

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cannot be utilized for service in the RVN that was entirely prior to that date.

- The regulation provides that presumption of exposure to herbicide agents during qualifying service will be rebutted by affirmative evidence that the Veteran was not exposed to any such agent during qualifying service. However, the probability that specific evidence will exist showing that a person in one of the qualifying locations during a qualifying period had no herbicide exposure is low.

References: For more information on

- verifying herbicide exposure, see M21-1, Part IV, Subpart ii, 1.H, and
 - using Army Post Office (APO) numbers to verify service in the RVN, see M21-1, Part IV, Subpart ii, 1.H.1.d.
-

**e.
Definition:
Service in
the RVN**

For the purposes of the presumption of exposure to herbicide agents under [38 CFR 3.307\(a\)\(6\)\(iii\)](#) and [38 CFR 3.309\(e\)](#), *service in the RVN* includes

- on land in the RVN
- aboard a vessel operating on the inland waterways of the RVN
- aboard vessels docked to a pier or shore of the RVN and the claimant provides a statement of personally going ashore
- aboard vessels on the offshore waters of the RVN, if the conditions of service involved duty or visitation on the ground in the RVN, or
- other locations, if the conditions of service involved duty or visitation on the ground in the RVN.

The term service in the RVN does not include service of a Vietnam Era Veteran whose only contact with Vietnam was flying high-altitude missions in Vietnamese airspace. In addition, there is no presumption of

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exposure based on documentation of service in the offshore waters (blue water) of the RVN or in locations other than those listed above.

Exception: The regulation explains that any duty or visitation in the RVN (as defined above) will qualify as service in the RVN notwithstanding that service was primarily or predominantly in the offshore waters or in other locations.

Important: This is only intended to clearly communicate ~~Department of Veterans Affairs'~~ (VAs') long-standing legal interpretation, which was held to be permissible by the Federal Circuit in [Haas v. Peake, 535 F.3d 1168 \(Fed. Cir. 2008\)](#). It does not represent any substantive change in VA's existing policy or practice.

References: For more information on

- service in the RVN, see
 - [38 CFR 3.313](#)
 - [VAOPGCPREC 27-97](#),

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and

– [VAOPGCPREC 07-93](#)

- required development for claims based on service aboard ships offshore of the RVN or on inland waterways, see M21-1, Part IV, Subpart ii, 1.H.2
 - considering claims based on exposure to herbicides during service aboard ships that operated on the offshore waters of the RVN, see M21-1, Part IV, Subpart ii, 2.C.3.m, and
 - verifying service in the RVN in connection with claims involving exposure to herbicides, see M21-1, Part IV, Subpart ii, 1.H.
-

**f. Time
Limits for
Disease
Manifesta-
tion for
Presump-
tive
Purposes
Under 38
CFR
3.309(e)**

In order to establish presumptive SC, the following diseases listed in [38 CFR 3.309\(e\)](#) must become manifest to a degree of 10 percent or more within one year of the *last date of exposure* to herbicides

- chloracne or other acne-form disease consistent with chloracne
- porphyria cutanea tarda

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(PCT), and

- early-onset peripheral neuropathy (PN).

Notes:

- There is no time limit for the other listed presumptive diseases in [38 CFR 3.309\(e\)](#).
- Previously, respiratory cancers (cancers of the lung, bronchus, larynx, and trachea) had to become manifest within 30 years of last exposure. *PL 107-103* eliminated this requirement effective January 1, 2002.

Reference: For more information on time limits for manifestation of diseases subject to presumptive SC, see [38 CFR 3.307\(a\)\(6\)\(ii\)](#).

g. Determining the Last Date of Herbicide Exposure

Under [38 CFR 3.307\(a\)\(6\)\(iii\)](#), the ***last date of herbicide exposure*** is the last date on which the Veteran served in the RVN during the Vietnam Era.

h. Considering Direct SC When Entitlement to Presumption Does Not Exist

If entitlement to presumptive SC based on herbicide exposure does not exist, consider entitlement to SC on a direct, facts-found basis.

Under [38 CFR 3.303\(d\)](#), the presumptive provisions of the statute and VA regulations implementing them are intended as liberalizations that allow for another basis of SC. Therefore, these provisions do *not* preclude direct SC, where appropriate.

i. Date Disabilities Became Subject to Presumptive SC Under 38 CFR 3.309(e)

The table below shows the dates on which the diseases listed in [38 CFR 3.309\(e\)](#) became subject to presumptive SC.

Disability	Effective Date
<ul style="list-style-type: none"> • Chloracne or other acne-form disease consistent with chloracne, and • soft-tissue sarcoma, <i>other than</i> – osteosarcoma 	February 6, 1991 <i>Note:</i> Originally, September 25, 1985, under 38 CFR 3.311a.

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<ul style="list-style-type: none"> - chondrosarcoma - Kaposi's sarcoma, or - mesothelioma 	
Non-Hodgkin's lymphoma (NHL)	<p>February 6, 1991</p> <p>Note: Originally, August 5, 1964, under 38 CFR 3.313.</p>
<ul style="list-style-type: none"> • Porphyria cutanea tarda, and • Hodgkin's disease 	February 3, 1994
<ul style="list-style-type: none"> • Respiratory cancers of the <ul style="list-style-type: none"> - lung - bronchus - larynx, or - trachea, and • multiple myeloma 	June 9, 1994
<ul style="list-style-type: none"> • Prostate cancer, and • acute and subacute PN 	November 7, 1996
Type 2 diabetes mellitus (DM)	May 8, 2001
CLL	October 16, 2003
AL amyloidosis	May 7, 2009

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<ul style="list-style-type: none"> • Ischemic heart disease (IHD) • chronic B-cell leukemia, and • Parkinson's disease 	August 31, 2010
Early-onset PN	September 6, 2013

Important: The table above includes reference to acute and subacute PN becoming subject to presumptive SC on November 7, 1996, for historical purposes. The covered disease was revised to early-onset PN by change effective September 6, 2013. For claims on or after September 6, 2013, entitlement to presumptive SC based on PN only exists when the Veteran meets qualifying service requirements specified at M21-1, Part IV, Subpart ii, 2.C.3.e and medical evidence establishes a confirmed diagnosis of early-onset PN.

Note: Unless an earlier effective date is determined pursuant to the *Nehmer* stipulation under [38 CFR 3.816](#), the provisions pertaining to retroactive payment under [38 CFR 3.114\(a\)](#) apply.

Reference: For more information on the *Nehmer* stipulation, see M21-1, Part IV, Subpart ii, 2.C.4.

j. Processing Claims Based on Early-Onset PN A change to [38 CFR 3.307\(a\)\(6\)](#) and [38 CFR 3.309\(e\)](#) ([78 FR 54763](#)) effective September 6, 2013, removed requirements that neuropathy must resolve within two years.

Do not deny presumptive SC for early-onset PN solely because the condition persisted for more than two years after initial diagnosis.

Important:

- The regulatory amendment does not change that PN must manifest to a compensable degree of 10 percent or more within one year of the date of last herbicide exposure during active military, naval, or air service.
- Claims of SC for later-occurring onset of PN can only be evaluated under other bases (for example, direct or secondary). NAS has determined that evidence does not support an association between herbicide exposure and delayed-onset PN, which NAS defined as having its

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onset more than one year after exposure.

Reference: For more information on conditions determined to have no positive association with herbicide exposure, see M21-1, Part IV, Subpart ii, 2.C.3.k.

**k.
Conditions
Determined
to Have No
Positive
Association
With
Herbicide
Exposure**

Under the Agent Orange Act of 1991, the Secretary receives from the NAS periodic reviews and summaries of the scientific evidence concerning the association between exposure to herbicides and diseases suspected to be associated with those exposures.

Based on cumulative scientific data reported by the NAS since 1993, the Secretary has determined that a positive association does not exist between herbicide exposure and the following conditions and that a presumption of SC is not warranted for any of the conditions.

- Cancers
 - bone and joint

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- brain and nervous system
(including eye)
- breast
- digestive (including
esophagus, stomach,
colon-rectum, small
intestine, and anus)
- endocrine (including
thyroid and thymus)
- hepatobiliary (liver,
gallbladder, and bile
ducts) and pancreatic
- leukemia (***excluding***
chronic B-cell leukemias
such as CLL and hairy
cell)
- nasal cavity (including
ears and sinuses)
- oral cavity (including lips
and tongue)
- pharynx (including
tonsils)
- pleura, mediastinum, and
other unspecified sites
within the respiratory
system and intrathoracic
organs
- renal (kidney and renal
pelvis)
- skin (including
melanoma, basal cell
carcinoma, and squamous
cell carcinoma)

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- reproductive (including the cervix, uterus, ovary, testes, and penis, but **excluding** prostate)
- urinary bladder, and
- any cancers for which the Secretary has not already established a presumption.
- Other
 - bone conditions
 - circulatory disorders (**but excluding** IHD)
 - cognitive and neuropsychiatric effects
 - endometriosis
 - eye problems
 - gastrointestinal, metabolic, and digestive disorders (including changes in liver enzymes, lipid abnormalities, and ulcers)
 - hearing loss
 - immune system disorders (immune suppression, allergy, and autoimmunity)
 - neurobehavioral (cognitive and neuropsychiatric) disorders
 - neurodegenerative

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- diseases (including amyotrophic lateral sclerosis (ALS), but **excluding** Parkinson's disease)
- conditions affecting offspring of exposed persons (including neonatal death, infant death, stillborn, low birth weight, birth defects **other than** spina bifida, and childhood cancer such as acute myeloid leukemia)
 - chronic peripheral nervous system disorders such as late-onset PN (**but excluding** early-onset PN)
 - reproductive effects, such as abnormal sperm parameters and infertility
 - respiratory disorders (**but excluding** covered respiratory cancers) such as asthma and chronic obstructive pulmonary disease (COPD), and
 - effects on thyroid homeostasis.

Note: No positive association means that the evidence for an association does not equal or outweigh

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the evidence against association.

l. Metastasis of a Cancer and Presumptive SC Under 38 CFR 3.307(a)

Do not establish presumptive SC on the basis of herbicide exposure under [38 U.S.C. 1116](#) and [38 CFR 3.307\(a\)](#) for a cancer listed in [38 CFR 3.309\(e\)](#) when medical evidence factually shows that the cancer developed as the result of metastasis of a cancer located at a primary site that is not recognized by the VA as associated with herbicide exposure.

Note: Such evidence constitutes affirmative evidence to rebut the presumption of SC based on herbicide exposure.

m. Considering Claims Based on Service Aboard Ships Offshore the RVN

When a Veteran claims exposure to herbicides during service aboard a Navy or Coast Guard ship, establish exposure on a presumptive basis if, while the Veteran was aboard

- evidence shows the ship

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- operated primarily on the inland waterways of the RVN, such as river patrol boats
- operated temporarily on the inland waterways of the RVN
- docked to a pier or shore of the RVN and the claimant provides a statement of personally going ashore, **or**
- ~~- operated on the offshore waters of the RVN **or** other locations, if the conditions of service involved duty or visitation on the ground in the RVN, **or**~~
- ~~- operated ~~in~~ other locations, if the conditions of service involved duty or visitation on the ground in the RVN.~~
- evidence places the Veteran onboard the ship at the time the ship docked to the shore or pier or operated in inland waterways, **and**
- **unless based on service on inland waterways,** the Veteran has stated that he/she went ashore when the ship docked or ~~operated~~

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~~on close coastal waters for extended periods~~ sent crew ashore, if the evidence shows the ship docked to the shore or pier or that crew members were sent ashore ~~when the ship operated on close coastal waters.~~

Notes:

- Service aboard a ship that anchored in ~~an open~~ a deep-water coastal harbor, such as Da Nang, Vung Tau, Qui Nhon, Ganh Rai Bay, or Cam Ranh Bay, along the RVN coast does not constitute inland waterway service or qualify as docking to the shore and is not sufficient to establish presumptive exposure to herbicides, unless the evidence of record confirms the Veteran went ashore during anchorage.
- Veterans who served aboard large ocean-going ships that operated on the offshore waters of the RVN are often referred to as “blue-water” Veterans because of the blue color of the deep offshore waters.

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They are distinguished from “brown-water” Veterans who served aboard smaller patrol vessels or their supply vessels that operated on the brown-colored freshwater rivers, canals, estuaries, and delta areas making up the inland waterways of the RVN.

- Brown-water Navy and Coast Guard Veterans who served on inland waterways receive the same presumption of herbicide exposure as Veterans who served on the ground in the RVN.

References: For more information on

- developing claims based on duty or visitation in the RVN while serving aboard ships on the RVN’s offshore waters or inland waterways, see M21-1, Part IV, Subpart ii, 1.H.2
- Navy vessels that docked to the shore or pier of the RVN, traveled on inland waterways, or ~~operated on close coastal waters for~~

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~~extended periods~~ sent crew ashore, see the Compensation Service Navy and Coast Guard Ships Associated with Service in Vietnam and Exposure to Herbicide Agents ~~Vietnam Era Navy Ship Agent Orange Exposure Development Site~~

- presumption of exposure to herbicides with verified service on inland waterways, see M21-1, Part IV, Subpart ii, 1.H.2.~~ef~~, and
- claims based on herbicide exposure due to transport, storage or use of herbicide agents on board the ship, see M21-1, Part IV, Subpart ii, 1.H.2.~~gj-hk~~.

n.
Effective
Dates
Based on
Duty or
Visitation
in the RVN
While
Serving
Aboard
Ships in its
Offshore
Waters or
Inland
Waterways

In some cases, a Veteran will reopen a claim that was previously denied because available service records did not establish that a ship qualified for Vietnam service. If newly received service records showing inland waterway service or docking found in deck logs, ship histories, or some other acceptable documentation now shows the ship qualifies, the claim must be reconsidered under [38 CFR 3.156\(c\)](#).

As stated in [38 CFR 3.156\(c\)\(3\)](#), if the evidence now justifies SC, the effective date will be the later of

- the date entitlement arose, or
- the date VA received the previously decided claim.

Notes:

- The date entitlement arose may be either the
– date that the claimed disease was diagnosed (or symptoms became manifest according to medical evidence), or

– the date that the claimed presumptive disease was finalized as part of the presumptive list of herbicide exposure-related diseases at [38 CFR 3.309\(e\)](#).

- Decisionmakers must also consider the effective date provisions of [38 CFR 3.114](#) and the *Nehmer* stipulation, when applicable.

Reference: For more information on the *Nehmer* stipulation, see M21-1, Part IV, Subpart ii, 2.C.4.

no. SC for NHL Under 38 CFR 3.313 Based on Service in the RVN During the Vietnam Era

VA regulations at [38 CFR 3.313](#) provide for a presumption of SC for NHL based on service in the RVN during the Vietnam Era.

Important: Exposure to herbicides is not a prerequisite for entitlement under [38 CFR 3.313](#). The claimant needs only to show service in the RVN, which includes the waters offshore.

ep.
Subcategories of NHL Qualifying for Presumptive SC

When [38 CFR 3.313](#) was promulgated, the U.S. Center for Disease Control identified a number of subcategories that are manifestations of NHL.

Extend the presumption of SC to a Veteran who claims SC for NHL if

- the Veteran had service in the RVN during the Vietnam Era, including naval service in the offshore waters of the RVN, and
- the medical evidence shows a diagnosis of any of the subcategories of low, intermediate, or high-grade lymphoma listed in the table below.

Low Grade Lymphoma	Intermediate Grade Lymphoma	High Grade Lymphoma
Small lymphocytic with plasmacytoid features	Diffuse, small and large	Diffuse, small and large
Small lymphocytic lymphoma and B-cell	Diffuse, small cleaved	Lymphoblastic

<p>CLL</p> <p>Note: Small lymphocytic lymphoma and B-cell CLL are considered slightly different forms of the same disease.</p>		
Intermediate cell	Diffuse, large cleaved	Immunoblastic
Follicular, mixed small and large	Diffuse, large non-cleaved	Burkitt's
Mantle zone	Diffuse, large	---
Follicular, small cleaved	Follicular, large	---
Waldenstrom's macroglobulinemia	---	---
Mycosis fungoides	---	---
<p>Reference: For more information on considering</p>		

<p>claims for SC for mycosis fungoides, see M21-1, Part III, Subpart iv, 4.I.4.j.</p>		
---	--	--

pq.
Benefits
Previously
Awarded
Under Pre-
Haas
Policies

Before the *Haas* case entered the court system, there was a period of time when a Veteran's receipt of the Vietnam Service Medal (VSM) or service in the offshore waters of Vietnam was sufficient to establish a presumption of herbicide exposure. This broad policy, which had been in effect since November 8, 1991, was subsequently narrowed as of February 27, 2002, so that service on the ground in Vietnam or on its inland waterways was required to receive a presumption of exposure. The *Haas* case was initiated as a challenge to this revised policy. Although the final judicial decision in *Haas* supported VA's revised policy, that decision cannot be applied retroactively to

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Veterans who were evaluated under the original broad policy.

When reviewing new claims from VSM Veterans or ~~B~~blue-~~W~~water Veterans, **do not**

- propose to sever SC for the disabilities previously awarded when the presumption of herbicide exposure was conceded under former policies, or
- concede herbicide exposure for any newly claimed disabilities unless evidence is presented that otherwise establishes the Veteran's exposure based on current evidentiary requirements.

References: For more information on

- new interpretations of the law and CUE, see
 - [*Berger v. Brown*](#), 10 Vet. App. 166 (1997), and
 - [*Jordan v. Nicholson*](#), 401 F.3d 1296 (Fed. Cir. 2005), and
- ~~B~~blue-~~W~~water Navy Veterans and herbicide exposure, see [*Haas v. Peake*](#).

**Department of
Veterans Affairs
Veterans Benefits
Administration
Washington, DC 20420**

**M21-1, Part IV
Subpart ii
February 5, 2016**

Key Changes

**Changes
Included
in This
Revision**

The table below describes the changes included in this revision of Veterans Benefits Manual M21-1, Part IV, “Compensation, DIC and Death Compensation Benefits,” Subpart ii, “Compensation.”

Notes:

- The term “regional office” (RO) also includes pension management center (PMC), where appropriate.
- Unless otherwise noted, the term “claims folder” refers to the official, numbered, Department of Veterans Affairs (VA) repository – whether paper or electronic – for all documentation relating to claims that a Veteran and/or his/her survivors file with VA.
- Minor editorial changes have also been made to
 - improve clarity and readability
 - update incorrect or obsolete references
 - reassign alphabetical designations

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to individual blocks, where necessary, to account for new and/or deleted blocks within a topic

- update the labels of individual blocks to more accurately reflect their content, and
- bring the document into conformance with M21-1 standards.

Reason(s) for the Change	Citation
<ul style="list-style-type: none"> • To update the definition of Vietnam’s inland waterways. • To add references. 	M21-1, Part IV, Subpart ii, Chapter 1, Section H, Topic 2, Block a (IV.ii.1.H.2.a)
<p>To add a new Block b containing the definition of Vietnam’s offshore waters.</p>	IV.ii.1.H.2.b
<p>To add a new Block c containing the geographic locations determined to be offshore waters.</p>	IV.ii.1.H.2.c
<p>To add a new Block d containing the geographic locations determined to be inland waterways.</p>	IV.ii.1.H.2.d
<p>To update procedures for reviewing military records to verify Vietnam service.</p>	IV.ii.1.H.2.e

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To clarify language about determining a Veteran's duty or visitation from a ship in Vietnam.	IV.ii.1.H.2.g
To clarify language about requesting National Personnel Records Center (NPRC) verification of a Veteran's duty or visitation from a ship in Vietnam.	IV.ii.1.H.2.h
<ul style="list-style-type: none"> • To incorporate published guidance clarifying the obligation to review records pertaining to Vietnam service and dates in Vietnam waters. • To add a note that if the U.S. Army and Joint Services Records Research Center (JSRRC) provides evidence that a ship may qualify for addition to the VA Ships List the information should be sent to Compensation Service's Agent Orange Mailbox. 	IV.ii.1.H.2.i

Rescissions None

Authority By Direction of the Under Secretary
for Benefits

Signature

Thomas J. Murphy, Director
Compensation Service

Distribution

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**Section H. Developing Claims for Service
Connection (SC) Based on Herbicide Exposure**

Overview

**In This
Section**

This section contains the following
topics:

Topic	Topic Name
1	Developing Claims Based on Herbicide Exposure in the Republic of Vietnam (RVN)
2	Developing Claims Based on Service Aboard Ships Offshore of the RVN or on Inland Waterways

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3	Developing Claims Based on Exposure to Agent Orange for Select Air Force Personnel Through Contact With Contaminated C-123 Aircraft Used in the RVN as Part of Operation Ranch Hand (ORH)
4	Developing Claims Based on Herbicide Exposure on the Korean Demilitarized Zone (DMZ)
5	Developing Claims Based on Herbicide Exposure in Thailand During the Vietnam Era
6	Developing Claims Based on Herbicide Exposure on Johnston Island
7	Developing Claims Based on Herbicide Exposure in Other Locations
8	Claims for Benefits Based on Birth Defects Due to Herbicide Exposure
9	Other Development Procedures for Claims Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicides

2. Developing Claims Based on Service Aboard Ships Offshore of the RVN or on Inland Waterways

Intro- duction

This topic contains information on developing claims based on service aboard ships offshore of the RVN or on inland waterways, including

- the definition of
 - inland waterways
 - offshore waters
- specific geographic locations determined to be
 - offshore waters
 - inland waterways
- review of military service personnel records to verify duty or visitation in the RVN while serving aboard ships on the RVN's offshore waters ~~service on ships offshore of the RVN~~ or on inland waterways
- presumption of exposure to herbicides with verified service aboard ships operating on inland waterways
- developing claims based on exposure to herbicides during service aboard

ships operating ~~in~~ on the RVN's offshore waters ~~of the RVN~~

- requesting National Personnel Records Center (NPRC) verification of duty or visitation in the RVN while serving ~~service~~ aboard ships on the RVN's offshore ~~waters of the RVN~~ or on inland waterways ~~from the National Personnel Records Center (NPRC)~~
 - requesting JSRRC verification of duty or visitation in the RVN while serving ~~service~~ aboard ships on the RVN's offshore ~~waters of the RVN~~ or on inland waterways ~~from the U.S. Army and Joint Services Records Research Center (JSRRC)~~
 - processing claims based on storage of Agent Orange aboard U.S. Navy and Coast Guard ships, and
 - mandatory claims folder documentation for Veterans claiming herbicide exposure aboard a ship in offshore waters.
-

**Change
Date**

~~January 20, 2016~~ February
5, 2016

**a. Definition
of Inland
Waterways**

The Agent Orange Act of 1991 implemented under [38 C.F.R. 3.307\(a\)\(6\)\(iii\)](#) requires “duty or visitation” within the RVN, ~~or~~ ~~including~~ its inland waterways, between January 9, 1962, and May 7, 1975, to establish a presumption of Agent Orange exposure.

Important: The presumption of exposure to Agent Orange requires evidence establishing duty or visitation within the RVN. Service on offshore waters does not establish a presumption of exposure to Agent Orange.

Inland waterways are fresh water rivers, streams, and canals, and similar waterways. Because these waterways are distinct from ocean waters and related coastal features, service on these waterways is service in the RVN. VA considers inland waterways to end at

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their mouth or junction to other offshore water features, as described below. For rivers and other waterways ending on the coastline, the end of the inland waterway will be determined by drawing straight lines across the opening in the landmass leading to the open ocean or other offshore water feature, such as a bay or inlet. For the Mekong and other rivers with prominent deltas, the end of the inland waterway will be determined by drawing a straight line across each opening in the landmass leading to the open ocean.

~~are those rivers, canals, estuaries, delta areas, and interior or enclosed bays within the land boundaries of RVN itself. Agent Orange aerial spraying occurred within the land boundaries and affected the inland waterways.~~

~~**Important:** Because Agent Orange was not sprayed over RVN's offshore waters, there is no presumption of~~

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~~exposure for service on the offshore open waters.~~

Note: Inland waterway service is also referred to as ***brown-water Navy service.***

References: For more information on

- criteria for inland waterway service, see the [Vietnam Era Navy Ship Agent Orange Exposure Development Site](#), and
- inland waterway locations, see M21-1, Part IV, Subpart ii, 1.H.1.d.

b. Definition of Offshore Waters

Offshore waters are the high seas and any coastal or other water feature, such as a bay, inlet, or harbor, containing salty or brackish water and subject to regular tidal influence. This includes salty and brackish waters situated between rivers and the open ocean.

Note: Service in offshore waters is also referred to as ***blue-water Navy service.***

Reference: For more information on offshore waters locations, see M21-1, Part IV, Subpart ii, 1.H.1.c.

c. Specific Geographic Locations Determined to Be Offshore Waters

The following locations are considered to be offshore waters of the RVN:

- Da Nang Harbor
- Nha Trang Harbor
- Qui Nhon Bay Harbor
- Cam Ranh Bay Harbor,
- Vung Tau Harbor, and
- Ganh Rai Bay

Important:

- RO staff are not authorized to independently determine that any particular coastal feature, such as bay, harbor, or inlet, is an inland waterway. RO staff unclear on the status of a particular body of water may, in accordance with established procedures, submit the claim to Compensation Service for administrative review.
- VA previously extended the presumption of exposure to herbicides to

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Veterans serving aboard U.S. Navy and other vessels that entered Qui Nhon Bay Harbor or Ganh Rai Bay. In the interest of maintaining equitable claim outcomes among shipmates, VA will continue to extend the presumption of exposure to Veterans who served aboard vessels that entered Qui Nhon Bay Harbor or Ganh Rai Bay during specified periods that are already on VA's "ships list." VA will no longer add new vessels to the ships list, or new dates for vessels currently on the list, based on entering Qui Nhon Bay Harbor or Ganh Rai Bay or any other offshore waters.

Reference: For more information on requesting an administrative review, see M21-1, Part III, Subpart vi, 1.A.3.

d. Specific Geographic Locations Determined to Be Inland Waterways

The following locations meet the criteria for inland waterways of the RVN:

- all rivers, from their mouth on the coast, or junction with adjoining coastal water feature, and throughout upstream channels and passages within Vietnam
 - Rivers ending in bays or other offshore water features on the coastline end at a notional boundary line drawn across the junction between the river and the offshore water feature.
 - The Mekong River and other rivers with prominent deltas begin at a line drawn across the mouth of each inlet on the outer perimeter of the landmass of the delta.
- all streams
- all canals, and
- all navigable waterways inside the perimeter of land-type vegetation (e.g., trees and grasses, but not seaweed or kelp). This is particularly applicable to

marshes found in the Rung Sat Special Zone and other Vietnam coastal areas.

be. Review of Military Service Personnel Records to Verify Duty or Visitation in the RVN While Serving Aboard Ships on the RVN's Offshore Waters of the RVN or on Inland Waterways

Follow the guidance in the table below to verify service on a ship in the offshore waters or inland waterways of the RVN.

Step	Action
1	Review military service personnel records for <ul style="list-style-type: none">• the ship on which the Veteran served in the waters offshore of the RVN, and/or• any service involving duty or visitation on land in the RVN.

<p>2</p>	<p>Search the Vietnam Era Navy Ship Agent Orange Exposure Development Site to verify whether the ship on which the claimant served</p> <ul style="list-style-type: none"> • traveled on inland waterways • docked to a pier or the shore of the RVN, or • operated on close coastal waters for extended periods of time sent crew ashore.
<p>3</p>	<p>Accept the Veteran's statement that he/she went ashore from a ship as evidence of presumptive exposure to herbicides <i>if</i> there is evidence that the Veteran's ship</p> <ul style="list-style-type: none"> • docked to the shore of the RVN, or • sent crew members ashore while operating on close coastal waters for extended periods of time, and • the claimant was stationed aboard the ship at that time.

	<p>Important: The presumption of herbicide exposure extends to any Veteran who served aboard a ship that entered <i>inland</i> waterways.</p>
<p>4</p>	<p>Can duty or Visitation in the RVN be conceded based on the above steps?</p> <ul style="list-style-type: none"> • If <i>yes</i>, concede exposure as discussed in M21-1, Part III, Subpart ii, 1.H.2.f. • If <i>no</i>, <ul style="list-style-type: none"> - ensure the development procedures in M21-1, Part III, Subpart ii, 1.H.2.g and h have been properly completed, and - follow the JSRRC procedures outlined in M21-1, Part IV, Subpart ii, 1.H.2.i. <p>Important: Service on a ship operating on the RVN's inland waterways constitutes duty or visitation in the RVN.</p>

~~**Reference:** For more information on reviewing the claims folder for proof of RVN service, see M21-1, Part IV, Subpart ii, 1.H.1.e.~~

**ef. Pre-
sumption of
Exposure to
Herbicides
With
Verified
Service
Aboard
Ships
Operating
on Inland
Waterways**

Veterans with verified service aboard ships operating on **the** RVN *inland* waterways qualify for presumption of Agent Orange exposure according to the Agent Orange Act of 1991 implemented under [38 C.F.R. 3.307\(a\)\(6\)\(iii\)](#).

Note: Veterans are *not* required to state that they went ashore if the service aboard ships during the time the ships were operating on inland waterways is verified.

References: For more information on

- the definition of inland waterway, see M21-1, Part IV, Subpart ii, 1.H.2.a, and
- verification of service aboard ships operating on inland waterways, see
 - M21-1, Part IV, Subpart ii, 1.H.2.b, and
 - M21-1, Part IV, Subpart

dg.
**Developing
Claims
Based on
Exposure to
Herbicides
During
Service
Aboard
Ships
Operating
in on the
RVN's
Offshore
Waters of
the RVN**

When the evidence of record is not sufficient to verify a Veteran's claim of exposure to herbicides while serving aboard a ship that operated on the offshore waters of the RVN, then develop for

- evidence showing the ship
 - operated temporarily on the RVN inland waterways
 - docked on the shores or piers of the RVN, or
 - ~~– operated on close coastal waters for extended periods, with additional evidence showing~~
 - ~~▪ crew members went ashore, or~~
 - ~~– smaller vessels from the ship went ashore regularly with supplies or personnel~~ sent crew ashore
- evidence placing the Veteran onboard the ship at the time the ship
 - operated on inland waterways

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- docked to the shore or pier, or
- ~~operated on close coastal waters for extended periods~~ sent crew ashore, and
- the Veteran's statement as to whether he/she went ashore ~~when the ship docked or operated on close coastal waters for extended periods~~, if the evidence shows the ship docked to the shore or pier or that crew members were sent ashore ~~when the ship operated on close coastal waters~~.

References:

- See the [Vietnam Era Navy Ship Agent Orange Exposure Development Site](#) for information on
 - ships associated with service in the RVN and exposure to herbicides
 - American Naval fighting ships, and
 - U.S. Naval bases and support activities in Vietnam.
- See M21-1, Part IV, Subpart ii, 2.C.3.m for

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information on

- “blue-water” versus “brown-water” Veterans, and
 - presumption of herbicide exposure for “brown-water” U.S. Navy and Coast Guard Veterans.
-

eh.
Requesting
NPRC
Verification
of Duty or
Visitation
in the RVN
While
Serving
Service
Aboard
Ships on
the RVN's
Offshore of
the
RVN Waters
or on
Inland
Waterways
From the
NPRC

If the claimant's military service personnel records are not currently in the claims folder and there is an assertion of a disability resulting from RVN duty or visitation —exposure to herbicides while serving on a ship in the RVN's offshore the waters offshore of the RVN or on the inland waterways, follow the procedures in the table below to develop for service personnel records from the National Personnel Records Center (NPRC).

If the claims folder is ...	Then ...
an eFolder	submit a request through PIES, using request code O50. <i>Note:</i> Do <i>not</i> resubmit a PIES O50 request if already submitted and a response has been received under prior claims development.
a paper claims folder	submit a request through PIES, using request code O18.

fi. Requesting JSRRC Verification of Service Duty or Visitation in the RVN While Serving Aboard Ships on the RVN's Offshore

Prior to submitting a Defense Personnel Records Information Retrieval System (DPRIS) O43 request to JSRRC for verification of herbicide exposure, or prior to determining that there is not sufficient information to obtain the assistance of JSRRC, the development activity must ensure

- all other possible avenues of verifying exposure to

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**Waters of
the RVN or
on Inland
Waterways
From the
JSRRC**

herbicides have been exhausted, to include

– following the development guidance in M21-1, Part IV, Subpart ii, 1.H.2.a-e, and

– consulting ~~the resources on~~

- the [Vietnam Era Navy Ship Agent Orange Exposure Development Site](#)

- the [Dictionary of American Naval Fighting Ships](#), and

- the [Dictionary of American Naval Aviation Squadrons](#), which contains the histories of all attack squadrons (“VA” prefix) and strike fighter squadrons (“VFA” prefix), for Navy flight personnel who state they served with a unit in Vietnam.

- the Veteran has identified a cumulative 60-day time frame for docking or inland waterway travel which may include different dates as long as the cumulative number of days

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does not exceed 60 days,
and

- the service department has been unable to provide verification that the Veteran went ashore or traveled on inland waterways.

Important:

- In conducting the development above, review *all* evidence relating to the Veteran's service (not just what he/she may provide in response to VA requests) and glean dates of service in Vietnam waters from the records to the extent possible.
- The DPRIS O43 request to JSRRC *must* include the following information
 - the name and hull number of the ship, such as U.S. Ship (USS) Galveston (CLG-3), and
 - the dates during which the ship
 - traveled on inland waterways
 - docked to shore or pier, or

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- sent crew members ashore.
- If a JSRRC response, or other documentation, shows that the Veteran's ship may meet the criteria for addition to the [VA Ships List](#), forward that evidence to VAVBAWAS/CO/211/AGENTORANGE for consideration.

Note: Concede exposure to herbicides on a presumptive basis if the

- Veteran's unit history shows RVN in-country service, consistent with the Veteran's dates of assignment to that unit, and
 - Veteran provides a lay statement of personal in-country service.
-

gj.
**Processing
Claims
Based on
Storage of
Agent
Orange
Aboard
U.S. Navy
and Coast
Guard
Ships**

Agent Orange was *not* transported, stored, or used aboard U.S. Navy or Coast Guard ships.

If a Veteran claims exposure to herbicides due to transport, storage, or use aboard a U.S. Navy or Coast Guard ship, associate a copy of the JSRRC memorandum shown in M21-1, Part IV, Subpart ii, 1.H.2.k with the Veteran's claims folder.

hk.
**Mandatory
Claims
Folder
Docu-
mentation
for
Veterans
Claiming
Herbicide
Exposure
Aboard a
Ship in
Offshore
Waters**

When a Veteran claims exposure to herbicides during service aboard a ship in offshore waters based on shipboard herbicide transportation, storage, or use, associate a copy of the JSRRC memorandum provided below with the Veteran's claim folder.

**DEPARTMENT OF THE ARMY
U.S. ARMY & JOINT SERVICES RECORDS
RESEARCH CENTER
7701 TELEGRAPH ROAD
KINGMAN BUILDING, ROOM 2C08
ALEXANDRIA, VA 22315-3828**

AAHS-RDC

01 May 09

MEMORANDUM FOR RECORD

SUBJECT: Joint Services Records Research Center Statement on Research Findings Regarding Navy and Coast Guard Ships During the Vietnam Era

1. In the course of its research efforts, the JSRRC has reviewed numerous official military documents, ships histories, deck logs, and other sources of information related to Navy and Coast Guard ships and the use of tactical herbicide agents, such as Agent Orange, during the Vietnam Era.

2. To date, the JSRRC has found no evidence that indicates Navy or Coast Guard ships transported tactical herbicides from the U.S. to the Republic of Vietnam or that ships operating off the coast of Vietnam used, stored, tested, or transported tactical herbicides. Additionally, the JSRRC cannot document or verify that a shipboard Veteran was exposed to tactical herbicides based on contact with aircraft that flew over Vietnam or

equipment that was used in Vietnam.

3. Therefore, the JSRRC can provide no evidence to support a Veteran's claim of exposure to tactical herbicide agents while serving aboard a Navy or Coast Guard ship during the Vietnam era.

/s/

Domenic A. Baldini

Director

Note: Association of the JSRRC memorandum with the claims folder will

- substitute for individual inquiries to the Compensation Service Agent Orange mailbox and to JSRRC, and
 - establish that JSRRC has no evidence to support a claim of herbicide exposure during shipboard service.
-

**Department of
Veterans Affairs** **Memorandum of Changes**

Date: February 5, 2016

From: Compensation Service (CS)

Background: In *Gray v. McDonald*, the Court of Appeals for Veterans Claims found VA's policy regarding inland waterways was "seemingly arbitrary and inconsistent" and "irrational" and remanded the matter to VA for clarification. These changes clarify VA's policy and are based upon the fact that Agent Orange was not sprayed over Vietnam's offshore waters. Further, VA does not have medical or scientific evidence to support a presumption of exposure for service on the offshore open waters.

Key Change Summary:

This change provides clear definitions for service on inland waterways and for waters offshore of Vietnam.

This change provides a list of geographical locations that qualify as inland waterways and those that fall into the category of offshore waters.

This change provides guidance to regional office employees when the status of a particular body of water is unclear.

This change provides guidance to decisionmakers on establishing an effective date.

Significant Manual Changes

<p>M21-IIV.ii.1.H</p> <ul style="list-style-type: none"> • 2.a • 2.b • 2.c • 2.d 	<p>Developing Claims Based on Service Aboard Ships Offshore of the RVN or on Inland Waterways</p> <ul style="list-style-type: none"> • Definition of inland waterways • Definition of offshore waters • Specific locations - offshore waters • Specific locations - inland waterways
<p>M21-IIV.ii.2.C</p> <p>3.n</p>	<p>Service Connection (SC) for Disabilities Resulting From Exposure to Environmental Hazards or Service in the Republic of Vietnam (RVN)</p> <p>Effective dates based on service aboard ships in the RVN</p>

Minor Manual Changes

<ul style="list-style-type: none"> • M21-IIV.ii.1.H - 2.e - 2.f - 2.g - 2.h - 2.i • M21-IIV.ii.2.C.3.m

Prepared by Compensation Service (21 C), Procedures Staff (212)

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THE SECRETARY OF VETERANS AFFAIRS

[Emblem **WASHINGTON**
omitted] **February 5, 2016**

The Honorable Richard Blumenthal
United States Senate
Washington, DC 20510

Dear Senator Blumenthal:

Thank you for your January 12, 2016, co-signed letter to the Department of Veterans Affairs (VA) expressing concern about Blue Water Navy Veterans. You requested that VA use its statutory authority to afford the presumption of service connection to Veterans with Agent Orange-related diseases who served in the territorial seas of the Republic of Vietnam between January 9, 1962, and May 7, 1975. It is critically important that any decisions related to presumption of service connection be fully grounded in science.

As noted in your letter, Congress extended a presumption of exposure to Agent Orange and other herbicides to Veterans who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975 (38 U.S.C. § 1116). VA has long interpreted that authority as extending only to those Veterans who actually served in Vietnam where they may have been exposed to the spraying of Agent Orange and other herbicides. This interpretation includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam (38 C.F.R. § 3.307(a)(6)(iii)). It is also VA's

longstanding policy to apply the presumption of herbicide exposure to Navy and Coast Guard Veterans who served on boats and ships that operated on Vietnam's inland waterways.

As a result of the Court of Appeals for Veterans Claims' remand in *Gray v. McDonald*, VA has re-evaluated and clarified its policy concerning these inland waterways where we will presume exposure to herbicides. That policy is as follows: Inland waterways are fresh water rivers, streams, canals, and similar waterways. Explicitly included by policy are the heavily vegetated Mekong River Delta and Rung Sat Special Zone. Specifically excluded are all other coastal water features, particularly bays and harbors, including Da Nang Harbor. As we have long done, VA will continue to extend a presumption of exposure to Agent Orange to any Veteran who went ashore.

I did not reach this decision lightly, I take very seriously our solemn obligation to fulfill President Lincoln's promise "*To care for him who shall have borne the battle, and for his widow, and his orphan,*" but I must also consider the current state of the pertinent science when considering creation or expansion of presumptions.

Environmental health experts in VA's Veterans Health Administration have reviewed the available scientific information – including the 2002 Royal Australian Navy laboratory study – and have concluded that the information is not sufficient to support a presumption that Blue Water Navy Veterans were exposed to Agent Orange. This review is consistent with a 2011 Institute of Medicine (IOM) study specifically addressing the plausibility of offshore exposure, as well as subsequent research

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published in reputable scientific journals. In this study, the IOM also reviewed the 2002 Australian study and concluded that exposure through distillation of potable water was highly uncertain and not plausible given the extreme dilution that would have occurred in offshore waters.

VA is looking to further add to the body of scientific knowledge with our own study of Blue Water Navy Veterans' health outcomes, and our partners at the Veterans of Foreign Wars, the Vietnam Veterans of America, and the Blue Water Navy Vietnam Veterans have graciously accepted our offer to collaborate on this groundbreaking study by serving on VA's steering committee for this issue.

I hold in high regard the service performed by Blue Water Navy Veterans. As we gather data and prepare analyses in our study, VA will continue to evaluate Blue Water Navy Veterans' claims on their individual merits, with due consideration paid to ensuring they receive fair, just, and equitable outcomes available under the law.

Should you have further questions, please have a member of your staff contact Mr. Joe Sixeas, Congressional Relations Officer, at (202) 461-5899 or by email at Joe.Sixeas@va.gov. A similar response was sent to the cosigners of your letter.

Thank you for continued support of our mission.

Sincerely,

s/ Robert A. McDonald

Robert A. McDonald

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[Emblem omitted] Department of Veterans Affairs	Office of Public Affairs	Washington, DC 20420
	Media Relations	(202) 461-7600 www.va.gov
	Fact Sheet	

Agent Orange and Presumptions of Service Connection: Inland Waterways and “Blue Water” Navy Veterans

The Department of Veterans Affairs (VA) remains committed to ensuring that Vietnam-era Veterans receive benefits they have earned through their service. This commitment includes determining presumptive service connection related to Agent Orange and other herbicide exposure.

- Congress has provided that a Veteran who “served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975,” will be presumed to have been exposed to an herbicide agent during such service. This presumption of exposure may be used to service connect an herbicide-related disease and establish entitlement to VA disability compensation.
- VA interprets the phrase “served in the Republic of Vietnam” to refer to duty or visitation on land (ground troops) or on the inland waterways of Vietnam (“Brown Water” Navy), but not to include service in the waters

offshore (“Blue Water” Navy) or in the airspace above Vietnam.

- In 2008, the U.S. Court of Appeals for the Federal Circuit (*Haas v. Peake*) upheld VA’s policy as a reasonable interpretation of the governing statute.

At the request of VA, the Institute of Medicine (IOM) conducted a review of numerous medical studies related to whether Blue Water Navy Veterans were exposed to herbicides during Vietnam service.

- The IOM determined in its report, *Blue Water Navy Vietnam Veterans and Agent Orange Exposure* (2011), that there was insufficient evidence to conclude that Blue Water Navy Veterans were exposed to herbicides.
- The medical and scientific evidence available at this time does not support extension of the presumption of exposure to herbicides to Blue Water Navy Vietnam Veterans.

A recent Veterans Court decision, *Gray v. McDonald*, required that VA re-evaluate and clarify its definition of “inland waterways.” Consistent with the decision in *Gray*, the Department has clarified that it defines inland waterways, which are part of the Republic of Vietnam for purposes of acknowledging Agent Orange exposure, as fresh water rivers, streams, canals, and similar waterways. Because these waterways are distinct from ocean waters and related coastal features, service on these waterways is service in the Republic of Vietnam. VA considers inland waterways to end at their mouth or junction to other offshore water features, as described below. For rivers and other waterways ending on the coastline, the end of

the inland waterway will be determined by drawing straight lines across the opening in the landmass leading to the open ocean or other offshore water feature, such as a bay or inlet. For the Mekong and other rivers with prominent deltas, the end of the inland waterway is determined by drawing a straight line across each opening in the landmass leading to the open ocean.

In contrast, offshore waters, where exposure to Agent Orange will not be presumed, are the high seas and any coastal or other water feature, such as a bay, inlet, or harbor, containing salty or brackish water and subject to regular tidal influence. This includes salty and brackish waters situated between rivers and the open ocean. Examples of offshore bays or harbors in Vietnam include, but are not limited to DaNang Harbor, Nha Trang Harbor, Cam Ranh Bay, Qui Nhon Bay, and Ganh Rai Bay.

Veterans who meet certain service qualifications and have any of the medical conditions determined by VA to be related to exposure to Agent Orange are encouraged to apply for benefits. Claimants may apply online through the eBenefits portal or by filling out VA Form 21-526, Veterans Application for Compensation and/or Pension, or VA Form 21-526EZ, Fully Developed Claim (Compensation). Additional information regarding exposure to herbicides during Vietnam service is available on VA's Public Health site at <http://www.publichealth.va.gov/exposures/agentorange/>.

FAQs

Who are Blue Water Navy Veterans?

Blue Water Navy Veterans are those sailors and other Veterans who served aboard ships that did not enter Vietnam's inland waterways.

Were Blue Water Navy Veterans exposed to Agent Orange?

The U.S. military sprayed Agent Orange over the Vietnam land mass. However, Blue Water Navy Veterans may be entitled to the presumption of Agent Orange exposure if they were on a ship when it entered Vietnam's inland waterways or went ashore.

Why doesn't VA recognize Blue Water Navy Agent Orange exposure?

The presumption of exposure to Agent Orange during Vietnam service is based upon service in Vietnam where Agent Orange spraying occurred, which includes the country's inland waterways. VA asked the Institute of Medicine (IOM) to determine whether there was any scientific basis for concluding that Blue Water Navy Veterans, who had only shipboard service off the coast of Vietnam, were also exposed to Agent Orange. IOM was unable to determine whether or not Blue Water Navy Veterans were exposed to herbicides sprayed in Vietnam.

Were any Navy Veterans exposed to Agent Orange?

Yes. VA recognizes that many Navy Veterans served in Vietnam, and those Veterans are afforded the presumption of exposure to Agent Orange and service connection for diseases associated with Agent Orange exposure.

Doesn't an Australian study conclude that Blue Water Navy Veterans were exposed to Agent Orange?

No. IOM validated the Australian study's laboratory methodology and confirmed that the intake of Agent Orange-contaminated seawater on Navy ships could result in exposures through the Navy's potable water desalinization process. However, the IOM concluded that the lack of evidence regarding the extent of any herbicides in the seawater made it impossible to determine whether Blue Water Navy personnel were exposed to herbicides through such processes.

Isn't there new science proving Blue Water Veterans were exposed to Agent Orange?

No, environmental health experts in VA's Veterans Health Administration have reviewed the available scientific information and concluded that it is not sufficient to support a presumption that Blue Water Navy Veterans were exposed to Agent Orange. This review includes the 2011 Institute of Medicine report specifically addressing the plausibility of offshore exposure, as well as subsequent research published in reputable scientific journals. VA, however, remains concerned with the health and well-being of all Veterans, including those who served off Vietnam's coast. As a result, we have partnered with the Veterans of Foreign Wars, the Vietnam Veterans of America and the Blue Water Navy Vietnam Veterans to initiate a groundbreaking study of Blue Water Navy Veterans health outcomes. We hope to have data gathered and analyses published in 2017.

What's next for Blue Water Veterans?

VA will continue to resolve their claims for Agent Orange-related disability benefits on a case-by-case basis.

Where can Navy Veterans find more information?

On the web at <http://www.publichealth.va.gov/PUBLICHEALTH/exposures/agentorange/index.asp>. We also maintain a public database of ships known to have operated on the inland waterways for some period of time at <http://www.publichealth.va.gov/exposures/agentorange/shiplist/list.asp>.

Ships List FAQs

I served on a PCF "Swift Boat" in and around the Rung Sat Special Zone in 1968. Am I entitled to a presumption of exposure to Agent Orange?

Yes, VA has determined that Veterans who had Vietnam service aboard certain classes of boats and ships that operated primarily on Vietnam's inland waterways are entitled to the presumption. PCF is one of those classes. Additionally, service in the Rung Sat Special Zone is service in Vietnam, not offshore, under VA's policy.

I served from 1965 to 1967 aboard the USS Guadalupe (AO-32), an oiler that operated in Ganh Rai Bay during April 1966, but I have never filed a claim for disability benefits. My doctor just diagnosed type II diabetes. Am I still entitled to the presumption of Agent Orange exposure?

As a result of the remand by the Court of Appeals for Veterans Claims in *Gray v. McDonald*, VA reviewed and clarified its policy concerning inland waterways where exposure to herbicides will be presumed. Although VA had previously considered Qui Nhon Bay and Ganh Rai Bay to be inland waterways, these two offshore bays are no longer considered inland waterways under VA's policy clarification.

Although VA will no longer add new ships or new dates of service to the ships list based on their presence in Qui Nhon Bay or Ganh Rai Bay, VA has already established a presumption of Agent Orange exposure for a number of ships entering those bays, including the *Guadalupe's* April 1966 service. VA will therefore continue to extend that presumption to crewmembers who were aboard the *Guadalupe* at that time. If you were actually aboard the *Guadalupe* when it operated in Ganh Rai Bay in April 1966, you will be entitled to the presumption of Agent Orange exposure.

I served aboard a ship that operated on Ganh Rai Bay during April 1968, but I have never filed a claim for disability benefits. My doctor just diagnosed type II diabetes. VA has already recognized my ship's service on Ganh Rai in 1966, but not 1968. Am I still entitled to the presumption of Agent Orange exposure?

If you went ashore in Vietnam at any point while performing active service, you are entitled to the presumption of exposure to Agent Orange. Although your ship is already on the list because it operated in Ganh Rai Bay in 1966, we are not adding the April 1968 period to the list because it was not service on

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Vietnam's inland waterways. Because we're not adding the April 1968 period to VA's ships list, that offshore service cannot be used to establish a presumption of exposure to Agent Orange.