

HOW A CRITICAL CHANGE TO THE VA'S INSTRUCTION MANUAL AFFECTED BLUE WATER NAVY PERSONNEL

A very important change took place in the wording which describes a veteran who is eligible for health care and other benefits if they have an herbicide-related disease due to service in Vietnam. The original description of that veteran, directly from the **Agent Orange Act of 1991**, reads as follows:

"...a veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era and while so serving was exposed to that herbicide agent, [the disease] shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service."

This description sets the basis of what is known as "the presumption of exposure to herbicide in Vietnam." It rests on the fact that there does not need to be any documentation or evidence that any actual contamination ever took place during service. No measurement of amount exposed to, duration of exposure, level of exposure, or analysis of exposure pathways is needed for the disease to be "[presumed] to have been incurred in or aggravated by such service." Based on this legislation from 1991, all veterans who served in the War Zone of Vietnam are presumed to have been exposed to herbicide. The immediate identification of "in Vietnam" included all personnel who served within the Vietnam Theater of Combat.

Following this legislation, the Department of Veterans Affairs (DVA) was tasked with clearly defining the rules for what action it would be required to take whenever presented with a claim for service-connected disability based on an herbicide-related disease or disability. The directions in the M21-1 Manual (attached) show this rule. It clearly reflects the DVA's understanding and acknowledgment of exactly who Congress intended this presumption of exposure to apply to. That included offshore Navy, Coast Guard and Marine personnel, now referred to as "The Blue Water Navy," serving on ships within the Theater of Combat. This rule was added to the M-21-1 Manual, which contains all the rules for deciding the benefits each veteran is entitled to.

This rule stayed basically unchanged until February, 2002. At that time, the VA re-wrote the rule to require all Vietnam veterans to have had "boots on ground" to qualify for the presumption of exposure to herbicide. This suddenly eliminated all Vietnam veterans who served on ships offshore and who never stood on land. At that time, service-connected benefits to The Blue Water Navy for herbicide exposure were denied.

HR-543 and S-1629 will re-instate those benefits for all Blue Water Navy personnel.

Your vote is needed to return health care and compensation benefits to veterans of The Blue Water Navy who are sick, disabled and dying due to exposure to herbicide in Vietnam.

furnished to avoid requesting information previously furnished or which cannot be located without additional information. Clearly indicate the specific information required. Include all clues which may assist the service department or the State Adjutant General in locating the desired data. Complete items on subsequent requests the same as on original requests. This information is needed to assist the service department in locating the veteran's records.

i. **Date of Induction Not the Same as Date of Entry.** The date of induction is not the same as the date of entry on active duty. The date of induction is the date a person signed the enlistment obligation papers. The date of entry on active duty is the date that active military service actually began. If verification of service is received on a 3101 response showing the date of induction as the entry date, do not accept it as verified service. Submit a hardcopy VA Form 21-3101, with a copy of the DD Form 214 attached. Point out the inconsistency and request verification of service.

j. **Enter Regional Office Return Address on Hardcopy 3101's.** Use Target to request service records whenever possible. However, if it is necessary to send a hardcopy VA Form 21-3101, put the full address of the regional office on the form. If the regional office address is not on the form, the service department does not know where to send its reply.

k. **Verifying Vietnam Service for Purposes of Non-Hodgkin's Lymphoma, Soft-tissue Sarcoma, and Chloracne Claims**

(1) It may be necessary to determine if a veteran had "service in Vietnam" in connection with claims for service connection for non-Hodgkin's lymphoma, soft-tissue sarcoma and chloracne. See paragraph 5.03c. In the absence of contradictory evidence, "service in Vietnam" will be conceded if the records shows that the veteran received the Vietnam Service Medal.

(2) If a veteran who did not receive the Vietnam Service Medal claims service connection for non-Hodgkin's lymphoma, soft tissue sarcoma or chloracne and alleges service on a ship in the waters offshore Vietnam, review the record for evidence that the ship was in the vicinity of Vietnam for some significant period of time (i.e., more than just in transit through the area). If the veteran cannot produce evidence that the ship was in the waters offshore Vietnam, contact the Compensation and Pension Service Projects Staff (213B). Be prepared to furnish the name of the ship, the number of the ship and the dates that it is alleged to have been in the waters offshore Vietnam. Central Office will attempt to obtain confirmation from the Department of Defense.

4.09 SPECIAL FOLLOWUP BY THE MILITARY RECORDS SPECIALIST

Each regional office will designate an employee as the military records specialist. This person must possess expertise in this area and must be thoroughly familiar with this chapter. The person will be responsible for local training on military records requests and will serve as the contact point with the NPRC and service departments if it is necessary to request records from the military services or NPRC outside normal channels. Any change to the list should be sent via E Mail to the following mailbox: MAIL VBA STLOU/21. If E Mail is not available, changes may be mailed to: