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Presumption of Exposure to Agent Orange for Vietnam Veterans

Issue: The Veterans Benefits Administration of the USDVA requires personnel in the US Coast Guard, US Marine Corps, and US Navy to have physically served ashore within the former Republic of Vietnam to be considered as having been exposed to Agent Orange or other Dioxins. This limits the assumption of contraction of presumptive diseases related to Agent Orange.

Discussion: Title 38 USC 101(29)(A) states that “The term “Vietnam era” means the following: “The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.” Title 38 USC 1116(f) states that “...a veteran 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, shall be presumed to have been exposed during such service to an herbicide agent...” Title 38 USC 1821(2) states that “The term ‘Vietnam veteran’ means an individual who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era, with regard to the characterization of that individual’s service.” Title 38 CFR 3.307(a)(6)(iii) states that “‘Service in the Republic of Vietnam’ *includes service in the waters off shore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.*” In VAOPGCPREC 27-97 dated July 23, 1997 states “In any event, the regulatory definition in 38 CFR 3.307(a)(6)(iii), which permits certain personnel not actually stationed within the borders of the Republic of Vietnam to be considered to have served in that Republic, *requires that an individual actually have been present within the boundaries of the Republic to be considered to have served there, through inclusion of the requirement for duty or visitation in the Republic.*” It further states that “*Service on a deep-water naval vessel in waters off the shore of the Republic of Vietnam does not constitute service in the Republic of Vietnam for purposes of 38 USC 101(29)(A).*” (Emphasis added)

The USDVA will not provide presumption to exposure to those sea service veterans who served afloat in waters contiguous to the former Republic of Vietnam unless written documentation of a visit ashore is provided.

It is a fact that Agent Orange was spread as an aerosol over tropical jungles. During the “rainy season” the defoliant washed into streams and creeks that fed into rivers that fed into the South China Sea where it was ingested into shipboard evaporators, distilled, and turned into drinking water for the crew of the vessel. It is also a fact that Naval aircraft suffering battle damage or mechanical malfunction often landed at military airfields in the Former Republic of Vietnam and that aircraft maintenance personnel were often sent ashore on verbal orders of the commanding officer to repair such aircraft. These aircrews and maintenance personnel meet the requirements for having “boots on the ground” in the RVN, but cannot document having met that requirement.

Recommendation: AMVETS requests that the Veterans’ Disability Benefits Commission recommend that the Congress rewrite Title 38 USC 1821(2) to include Sea Service personnel serving in waters contiguous to the former Republic of Vietnam as being presumed to have been exposed to Agent Orange and other herbicides.