(VSR VIP Pre-D) Herbicide Exposure Claims Development

Student Handout

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# Objectives

After this training, the trainee will be able to:

* Explain the history of herbicide claims processing
* Identify the types of Vietnam service
* Establish the required special issue
* Develop for necessary evidence
* Identify the presumptive conditions associated with herbicide exposure
* Complete steps required to route the claim to the Centralized Processing Regional Offices

# References

All M21-1 references are found in the [Compensation Pension Knowledge Management Portal](https://vaww.compensation.pension.km.va.gov/):

* [CFR 3.307(a)(6), Diseases associated with exposure to certain herbicide agents](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58)
* [CFR 3.309(e), Disease associated with exposure to certain herbicide agents](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58)
* [CFR 3.313, Claims based on service in Vietnam](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58)
* [CFR 3.816, Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58)
* [M21-1, Part IV, Subpart ii,1.H, Developing Claims for Service Connection (SC) Based on Herbicide Exposure](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014940/M21-1-Part-IV-Subpart-ii-Chapter-1-Section-H-Developing-Claims-for-Service-Connection-SC-Based-on-Herbicide-Exposure?articleViewContext=article_view&isFeatured=undefined&topic=undefined)
* [M21-1, Part IV, Subpart ii,2.C.3, SC for Disabilities Resulting From Exposure to Certain Herbicide Agents or Based on Service in the RVN](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014556/M21-1-Part-IV-Subpart-ii-Chapter-2-Section-C-Service-Connection-SC-for-Disabilities-Resulting-From-Exposure-to-Environmental-Hazards-or-Service-in-the-Republic-of-Vietnam-RVN?articleViewContext=article_view&isFeatured=undefined&topic=undefined)
* [M21-1, Part VI, 1, General Chapter 18 Benefits Information](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014960/M21-1%2C%20Part%20VI%2C%20Chapter%201%20-%20General%20Chapter%2018%20Benefits%20Information)
* [M21-1, Part VI, 2.B, Eligibility and Development](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014964/M21-1-Part-VI-Chapter-2-Section-B-Eligibility-and-Development)

# Topic 1: History of Herbicide Exposure

**Herbicide Use**

Herbicides were used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam era. These chemicals were defoliants that killed any and all vegetation, like jungles and crops. Several million gallons of defoliant were aerially sprayed over South Vietnam from 1962 to 1971. There were several different types of herbicide agents used. The most widely used herbicides were Agents Orange, Blue, and White. The herbicides were developed primarily by Monsanto and Dow and different types include: Agent Green, Agent Pink, Agent Purple, Agent White, Agent Blue and Agent Orange. The most common were Orange, Blue, and White

Most of the herbicides used in Vietnam contained a toxic byproduct called dioxin, which accumulates in a body’s fatty tissue, does not break down, and stays there. The long-term effects of dioxin have been extensively studied, and the VA currently recognizes several conditions as related to dioxin exposure.

**Herbicide Legislation**

VA received the first claims asserting conditions related to Agent Orange in 1977. Since then, Vietnam-era veterans have sought relief from Congress and through the judicial system. Beginning in 1979, Congress enacted several laws to determine whether exposure to herbicides in Vietnam was associated with possible long-term health effects and certain disabilities.

The Veterans’ Health Care, Training and Small Business Loan Act of 1981 gave Vietnam Veterans priority status for health care at VA facilities if a Veteran self-reported exposure to herbicides, absent evidence to the contrary.

The Veterans’ Dioxin and Radiation Exposure Compensation Standards Act of 1984 required the VA to develop regulations for disability compensation for Vietnam Veterans exposed to Agent Orange.

In 1991, the Agent Orange Act established a presumption of service connection for diseases associated with herbicide exposure. It also authorized the VA to work with the Institute of Medicine (IOM) to conduct scientific reviews of any and all evidence linking certain medical conditions to herbicide exposure. If evidence suggests that new conditions are being caused by herbicide exposure, then VA is required to update its current rules and regulations. Many conditions have been added since 1991 based on reports from the IOM.

The Veterans’ Health Care Eligibility Reform Act of 1996 completely restructured VA medical care eligibility requirements for all veterans, to include those exposed to herbicides. Under this law, a Veteran does not have to demonstrate a link between a certain health condition and exposure to herbicides; instead, medical care is provided unless VA determines that the condition did not result from exposure to herbicides. This authority was permanently authorized by the Caregivers and Veterans Omnibus Health Services Act of 2010.

There have also been several court decisions that have affected VA rules and regulations regarding claims based on herbicide exposure. In *Nehmer* *v. United States Department of Veterans Affairs*, the court ruled that VA must grant benefits retroactively in some scenarios where the Veteran was previously denied for service-connection for a condition now considered presumptive to herbicide exposure. In some scenarios, VA used effective dates many decades in the past. In *Haas v. Shinseki*, the court ultimately decided that Veterans who only served aboard ships on the open ocean (Blue Water Veterans) were not eligible for presumption based on herbicide exposure. In *Gray v. McDonald*, the court required that the VA provide a stricter definition of Brown and Blue Water Veterans.

PL 116-23, Blue Water Vietnam Veterans Act - These changes began with the case Procopio V. Wilkie (2019), which was a case that sought to extend the presumption of herbicide exposure to those Veterans who served in the offshore waters of Vietnam. This was defined as serving in the seas of the Republic of Vietnam, or 12 nautical miles from the land mass.

Prior to the enactment of this new law, the VA extended a presumption of herbicide exposure to any Veteran who served on the ground or on the inland waterways of the Republic of Vietnam between January 9, 1962, and May 7, 1975 based upon 38 U.S.C.§ 1116(a)(1).

# Topic 2: Evidentiary Requirements

Service-Connection Requirements

In order for VA to establish service connection for a condition caused by herbicide exposure, there must be:

* Element 1: medical evidence diagnosing the condition,
* Element 2: evidence the in-service event (or exposure) occurred,
* Element 3: a nexus between the in-service stressor and the diagnosed condition\*

If the Veteran is diagnosed with one of the conditions listed in CFR 3.309(e) and was exposed to herbicides, then element 3 is satisfied. VA should not develop for medical or scientific evidence or an opinion in these scenarios. If the Veteran is claiming a condition not listed in CFR 3.309(e), then there must be evidence linking the condition to herbicide exposure.

Since it is very difficult for a lay person to describe symptoms for the conditions listed on CFR 3.309, the Veteran will need to provide medical evidence diagnosing the condition.

We will discuss element 2 (exposure) in a few moments.

**Presumptive Conditions**

The following diseases are presumptive to herbicide exposure:

* AL amyloidosis
* Chloracne or other acneiform disease consistent with chloracne
* Type 2 diabetes
* Hodgkin's disease
* Ischemic heart disease
* All chronic B-cell leukemias
* Multiple myeloma
* Non-Hodgkin's lymphoma
* Parkinson's disease
* Early-onset peripheral neuropathy (PN)
* Porphyria cutanea tarda (PCT)
* Prostate cancer
* Respiratory cancers
* Soft-tissue sarcom

The following diseases must have manifested at a compensable level **within one year** of the Veteran’s last exposure to herbicides:

* Chloracne or other acne-form disease consistent with chloracne
* Porphyria cutanea tarda (PCT),
* Early-onset peripheral neuropathy (PN)

For all other conditions, there is no time limit.

The Veteran must have served in specific locations to qualify for presumption. We will discuss these locations in the next portion of the training. However, VA has extended presumption for
Non-Hodgkin’s Lymphoma to any Veteran who also served in the waters off the shores of Vietnam. Non-Hodgkin’s Lymphoma is not a single disease but a grouping of lymphomas that are Non-Hodgkin’s type. For more information see M21-1, Part IV, Subpart ii, 2.C.3.o. The presumption of exposure is also extended to Veterans who have boots on the ground and from categories one through two as well. However, this presumption does not extend to anyone who served outside of Vietnam, e.g., Thailand or Korea.

**Herbicide Exposure**

The presumption of exposure to herbicides can be extended to any Veteran who, during active military, naval, or air service served in the Republic of Vietnam (RVN) during the period beginning on January 9, 1962, and ending on May 7, 1975.

* On land
* On the inland waterways
* Aboard vessels docked to a pier or shore (w/ land visitation)
* Aboard vessels on the offshore waters (w/ land visitation)

This presumption has also been extended to certain Veterans who served on the demilitarized zone in Korea and on the perimeter of bases in Thailand.

Vietnam

If a Veteran served inside the land borders of the Republic of Vietnam between January 09, 1962, and May 07, 1975, they are presumed to have been exposed to herbicides. There is no time limit for the length of service inside the land borders of the Republic of Vietnam. A Veteran who got off a plane for a few hours while it was refueling and resupplying is just as eligible as a Veteran who served in-country for two years.

Remember, although 38 CFR 3.2 classifies the Vietnam era as starting February 28, 1961, for those that served in-country, this is not the start date for herbicide presumption.

A Veteran who served aboard a ship or boat that navigated through the inland waterways of Vietnam is considered to have served in-country. An inland waterway is defined as any river, stream, canal, or other body of fresh water or waterway inside the perimeter of land-type vegetation that is within the land boundaries of Vietnam. There are two categories of ships and boats that operated on the inland waters of Vietnam. You can find a list of these ships and boats on the Vietnam Ship List under the Rating Job Aids.

**Thailand**

Compensation Service has determined that special consideration should be extended to Veterans who served on U.S. Air Force or Army bases in Thailand and whose duties placed them on or near the perimeter on a regular basis during the Vietnam Era.

M21-1, Part IV, Subpart ii, 1.H.4.b has a great step-by-step guide to determine if we can concede that the Veteran was exposed to herbicides (to include serving in Thailand).

If the Veteran served with the Air Force on one of the Air Force bases in Thailand (RTAFB), we can concede exposure to herbicides when the Veteran’s military occupational speciality (MOS) was security policeman or security patrol dog handler, the Veteran was a member of the security police squadron, or according to credible supporting evidence, the Veteran’s duties placed them on or near the perimeter on a regular basis.

If the Veteran served with the Army on one of the Air Force bases in Thailand, we can concede exposure to herbicides when the Veteran provides a statement that they were involved in perimeter security duty and credible evidence supports their statement. Members of the Army did assist with base security at Air Force bases early in the war before these bases were fully operational.

If the Veteran served with the Army on one of the Army bases in Thailand, we can concede exposure to herbicides when the Veteran provides a statement that their duties placed them on or near the perimeter and the Veteran was a member of a military police unit, the Veteran’s MOS was military police, or according to credible supporting evidence, the Veteran’s duties placed them on or near the perimeter on a regular basis.

When reviewing claims involving Thailand service and herbicide exposure, the benefit of doubt rule does not apply. The employee must have credible evidence that places the Veteran on or near the perimeter on a regular basis.

The perimeter of the base is the outermost perimeter and usually consisted of a double fence line. There can be multiple fence lines and perimeters within this outermost perimeter. The Veteran’s duties must have placed them on or near the outermost perimeter and not on one of the interior fence lines. Generally, buildings, housing, or other structures were not near the outermost perimeter. The only structures usually on or near the outermost perimeter were guard posts or other security-related structures.

Korean Demilitarized Zone (DMZ)

The VA has extended the presumption of exposure to herbicides to Veterans who served on the Korean DMZ from April 1, 1968, to August 31, 1971. Prior to February 24, 2011, the dates for exposure were April 1968, to July 1969. This change affects all claims, even those previously denied.

The VA and the Department of Defense have come up with a list of units that were stationed on the DMZ during this time frame. You can find this list at M21-1, Part IV, Subpart ii, 1.H.3.b.

For a Veteran who served in Korea to be eligible for the presumption of exposure to herbicides, they must have served in one of the units listed in the manual reference during the appropriate time frame. Pay close attention to documents in the Veteran’s personnel file and the manual reference as some units on the list could be listed under the 2nd or 7th Infantry Division. If the Veteran served in one of these units, they would still be eligible for presumption no matter if their service records show they served under the 2nd or the 7th Infantry Division.

If the Veteran alleges service on the Korean DMZ outside of the appropriate time frame and/or the unit they served with is not on the list and they provide us with enough information (namely a two-month time frame as the Veteran would have already stated he served on the DMZ and the unit would be of record), the claim must be routed to your station’s Joint Services Records Research Center (JSRRC) representative for further research.

Other Scenarios

There are three special scenarios where the VA has established the presumption of exposure to herbicides that do not fall into one of the categories above.

The first scenario is exposure to herbicides based on service on Johnston Island. Johnston Island is a coral atoll in the Pacific Ocean that was used as a storage location for drums (barrels) of herbicides from April 1972 to September 1977. During routine inspections, leakage was discovered in some of the drums. Due to the composition of the island, the herbicide did not disperse and contaminated the ground in the area. After much testing, it was determined that any risk of exposure was minimal. Also, most personnel that were involved with any activity involving the stored herbicides were military contractors. More information on herbicide exposure at Johnston Island can be found in the fact sheet located at M21-1, Part IV, Subpart ii, 1.H.5.a-b. Although it seems based on the information provided that exposure to herbicides would not have occurred, the VA has extended the presumption of exposure on a facts-found basis. This means if you have credible supporting evidence that directly places the Veteran in contact with the stored herbicides, presumption of exposure to herbicides can be established.

The second scenario is exposure to herbicides through contaminated C-123 aircraft. The C-123 was the aircraft used to disperse herbicides throughout Vietnam as part of Operation Ranch Hand. The VA has extended presumption of exposure to select individuals who came into contact with the aircraft used as a part of Operation Ranch Hand. If a Veteran alleges coming into contact with a contaminated C-123, the claim should be forwarded to the St. Paul Regional Office. St. Paul has exclusive jurisdiction to make service-connection determinations for these claims.

The third scenario is exposure to herbicides causing spina bifida or other birth defects in the biological children of Veterans who served in Vietnam or Korea during the Vietnam Conflict era (Chapter 18 claims). These claims are made by the children themselves. If a claim is received from a claimant alleging spina bifida or other birth defect due to their parent’s herbicide exposure, the claim should be forwarded to the Denver Regional Office. Denver has exclusive jurisdiction to make determinations for these claims. VA Form 21-0304, *Application for Benefits for Qualifying Veteran’s Child Born with Disabilities*, is the application used to apply for these benefits.

Occasionally, a Veteran will submit a claim alleging herbicide exposure outside of the locations and scenarios mentioned above. These locations and scenarios could range from exposure in Guam or Florida to handling the herbicide contaminated clothes of the deceased at a military mortuary facility. Anytime one of these claims is received, the steps in M21-1, Part IV, Subpart ii, 1.H.6.a should be followed.

If sufficient information has been received to perform research (sixty-day time frame, location, unit assigned, and a brief description of the exposure event(s)), an email will be sent to the Agent Orange mailbox. This address can be found in the manual reference above. If the exposure is verified by the Agent Orange mailbox, a review should be completed to determine if an exam is necessary. If after all development has been completed and not enough information has been received, the formal finding process should be started. If a negative response is received from the Agent Orange mailbox and we have enough information to submit the exposure event to JSRRC for further research, the claim should be forwarded to your station’s JSRRC representative. If there is not enough information to submit the exposure event to JSRRC, the formal finding process should be started.

# Topic 3: Exposure Verification

**Exposure Verification**

When there is in-service evidence of herbicide exposure and current evidence of one of the conditions listed in 38 CFR 3.309(e), a presumption exists that the condition is related to herbicide exposure and the Veteran’s service. This presumption removes the need for a nexus between the in-service event (in this case exposure) and the current diagnosed condition. Therefore, if the Veteran is eligible, service-connection is granted. The key point in the claims process for herbicides claims is the verification of the Veteran’s herbicide exposure.

Primary evidence is generally considered the most reliable source for corroborating herbicide exposure and should be carefully reviewed when corroboration is required. It is typically obtained from the National Archives and Records Administration (NARA) or Department of Defense (DoD) entities, such as service departments, the VA Records Research Center (RRC), and the Marine Corps Archives and Special Collections (MCASC).

Personal primary evidence includes:

* Service personnel records and pay records
* Military occupation evidence
* Hazard pay records
* Military performance reports
* Service Treatment Records (STRs)

Unit primary evidence includes:

* Unit and organizational histories
* Daily staff journals
* Operational reports-lessons learned (ORLLs)
* After action reports (AARs)
* Radio logs, deck logs, and ship histories
* Muster rolls
* Command chronologies and war diaries,
* Monthly summaries and morning reports

***Be careful when using unit evidence to verify personal exposure to herbicides. Confirm that the Veteran served in that unit during that time frame and in the general vicinity of the unit.***

Evidence of in-country service is generally found on the DD Form 214 or in the personnel file; however, other evidentiary sources may be utilized like STRs, award citations, or personal correspondence. For a list of Vietnam APOs, please see the Vietnam APO Job Aid.

Review the following secondary sources of evidence critically and carefully for information confirming service in one of previously mentioned areas:

* Buddy statements,
* Contemporaneous letters and diaries
* Newspaper archives

Although we generally use the information on the [Stressor Verification](http://vbaw.vba.va.gov/bl/21/rating/stressor/general.htm) Site for PTSD claims, the information can also be helpful when trying to verify exposure.

Records for Army and Marines Veterans generally contain very specific information on when and where they served. The records for Air Force Veterans are very clear on when and where they served, however, these Veterans often took flights into Vietnam, even when they served in other locations like Thailand, Okinawa, etc. The most difficult scenario usually involves Naval and Coast Guard Veterans. Their service records for these Veterans do not always indicate a land-based service location. Be on the lookout for the following types of service:

* Service at a Naval Base
* With a Seabee unit
* As a Corpsmen
* Service on river and coastal patrol crafts.

In cases where verification of Vietnam service is difficult, you may have to think outside the box. For example, we were once able to concede in-country Vietnam service (and thus herbicide exposure) for a Navy Veteran because they submitted their old military driver’s license (for use in Vietnam).

When you have identified evidence that verifies herbicide exposure,

* Ensure the evidence is properly uploaded to the electronic claims folder (eFolder), **and**
* Edit the subject line of the relevant document(s) used to concede the exposure using the following format:
Herbicide Exposure, pg. [number].

For more information on uploading documents to the eFolder and editing document properties, see the

* [VBMS Core User Guide](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp), **and**
* [M21-1, Part III, Subpart ii, 4.H.1.b.](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014133/M21-1-Part-III-Subpart-ii-Chapter-4-Section-H-Electronic-Claims-Folder-eFolder-Maintenance%22%20%5Cl%20%221b)

# Topic 4: Development

**Herbicide Development**

Remember, a claim for herbicide exposure is no different than a claim for any other condition in that there are four general categories of development:

* Veteran
* Federal Records
* Private Medical Records
* Exam

Even if VA can verify herbicide exposure, development for STRs, private medical records, and any other relevant records is still required.

**Development - Veteran**

Our duty to assist for herbicide exposure claims is not satisfied by the VA Form 21-526 EZ or a standard 5103 letter if

* The Veteran did not identify where and how they were exposed to herbicides
* The Veteran claimed a condition other than those listed in
38 CFR 3.309(e)
* The Veteran did not claim a condition but just herbicide exposure

The VSR will need to send a subsequent development letter requesting that the Veteran provide us details about his exposure to Agent Orange. This development can also be undertaken over the phone. Remember, this development does not exclude the Veteran from the FDC program.

Generally, this development is accomplished by using one of the VBMS Core A/O paragraphs.

A claim is not substantially complete if a Veteran claims herbicide exposure during service, but does not claim SC for a specific disability. In cases such as these inform the Veteran that they *must* identify a specific disability, since exposure in and of itself is not a disability.

In herbicide-related claims, if the claimed disability is not recognized as a presumptive condition under 38 CFR 3.309(e), then the development activity must send the claimant a letter requesting scientific or medical evidence showing that the claimed condition is medically associated with dioxin exposures.

Do not develop to the Veteran

* If exposure can be verified based on the evidence of record,
* The Veteran has already provided this information, **or**
* VA has already requested this information

Per M21-1 IV.ii.1.H.1.i, a claim is not substantially complete if a Veteran claims herbicide exposure during service but does not claim SC for a specific disability. In cases such as these inform the Veteran that they must identify a specific disability, since exposure in and of itself is not a disability. Treat it as an incomplete application and follow the steps in M21-1, Part I, 1.B.1.g and h.

**Development – Federal Records**

Development for STRs and the personnel file will be accomplished through the appropriate system based on the Veteran’s service:

* PIES (STRs and the personnel file)
* RMC (STRs)
* DPRIS (personnel file)
* HAIMS (STRs)

**If the claim is being processed in VBMS Core, all PIES requests for the personnel record should be accomplished using the O50 request code.**

Development for deck logs is accomplished through your station’s RRC representative. If you have evidence that the Veteran served aboard a ship(s) that was/were in the waters off of the coast of Vietnam, send the file to your station’s RRC representative and ask them to request deck logs for each ship.

If at any time, exposure can be verified, cease further development and determine if an exam is needed or the claim is ready for decision.

If federal records cannot be located, a formal finding of unavailability will be needed before the RVSR can deny the claim.

**Development – Other Medical Records**

Request hospital reports and clinical records if the Veteran indicates pertinent treatment in a Department of Veterans Affairs (VA) facility, Vet Center, or elsewhere.

**Vet Center and Private Medical Records require a VA Form 21-4142, Authorization to Disclose Information to the Department of Veterans Affairs and 4142a, General Release for Medical Provider Information to the Department of Veterans Affairs. This development would also exclude the Veteran from the FDC process.**

**Development – Exams**

Request an examination if:

* there is credible supporting evidence that the Veteran was exposed to herbicides
* evidence indicates the Veteran is diagnosed with one of the conditions in CFR 3.309(e) **and**
* medical evidence adequate for rating purposes is not already of record. Evidence (to include lay statements) indicates the Veteran currently suffers from symptoms consistent with a diagnosis of PTSD, **and**
* medical evidence adequate for rating purposes is not already of record.

**Routing to Centralized Processing Teams**

* Per M21-1 IV.ii.1.H.1.e., both the Agent Orange-Vietnam corporate flash and Blue Water Agent Orange special issue flash must be applied to herbicide exposure claims, once the claimed disability is determined to be eligible for presumption under 38 CFR 3.309(e). Once these flashes are applied, the claim will be routed to a centralized processing team by National Work Queue (NWQ).

Herbicide exposure claims will be routed to, and processed at 8 designated regional offices, once all applicable records are received:

* St. Louis
* Cleveland
* Waco
* St. Paul (VSC/PMC)
* Roanoke
* St. Petersburg
* Phoenix
* Salt Lake City