

HERBICIDE EXPOSURE CLAIMS DEVELOPMENT TRAINEE HANDOUT

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REFERENCES

- 38 CFR §3.114 CHANGE OF LAW OR DEPARTMENT OF VETERANS AFFAIRS ISSUES
- 38 CFR §3.307 PRESUMPTIVE CONDITIONS ASSOCIATED WITH HERBICIDE EXPOSURE
- 38 CFR §3.309 DISEASE SUBJECT TO PRESUMPTIVE SERVICE CONNECTION
- 38 CFR §3.313 CLAIMS BASED ON SERVICE IN VIETNAM.
- 38 CFR §3.814 MONETARY ALLOWANCE UNDER 38 U.S.C. CHAPTER 18 FOR AN INDIVIDUAL SUFFERING FROM SPINA BIFIDA WHOSE BIOLOGICAL FATHER OR MOTHER IS OR WAS A VIETNAM VETERAN.

- 38 CFR §3.815 MONETARY ALLOWANCE UNDER 38 U.S.C. CHAPTER 18 FOR AN INDIVIDUAL WITH DISABILITY FROM COVERED BIRTH DEFECTS WHOSE BIOLOGICAL MOTHER IS OR WAS A VIETNAM VETERAN; IDENTIFICATION OF COVERED BIRTH DEFECTS.

- M21-1MR IV .ii.1.H.28 - DEVELOPING CLAIMS FOR SERVICE CONNECTION FOR DISABILITIES RESULTING FROM EXPOSURE TO HERBICIDES

- M21-1MR IV .ii.2.C.10-12 - GENERAL INFORMATION ON ESTABLISHING SERVICE CONNECTION FOR DISABILITIES RESULTING FROM EXPOSURE TO HERBICIDE AGENTS

- M21-1MR VI.2 - SPINA BIFIDA AND OTHER BIRTH DEFECTS

- Veterans Service Center Manager Conference Call Transcript from March 2003, August 2004, February 2009, and May 2009

- MAP-D Users Guide

- SHARE Users Guide

- Training Letter 10-06 Adjudicating Disability Claims Based on Herbicide Exposure from US Navy and Coast Guard Veterans of the Vietnam Era.

- [Navy and Coast Guard Ships Associated with Service in Vietnam and Exposure to Herbicide Agents](#) - List Updated December 9, 2014

HISTORY OF HERBICIDE SPRAYING

During combat, you use whatever tools you have available to give you an advantage. During the war in Vietnam, our enemies used the cover of the jungle to their advantage. Our military sought to remove that advantage by defoliating large sections of the battlefields and supply lines. To that end, several million gallons of defoliants or herbicide agents were aerially sprayed over South Vietnam from 1962 to 1971. The spraying was done from both airplanes and helicopters.

Several different types of herbicides were used. Each was shipped in a 55-gallon drum and was identified by the color of the stripe painted on the drum. Of these herbicides, the most widely used was Agent Orange (AO). Other herbicides used included Agent Blue, Purple and White. However, VA regulations (see 38 CFR §3.301(a)(6)) do **not** make a distinction between Agent Orange and any other herbicides used in Vietnam. In common usage, “Agent Orange” is used to generically describe all herbicides used in Vietnam.

Agent Orange contained a toxic byproduct called dioxin, which accumulates in a body’s fatty tissue, that 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.

In February of 1991, *Public Law 102-4 (PL 102-4)*, also known as the Agent Orange Act, empowered the Secretary to grant service connection for any disease that were shown to have a positive association with those herbicides used in Vietnam. The Secretary could use the findings of the National Academy of Science (NAS) or other legitimate scientific studies to establish associations between exposure to herbicides among those Veterans serving in Vietnam and the subsequent development of certain diseases. The NAS reports focused on many studies regarding dioxin exposure, and these studies provided most of the material for identifying diseases where credible evidence for the association was equal to or outweighed the credible evidence against the association (see 38 USC 1116(b)(3)). It is important to note that the Secretary does not need to establish a cause and effect link between herbicide exposure and a specific disease, but only that there is a “statistically significant” association between exposure to herbicides used in Vietnam and subsequent development of one of the presumptive diseases.

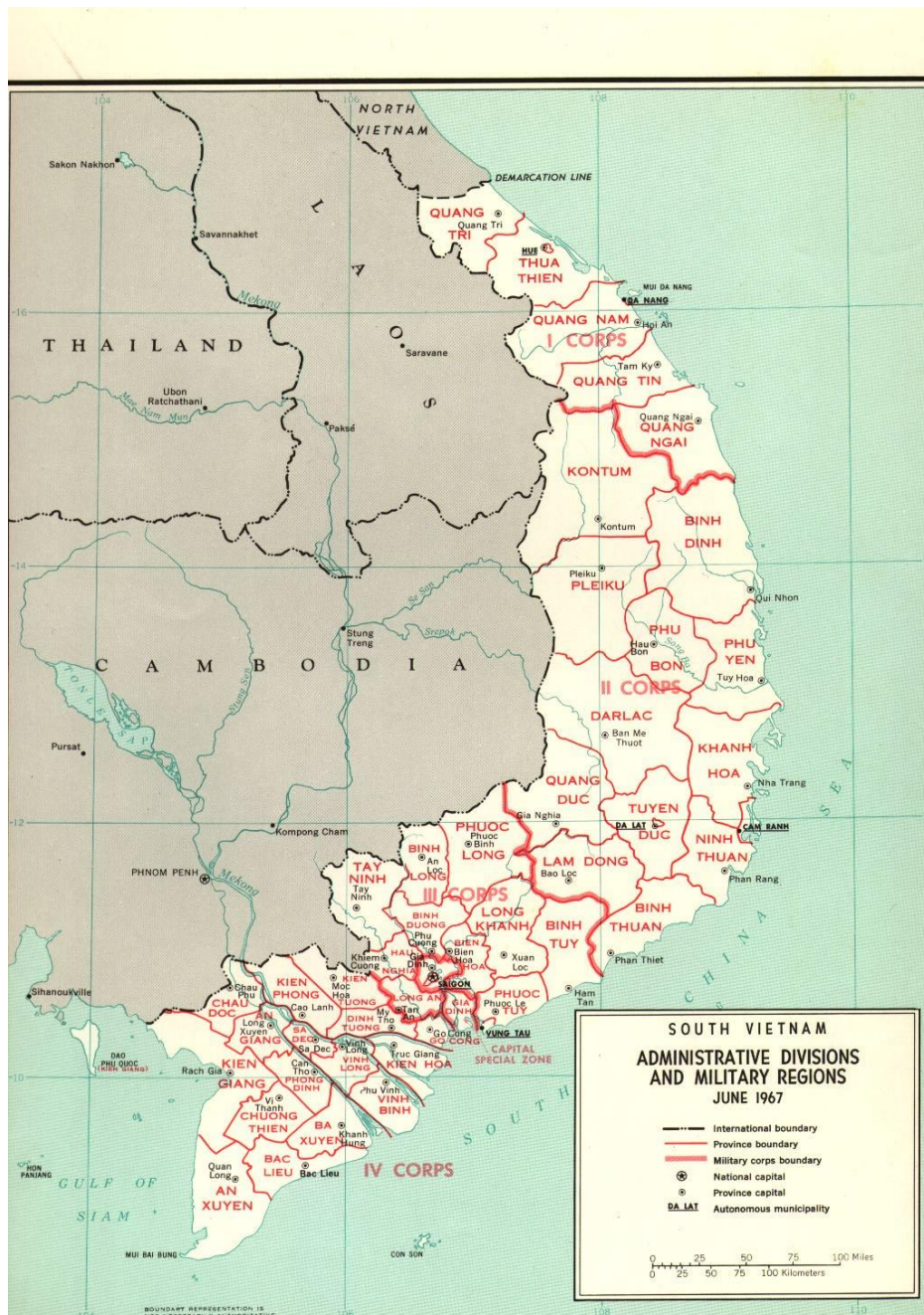
During the years following the Agent Orange Act of 1991, additional diseases were added to the presumptive list. The current listing can be found in VA regulations at 38 CFR §3.309(e).

Because the use of herbicides was so extensive in Vietnam, any Veteran who was in Vietnam during the period beginning January 9, 1962, and ending May 7, 1975, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service. To be eligible, it is not necessary to establish that the Veteran was in a certain place or for a certain time, only that the Veteran served within the country of Vietnam or on its inland waterways.

So, it boils down to this: if the Veteran currently has a diagnosis of one of the disabilities listed, and there is evidence available showing the Veteran served on the ground in Vietnam, or on its inland waterways, for any length of time, service connection can be granted. Our job then is to establish these facts.

The above instructions deal with the majority of cases you will encounter, but you should be aware that Veterans were exposed to herbicides in locations other than Vietnam.

VA extends the presumption of exposure to Veterans who served in certain military units that were stationed near the Korean demilitarized zone (DMZ) from April 1, 1968 to August 31, 1971. In addition, the Department of Defense (DoD) has provided VA with information on the testing and storage of tactical herbicides, such as Agent Orange, at other locations in the United States and foreign countries where a Veteran may have encountered occupational exposure. However, there is no presumption of exposure in such cases, and each case must be developed and decided based on the facts found. This subject will be considered in more detail later.



[MAP South Vietnam Corps and Provinces](#) from C&P Stressor Verification Site

VERIFYING “IN-COUNTRY” VIETNAM SERVICE

Most of the time, verifying in-country Vietnam service is easy. The Veterans DD-214 will show foreign or sea service in the block showing service time. Either there or in the “Remarks” section, you will usually find a notation that verifies Vietnam service. The following notations verify service in Vietnam: “Vietnam,” “RVN” (Republic of Vietnam), or “USARV” (United States Army Republic of Vietnam).

NOTE: Notations on the DD-214 such as “Southeast Asia”, “Indochina” or “USAPAC” (United States Army Pacific Command) denote that Vietnam service is possible but could refer to service in Thailand, Guam, Okinawa, etc., therefore verification is still required.

The fact that a Veteran has been awarded the Vietnam Service Medal *does not* prove that he or she was “in country.” Service members who were stationed on ships off shore, or who flew missions over Vietnam, but were never physically in Vietnam (to include inland waterways), were sometimes awarded the Vietnam Service Medal. It is also not sufficient for the Veteran to have been awarded a unit citation. Although his or her unit may have been in Vietnam, this citation is not verification that *he* was there.

To verify service in Vietnam, you should review the Veteran’s DD-214 to determine if it shows such service (e.g., “Foreign Service: Republic of Vietnam” or the designations listed above).

If the DD-214 is inconclusive, you may need to obtain and review the Veteran’s other personnel records (e.g., Department of the Army Form 20 or equivalent). If the evidence of records does not confirm Vietnam service, to include inland waterways, send a PIES request, specifically field O50, for dates of service in Vietnam **or** field O50 if the Veteran alleges other exposure to herbicides. If the request is not conclusive, obtain the entire service personnel file. A PIES request O50 will request the entire personnel file. Agent Orange exposure related claims when the Veteran alleges temporary duty (TDY) to Vietnam during the early war years. In such cases, when an initial O50 PIES request does not provide the required evidence of TDY, then request code PIES 050. Regardless of whether the PIES O50 request produces any evidence of TDY, assume that the entire file was reviewed and VA’s duty to assist has been fulfilled. The personnel record should contain clear evidence that the Veteran did or did not serve in-country. Look for any orders sending him or her to or from Vietnam, or any performance evaluation forms that show they were filled out while he or she was in Vietnam. Service treatment records can also be used, if they show a location in Vietnam where the Veteran was treated.

These efforts should be sufficient for most cases you will see. There are some cases that are much harder to resolve. Begin by asking the Veteran to verify that he or she had service in-country, using your MAP-D development letter specifically intended for this use. Remember when you are writing to a Veteran that they often consider their in-country service as a badge of honor and you should be careful not to take a tone that would indicate you are questioning their word on the subject. Ask them for specifics about their time in Vietnam, including dates, places and especially units of assignment. If you receive specific information from the Veteran, you can send a request to the U.S. Army and Joint Services Records Research Center (JSRRC) for verification.

Army Veterans generally have their DD-214s adequately marked to verify Vietnam service and no further development will be required. The same is true with the Marine Corps. In the Navy, usually the only Veterans whose DD-214s will show Vietnam service were those who served in Seabee Units, those who served on river and coastal patrol crafts, and those who were hospital corpsmen assigned to Marine Corps units. Seabees were shore-based mobile construction battalions that built various facilities for American forces. They could have built anything from barracks to port facilities. Generally, the assignment to a Seabee unit is documented on the DD-214, or in the personnel records. During Vietnam, the Navy and U. S. Coast Guard ran numerous patrol craft along the shoreline and in the rivers of Vietnam. These units are called the “brown water Navy” in their slang, and the unit is usually designated as “RIVRON”. Veterans of these units qualify as having verified Vietnam service. Virtually all hospital corpsmen assigned to Marine combat units were Navy personnel. If you see a DD-214 for a Navy Veteran who was assigned to a Marine Corp unit, and had a rating of “HC”, he or she was likely in-country.

Support missions for ground troops and attacks on enemy positions were also conducted by U.S. Navy aircraft launched from aircraft carriers (designated by CV or CVA hull numbers) stationed at sea, generally from 30 to 100 miles off the Vietnam coast. The gun line ships and aircraft carriers, as well as their supply and support ships, are collectively referred to as the “Blue Water” Navy because they operated on the blue-colored waters of the open ocean. Although some Blue Water Navy destroyers were involved with enemy interdiction, the majority of these operations were conducted by smaller vessels based along the coast or within the river systems of South Vietnam. These vessels are collectively referred to as the “Brown Water” Navy because they operated on the muddy, brown-colored inland waterways of Vietnam.

Navy Veterans who served on board large ocean going ships (the “blue water Navy”) may or may not have set foot in country. They may allege that their ship docked and they went ashore or that their ship temporarily operated on the inland waterways. Their official records will not likely give you a clear answer. If a Veteran claims service connection for a condition based on exposure to herbicide agents, and alleges service on a ship in the waters offshore of Vietnam, review the record for evidence that the ship was in the waters off Vietnam and that the Veteran’s service involved duty or visitation on land. If the Veteran cannot produce evidence of this, request possible verification through a PIES O50 request to the National Personnel Records Center. If there is evidence that the Veteran’s ship was in the offshore waters, contact the Veteran for the specific dates of docking in inland waterway travel. Then provide no more than a 60-day time frame to JSRRC for research of the ship’s history or deck logs. If the JSRRC provides evidence of the ship’s travel on the inland waterways and the Veteran was on the ship at that time, the Veteran will receive the presumption of herbicide exposure. If the JSRRC provides evidence that the ship docked to the shore, and that the Veteran was on the ship at the time and the Veteran states that he or she went ashore, the Veteran will receive the presumption of exposure. In these cases, develop as far as you can and the VA will make a decision on the facts found.

Members of the Air Force who were stationed at bases in Vietnam will usually have their in-country service verified through their personnel records. The Air Force operated a number of large bases in Thailand during the Vietnam War, and Veterans who were stationed there are not eligible for presumption of “in-country” Vietnam status unless they can establish that they actually went to Vietnam. Pilots and aircrew of high altitude flights over Vietnam are not

presumed to have been exposed to AO. However, for pilots or aircrew of airplanes and helicopters that landed in Vietnam, exposure to AO is presumed.

Many Air Force units were stationed outside Vietnam but flew missions into the country and occasionally landed there. In most of these cases, there will be little or no documentation that the Veteran was “in-country”. You may also encounter claims where the Veteran was part of an Air Force unit that never went to Vietnam, but he or she, as an individual or as part of a unit, was sent to Vietnam for temporary duty (TDY). Agent Orange exposure related claims when the Veteran alleges temporary duty (TDY) to Vietnam during the early war years. In such cases, when an initial 050 PIES request does not provide the required evidence of TDY, then request code PIES 050. Regardless of whether the PIES 039 request produces any evidence of TDY, assume that the entire file was reviewed and VA’s duty to assist has been fulfilled. The personnel other than records provided by the Veteran, the only possible documentation of Vietnam TDY of flight records may be found in the Veteran’s complete military personnel file, available through PIES O50 request.

In these cases, you must gather the best information you can find, including the Veteran’s statements and any other documentation he or she can find or the military personnel records can provide. Ultimately, the RVSR rating the case will have to make a decision whether or not in-country service has been established.

USE OF APO NUMBERS AS EVIDENCE

In claims where the Veteran seeks to establish verified Vietnam service or service on its inland waterways, regional offices should use all available resources to assist the Veteran. One valuable resource is the listing of Army Post Office (APO) address numbers for the Asian Pacific Theater during the Vietnam era. This list contains APO numbers for all major Army and Air Force bases in Asia, including Vietnam, Korea, Thailand, Japan, Taiwan, Okinawa, Guam, and the Philippines. If an APO number is written or stamped in service personnel or service treatment records, this is official evidence of the Veteran’s presence at that location. This evidence is valuable in claims based on Agent Orange exposure because it can be used to verify Vietnam in-country service.

The APO listing is available on the Compensation Service Intranet website under the Stressor Verification Site. To access the listing, open the General Information folder and click on “General 1942-2002 APO-FPO Files.” (FPO stands for Fleet Post Office, and these are used by the Navy.) This is a large PDF file and will take several minutes to download. The Asian Pacific Theater APO section is located on pages 4999 through 5005. It is advisable to print the listing and save it for further reference. Each APO number is shown along with the location it identifies and the previous number that it replaces. When successive locations were identified with the same APO number, the dates of use at each location are specified. The close out date (CO) is also shown.

**Once Vietnam service has been verified, be sure to update BIRLS on the MSC screen, specifically the “Vietnam Service” field.

ESTABLISHING HERBICIDE EXPOSURE OUTSIDE OF VIETNAM

Herbicides were used outside Vietnam, but rarely were they applied through aerial spraying. The most clearly documented use of Agent Orange outside Vietnam occurred in Korea. DoD has confirmed that Agent Orange was used from April 1, 1968 through August 31, 1971 along the Korean DMZ. DoD defoliated the fields of fire between the front line defensive positions and the south barrier fence. The size of the treated area was a strip of land 151 miles long and up to 350 yards wide from the fence to north of the "civilian control line." There is no indication that herbicides were sprayed in the DMZ itself.

In general, herbicides were applied through hand spraying and by hand distribution of pelletized herbicides by South Korean soldiers. The Army units that were in close proximity to this area are well documented. In developing these cases, it must be established that the claimant was assigned to one of these units during the specific time period shown above. The list of units involved is shown in M21-1MR IV.ii.2.C.10.p. If you can establish that the Veteran was in one of the listed units during the time period prescribed, you can concede AO exposure.

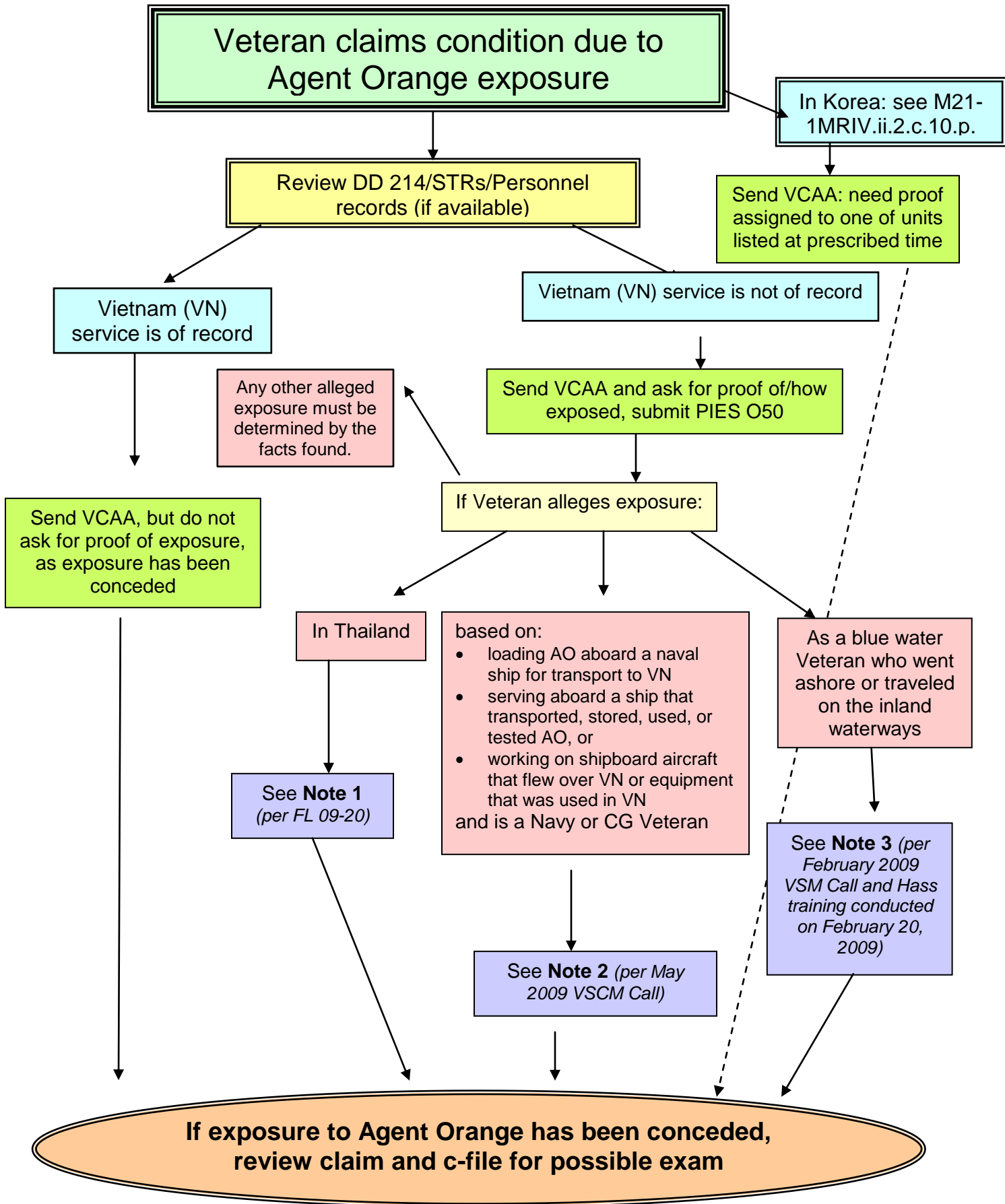
Occasionally, a Veteran will claim that he or she was exposed to AO through local spraying along his or her military base. Other than use in Vietnam, along the Korean DMZ, and at specific herbicide development and test sites, "tactical" herbicides, such as Agent Orange, were not used. Routine base maintenance activities, intended to control weeds and brush along roads, railroad tracks, buildings, and rifle or artillery ranges made use of commercial herbicides, not tactical herbicides. Additionally, DoD has informed VA that records of commercial herbicide use on military bases are not available. Therefore, commercial herbicides are not covered by the procedures related to tactical herbicide exposure.

DoD has also provided VA with a list of domestic and foreign locations where development, testing, and storage of tactical herbicides occurred. Although these locations were documented, the names of Veterans who were potentially exposed were not provided. In claims based on a Veteran's service in one of these locations, there must be some probative evidence of actual handling or being exposed to the tactical herbicide. Service at a location itself is not sufficient to establish exposure.

After full development of the issue of exposure, to include obtaining a specific description of the exposure (approximate date(s), location and nature of exposure), you may contact Compensation Service at VAVBAWAS/CO/211/Agent Orange via email. They will review DoD's inventory of herbicide operations to determine whether herbicides were used or tested as alleged.

Remember that VA procedures only establish presumption of exposure to herbicides for Veterans who served in the country of Vietnam or on its inland waterways, and certain Veterans who served along the Korean DMZ; for all other claims the presumption of exposure *does not apply*, and must be established through factual evidence. After exposure has been established, the claimed presumptive disease(s) can then be service connected.

The process for development of herbicide exposure claims is always changing. The next few pages provides an overview of the development process, and deals with some of the more recent changes to processing claims based on herbicides exposure.



Note 1: Exposure in Thailand cannot be conceded based on Department of Defense (DoD) review. Do not submit a request to the Agent Orange mailbox. The memorandum titled "Subject: Herbicide use in Thailand during the Vietnam Era" found in *Fast Letter 09-20* should be incorporated into c-file. This document contains input from DoD and is intended to cover general claims of exposure as well as a number of specific exposure claims. If the herbicide exposure issue can be resolved based on this document, then no further development action is necessary. If not, and sufficient information has been obtained from the Veteran, send an inquiry directly to JSRRC following its guidelines. If sufficient information cannot be obtained from the Veteran to meet JSRRC guidelines, produce a formal memo for the file documenting efforts to obtain information, then forward the claim to the rating activity.

Note 2: Compensation Service and JSRRC agree that there is no Department of Defense or other evidence available to support claims based on this method of exposure. In order to expedite processing of these claims, JSRRC has provided C&P Service with a document for inclusion in the Veteran's claims folder. The document, whose subject line reads: "*Joint Services Records Research Center Statement of Research Finding Regarding Navy and Coast Guard Ships During the Vietnam Era*", can be found as an attachment to the May 2009 VSCM Call agenda. The document will substitute for a response from the C&P Service Agent Orange Mailbox as well as a response from JSRRC. It explains that there is no evidence available to support a claim of herbicide exposure aboard a Navy or Coast Guard ship during the Vietnam era. This document will serve as a final JSRRC response to these claims.

Note 3: AO- Exposure General Notice

In order for VA to acknowledge that you were exposed to Agent Orange, please send evidence that (1) you physically served within or visited the country of Vietnam, or its inland waterways, between January 9, 1962 through May 7, 1975. If you were stationed aboard a ship, we need the ship's name and evidence that it entered Vietnam's inland waterways, or that you went ashore; (2) you served in a unit stationed along the Korean delimitarized zone between April 1, 1968 through August 31, 1971; or (3) you were exposed to Agent Orange in some other manner, with an explanation of when, where and how you were exposed. You may include statements of persons who know of your exposure. Any person making a statement should provide as much description of the exposure as possible and include hi or her name, service number or social security number, unit assignment and dates of service.

Note 4: AO- Blue Water

If you served aboard a U.S. Navy or Coast Guard ship on the offshore, "blue waters" of Vietnam, VA will presume Agent Orange exposure if your service included duty or visitation within the country of Vietnam itself or **on its inland waterways**, between January 9, 1962 through May 7, 1975. We need evidence your ship entered Vietnam's inland waterways while you were aboard or that you went ashore while the ship was docked or at anchorage. Please provide us with the name of your ship and the approximate dates to the best of your recollection, when your ship entered the inland waterways, docked or otherwise sent you ashore. If your ship docked, you must state whether or not you went ashore. If you went ashore from a ship at anchorage, you must explain the circumstances. Agent Orange exposure will not be presumed if your ship just anchored temporarily in an open deep-water harbor such as Da Nang, Cam Ranh Bay or Vung Tau and you remained on the ship.

Some Veterans served on smaller, shallow draft vessels operating primarily on the inland waterways or "brown waters" of Vietnam rivers, canals, estuaries and delta areas, where herbicide exposure is presumed to have occurred. Please tell us if you are one of these Veterans and provide the name of your vessel and dates of service in Vietnam.

A Veteran who served aboard a ship while it was operating temporarily on Vietnam's inland waterways did not need to leave the ship in order for VA to concede Agent Orange.

On the other hand, a Veteran who served aboard a ship that docked or operated on the close coastal offshore waters **must** provide evidence of "visitation in Vietnam" with a lay statement attesting to the fact that he or she personally went ashore, in order for VA to concede Agent Orange exposure.

Note 5:

Use of Modern Awards Processing Development (MAP-D) paragraphs to Provide Notice in Agent Orange Related Claims

Compensation Service recently revised the paragraphs in MAP-D that are used to provide Veterans with notice of the evidence required to support disability claims based on Agent Orange herbicide exposure. This revision includes two new paragraphs. One is a general notice to be provided when a claim is received based on unspecified Agent Orange exposure. The other is a notice specifically tailored for Agent Orange-related claims from “blue water” Navy Veterans who served aboard ships on the offshore waters of Vietnam.

Note 6: The presumption of herbicide exposure will be extended to any Veteran when: (1) evidence shows that the Veteran’s ship docked on the shore of Vietnam, (2) evidence shows that the Veteran was a crewmember aboard ship at that time, (3) the Veteran provides a statement of leaving the ship and going ashore, and (4) there is no substantial evidence contradicting the Veteran’s statement. All elements must be met to concede exposure. Service aboard a ship that *anchored* in an open deep-water harbor such as Da Nang, Vung Tau, and Cam Ranh Bay along the Vietnam coast is not the same as *docking* to the shore; evidence for shore docking or inland waterway travel is required.

The following language should be sent in the VCAA (or subsequent development) letter to assist in development for this evidence:

“We need to know how your military duties in the waters offshore of the Republic of Vietnam exposed you to herbicides. Please furnish the following information:

1. The name of the ship you were on.
2. The date(s) of herbicide exposure (limited to a 60-day time period).
3. A detailed description of how you were exposed to herbicides.

You may include statements from persons who know of your exposure. Any person making a statement should provide as much description of the exposure as possible, and include his or her name, service number, unit assignment, and dates of service.”

A PIES O50 request to the National Personnel Records Center can provide evidence of the Veteran’s crewmember status aboard ship. Evidence for the ship’s docking can come from the ship’s deck logs. Before taking development action on the affected claims that requires a response from another agency, local research attempts should be exhausted. The Stressor Verification Site (<http://vbaw.vba.va.gov/bl/21/rating/stressor/general.htm>) is an excellent source of military documents, including Vietnam Navy documents that may allow in-country service to be conceded without lengthy development actions being taken if information obtained from the Veteran is complete. Some Navy Deck Logs are also available on this site.

Once the necessary information is collected, and it is determined that verification of Vietnam service cannot be conceded without JSRRC research, a request for information related to ship histories and/or deck logs should be faxed to JSRRC using the form letter developed for this purpose. This letter will provide JSRRC with the details necessary to conduct meaningful research on the Veteran’s claim. The letter is intended for *Haas* cases only and can be located as an attachment to the February 2009 VSCM Call. All the necessary information outlined on this form must be obtained before submitting a request to JSRRC.

PRESUMPTIVE CONDITIONS

Once exposure to herbicides has been established, either through in-country service in Vietnam or service on its inland waterways, through service in one of the specified units along the Korean DMZ during the established time frame, or on a factual basis, the Veteran is eligible to be service connected for specific conditions. The conditions are listed in 38 CFR 3.309(e).

Disease associated with exposure to certain herbicide agents. If a Veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service-connected if the requirements of §3.307(a)(6) are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of §3.307(d) are also satisfied.

- AL amyloidosis
- Chloracne or other acne form disease consistent with chloracne
- Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes)
- Hodgkin's disease
- Ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable and Prinzmetal's angina)
- All chronic B-cell leukemias (including, but not limited to, hairy-cell leukemia and chronic lymphocytic leukemia)
- Multiple myeloma
- Non-Hodgkin's lymphoma
- Parkinson's disease
- Acute and subacute peripheral neuropathy
- Porphyria cutanea tarda
- Prostate cancer
- Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)
- Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

Note 1: The term soft-tissue sarcoma includes the following:

- Adult fibrosarcoma
- Dermatofibrosarcoma protuberans
- Malignant fibrous histiocytoma
- Liposarcoma
- Leiomyosarcoma
- Epithelioid leiomyosarcoma (malignant leiomyoblastoma)
- Rhabdomyosarcoma
- Ectomesenchymoma
- Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)
- Proliferating (systemic) angioendotheliomatosis
- Malignant glomus tumor
- Malignant hemangiopericytoma
- Synovial sarcoma (malignant synovioma)
- Malignant giant cell tumor of tendon sheath
- Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas
- Malignant mesenchymoma
- Malignant granular cell tumor
- Alveolar soft part sarcoma

- Epithelioid sarcoma
- Clear cell sarcoma of tendons and aponeuroses
- Extraskeletal Ewing's sarcoma
- Congenital and infantile fibrosarcoma
- Malignant ganglioneuroma

Note 2: For purposes of this section, the term acute and subacute peripheral neuropathy means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset.

Most of these conditions are self explanatory and only require a medical diagnosis, but a few may need additional clarification:

1. Chloracne looks very much like any other form of acne, and if it is associated with exposure to herbicides, it would have first occurred soon after exposure. Usually only a dermatologist can distinguish between chloracne and other acne. If a clear diagnosis of chloracne is not of record, request an exam or medical opinion.
2. Respiratory cancers mean cancers in areas of the respiratory system below the junction of the trachea and esophagus. Cancers of the mouth, throat, tongue, or anywhere else above the junction are not covered.
3. The only type of peripheral neuropathy that can be *directly* associated with herbicide exposure is acute peripheral neuropathy as described in **Note 2**. However if a Veteran is service connected for a presumptive condition such as Diabetes Mellitus, type 2, and develops peripheral neuropathy secondary to that condition, service connection can be established on a secondary basis.
4. If a Veteran has a diagnosis of a soft tissue cancer, and you're not sure if it is a sarcoma, we should request an exam or medical opinion. Consult with your RVSR for guidance.
5. Although non-Hodgkin's lymphoma is listed as a presumptive disease associated with herbicide exposure, it is also listed as a presumptive disease under 38 CFR 3.313, based solely on service in Vietnam, to include the offshore waters of Vietnam. Therefore, service on a ship in the offshore waters of Vietnam, without the Veteran ever having gone ashore in Vietnam or traveling on its inland waterways, is sufficient to establish the presumption of service connection for this disease.

VA EXAMS

The Veteran is responsible for furnishing evidence of a current disability. Per M21-1 MR Part I.1.C.7.b and 38 CFR 3.159 (a)(2) and 38 CFR 3.159 (c)(4), a medical examination or opinion may be necessary when the file:

- contains competent medical evidence that the claimant has a current disability, **or**
- contains competent lay evidence that the claimant has persistent or recurrent symptoms of disability (A claimant is competent to describe symptoms of a disability that he/she is experiencing, such as dizziness as a symptom of diabetes, but (typically) not a diagnosis of a condition)
- contains supporting evidence from service records or other sources that the claimant was exposed to Agent Orange, **and**

- does *not* contain sufficient medical evidence to make a decision on the claim.

For these presumptive conditions, typically only a medical diagnosis is required. If the Veteran claims a presumptive condition and only furnishes evidence, such as a lay statement, indicating symptoms, but the evidence is inconclusive, we should order a VA exam to determine the exact diagnosis.

However, it is not enough for a Veteran to claim “Agent Orange” or “exposure to Agent Orange” because it is too vague. A claim for a *specific disability* is required for a claim. If the Veteran has not submitted this, write and ask for this *before* proceeding any further with development.

Once you have established exposure to herbicides and a medical diagnosis (either submitted by the Veteran, or obtained through a VA exam) for one of the presumptive conditions, or you have developed all possible evidentiary paths to get them, the claim is ready for rating consideration.

Remember that all claims for conditions that are due to Agent Orange exposure require a VETSNET flash of “Agent Orange”.



CHILDREN OF VETERANS EXPOSED TO HERBICIDES

Other diseases that have been associated with herbicide exposure are certain types of birth defects in children of Veterans who were exposed. There are two laws that provide benefits for those children who are eligible; the first covers children of Vietnam Veterans, and certain Veterans with Korean DMZ service, who are born with spina bifida and the second covers children of women Vietnam Veterans who have certain other birth defects. In both cases, the benefits are payable directly to the children.

Public Law 104-204 created a benefit that is payable to children of Vietnam Veterans if the child has spina bifida. The Veterans Benefits Act of 2003 added Veterans who served near the DMZ in Korea, as discussed previously. All forms of spina bifida are covered except spina bifida occulta. Spina bifida is a condition of the spinal column where the bony structure is deformed and does not provide a complete cover or canal for the nerves of the spinal chord. Severity can vary, and benefit payments are made at three levels depending on the severity. Children may also be eligible for VA vocational rehabilitation benefits through the VA.

Public Law 106-419 established a payment allowance to children of female Vietnam Veterans who have certain birth defects. The lists of birth defects that are covered, as well as those not covered are found in 38 CFR 3.815.

To apply for benefits for these children *VA Form, 21-0304, "Application for Benefits for Certain Children with Disabilities Born of Vietnam Veterans"* should be completed

All of these cases are centralized at the Denver Regional Office. Upon receipt of one of these claims, forward the following information to the Denver RO for development and processing:

- new claims with any supporting evidence from the claimant
- any service data/verification available from the Veteran's claim folder (if located at RO), and
- any development evidence or additional documentation evidence received from the claimant or any other source.

Note: The spina bifida/birth defects coordinators at each RO will coordinate forwarding of all evidence with the Denver RO.

Refer to M21-1MR, Part VI.

REVIEW EXERCISE

1. How long must the Veteran have been in Vietnam to be eligible for the presumption of exposure to herbicide?

2. The first place to look for Vietnam service is _____.

3. True or False? Service in the waters off shore is close enough to Vietnam to establish exposure. _____

4. Exposure to herbicides outside Vietnam or along the Korean DMZ must be established on _____.

5. True or False? All forms of cancer are considered presumptive diseases due to herbicide exposure. _____

6. In order to have a valid claim based on herbicide exposure, the Veteran must furnish _____ .

7. If you receive a claim from a female Vietnam Veteran claiming that her child has a birth defect, you should _____.