#### Department of Veterans Affairs M21-1, Part IV, Subpart ii

**Veterans Benefits Administration February 5, 2016**

**Washington, DC 20420**

#### Key Changes

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| 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 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.
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| Reason(s) for the Change | Citation |
| * 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)](#Topic2a) |
| To add a new Block b containing the definition of Vietnam’s offshore waters. | [IV.ii.1.H.2.b](#Topic2b) |
| To add a new Block c containing the geographic locations determined to be offshore waters.  | [IV.ii.1.H.2.c](#Topic2c) |
| To add a new Block d containing the geographic locations determined to be inland waterways. | [IV.ii.1.H.2.d](#Topic2d) |
| To update procedures for reviewing military records to verify Vietnam service. | [IV.ii.1.H.2.e](#_be.__Review) |
| To clarify language about determining a Veteran’s duty or visitation from a ship in Vietnam. | [IV.ii.1.H.2.g](#_dg.__Developing) |
| 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](#_eh.__Requesting) |
| * 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](#_fi.__Requesting) |

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| Rescissions | None |

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| Authority | By Direction of the Under Secretary for Benefits |

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| Signature | Thomas J. Murphy, DirectorCompensation Service |

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| Distribution | LOCAL REPRODUCTION AUTHORIZED |

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

#### Overview

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| In This Section | This section contains the following topics: |

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| 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 |
| 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 |

#### 1. Developing Claims Based on Herbicide Exposure in the RVN

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| Introduction | This topic contains information on developing claims based on herbicide exposure in the RVN, including* requirement for service in the RVN
* the time period during which herbicide exposure may be presumed
* considering qualifying length of service in the RVN
* when to verify service in the RVN
* when to request additional evidence in herbicide claims
* reviewing the claims folder for proof of RVN service
* developing for proof of RVN service
* action to take when the claimed disability is not recognized under 38 CFR 3.309(e) informing the Veteran about the Agent Orange Registry program
* the action to take when the Veteran claims herbicide exposure but does not claim a disability
* formal findings that VA lacks the information U.S. Army and Joint Services Records Research Center (JSRRC) requires to verify herbicide exposure
* requirements for an herbicide formal finding, and
* template for documenting an herbicide formal finding.
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| Change Date | January 20, 2016 |

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| a. Requirement for Service in the RVN  | For the purposes of establishing service connection (SC) under [38 CFR 3.307(a)(6)](http://www.ecfr.gov/cgi-bin/text-idx?SID=eeb25614ff133ec52c6f89f62aa156dc&mc=true&node=se38.1.3_1307&rgn=div8) and [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=eeb25614ff133ec52c6f89f62aa156dc&mc=true&node=se38.1.3_1309&rgn=div8), service in the Republic of Vietnam(RVN)must be shown.***Reference***: For more information on the definition of service in the RVN, see * M21-1, Part IV, Subpart ii, 2.C.3.e, and
* [38 CFR 3.313](http://www.ecfr.gov/cgi-bin/text-idx?SID=8fa8a93c1f29438aea786047356b2bd4&mc=true&node=se38.1.3_1313&rgn=div8).
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| b. Time Period During Which Herbicide Exposure May Be Presumed  | The specific time period during which herbicide exposure in the RVN may be presumed is the period beginning on January 9, 1962, and ending on May 7, 1975. ***Reference***: For more information on the definition of herbicide agent, see M21-1, Part IV, Subpart ii, 2.C.3.b. |

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| c. Considering Qualifying Length of Service in the RVN  | There is no requirement for a specified length of service, duty, or visitation in the RVN under [38 CFR 3.307(a)(6)(iii)](http://www.ecfr.gov/cgi-bin/text-idx?SID=eeb25614ff133ec52c6f89f62aa156dc&mc=true&node=se38.1.3_1307&rgn=div8). Any length of time in the RVN during the Vietnam era may be sufficient to establish SC for subsequently-developed diseases based on a presumption of exposure to herbicides. |

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| **d. When to Verify Service in the RVN**  | Verify service in the RVN upon receipt of a claim for SC for a disability the claimant asserts is related to his/her (or a Veteran’s) exposure to herbicides during service in the RVN.A Veteran must have had actual duty or visitation in the RVN or on its inland waterways to qualify for the presumption of exposure to herbicides under [38 CFR 3.307(a)(6)](http://www.ecfr.gov/cgi-bin/text-idx?SID=42f37df4e52f497d9fb5ed25cb141e56&node=se38.1.3_1307&rgn=div8).***Note***: It is unnecessary to attempt to verify service in the RVN if a claimant specifically states he/she (or the Veteran) neither went ashore nor served on board a ship as it operated on the inland waterways of the RVN.***Reference***: For more information on verifying a Veteran’s exposure to herbicides in locations *other than* the RVN, see M21-1, Part IV, Subpart ii, 1.H.2-5. |

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| **e. When to Request Additional Evidence in Herbicide Claims**  | For herbicide exposure claims, additional development to the Veteran for evidence of a claimed disability covered under [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=78791cfa2edf9c676ee0728238fe04e6&mc=true&node=se38.1.3_1309&rgn=div8) (Disease associated with exposure to certain herbicide agents), is not warranted as the evidence requirements are covered under the *Disability Service Connection* evidence table of the *VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits*. Additional development to the claimant is still required if* the claimed disability is not covered under [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=78791cfa2edf9c676ee0728238fe04e6&mc=true&node=se38.1.3_1309&rgn=div8), or
* herbicide exposure is unverified.

***References***: For more information on * reviewing the claims folder for proof of RVN service, see M21-1, Part IV, Subpart ii, 1.H.1.f
* developing for proof of RVN service, see M21-1, Part IV, Subpart ii, 1.H.1.g, and
* action to take when the claimed disability is not covered under [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=78791cfa2edf9c676ee0728238fe04e6&mc=true&node=se38.1.3_1309&rgn=div8), see M21-1, Part IV, Subpart ii, 1.H.1.h.
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| **f. Reviewing the Claims Folder for Proof of RVN Service** | Certain documents within the claims folder may show proof of RVN service. See the table below for guidance on reviewing documents that may show RVN service or temporary duty (TDY) service in the RVN between January 9, 1962, and May 7, 1975. |

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| **Review …** | **For …** |
| all certified *DD Forms 214, Certificate of Release or Discharge from Active Duty* | * entries such as *Foreign Service: Republic of Vietnam*, or
* a separating station/last duty assignment in the RVN.
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| military personnel records, including the *DA Form 20, Enlisted Qualification Record* | * verification of service locations
* any travel or flight orders
* any statements in performance evaluations related to travel or flights, and
* any TDY orders.
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| service treatment records (STRs) and dental records | treatment in the RVN with particular attention to Army Post Office (APO) numbers, which may be associated with a location in which the presumption of herbicide exposure applies.***Reference***: For a list of APO address numbers for the Asian Pacific Theater during the Vietnam Era, see the [General 1942-2002 APO-FPO Files](http://vbaw.vba.va.gov/bl/21/rating/stressor/general/GENERAL%201942-2002%20APO-FPO%20Files.pdf) document on the Compensation Service Stressor Verification web site.***Note***: The listing of APO-FPO addresses begins on page 4998. |

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| ***Important***: Receipt of the Vietnam Service Medal, Vietnam Campaign Medal, Armed Forces Expeditionary Medal and/or the Vietnam Cross of Gallantry is ***not*** acceptable proof of RVN service for the purpose of proving herbicide exposure. * The Vietnam Service Medal was given to service members who were stationed on ships offshore or flew high altitude missions over the RVN as well as those who served in Thailand.
* The Armed Forces Expeditionary Medal was issued by all branches of the service during the years before 1965 and *may* indicate duty or visitation in Vietnam. If a Veteran was issued this medal, carefully review the records for documentation of travel or TDY orders to Vietnam.
* The Vietnam Cross of Gallantry was issued by the Vietnamese Government to all units subordinate to Military Assistance Command (MACV) and the U.S. Army Vietnam, regardless of their physical presence in the RVN. Since this is a unit-level citation and not an individual citation, receipt of this medal alone is not acceptable proof of service in the RVN.

***References***: For more information on* RVN service in regards to Veterans who flew military missions over the RVN but never actually landed in country, see [VAOPGCPREC 7-1993](http://www.va.gov/ogc/docs/1993/PRC07-93.DOC), and
* select Air Force personnel who had contact with contaminated C-123 aircraft used in the RVN, see M21-1, Part IV, Subpart ii, 1.H.3.
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| **g. Developing for Proof of RVN Service**  | If RVN service cannot be verified based on initial review of the materials in the claims folder* develop to the claimant for proof of service in the RVN to include “buddy statements,” and
* develop for Federal records containing proof of service in the RVN.

Use the table below to develop for Federal records containing proof of RVN service. |

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| **If the Veteran claims ...** | **And the claims folder is ...** | **Then …** |
| to have been stationed in the RVN  | an electronic claims folder (eFolder) | submit a request through the Personnel Information Exchange System (PIES), using request code O50.***Note***: Do *not* resubmit a PIES O50 request if already submitted and received under prior claims development. |
| a paper claims folder | submit a request through PIES, using request code O34.***Note***: If the response to the PIES O34 request is negative, request the entire personnel record using the PIES O18 code. |
| TDY service in the RVN | an eFolder | submit a request through PIES, using request code O50.***Note***: Do *not* resubmit a PIES O50 request if already submitted and received under prior claims development. |
| a paper claims folder | submit a request through PIES, using request code O39. |

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| ***Important***: A claim may not be denied solely because service in the RVN cannot be verified * until the end of the initial 30-day and 30-day follow-up response periods, and/or
* all requested Federal records needed to verify service in the RVN have been received *or* a formal response has been received indicating the records are unavailable.

***Reference***: For more information on requesting records through PIES, see the [*PIES Participant Guide*](http://vbaw.vba.va.gov/bl/21/publicat/Users/Pies/PIESparticipantguide.zip). |

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| **h. Action to Take When the Claimed Disability is Not Recognized Under 38 CFR 3.309(e)** | The Agent Orange Act of 1991, *Public Law (PL) 102-4*, established a presumption of SC for Veterans with service in the RVN during the Vietnam Era who subsequently develop specific diseases to a degree of 10 percent or more.In herbicide-related claims, if the claimed disability is not recognized as a presumptive condition under [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ce4db74ee1e5ecc339221e5184616cc0&mc=true&node=se38.1.3_1309&rgn=div8), 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.***Exception***: Do not send the letter if the claimant previously submitted the evidence requested in the letter.***Reference***: For a list of diseases and the date they became subject to presumptive SC under [38 CFR 3.309(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ce4db74ee1e5ecc339221e5184616cc0&mc=true&node=se38.1.3_1309&rgn=div8), see M21-1, Part IV, Subpart ii, 2.C.3.i. |

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| **i. Informing the Veteran About the Agent Orange Registry Program** | If the development activity determines further development is necessary per M21-1, Part IV, Subpart ii, 1.H.1.d, the development activity should also* inform the Veteran of the availability of hospital examinations and treatment as part of the Agent Orange Registry program, and
* if the Veteran has already had the herbicide examination or been treated for herbicide exposure, request that the Veteran submit
* a copy of the examination or treatment report, or
* the name of the Department of Veterans Affairs (VA) facility performing the examination or treatment so that a copy of the report may be associated with the claims folder.
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| **j. Action to Take When the Veteran Claims Herbicide Exposure but Does Not Claim a Disability** | 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 he/she *must* identify a specific disability, since exposure in and of itself is not a disability, and
* ask the Veteran to identify the disability(ies) that resulted from exposure to herbicides during service.

***Important***:* do not
* process the claim as a denial, or
* establish end product (EP) control for the incomplete claim, and
* whenever possible, telephone the Veteran to obtain the information needed to substantiate the claim.

***Reference***: For more information on what constitutes a substantially complete application for benefits, see* [38 CFR 3.159(a)(3)](http://www.ecfr.gov/cgi-bin/text-idx?SID=eeb25614ff133ec52c6f89f62aa156dc&mc=true&node=se38.1.3_1159&rgn=div8), and
* M21-1, Part I, 1.B.1.b.
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| **k. Formal Findings That VA Lacks the Information JSRRC Requires to Verify Herbicide Exposure** | If a claimant fails to provide the information the U.S. Army and Joint Services Records Research Center (JSRRC) requires to determine whether a Veteran served in an area associated with herbicide exposure, the regional office’s (RO’s) JSRRC Coordinator must prepare a formal finding that documents this fact.*Before* preparing the formal finding, the JSRRC Coordinator must review the Veteran’s claims folder to confirm the RO* gave the claimant an opportunity to provide the information JSRRC requires
* properly followed established procedures for
* verifying the Veteran’s claimed route of exposure, and
* obtaining the information JSRRC requires, and
* reviewed and considered all relevant evidence of record, to include service records, in an attempt to
* verify the Veteran’s claimed route of exposure, and
* obtain the information JSRRC requires.

***Reference***: For more information on the definition of herbicide agent, see M21-1, Part IV, Subpart ii, 2.C.3.b.  |

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| **l. Requirements for an Herbicide Formal Finding** | The formal finding referenced in M21-1, Part IV, Subpart ii, 1.H.1.k must* state that VA does not possess the information JSRRC requires to research a claim that a Veteran served in an area associated with herbicide exposure
* confirm the RO properly followed established procedures for obtaining the information
* describe the actions the RO took to obtain the information
* state that evidence of the RO’s efforts to obtain the information is of record in the claims folder, and
* be signed by
* the JSRRC Coordinator that prepared the formal finding, and
* the RO’s Veterans Service Center Manager (VSCM) or his/her designee.

When preparation of the formal finding is complete, add it to the Veteran’s claims folder.***Note***: It is *not* necessary to contact the Veteran by telephone to * advise him/her of the formal finding, or
* allow additional time to submit the required information.
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| **m. Template for Documenting an Herbicide Formal Finding** | Use the template below to document a formal finding that VA lacks the information the JSRRC requires to determine a Veteran’s service in an area associated with herbicide exposure. |

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| **Department of Veterans Affairs Memorandum**Date:From:RE: Private, John Q. CSS 999 99 9999Subj: Formal finding that the Department of Veterans Affairs (VA) lacks the information the U.S. Army and Joint Services Records Research Center (JSRRC) requires to verify herbicide exposure in [**LOCATION(S)**].To: File1. We have determined that the VA lacks the information the JSRRC requires to verify herbicide exposure in [**LOCATION(S)]**.2. The RO has given the claimant the opportunity to provide the missing information and has properly followed all other established procedures for obtaining it. 3. The following efforts were made to obtain the information the JSRRC requires:  a. b. c.4. Evidence of efforts the RO made to obtain the information is contained in the claims folder.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of the JSRRC Coordinator\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of the VSCM or Designee |

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

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| Introduction | 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 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 on the RVN’s offshore waters
* requesting National Personnel Records Center (NPRC) verification of duty or visitation in the RVN while serving aboard ships on the RVN’s offshore waters or on inland waterways
* requesting JSRRC verification of duty or visitation in the RVN while serving aboard ships on the RVN’s offshore waters or on inland waterways
* 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.
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| Change Date | February 5, 2016 |

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| **a. Definition of Inland Waterways** | The Agent Orange Act of 1991 implemented under [38 C.F.R. 3.307(a)(6)(iii)](http://www.ecfr.gov/cgi-bin/text-idx?SID=0dc37828ef5a0124bce2121f73da0c6b&mc=true&node=se38.1.3_1307&rgn=div8) requires “duty or visitation” within the RVN, 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 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. ***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](http://vbaw.vba.va.gov/bl/21/rating/VENavyShip.htm), and
* inland waterway locations, see M21-1, Part IV, Subpart ii, 1.H.1.d.
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| **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. |

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| **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 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.  |

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| **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.
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| e. Review of Military Service Personnel Records to Verify Duty or Visitation in the RVN While Serving Aboard Ships on the RVN’s Offshore Waters 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. |

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| Step | Action |
| 1 | Review military service personnel records for * 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.
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| 2 | Search the [Vietnam Era Navy Ship Agent Orange Exposure Development Site](http://vbaw.vba.va.gov/bl/21/rating/VENavyShip.htm) to verify whether the ship on which the claimant served * traveled on inland waterways
* docked to a pier or the shore of the RVN, or
* sent crew ashore.
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| 3 | Accept the Veteran’s statement that he/she went ashore from a ship as evidence of presumptive exposure to herbicides *if* there is evidence that the Veteran’s ship * docked to the shore of the RVN, or
* sent crew members ashore, *and*
* the claimant was stationed aboard the ship at that time.

***Important***: The presumption of herbicide exposure extends to any Veteran who served aboard a ship that entered *inland* waterways. |
| 4 | Can duty or Visitation in the RVN be conceded based on the above steps?* If *yes*, concede exposure as discussed in M21-1, Part III, Subpart ii, 1.H.2.f.
* If *no*,
* 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.

***Important***: Service on a ship operating on the RVN’s inland waterways constitutes duty or visitation in the RVN. |

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| f. Presumption 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)](http://www.ecfr.gov/cgi-bin/text-idx?SID=0dc37828ef5a0124bce2121f73da0c6b&mc=true&node=se38.1.3_1307&rgn=div8).***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 ii, 1.H.2.e-g.
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| g. Developing Claims Based on Exposure to Herbicides During Service Aboard Ships Operating on the RVN’s Offshore Waters  | 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
* sent crew ashore
* evidence placing the Veteran onboard the ship at the time the ship
* operated on inland waterways
* docked to the shore or pier, or
* sent crew ashore, *and*
* the Veteran’s statement as to whether he/she went ashore, if the evidence shows the ship docked to the shore or pier or that crew members were sent ashore.

***References***: * See the [Vietnam Era Navy Ship Agent Orange Exposure Development Site](http://vbaw.vba.va.gov/bl/21/rating/VENavyShip.htm) 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 information on
* blue-water versus brown-water” Veterans, and
* presumption of herbicide exposure for brown-water U.S. Navy and Coast Guard Veterans.
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| h. Requesting NPRC Verification of Duty or Visitation in the RVN While Serving Aboard Ships on the RVN’s Offshore Waters or on Inland Waterways  | 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 while serving on a ship in the RVN’s offshore waters or inland waterways, follow the procedures in the table below to develop for service personnel records from the National Personnel Records Center (NPRC). |

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| If the claims folder is … | Then … |
| an eFolder | submit a request through PIES, using request code O50.***Note***: Do *not* 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. |

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| i. Requesting JSRRC Verification of Duty or Visitation in the RVN While Serving Aboard Ships on the RVN’s Offshore Waters oron Inland Waterways  | 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 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 [Vietnam Era Navy Ship Agent Orange Exposure Development Site](http://vbaw.vba.va.gov/bl/21/rating/VENavyShip.htm)
* the [*Dictionary of American Naval Fighting Ships*](http://www.history.navy.mil/research/histories/ship-histories/danfs.html), and
* the [*Dictionary of American Naval Aviation Squadrons*](http://www.history.navy.mil/research/histories/naval-aviation-history/dictionary-of-american-naval-aviation-squadrons-volume-1.html),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 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 sevice 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
* 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](http://vbaw.vba.va.gov/bl/21/rating/docs/shiplist.docx), 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.
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| j. 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.  |

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| k. Mandatory Claims Folder Documentation 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. |

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| **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 09MEMORANDUM FOR RECORDSUBJECT: Joint Services Records Research Center Statement on Research Findings Regarding Navy and Coast Guard Ships During the Vietnam Era1. 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 |

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| ***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.
 |

**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 ORH**

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| **Change Date** | January 20, 2016 |

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| a. RO Procedure for Claims Based on Exposure to Agent Orange Through Contaminated C-123 Aircraft as Part of ORH | The St. Paul RO has ***exclusive*** jurisdiction of all claims for service-connected (SC) disability or death associated with Agent Orange exposure through regular and repeated duties flying on, or maintaining, contaminated former Operation Ranch Hand (ORH) C-123 aircraft, which were used to spray Agent Orange in Vietnam. The St. Paul RO will be responsible to address all outstanding issues claimed. The Claims Assistant (CA) or Intake Analyst (IA) should follow the steps in the table below when a claim based on regular and repeated C-123 exposure is received at the RO. |

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| Step | Action |
| 1 | Review the claim for Agent Orange and/or C-123 annotation.  |
| 2 | Establish the proper EP with the *C-123 Agent Orange* flash. |
| 3 | Attach the *C-123 Agent Orange* special issue contention for each of the presumptive disabilities claimed. |
| 4 | Forward the claim to the St. Paul RO for processing. |

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| ***Reference***: For more information on processing claims based on contaminated C-123 aircraft, see the [C-123 Aircraft Agent Orange Exposure web site](http://www.benefits.va.gov/compensation/agentorange-c123.asp).  |

#### 4. Developing Claims Based on Herbicide Exposure on the Korean DMZ

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| Introduction | This topic contains information on developing claims based on herbicide exposure in the Korean DMZ, including* requirements for presumptive SC based on herbicide exposure in the Korean DMZ, and
* units or other military entities identified by the Department of Defense (DoD) as operating in the Korean DMZ during the qualifying time period.
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| Change Date | January 20, 2016 |

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| a. Requirements for Presumptive SC Based on Herbicide Exposure in the Korean DMZ  | Under [38 CFR 3.307(a)(6)(iv)](http://www.ecfr.gov/cgi-bin/text-idx?SID=eeb25614ff133ec52c6f89f62aa156dc&mc=true&node=se38.1.3_1307&rgn=div8) and effective February 24, 2011, extend the presumption of herbicide exposure to any Veteran who served* in a unit determined by VA or the Department of Defense (DoD) to have operated in the Korean Demilitarized Zone (DMZ), and
* between April 1, 1968, and August 31, 1971.

***Note***: Before the amendment of [38 CFR 3.307(a)(6)(iv)](http://www.ecfr.gov/cgi-bin/text-idx?SID=eeb25614ff133ec52c6f89f62aa156dc&mc=true&node=se38.1.3_1307&rgn=div8) which became effective February 24, 2011, VA conceded exposure to herbicides on a direct basis for Veterans who served between April 1968 and July 1969 in one of the groups listed under M21-1, Part IV, Subpart ii, 1.H.4.b. |

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| b. Units or Other Military Entities Identified by DoD as Operating in the Korean DMZ During the Qualifying Time Period  | The table below shows the units or other military entities that DoD has identified as operating in the Korean DMZ during the qualifying time period of April 1, 1968, to August 31, 1971. |

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| Combat Brigade of the 2nd Infantry Division | Division Reaction Force | 3rd Brigade of the 7th Infantry Division |
| 1st Battalion, 38th Infantry | 4th Squadron, 7th Cavalry, Counter Agent Company | 1st Battalion, 17th Infantry |
| 2nd Battalion, 38th Infantry |  | 1st Battalion, 31st Infantry |
| 1st Battalion, 23rd Infantry |  | 1st Battalion, 32nd Infantry |
| 2nd Battalion, 23rd Infantry |  | 2nd Squadron, 10th Cavalry |
| 3rd Battalion, 23rd Infantry |  | 2nd Battalion, 17th Infantry |
| 2nd Battalion, 31st Infantry***Note***: Service records may show assignment to either the 2nd or the 7th Infantry Division. |  | 2nd Battalion, 31st Infantry***Note***: Service records may show assignment to either the 2nd or the 7th Infantry Division. |
|  |  | 2nd Battalion, 32nd Infantry |
| 3rd Battalion, 32nd Infantry***Note***: Service records may show assignment to either the 2nd or the 7th Infantry. |  | 3rd Battalion, 32nd Infantry***Note***: Service records may show assignment to either the 2nd or the 7th Infantry. |
| 1st Battalion, 9th Infantry |  | 1st Battalion, 73rd Armor |
| 2nd Battalion, 9th Infantry |  |  |
| 1st Battalion, 72nd Armor |  |  |
| 2nd Battalion, 72nd Armor |  |  |
| 1st Battalion, 12th Artillery |  |  |
| 1st Battalion, 15th Artillery |  |  |
| 7th Battalion, 17th Artillery |  |  |
| 5th Battalion, 38th Artillery |  |  |
| 6th Battalion, 37th Artillery |  |  |
| **Other Qualifying Assignments** |
| 2nd Military Police Company, 2nd Infantry Division |
| 2nd Engineer Battalion, 2nd Infantry Division |
| 13th Engineer Combat Battalion |
| United Nations Command Security Battalion-Joint Security Area (UNCSB-JSA) |
| Crew of the USS Pueblo |

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| ***Important***: * Send a request to JSRRC for verification of exposure to herbicides when a Veteran claims exposure in Korea, and his/her service was not
* between April 1, 1968, and August 31, 1971, or
* in a unit or entity listed in the table above.
* If the Veteran fails to provide sufficient information to complete a JSRRC request, refer the claim to the JSRRC coordinator to complete a formal finding as discussed in M21-1, Part IV, Subpart ii, 1.H.1.k-m.
 |

#### 5. Developing Claims Based on Herbicide Exposure in Thailand During the Vietnam Era

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| **Introduction** | This topic contains information on developing claims based on herbicide exposure in Thailand during the Vietnam Era, including* special consideration for claims based on herbicide exposure in Thailand during the Vietnam Era, and
* verifying exposure to herbicides in Thailand during the Vietnam Era.
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| **Change Date** | November 12, 2015 |

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| **a. Special Consideration for Claims Based on Herbicide Exposure in Thailand During the Vietnam Era**  | Compensation Service has determined that a special consideration of herbicide exposure on a factual basis should be extended to Veterans whose duties placed them on or near the perimeters of Thailand military bases.***Reference***: For more information on verifying exposure to herbicides in Thailand, see M21-1, Part IV, Subpart ii, 1.H.5.b. |

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| **b. Verifying Exposure to Herbicides in Thailand During the Vietnam Era**  | When a Veteran with service in Thailand during the Vietnam Era claims SC for disability based on herbicide exposure, follow the steps in the table below to verify exposure to herbicides. |

|  |  |
| --- | --- |
| **Step** | **Action** |
| 1 | Did the Veteran serve in the U.S. Air Force in Thailand during the Vietnam Era* at one of the following Royal Thai Air Force Bases (RTAFBs)
* U-Tapao
* Ubon
* Nakhon Phanom
* Udorn
* Takhli
* Korat, or
* Don Muang, *and*
* as an Air Force
* security policeman
* security patrol dog handler
* member of the security police squadron, or
* otherwise near the air base perimeter as shown by evidence of daily work duties, performance evaluation reports, or other credible evidence?

If *yes*, concede herbicide exposure on a direct/facts-found basis.If *no*, proceed to Step 2.***Notes***:* Concede herbicide exposure on a direct or facts-found basis for U.S. Army Veterans who served on RTAFBs in Thailand if the Veteran
* provides a statement that he was involved in perimeter security duty, *and*
* there is additional credible evidence supporting this statement.
* U.S. Army personnel may have provided RTAFB security early in the war before the base was fully operational.
 |
| 2 | Did the Veteran serve at a U.S. Army Base in Thailand during the Vietnam Era * as a member of a military police (MP) unit, or
* with a military police occupational specialty?
* If *yes*, concede exposure to herbicides on a facts-found or direct basis *if* the Veteran states his duty placed him at or near the base perimeter.
* If *no*, go to Step 3.
 |
| 3 | Ask the Veteran for the * approximate dates
* location, and
* nature of the alleged exposure.
 |
| 4 | Did the Veteran furnish this information within 30 days?* If *yes,* proceed to Step 5.
* If *no*,
* refer the case to the JSRRC coordinator to make a formal finding that sufficient information required to verify herbicide exposure does not exist (***Note***: For a sample of a formal finding, see M21-1, Part IV, Subpart ii, 1.H.1.m.), and
* decide the claim based on the evidence of record, ensuring the rating decision and decision notice adequately explain the basis of the decision.
 |
| 5 | Review the information provided by the Veteran and proceed to Step 6. |
| 6 | Can exposure to herbicides be acknowledged on a direct or facts-found basis as a result of this review?* If *yes*, proceed with any other necessary development before referring the claim to the rating activity.
* If *no*, proceed to Step 7.
 |
| 7 | Has the Veteran provided sufficient information to permit a search by the JSRRC?* If *yes*, send a request to the JSRRC for verification of exposure to herbicides.
* If *no*,
* refer the case to the JSRRC coordinator to make a formal finding that sufficient information required to verify herbicide exposure does not exist (***Note***: For a sample of a formal finding, see M21-1, Part IV, Subpart ii, 1.H.1.m.), and
* decide the claim based on the evidence of record, ensuring the rating decision and decision notice adequately explain the basis of the decision.
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| ***Reference***: For more information on Thailand military bases and herbicide exposure, see the [VA Public Health site](http://www.publichealth.va.gov/exposures/agentorange/locations/thailand.asp). |

#### 6. Developing Claims Based on Herbicide Exposure on Johnston Island

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| Introduction | This topic contains information on developing claims based on herbicide exposure on Johnston Island, including* an overview of herbicide storage on Johnston Island, and
* a Fact Sheet on herbicide storage on Johnston Island.
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| Change Date | August 7, 2015 |

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| **a. Overview of Herbicide Storage on Johnston Island** | Herbicides were stored in drums on Johnston Island in the North Pacific between April 1972 and September 1977. Because military contractors were responsible for the inventory, few military personnel who served on Johnston Island had duties involving the direct handling of herbicides. If a Veteran alleges exposure to herbicides during service on Johnston Island, obtain verification of exposure on a factual basis.***Reference***: For more information on verifying exposure to herbicides on a factual basis, see M21-1, Part IV, Subpart ii, 1.H.7. |

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| **b. Fact Sheet: Herbicide Storage on Johnston Island** | Below is a *Fact Sheet* on the storage of the herbicide Agent Orange on Johnston Island. |

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| FACT SHEET: STORAGE OF AGENT ORANGE ON JOHNSTON ISLAND* Approximately 1.5 million gallons of Agent Orange (AO) were stored on Johnston Island (JI) between April 1972 and September 1977, when it was incinerated at sea.
* There were approximately 25 thousand 55-gallon drums stored in rows stacked three high on about 3.5 acres on the NW corner of the island. The storage location was selected because the east-to-west trade winds would rapidly disburse any airborne AO into the Pacific.
* Military contractors (and not U.S. military personnel) were solely responsible for site monitoring and redrumming and dedrumming activities. The storage area was fenced and off limits from a distance.
* The entire inventory of AO was screened for leaks daily. Leaking drums were re-drummed on a weekly basis. Fresh spillage was absorbed, and surface soil was scraped and sealed.
* Leakage of drums began in 1974. Between 1974 and 1977, the equivalent of the contents of 405 drums was leaked.
* The floor of the storage site was comprised of dense coral. Because of the composition and properties of coral, leaked AO was literally bound to the coral, providing little opportunity for AO to become airborne.
* A 1974 Air Force report found that the condition of the storage area provided evidence of the rapid identification of leaking drums, as few spill areas were observed.
* Soil samples in 1974 revealed that herbicide contamination was not detected outside of the storage yard except in close proximity to the redrumming operation.
* Water samples were collected and analyzed twice per month from 10 different locations.
* A 1978 Air Force Land Based Environmental Monitoring study concluded that no adverse consequences of the minimal release of AO into the JI environment during the dedrumming operation were observed. The report further stated that “exposure to (land-based operations) workers to airborne 2,4-D and 2,4,5-T were well below permissible levels.”
 |

#### 7. Developing Claims Based on Herbicide Exposure in Other Locations

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| Change Date | August 7, 2015 |

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| a. Verifying Herbicide Exposure on a Factual Basis in Other Locations  | Follow the steps in the table below to verify potential herbicide exposure on a factual basis when the Veteran alleges exposure in locations other than the RVN, Korean DMZ, or Thailand.  |

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| **Step** | **Action** |
| 1 | Ask the Veteran for the approximate dates, location(s), and nature of the alleged exposure to herbicides. Allow the Veteran 30 days to submit the requested information. |
| 2 | After 30 days, did VA receive this information?* If *yes,* go to Step 3.
* If *no*
* refer the case to the RO JSRRC coordinator to make a formal finding that sufficient information required to verify herbicide exposure does not exist. (***Note***: For a sample formal finding, see M21-1, Part IV, Subpart ii, 1.H.1.m), and
* decide the claim based on the evidence of record.
 |
| 3 | * Furnish the Veteran’s detailed description of exposure to Compensation Service at VAVBAWAS/CO/211/AGENTORANGE, and
* request a review of DoD’s inventory of herbicide operations to determine whether herbicides were used as claimed.
 |
| 4 | Did Compensation Service confirm that herbicides were used as claimed?* If *yes*, determine whether SC is otherwise in order.
* If *no*, go to Step 5.
 |
| 5 | Has the Veteran provided sufficient information to permit a search by the JSRRC?* If *yes*, send a request to the JSRRC for verification of exposure to herbicides.
* If *no*
* refer the case to the RO JSRRC coordinator to make a formal finding that sufficient information required to verify herbicide exposure does not exist (***Note***: For a sample formal finding that VA lacks the information JSRRC requires, see M21-1, Part IV, Subpart ii, 1.H.1.m.), and
* decide the claim based on the evidence of record.
 |

#### 8. Claims for Benefits Based on Birth Defects Due to Herbicide Exposure

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| Change Date | August 7, 2015 |

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| a. Considering Claims for Benefits Based on Birth Defects  | Claims for* benefits for a child with spina bifida and other birth defects, to include development procedures, are discussed in [M21-1, Part VI](http://vbaw.vba.va.gov/BL/21/M21/content/contents.asp?address=M21-1MRVI), and
* additional benefits for natural children born with certain birth defects to female Vietnam Veterans have been authorized under *PL 106-419*.

***Important***: The law limits the birth defects for which VA may pay benefits. Do not award compensation for the following condition on the basis that SC for these conditions is not authorized by law* birth defects resulting from a familial disorder
* a birth-related injury, or
* a fetal or neonatal infirmity, with well-established, unrelated causes.

***Reference***: For more information on claims for benefits for birth defects from children of Vietnam Veterans, see* M21-1, Part VI
* [38 CFR 3.814](http://www.ecfr.gov/cgi-bin/text-idx?SID=eeb25614ff133ec52c6f89f62aa156dc&mc=true&node=se38.1.3_1814&rgn=div8)
* [38 CFR 3.815](http://www.ecfr.gov/cgi-bin/text-idx?SID=eeb25614ff133ec52c6f89f62aa156dc&mc=true&node=se38.1.3_1815&rgn=div8), and
* [38 U.S.C. Chapter 18](http://www.law.cornell.edu/uscode/html/uscode38/usc_sup_01_38_10_II_20_18.html).
 |

**9. Other Development Procedures for Claims Under the Nehmer Stipulation for Disabilities Resulting From Exposure to Herbicides**

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| **Introduction** | This topic contains information on developing claims under the *Nehmer* stipulation for disabilities resulting from exposure to herbicides, including* development actions following claims folder review
* EP control of claims under the *Nehmer* stipulation
* information to include in *Nehmer* development letters to the Veteran
* scheduling an examination for a *Nehmer* claim, and
* returned mail procedures for claims based on the *Nehmer* stipulation.
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| **Change Date** | January 20, 2016 |

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| **a. Development Actions Following Claims Folder Review** | Development actions following a *Nehmer* claims folder review may include development for* medical evidence
* verification of service
* dependency
* payee status
* military pay, and/or
* burial information.
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| **b. EP Control of Claims Under the Nehmer Stipulation** | Control all *Nehmer* claims as follows |

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| **If ...** | **Then ...** |
| * the claim is received prior to the Secretary’s announcement to add new presumptive conditions, *and*
* requires readjudication based on a prior claim and decision for the benefit
 | control with EP 687.***Note***: Use of the EP 687 for adjudications under Nehmer was discontinued effective September 7, 2011. |
| * the claim is a new claim that requires adjudication, *and*
* it is received on or after the date of the Secretary’s announcement
 | control with EP 681. |
| the claimed benefit is peripheral neuropathy (PN) | * conduct a one-time Pending Inquiry File (PIF) Clear (PCLR) of EP 686 when the
* claims folder is sent to QTC Medical Services for initial checklist review of eligibility for SC of PN under the *Nehmer* stipulation
* RO completes the initial checklist review of eligibility for SC of PN under the *Nehmer* stipulation, and
* control the adjudication of positive checklist cases with EP 020 and special issue indicator of *Nehmer AO Peripheral Neuropathy*.
 |

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| ***Important***:Any subsequent claims received after establishment of the appropriate *Nehmer* EP will be worked under a separate, appropriate EP, whether rating or non-rating.***Reference***: For more information on PN for *Nehmer* purposes, see M21-1, Part IV, Subpart ii, 2.C.3.j. |

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| c. Information to Include in Nehmer Development Letters to the Veteran | When readjudication of a claim under the *Nehmer* stipulation requires development to the Veteran, letters to the Veteran should include notification that* the claim will be readjudicated with all of the procedural rights normally applicable to VA decisions
* the Veteran will be afforded a reasonable time to present evidence or reasons why the claim should be considered under the new regulations, and
* if the VA does not receive such evidence or reasons, VA will make a decision based on the evidence considered in the previously decided claim.
 |

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| **d. Scheduling an Examination for a Nehmer Claim** | The mere passage of time since a VA examination was completed does not automatically require VA to provide a new medical examination, as stated in [*Palczewski v. Nicholson*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmp), 21 Vet.App. 174, 182 (2007). The determination of whether an examination is warranted is made on a case-by-case basis primarily focused on whether the evidence of record is adequate for rating purposes and accurately reflects the overall disability picture.***Important***: When entering an examination request, notify the VA medical facility in the *Remarks* section that the claim is a *Nehmer* case and should not be canceled due to incorrect jurisdiction. |

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| **e. Returned Mail Procedures for Claims Based on the Nehmer Stipulation**  | Upon receipt of mail that has been returned as undeliverable pertaining to a *Nehmer* claim * review the returned mail for any forwarding address indicated by the U.S. Postal Service
* review the claims folder
* review Share, Compensation and Pension Records Interchange (CAPRI), and other systems, as applicable, to verify the validity of the address utilized in the development letter
* if a valid address still cannot be verified, attempt to make telephone contact with the payee, and
* if there is evidence of a previous electronic funds transfer with complete bank information, send a letter to the bank.

***Important***: Document all efforts to locate a payee on *VA Form 27-0820, Report of General Information* summarizing each action taken to identify a current address. If VA attempted to locate multiple payees, a separate *VA Form 27-0820* shall be completed for each payee with a summary for each individual. After completion, the claim shall be forwarded to the rating activity for a decision based on the evidence of record, if one is not yet completed. |