



November 20, 2019

Expansion of Benefits to Blue Water Navy Vietnam Veterans

Legislative History

The Blue Water Navy Vietnam Veterans Act of 2019 (P.L. 116-23) is the most recent action taken by Congress to grant disability compensation benefits to veterans exposed to Agent Orange, a combination of tactical herbicides used by the U.S. military in Vietnam. Earlier legislation directed the Department of Veterans Affairs (VA) to provide some veterans with VA benefits for specific disabilities without requiring proof of actual exposure to Agent Orange.

In 1991, the Agent Orange Act (P.L. 102-4) established a presumption of service connection—that is, a presumption that a disability is related to a veteran’s service, entitling that veteran to VA disability compensation—for diseases associated with herbicide exposure contracted by veterans who “served in the Republic of Vietnam” between January 9, 1962, and May 7, 1975. VA interpreted “served in the Republic of Vietnam” to apply to veterans who set foot in Vietnam or served on its inland waterways. For veterans to be eligible for VA disability benefits under these provisions, they must have at least one of the illnesses or diseases listed in 38 C.F.R. §3.309(e). These include, but are not limited to, type II diabetes, chloracne, non-Hodgkin lymphoma, respiratory cancers, and certain types of soft-tissue sarcoma. A veteran without a presumptive condition who was exposed to Agent Orange may be eligible for benefits by providing sufficient medical evidence linking their condition to this exposure.

On January 25, 2011, VA issued regulations expanding the scope of the presumption of herbicide exposure to veterans who served in or near the Korean Demilitarized Zone (DMZ) between September 1, 1967, and August 31, 1971. These regulations took effect on February 24, 2011.

On January 29, 2019, the U.S. Court of Appeals for the Federal Circuit, in *Procopio v. Wilkie*, invalidated VA’s interpretation of “Republic of Vietnam” and held that the term’s meaning included the country’s 12 nautical miles of territorial sea. The court reasoned that, for the purpose of VA benefits, all veterans who served on U.S. vessels within the 12-nautical-mile region were eligible for the Agent Orange presumption.

As *Procopio* unfolded, Congress also legislated an expansion of the Agent Orange presumption. On January 8, 2019, H.R. 299 was introduced to expand the presumption of herbicide exposure for veterans who served offshore the Republic of Vietnam on U.S. vessels. Following House and Senate passage, President Donald J. Trump signed into law the Blue Water Navy Vietnam Veterans Act of 2019 (P.L. 116-23) on June 25, 2019. The act requires VA to grant the presumption of exposure to herbicide agents to veterans

who served on U.S. Navy or Coast Guard vessels off the coast of Vietnam.

Overview of P.L. 116-23

P.L. 116-23 amends chapters 11, 17, 18, and 37 of Title 38 of the *U.S. Code*, expanding the Agent Orange presumption to veterans who served on U.S. Navy or Coast Guard vessels offshore the Republic of Vietnam; to certain veterans who served in or near the Korean Demilitarized Zone (DMZ); and to certain veterans who served in Thailand whose children were born with spina bifida. In addition, the law amends multiple provisions related to the VA Home Loan Program. All changes to the *U.S. Code* made by P.L. 116-23 will take effect on January 1, 2020. In a July 5, 2019, press release, VA estimated that as many as 560,000 Vietnam-era veterans may be recognized as Blue Water Navy (BWN) veterans.

Provisions Expanding the Agent Orange Presumption

The provisions that expand the Agent Orange presumption appear in Sections 2, 3, and 4 of P.L. 116-23.

Vietnam Blue Water Navy Veterans

Section 2 of P.L. 116-23 extends the presumption of herbicide exposure to veterans who served on a U.S. Navy or Coast Guard vessel offshore the Republic of Vietnam between January 9, 1962, and May 7, 1975. These vessels must have operated “not more than 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia.” That line roughly connects Vietnam’s islands located within their territorial waters. **Figure 1** shows the entire region associated with Agent Orange exposure, including the newly added territorial waters and the corresponding 12-nautical-mile expansion seaward.

Veterans near the DMZ in Korea

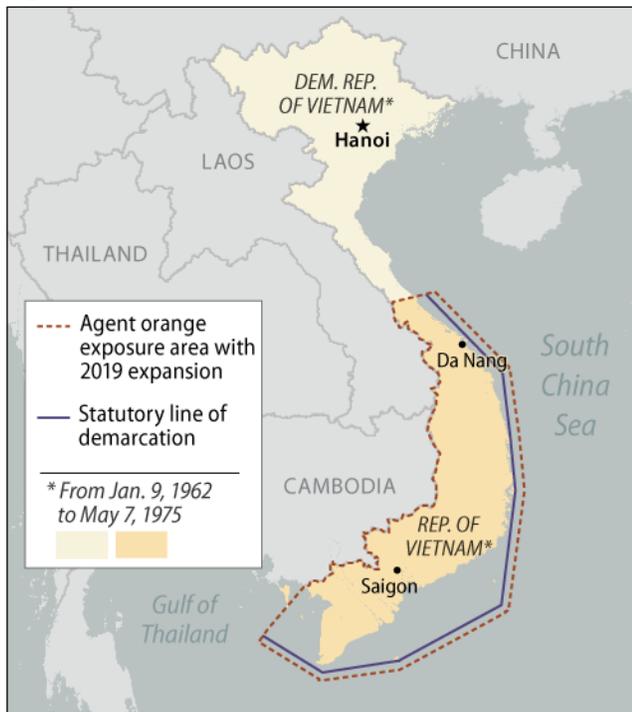
Section 3 of P.L. 116-23 codifies the 2011 regulatory presumption that veterans who served in the Korean DMZ between September 1, 1967, and August 31, 1971, were exposed to herbicides.

Children of Certain Thailand Veterans

Section 4 of P.L. 116-23 extends eligibility for health care, vocational training and rehabilitation, and monetary allowances for children born with spina bifida to certain veterans who served in Thailand between January 9, 1962, and May 7, 1975, in the same manner as these benefits are available to children of Vietnam veterans exposed to Agent Orange. The veteran must have served in an area of Thailand where the Secretary of Veterans Affairs, in consultation with the Secretary of Defense, identified herbicides used during this time period. This section applies to children conceived after the date of the veteran’s service

in Thailand and to all forms of spina bifida except for the mildest form, spina bifida occulta.

Figure 1. Vietnam



Source: Created by CRS. Information from P.L. 116-23 Section 2(d).

Required Reporting

P.L. 116-23 requires the Secretary of Veterans Affairs to submit three reports related to the BWN provisions to the House and Senate Committees on Veterans' Affairs. These reports' subjects and due dates are as follows:

- when and where herbicide agents were used in Thailand during the Vietnam era, including any military installations possibly affected, due within 120 days following the law's effective date;
- how VA plans to respond to veterans' inquiries regarding the BWN presumption, due within 180 days following the law's effective date; and
- the number of claims filed by BWN veterans for compensation, including the number of those claims granted and denied, due no later than January 1, 2021.

In addition, the Secretary must report on the current status of the Follow-Up Study of the National Cohort Gulf War and Gulf Era Veterans within 180 days of the law's effective date.

VA Implementation

After President Trump signed P.L. 116-23, VA began preparing to adjudicate BWN claims. In particular, VA has placed a hold on pending BWN veterans' claims and created a database to identify eligible veterans.

A Stay of Claims

On July 1, 2019, Secretary of Veterans Affairs Robert L. Wilkie placed a stay, or hold, on all pending claims affected by P.L. 116-23. Sections 2(c)(3), 3(c)(3), and 4(d)(3) grant

the Secretary the authority to place a stay on claims until January 1, 2020, delaying decisions on pending claims.

Ship Logs

On August 9, 2019, VA signed an agreement with the National Archives and Records Administration allowing VA to take the deck logs of U.S. Navy and Coast Guard ships from the Vietnam era (1956-1978) offsite and digitize them. VA anticipates all deck logs will be scanned by January 1, 2020, in time for P.L. 116-23's implementation. The deck logs include the ships' movements, locations, activities, and, sometimes, personnel issues. By scanning these logs and using documented coordinates, VA can create tools to identify whether a veteran was within the 12-nautical-mile region. This will assist BWN veterans in their claims, as a veteran will only need to provide a ship name and dates of service on the ship, not specific coordinates.

Outreach to Veterans

P.L. 116-23 requires VA to implement an outreach program to inform veterans who qualify under the new law that they have the opportunity to submit a disability compensation claim. This outreach includes publishing the information on the VA website and sending written notification to veterans and veteran service organizations (VSOs) of the submission or resubmission process.

Processing Veterans' Claims

New Claims

Veterans who believe they may qualify for benefits under P.L. 116-23 can file a disability compensation claim using the process explained on VA's website. For BWN veterans, applications should note that the claim is for an Agent Orange-related condition and any evidence of service offshore Vietnam, such as a ship name and service dates, as well as medical evidence showing a diagnosis of a presumptive condition.

Previously Denied Claims

BWN veterans who previously filed, and were denied, a claim for an Agent Orange-related disability are eligible to refile their claim. The veteran must have received VA's denial for benefits between September 25, 1985 (the date retroactive benefits could be granted to Vietnam veterans under *Nehmer v. U.S. Department of Veterans Affairs*) and January 1, 2020. If VA finds the veteran is eligible for benefits under P.L. 116-23, VA will grant retroactive benefits to when the veteran first filed a claim. Korea and Thailand veterans with previously denied claims can file a new claim to receive benefits, but the effective date cannot be earlier than January 1, 2020.

Ongoing Concerns

The House Committee on Veterans' Affairs Subcommittee for Disability Assistance and Memorial Affairs' hearings raised concerns regarding P.L. 116-23's implementation. These concerns included VA's launch of a new database; VA's staff training on how to use that new database; outreach efforts to veterans whose contact information may have changed since their initial claims; and VA's updates to VSO counterparts on BWN claims processing.

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