

Finally, VA proposes a clerical amendment to section 3.105(g) by replacing the word “children” with the phrase “natural children” wherever it occurs in the regulation. As is true with the proposed amendment to 38 CFR 3.114(a) ([https://www.ecfr.gov/current/title-38/section-3.114#p-3.114\(a\)](https://www.ecfr.gov/current/title-38/section-3.114#p-3.114(a))), this is a clerical change made to reflect the statutory definition of “child” for purposes of benefits for children of certain Veterans born with spina bifida. See 38 U.S.C. 1831(1) (<https://www.govinfo.gov/link/uscode/38/1831>).

IX. Proposed Changes to § 3.816 Awards Under the Nehmer Court Orders for Disability or Death Caused by a Condition Presumptively Associated With Herbicide Exposure

VA proposes to codify the current procedural guidance regarding locating the appropriate survivor(s) of a deceased *Nehmer* class member and defining the parameters of “reasonable efforts” to identify them. VA is also codifying its existing policy to pay newly identified qualifying payees before attempting recoupment from improperly compensated payees, rather than waiting for recoupment before paying the newly identified qualifying payees. The intent of this change is to ensure compliance with the *Nehmer* consent decree.

Historically, VA has sought to locate payees for potential retroactive *Nehmer* benefits by sending letters to all dependents of record requesting the names, addresses and telephone numbers of all known survivors. VA will also seek to obtain proof of dependency documents such as birth certificates, marriages certificates and other proof of dependency, if necessary.

If payees cannot be identified, VA will make reasonable efforts to locate payees as the information on file permits. For example, if a claimant's record identifies an authorized representative or a relative, it would be reasonable to contact such person to request information concerning the existence of a surviving spouse, child(ren), parent(s) or the executor/administrator of the class member's estate. It would be unreasonable to attempt to locate a payee where there is no evidence of record to suggest that the party would potentially qualify for retroactive benefits.

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If the evidence of record does not contain sufficient information to identify an eligible *Nehmer* class beneficiary, a letter will be sent to the last known address of the Veteran, and VA will wait 30 days for a response. If an address is unknown, an attempt will be made to contact the survivor by telephone to obtain their address.

This proposed regulation codifies the procedure for locating *Nehmer* payees as follows: Claims processors must review the claims folder for relevant information and review other VA resources including, but not limited to, benefit applications, statements from the veteran, medical records, corporate database and claims processing system notes. If review of both the claims folder and electronic claims processing system do not provide beneficiary contact information, claims processors must contact any known authorized representatives of record (including those who provided first notice of death and/or funeral/burial services). Claims processors also must attempt to locate potential payees using online public record investigation software authorized by VA. If, after this review, no beneficiary, authorized representative or next of kin is located, the claims processor will send (i) a letter to the Veteran's last known address and wait 30 days for a response and (ii) attempt contact via last known telephonic contact information. If no response is received at the expiration of 30 days, the claims processor will annotate in the claims folder all actions taken to identify eligible payees. The claims processor will then add the claim data to communications with *Nehmer* class counsel, as VA is required to provide class counsel with a list of every claim where eligible survivors cannot be located.

Given the universe of information in the VA benefits system available to claims processors and the measures VA proposes to identify eligible beneficiaries and contact individuals who may provide information about eligible beneficiaries unknown to VA, this procedural guidance constitutes what VA has determined to be reasonable efforts to identify all appropriate *Nehmer* payees. VA does not believe it is reasonable to pay private search firms or undertake extraordinary efforts beyond those identified in this regulation to identify potential payees.

If, following such efforts, VA releases the full amount of unpaid benefits to a payee or payees, and additional qualifying payees subsequently identify themselves to VA, VA will pay the newly identified payee(s) the portion of the award to which they are entitled, and then attempt to recover the overpayment from the original payee(s). While this is consistent with VA's current policy, the revision is necessary in light of the December 2, 2021, amendment to 38 CFR 3.816(f)(3) ([https://www.ecfr.gov/current/title-38/section-3.816#p-3.816\(f\)\(3\)](https://www.ecfr.gov/current/title-38/section-3.816#p-3.816(f)(3))), which was required by the November 10, 2021, court order in *Nehmer v. U.S. Department of Veterans Affairs*, No. C86–06160 WHA (N.D. Cal.) vacating the final sentence of section 3.816(f)(3), directing VA to issue a rule rescinding that sentence and requiring VA to publish that rule in the **Federal Register**. See 86 FR 68409 (/citation/86-FR-68409) (Dec. 2, 2021). VA is obligated to issue payment to the newly identified payee(s) regardless of whether it previously disbursed the entirety of an award to the original payee(s). As noted by the U.S. Court of Appeals for Veterans Claims in *Snyder v. Principi*, the prior disbursement “in no way impairs [VA's] authority and obligation to pay from the compensation . . . account the amount that is owed to the correct beneficiary.” 15 Vet. App. 285, 292 (2001). This is because “the amount owed to the correct beneficiary, in fact, remains undisturbed in the compensation . . . account.” *Id.* Nevertheless, payment to newly identified payees does not relieve VA of its corresponding obligation to recover the overpayment to the original payees. See 31 U.S.C. 3711(a)(1) (<https://www.govinfo.gov/link/uscode/31/3711>) (“The head of an executive, judicial, or legislative agency . . . shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency.”); 38 CFR 1.910(a) ([https://www.ecfr.gov/current/title-38/section-1.910#p-1.910\(a\)](https://www.ecfr.gov/current/title-38/section-1.910#p-1.910(a))) (requiring VA to take “aggressive collection action . . . to collect all claims for money or property arising from [VA's] activities”); see also *Edwards v. Peake*, 22 Vet. App. 57, 59 (2008) (noting that “the Secretary generally is required to recover erroneous VA payments or overpayment of benefits”).

X. Severability

The purpose of this section is to clarify the agency's intent with respect to the severability of provisions of this proposed rule. Each provision that the agency has proposed is capable of operating independently and the agency intends them to be severable. If any provision of this rule is determined by judicial review or operation of law to be invalid, the agency would not intend that partial invalidation to render the remainder of this rule invalid. Likewise, if the application of any portion of this proposed rule to a particular circumstance were determined to be invalid, the agencies would intend that the rule as proposed remain applicable to all other circumstances.

Executive Orders 12866, 13563 and 14094

Executive Order (E.O.) 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (/executive-order/13563) (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 14094 (/executive-order/14094) (E.O. on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and

definitions governing contemporary regulatory review established in E.O. 12866 of September 30, 1993 (Regulatory Planning and Review), and E.O. 13563 (/executive-order/13563) of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under E.O. 12866, Section 3(f)(1), as amended by E.O. 14094 (/executive-order/14094). The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov (<http://www.regulations.gov>).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612 (<https://www.govinfo.gov/link/uscode/5/601>)). The factual basis for this certification is that no small entities or businesses provide Federal compensation or pension benefits to Veterans, and such entities or businesses therefore would be unaffected by the proposed rule. Therefore, pursuant to 5 U.S.C. 605(b) (<https://www.govinfo.gov/link/uscode/5/605>), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 (<https://www.govinfo.gov/link/uscode/5/603>) and 604 (<https://www.govinfo.gov/link/uscode/5/604>) do not apply. □

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Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532 (<https://www.govinfo.gov/link/uscode/2/1532>), that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on state, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521 (<https://www.govinfo.gov/link/uscode/44/3501>)).

List of Subjects in 38 CFR Part 3 (<https://www.ecfr.gov/current/title-38/part-3>)

- Administrative practice and procedure
- Claims
- Disability benefits
- Healthcare
- Pensions
- Radioactive materials
- Veterans
- Vietnam

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on January 9, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 3 (<https://www.ecfr.gov/current/title-38/part-3>) as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a) (<https://www.govinfo.gov/link/uscode/38/501>), unless otherwise noted.

2. Amend § 3.105 by revising paragraph (g) to read as follows:

§ 3.105 Revision of decisions.

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(g) Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are natural children of Vietnam Veterans or natural children of Veterans with covered service in Korea or Thailand. Where a reduction or discontinuance of a monetary allowance currently being paid under 38 U.S.C. chapter 18 is considered warranted, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefore, and allow the beneficiary 60 days to present additional evidence to show that the monetary allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following 60 days from the date of notice to the beneficiary of the proposed reduction.

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3. Amend § 3.114 by:

- a. Revising paragraph (a) introductory text;
- b. Removing the authority citation immediately preceding paragraph (b); and
- c. Revising the authority citation immediately following paragraph (b).

The revisions read as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

(a) Effective date of award. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a natural child of a Vietnam Veteran or natural child of a Veteran with covered service in Korea or Thailand is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved

by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a natural child of a Vietnam Veteran or natural child of a Veteran with covered service in Korea or Thailand is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and supplemental claims as well as claims for increase.

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(b) * * *

(Authority: 38 U.S.C. 1805 (<https://www.govinfo.gov/link/uscode/38/1805>), 1815
(<https://www.govinfo.gov/link/uscode/38/1815>), 1821
(<https://www.govinfo.gov/link/uscode/38/1821>), 1822
(<https://www.govinfo.gov/link/uscode/38/1822>), 1831
(<https://www.govinfo.gov/link/uscode/38/1831>), 1832
(<https://www.govinfo.gov/link/uscode/38/1832>), 5110(g)
(<https://www.govinfo.gov/link/uscode/38/5110>))

4. Amend § 3.307 by revising paragraphs (a)(6) introductory text, (a)(6)(iii) through (v), and adding paragraphs (a)(6)(vi) through (xi) to read as follows:

§ 3.307 Presumptive service connection for chronic, tropical, or prisoner-of-war related disease, disease associated with exposure to certain herbicide agents, or disease associated with exposure to contaminants in the water supply at Camp Lejeune; wartime and service on or after January 1, 1947.

(a) * * *

(6) *Presumption of exposure to certain herbicide agents.* (i) For the purposes of this section, the term "herbicide agent" means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, specifically: 2,4-D; 2,4,5-T and its contaminant TCDD; cacodylic acid; and picloram.

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(iii) *Service in the Republic of Vietnam.* A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962 and ending on May 7, 1975, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service. The last date on which such a Veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam during the period beginning on January 9, 1962 and ending on May 7, 1975. Service in the Republic of Vietnam includes service in the offshore waters of the Republic of Vietnam. Service in the

offshore waters of the Republic of Vietnam is defined as service in waters at any location not more than 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia. This line would encompass Phu Quoc island, terminating at the mid-point of the Ben Hai River, and intersecting the following points: □

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Points geographic names	Latitude north	Longitude east
At Phu Quoc Extension Point A	10°14'51.16"	104°12'54.69"
At Phu Quoc Extension Point B	10°23'55.92"	104° 7'56.91"
At Phu Quoc Extension Point C	10°30'12.70"	103°59'19.11"
At Phu Quoc Extension Point D	9°43'18.90"	102°46'28.56"
At Phu Quoc Extension Point E	9°11'34.58"	103°14'38.50"
At Hon Nhan Island, Tho Chu Archipelago Kien Giang Province	9°15.0'	103°27.0'
At Hon Da Island southeast of Hon Khoai Island Minh Hai Province	8°22.8'	104°52.4'
At Tai Lon Islet, Con Dao Islet in Con Dao-Vung Toa Special Sector	8°37.8'	106°37.5'
At Bong Lai Islet, Con Dao Islet	8°38.9'	106°40.3'
At Bay Canh Islet, Con Dao Islet	8°39.7'	106°42.1'
At Hon Hai Islet (Phu Qui group of islands) Thuan Hai Province	9°58.0'	109°5.0'
At Hon Doi Islet, Thuan Hai Province	12°39.0'	109°28.0'
At Dai Lanh point, Phu Khanh Province	12°53.8'	109°27.2'
At Ong Can Islet, Phu Khanh Province	13°54.0'	109°21.0'
At Ly Son Islet, Nghia Binh Province	15°23.1'	109° 9.0'
At Con Co Island, Binh Tri Thien Province	17°10.0'	107°20.6'

(iv) *Service in or near the Korean Demilitarized Zone (DMZ).* A Veteran who, during active military, naval, or air service, served between September 1, 1967, and August 31, 1971, in a unit that, as determined by DoD, operated in or near the Korean DMZ in an area in which certain herbicide agents are known to have been applied during that period, 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. *See also* 38 CFR 3.814(c)(2) ([https://www.ecfr.gov/current/title-38/section-3.814#p-3.814\(c\)\(2\)](https://www.ecfr.gov/current/title-38/section-3.814#p-3.814(c)(2))).

(v) *Service operating, maintaining, or serving aboard C-123 aircraft.* An individual who performed service in the Air Force or Air Force Reserve under circumstances in which the individual concerned regularly and repeatedly operated, maintained, or served onboard C-123 aircraft known to have been used to spray an herbicide agent during the Vietnam era shall be presumed to have been exposed during such service to an herbicide agent. For purposes of this paragraph, "regularly and repeatedly operated, maintained, or served onboard C-123 aircraft" means that the individual was assigned to an Air Force or Air Force Reserve squadron when the squadron was permanently assigned one of the affected aircraft and the individual had an Air Force Specialty Code indicating duties as a flight, ground maintenance, or medical crew member on such aircraft. Such exposure constitutes an injury under 38 U.S.C. 101(24)(B) (<https://www.govinfo.gov/link/uscode/38/101>) and (C) (<https://www.govinfo.gov/link/uscode/38/101>). If an individual described in this paragraph

develops a disease listed in 38 CFR 3.309(e) ([https://www.ecfr.gov/current/title-38/section-3.309#p-3.309\(e\)](https://www.ecfr.gov/current/title-38/section-3.309#p-3.309(e))) as specified in paragraph (a)(6)(ii) of this section, it will be presumed that the individual concerned became disabled during that service for purposes of establishing that the individual served in the active military, naval, or air service.

(vi) *Service in Thailand.* A veteran who, during active military, naval, or air service, served in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on June 30, 1976, without regard to where on the base the Veteran was located or what military job specialty the Veteran performed, 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. Service at any United States or Royal Thai base includes service aboard a ship that called to a coastal base in Thailand.

(vii) *Service in Laos.* A veteran who, during active military, naval, or air service, served in Laos during the period beginning on December 1, 1965, and ending on September 30, 1969, 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.

(viii) *Service in Cambodia.* A veteran who, during active military, naval, or air service, served in Cambodia at Mimot or Krek, Kampong Cham Province during the period beginning on April 16, 1969, and ending on April 30, 1969, 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.

(ix) *Service in Guam or American Samoa.* A Veteran who, during active military, naval, or air service, served in Guam or American Samoa, or in the territorial waters thereof, during the period beginning on January 9, 1962, and ending on July 31, 1980, 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.

(x) *Service on Johnston Atoll.* A Veteran who, during active military, naval, or air service, served on Johnston Atoll or served on a ship when it called at Johnston Atoll during the period beginning on January 1, 1972, and ending on September 30, 1977, 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.

(xi) *Service in locations recognized by the Department of Defense.* A veteran who does not meet the requirements of paragraphs (a)(6)(iii)-(x) of this section, and whose circumstances of service reasonably would have placed the Veteran at a site of certain herbicide agent testing, use, or storage on a date of certain herbicide agent testing, use, or storage, shall be presumed to have been exposed to an herbicide agent during such service, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service. The DoD List of Locations Where Tactical Herbicides and Their Chemical Components Were Tested, Used, or Stored Outside of Vietnam, published on VA's website, is the authoritative source regarding where and when certain herbicide agents were tested, used or stored for purposes of this paragraph, and can be found at: <https://www.publichealth.va.gov/exposures/agentorange/locations/tests-storage/>

index.asp (<https://www.publichealth.va.gov/exposures/agentorange/locations/tests-storage/index.asp>). VA will publish changes to this list in the Notices section of the **Federal Register**.

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5. Amend § 3.309 by revising paragraph (e) to read as follows:

§ 3.309



Disease subject to presumptive service connection.

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(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 acneform 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

Early-onset 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)

Bladder cancer

Parkinsonism (including, but not limited to, the following Parkinson-plus syndromes (also referred to as “atypical Parkinsonism”): progressive supranuclear palsy (PSP), multiple system atrophy (MSA) (also referred to as Shy-Drager syndrome), corticobasal degeneration (CBD), vascular Parkinsonism, and dementia with Lewy bodies (DLB))

Hypothyroidism

Hypertension

Monoclonal gammopathy of undetermined significance (MGUS)

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 ischemic heart disease does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke, or any other condition that does not qualify within the generally accepted medical definition of Ischemic heart disease.

Note 3:

Drug-induced Parkinsonism is not recognized as a disease associated with exposure to certain herbicide agents.

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6. Revise § 3.313 to read as follows:

§ 3.313 Claims based on service in the Republic of Vietnam.

(a) Service in the Republic of Vietnam. Service in the Republic of Vietnam includes service in the offshore waters of the Republic of Vietnam as defined in 38 CFR 3.307(a)(6)(iii) ([https://www.ecfr.gov/current/title-38/section-3.307#p-3.307\(a\)\(6\)\(iii\)](https://www.ecfr.gov/current/title-38/section-3.307#p-3.307(a)(6)(iii))). Service in other locations will constitute service in the Republic of Vietnam if the conditions of service involved duty or visitation in the Republic of Vietnam.

(b) Service connection based on service in the Republic of Vietnam. Service in the Republic of Vietnam during the Vietnam Era together with the development of non-Hodgkin's lymphoma manifested subsequent to such service is sufficient to establish service connection for that disease.

7. Amend § 3.814 by revising the section heading, paragraph (c), and the authority citation at the end of the section to read as follows:

§ 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 or a Veteran with covered service in Korea or Thailand.

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(c) Definitions—(1) *Vietnam veteran*. For the purposes of this section, the term “Vietnam Veteran” means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the person's service. Service in the Republic of Vietnam includes service in the

offshore waters of the Republic of Vietnam as defined in 38 CFR 3.307(a)(6)(iii) ([https://www.ecfr.gov/current/title-38/section-3.307#p-3.307\(a\)\(6\)\(iii\)](https://www.ecfr.gov/current/title-38/section-3.307#p-3.307(a)(6)(iii))). Service in other locations will constitute service in the Republic of Vietnam if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Covered service in Korea.* For the purposes of this section, the term “Veteran with covered service in Korea” means a person who served in the active military, naval, or air service in or near the Korean DMZ between September 1, 1967, and August 31, 1971, and who is determined by VA, in consultation with the DoD, to have been exposed to an herbicide agent during such service. Exposure to an herbicide agent will be conceded if the Veteran served between September 1, 1967, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which certain herbicide agents are known to have been applied during that period, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service.

(3) *Covered service in Thailand.* For the purposes of this section, the term “covered service in Thailand” means service in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to where on the base the Veteran was located or what military job specialty the Veteran performed.

(4) *Individual.* For the purposes of this section, the term “individual” means a person, regardless of age or marital status, whose biological father or mother is or was a Vietnam Veteran and who was conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam Era, or whose biological father or mother is or was a Veteran with covered service in Korea or Thailand and who was conceived after the date on which the Veteran first had covered service in □ Korea or Thailand as defined in this section. Notwithstanding the provisions of § 3.204(a)(1), VA will require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish in the judgment of the Secretary that a person is the natural child of a Vietnam Veteran or a Veteran with covered service in Korea or Thailand.

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(5) *Spina bifida.* For the purposes of this section, the term “spina bifida” means any form and manifestation of spina bifida except spina bifida occulta.

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(Authority: 38 U.S.C. 501 (<https://www.govinfo.gov/link/uscode/38/501>), 1116A

(<https://www.govinfo.gov/link/uscode/38/1116A>), 1116B

(<https://www.govinfo.gov/link/uscode/38/1116B>), 1805

(<https://www.govinfo.gov/link/uscode/38/1805>), 1811

(<https://www.govinfo.gov/link/uscode/38/1811>), 1812

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(<https://www.govinfo.gov/link/uscode/38/1833>), 1834

(<https://www.govinfo.gov/link/uscode/38/1834>), 5101

(<https://www.govinfo.gov/link/uscode/38/5101>), 5110

(<https://www.govinfo.gov/link/uscode/38/5110>), 5111

(<https://www.govinfo.gov/link/uscode/38/5111>), 5112

(<https://www.govinfo.gov/link/uscode/38/5112>)

8. Amend § 3.815 by revising paragraph (c)(1) and the authority citation at the end of the section to read as follows:

§ 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.

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(c) * * *

(1) Vietnam Veteran. For the purposes of this section, the term *Vietnam veteran* means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. Service in the Republic of Vietnam includes service in the waters offshore of the Republic of Vietnam, as defined in 38 CFR 3.307(a)(6)(iii)

([https://www.ecfr.gov/current/title-38/section-3.307#p-3.307\(a\)\(6\)\(iii\)](https://www.ecfr.gov/current/title-38/section-3.307#p-3.307(a)(6)(iii))). Service in other locations will constitute service in the Republic of Vietnam if the conditions of service involved duty or visitation in the Republic of Vietnam.

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(Authority: 38 U.S.C. 501 (<https://www.govinfo.gov/link/uscode/38/501>), 1116A

(<https://www.govinfo.gov/link/uscode/38/1116A>), 1811

(<https://www.govinfo.gov/link/uscode/38/1811>), 1812

(<https://www.govinfo.gov/link/uscode/38/1812>), 1813

(<https://www.govinfo.gov/link/uscode/38/1813>), 1814

(<https://www.govinfo.gov/link/uscode/38/1814>), 1815

(<https://www.govinfo.gov/link/uscode/38/1815>), 1816

(<https://www.govinfo.gov/link/uscode/38/1816>), 1831

(<https://www.govinfo.gov/link/uscode/38/1831>), 1832

(<https://www.govinfo.gov/link/uscode/38/1832>), 1833

(<https://www.govinfo.gov/link/uscode/38/1833>), 1834

(<https://www.govinfo.gov/link/uscode/38/1834>), 5101

(<https://www.govinfo.gov/link/uscode/38/5101>), 5110

(<https://www.govinfo.gov/link/uscode/38/5110>), 5111

(<https://www.govinfo.gov/link/uscode/38/5111>), 5112

(<https://www.govinfo.gov/link/uscode/38/5112>))

9. Amend § 3.816 by revising paragraph (f)(3) and the authority citation at the end of the section to read as follows:

§ 3.816 Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.

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(f) * * *

(3) *Identifying payees.* VA shall make reasonable efforts to identify the appropriate payee(s) under paragraph (f)(1) of this section. For the purposes of this section, *reasonable efforts* to locate a *Nehmer* payee are limited to the following:

(i) Claims processors must review the claims folder for beneficiary contact information. Documents in the claims folder that might contain this contact information can include but are not limited to:

(A) benefit applications;

(B) statements from the Veteran; and

(C) medical records

(ii) Claims processors must review electronic claims processing systems for potential beneficiary contact information, including:

(A) corporate database review, and

(B) claims processing system notes review

(iii) Claims processors must utilize online public record investigation software authorized by VA to locate potential beneficiary contact information.

(iv) If review of both the claims folder and electronic claims processing systems do not provide contact information, VA will attempt to contact any known or applicable authorized representatives of record, next of kin, individuals who provided first notice of death, the executor/administrator of the class member's estate, or funeral homes that provided funeral/burial services, if that information is available.

(v) If no beneficiary, authorized representative, next of kin, individuals who provided first notice of death, executor/administrator of the class member's estate, or funeral home that provided funeral/burial services is located in the review above, then claims processors must:

(A) Send a letter to the last known address of the veteran and wait 30 days for a response, and

(B) Attempt contact via the Veteran's last known telephonic contact information found in the Veteran's file.

(vi) If, following such efforts, VA releases the full amount of unpaid benefits to a payee, and additional qualifying payees subsequently identify themselves to VA, VA will pay the newly identified payees the portion of the award to which they are entitled, and then attempt to recover the overpayment from the original payee(s).

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(Authority: 38 U.S.C. 501 (<https://www.govinfo.gov/link/uscode/38/501>))

Footnotes

1. *National Academies of Sciences, Engineering, and Medicine. 2018. Veterans and Agent Orange: Update 11 (2018). Washington, DC: The National Academies Press. <https://doi.org/10.17226/25137> (<https://doi.org/10.17226/25137>).*

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2. *Nicolaus R. McFarland. "Diagnostic Approach to Atypical Parkinsonian Syndromes," Continuum (Minneap Minn). 2016 Aug; 22(4 Movement Disorders)11171142. doi: 10.1212/CON.000000000000348*

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3. *Shin, Hae-Won, and Sun Ju Chung. "Drug-induced parkinsonism." Journal of clinical neurology (Seoul, Korea) vol. 8,1 (2012): 15-21. doi:10.3988/jcn.2012.8.1.15*

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