



THE VETERANS ASSOCIATION OF SAILORS  
OF THE VIETNAM WAR™

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111th CONGRESS

HR 2254

**The Agent Orange Equity Act of 2009**

To amend title 38, United States Code, chapter 11, to clarify that an award of benefits based on a regulatory presumption established pursuant to 38 U.S.C. 1116 can be made effective earlier than the date the regulatory presumption was established, in effect, to the date of the first claim; and to clarify that the presumption of herbicide exposure provided by 38 U.S.C. 1116(f) applies to veterans who served in Vietnam on land or on Vietnam's inland waterways and to those who served only in waters offshore or in airspace above, or in Thailand, Laos, or Cambodia.

**IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES**

January, 2009

Mr. Filner introduced the following bill; it is co-sponsored by Representatives:

**A BILL**

To amend title 38, United States Code, chapter 11, to clarify and show the intent of Congress that an award of benefits based on a regulatory presumption established pursuant to 38 U.S.C. 1116 can be made effective earlier than the date the regulatory presumption was established, in effect, to the date of the first claim; and to clarify that the presumption of herbicide exposure provided by 38 U.S.C. 1116(f) applies to veterans who served in Vietnam on land, or on Vietnam's inland waterways, and to those who served only in waters offshore of the Republic of Vietnam, or in airspace above the Republic of Vietnam, or in Thailand, Laos, or Cambodia. The determining factor will be receipt of the Vietnam Service Medal, or the Armed Forces Expeditionary Medal issued for service in the Vietnam War.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.**

(a) Short Title- This Act may be cited as the 'Agent Orange Equity Act of 2009'

(b) References- Wherever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

**SEC. 2. CLARIFICATION OF AUTHORITY TO ESTABLISH PRESUMPTIONS BASED ON HERBICIDE EXPOSURE; CONFIRMATION OF RETROACTIVE PAYMENT.**

(a) Section 1116 is amended by adding at the end the following new subsection:



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(g) Presumptions established pursuant to this section shall be considered to be presumptions established pursuant to the Agent Orange Act of 1991. Awards based on such presumptions are subject to section 5110 of this title and may be made effective earlier than the effective date of the regulation establishing the presumption, and must be made back to the date of first claim.

(b) Applicability- The provisions of section 1116(g) as added by this Act apply to any determination made on or after the date of enactment of this Act, or prior to it back to the date of first claim.

(c) The Secretary of the Department of Veterans Affairs is directed to proceed with all dispatch to process the claims pending from Veterans who are affected by this act, and all new claims filed under the provisions of this act.

### **SEC. 3. CLARIFICATION OF DEFINITION OF SERVICE IN THE REPUBLIC OF VIETNAM.**

(a) Paragraph (f) of section 1116 is amended by adding to the end of that paragraph the following: 'For the purposes of this presumption, a veteran will be considered to have served in the Republic of Vietnam if the veteran was physically present on land in Vietnam, or on its inland waterways, or if the veteran served only on the waters offshore of the Republic of Vietnam, or in airspace above the Republic of Vietnam, or in Thailand, Laos, or Cambodia, and received either the Vietnam Service Medal or the Armed Forces Expeditionary Medal for service in Vietnam.'

(b) Applicability- The provisions of section 1116(f), as amended by this Act, apply to any claim pending on the date of enactment of this Act, including a claim to reopen or revise a previous claim, to any claim previously denied on the basis of the Department of Veterans Affairs' interpretation of the definition of "Service in Vietnam" requiring a Veteran's service to have included his or her presence on the land mass of the Republic of Vietnam, and to any claim filed on or after the date of enactment of this Act. Benefits severed by the Department of Veterans Affairs on the basis of any revised policy interpretations of the definition of "Service in Vietnam" requiring a Veteran's service to have included his or her actual presence on the land mass of the Republic of Vietnam shall be reinstated in full, with full retroactive benefits. Benefits will be paid to the date of first claim in all cases under this authority, minus any previous payments paid on the claim. In all cases under this authority, failure to file an appeal subsequent to a denial based on the Department of Veterans Affairs' revised policy interpretation of the definition of "Service in Vietnam" requiring a Veteran's service to have included his or her actual presence within the land mass of the Republic of Vietnam shall not interrupt retroactive benefits.

[Edited 11/24/2007, 07/17/2008, 08/28/2008, final edits accepted 09/04/2008 updated 09/14/2008]