Uploaded to the VFC Website

June 2014

This Document has been provided to you courtesy of Veterans-For-Change!

Feel free to pass to any veteran who might be able to use this information!

For thousands more files like this and hundreds of links to useful information, and hundreds of "Frequently Asked Questions, please go to:

Veterans-For-Change

Veterans-For-Change is a A 501(c)(3) Non-Profit Organizaton
Tax ID #27-3820181
CA Incorporation ID #3340400
CA Dept. of Charities ID #: CT-0190794

If Veterans don't help Veterans, who will?

We appreciate all donations to continue to provide information and services to Veterans and their families.

https://www.paypal.com/cgi-bin/webscr?cmd=_s-xclick&hosted_button_id=WGT2M5UTB9A78

Note: VFC is not liable for source information in this document, it is merely provided as a courtesy to our members & subscribers.

Item ID Number	04938	☐ **Not Scanned**
Author		
Corporate Author		
Report/Article Title	Memorandum: From Office of the Administrator of Veterans Affairs, to Alan K. Simpson, Chairman, Committee on Veterans Affairs, United States Senate regarding the proposed Vietnam Veterans Agent Orange Relief Act	
Journal/Book Title		
Year	0000	
Month/Day		
Color	☐	
Number of Images	4	
Descripton Notes		

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans Administration

Honorable Alan K. Simpson
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the Administration's views on S. 1953, 97th Congress, the proposed "Vietnam Veterans Agent Orange Relief Act."

We oppose enactment of this measure, which we regard as inappropriate and unwarranted.

S. 1953 would provide for a presumption of service connection respecting the occurrence of certain diseases in Vietnam-era veterans exposed to phenoxy herbicides during military service in Southeast Asia. The principal phenoxy herbicide used during the Vietnam conflict was, of course, Agent Orange.

Effective upon enactment, the bill would amend section 312 of title 38, United States Code, by adding a new subsection (c). Section 312 currently provides for presumptions, relating to certain chronic diseases and disabilities, that ease the burden of establishing service connection in cases where the veteran's symptoms do not appear until after separation from military service. The new subsection would apply only to Vietnam-era veterans who served in Southeast Asia. If such a veteran, after service, were to become 20 percent or more disabled, the disability would be presumed to be service connected if it resulted from a disease caused by exposure to phenoxy herbicides to which the veteran was exposed during service, even though there is no indication the veteran was suffering from the disease during the service period.

The new subsection would require the VA to determine, according to "credible medical opinion", those diseases caused by exposure to phenoxy herbicides and the conditions of service sufficient to establish exposure. Within three months of enactment, the VA would be required to promulgate final rules, in accordance with Administrative Procedure Act requirements

of notice, hearing, and opportunity for public comment, that set forth the pertinent diseases and conditions of service as well as the factors and standards used in determining those diseases and conditions. The term "credible medical opinion" is not defined in the bill; we take it to mean conclusions arrived at by the medical community as a whole and based upon authoritative scientific research.

Like certain other measures introduced in the 96th and 97th Congresses in response to concerns about Agent Orange exposure, S. 1953 is intended to assist veterans of service in the Vietnam conflict establish entitlement to service-connected disability compensation. Two features of S. 1953 that we regard as particularly objectionable have appeared in previous bills on which we have reported. As discussed in detail in the testimony of Dr. Camp, Associate Deputy Chief Medical Director, before your Committee on April 30, 1981, in connection with S. 26 and S. 689, we regard a special presumption in Agent Orange cases as unnecessary. VA currently has authority to grant service connection for disabilities caused by exposure during military service to Agent Orange or any other toxic substance, even though the first signs of disability appear long after the exposure and regardless of whether the disability has reached the 20 percent level. 38 U.S.C. § 313(b); 38 C.F.R. § 3.303(d). When scientific investigation results in new findings regarding the cause or a contributing cause of a particular disability, our current authorities enable us to grant service connection and award compensation, as appropriate under the circumstances, and to promulgate new regulations as necessary, in accordance with procedures that have proved adequate over many years. By requiring a different approach, S. 1953 would weaken the integrity of our current procedures and disrupt the orderly development of regulatory guidelines.

S. 1953 would set up an unrealistically tight timetable for the issuance of final rules. Compliance with sections 553, 556, and 557 of title 5, United States Code (the Administrative Procedure Act), would be required. The reference to section 553 is unnecessary; this Agency currently conducts its rulemaking under that section. We publish proposed rules in the Federal Register, solicit public comments, and evaluate those comments carefully before final promulgation. We oppose subjecting the VA to the formal rulemaking process under sections 556 and 557 for this limited class of rules. Under those sections, rules can be promulgated only after interested parties have formally presented evidence "on the record" in proceedings before an administrative law judge, a process that lends itself better to the activities of regulatory agencies than to agencies like the VA whose primary mission is the delivery of benefits and services. We are not aware of any advantages that would accrue to veterans should the extensive formalities mandated by sections 556 and 557 be imposed on the VA.

Finally, we suggest that the enactment of S. 1953 would entail a serious risk—the risk of misleading veterans and the American public as to the likelihood of an early resolution of the underlying scientific questions,

or, even worse, the risk of misleading veterans as to the likelihood that those findings will be positive regarding the latent adverse health effects of Agent Orange exposure.

In testimony before your Committee on November 18, 1981, I advised the Committee as to the status of the ongoing scientific inquiries. I also advised the Committee that the Agent Orange controversy, as it relates to individual claims for compensation, involves two basic questions: (1) whether the veteran was exposed, and (2) whether the disability results from the exposure. S. 1953 would require the VA to address each of those questions. However, as I noted in my remarks on November 18, we have already resolved the first question in a manner favorable to veterans. Unless there is specific evidence to the contrary, we are prepared to presume exposure if the veteran served in Southeast Asia during the relevant period. This policy, prompted by the lack of a definitive method for identifying exposed individuals, is consistent with our longstanding policy of resolving reasonable doubt in a veteran's favor.

The second question would remain unresolved for the present even if S. 1953 were to be enacted immediately. The various ongoing scientific inquiries that I described in my November 18 testimony are intended to bridge the knowledge gap that has thus far frustrated the resolution of this question. As part of our continuing responsibility to veterans as well as to the American public, we closely follow those and all other relevant inquiries and will carefully monitor the result of the comprehensive epidemiological study mandated by Pub. L. No. 96-151. At present, however, there is no consensus among scientists as to whether Agent Orange or any other phenoxy herbicide is the cause or a contributing cause of latent adverse health effects on human beings.

Our opposition to S. 1953 is thus based on our view that enactment could not result in the award of compensation to even a single veteran until and unless scientific findings are made that establish, or tend to establish, a causal link between Agent Orange exposure and subsequent disability; would mislead veterans and the public; and would adversely affect our present system.

You also requested our estimate of the costs of S. 1953, if enacted. Cost estimates for bills intended to facilitate the payment of compensation must necessarily be based on assumptions about the number of veterans involved, the extent of disability, and the rate of compensation. One may speculate that the eventual cost of S. 1953 or a similar measure could be many millions merely because we know that a sizeable number of veterans suffered Agent Orange exposure. This would not be inconsistent with our informal prediction that, if scientists make positive findings regarding the latent adverse health effects of such exposure, compensation costs

would rise, possibly by millions, regardless of whether S. 1953 or a similar measure is enacted. Nevertheless, at present we have no reasonable basis for making assumptions about the potential number of veterans involved or the degree of disability and cannot, therefore, furnish a cost estimate for S. 1953.