

EIGHTY-EIGHTH NATIONAL CONVENTION
OF
THE AMERICAN LEGION
SALT LAKE CITY, UTAH
AUGUST 29, 30, 31, 2006

RESOLUTION NO.:131

**SUBJECT: Clarification of "Service in the
Republic of Vietnam" for the Purpose
Of Agent Orange Presumption**

Origin: Maryland

Submitted by: Veterans Affairs and Rehabilitation

WHEREAS, The Department of Veterans Affairs (VA) has begun to implement a General Counsel opinion that impacts negatively on the eligibility of veterans who served their country during a time of war; and

WHEREAS, Until most recently, VA awarded service connection on a presumptive basis for all individuals who served on the Republic of Vietnam soil and also those who served in the territorial waters of Vietnam, thus recognizing such service as service in the Republic of Vietnam; and

WHEREAS, Congress in its plain language included a definition of "Service in Republic of Vietnam" in the most general of terms; "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," so as to plainly be deemed an intent of inclusion, rather than exclusion; and

WHEREAS, Succeeding interpretations in 38 Code of Federal Regulations (CFR) and General Counsel precedent opinion (VAOPGCPREC) prior to VAOPGCREC 27-97 have considered service in a "naval" capacity as service in the offshore or territorial waters of the Republic of Vietnam, as included in the category of "exposed" to Agent Orange, and, therefore, included in those eligible for presumptive consideration; and

WHEREAS, The plain language and sentence structure of the statute is expanded in 38 CFR 3.307(a)6(iii) to include restrictive terminology which was further supported and confirmed in VAOPGCREC 27-97; and

WHEREAS, The sentence structure and plain meaning of even the restrictive language can be interpreted to include "service in the territorial waters offshore" as "service in the Republic of Vietnam;" as "territorial waters" would be considered to be within the boundaries of the Republic of Vietnam; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Salt Lake City, Utah, August 29, 30, 31, 2006, That The American Legion seek legislation to plainly identify and further clarify "service in the Republic of Vietnam beginning January 9, 1962 and ending on May 7, 1975" to include those who served in the territorial waters offshore, as this was clearly the original intent of the statute; and, be it finally

RESOLVED, That those individuals who served in "other locations," who can show their condition of service-involved duty or visitation in the Republic of Vietnam, shall also be included under the definition of those exposed to Agent Orange and the resultant presumptive conditions.