

compliance with regulations. An absence of the reporting and recordkeeping requirements would not allow for prudent internal controls or for examiners to determine the accurate performance and condition of savings associations. Specifically, OTS examiners use the reports and recordkeeping requirements to determine whether the savings associations are being operated safely, soundly, and in compliance with regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 834.

Estimated Number of Responses: 834.

Estimated Burden Hours per

Response: Range between 15 minutes to 100 hours, an average of 19 hours.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 3,648,563.

Clearance Officer: Ira L. Mills, (202) 906-6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 9, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8-8014 Filed 4-14-08; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Mutual to Stock Conversion Application

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 15, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from *RegInfo.gov* at <http://www.reginfo.gov/public/do/PRAMain>.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OTS and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S.

Office of Management and Budget, 725-17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395-6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906-6518, or by e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at www.ots.treas.gov. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, ira.mills@ots.treas.gov (202) 906-6531, or facsimile number (202) 906-6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Mutual to Stock Conversion Application.

OMB Number: 1550-0014.

Form Number: OTS Forms 1680, 1681, 1682, and 1683.

Description: The OTS staff makes an in-depth study of all information furnished in the application in order to determine the safety and soundness of the proposed stock conversion. The purpose of the information collection is to provide OTS with the information necessary to determine if the proposed transaction may be approved. If the information required were not collected, OTS would not be able to properly evaluate whether the proposed transaction was acceptable. The information collection allows OTS to evaluate the merits of the proposed conversion plan and application in light of applicable statutory and regulatory criteria.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 14.

Estimated Number of Responses: 14.
Estimated Burden Hours per Response: 510 hours.

Estimated Frequency of Response: Other; Required once when converting to stock form.

Estimated Total Burden: 7,140 hours.
Clearance Officer: Ira L. Mills, (202) 906-6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 9, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

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DEPARTMENT OF VETERANS AFFAIRS

VA Adjudication Procedures Manual, M21-1; Rescission of Manual M21-1 Provisions Related to Exposure to Herbicides Based on Receipt of the Vietnam Service Medal

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) rescinds provisions of its Adjudication Procedures Manual, M21-1 (Manual M21-1) that were found by the U.S. Court of Appeals for Veterans Claims (Veterans Court) not to have been properly rescinded.

DATES: This rescission is effective April 15, 2008.

SUPPLEMENTARY INFORMATION: On November 27, 2007, we proposed to rescind certain provisions of our Manual M21-1. 72 FR 66218. The notice was necessitated by the opinion rendered by the Veterans Court in *Haas v. Nicholson*, 20 Vet. App. 257 (2006). Although VA's appeal of that decision has been submitted to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), that court has not yet issued a decision in the case. The comment period has ended, and we now rescind the provisions.

We received more than 75 comments, most of which were very similar and can be addressed in three categories: (1) Citation to scientific evidence, in particular a 2002 study performed for Australia's Queensland Health Scientific Services by their National Research Center for Environmental Toxicology, titled, *Examination of the Potential Exposure of Royal Australian Navy Personnel to Polychlorinated Dibenzo-dioxins and Polychlorinated*

Dibenzofurans Via Drinking Water (the Australian study); (2) personal stories about the commenters' experiences during service and/or their current illnesses; and, (3) arguments presented in connection with the *Haas* litigation. We will address these three categories of comments, and then address a few additional comments that do not fit within these categories.

Comments Based on Scientific Articles

Several commenters suggested that rescission of the Manual M21-1 is inconsistent with scientific articles purportedly showing that herbicide exposure in offshore waters could have occurred by virtue of wind drift or consumption of drinking water distilled from estuarine waters. We make no change based on these comments for the reasons explained below.

Several commenters cited the Australian study as proof that American military personnel on ships off the coast of Vietnam were exposed to herbicides in drinking water. The Australian study assumed that ocean water near estuarine sources could contain dioxin if dioxin had been used over adjacent land. It then noted that Australian Navy boats distilled water, obtained primarily from locations near such estuarine sources, to use as drinking water. Based on these factual predicates, the study found that the distillation process used by those boats did not remove dioxin when dioxin was added to salt water and the distillation process was performed in a laboratory, but, instead, the distillation concentrated the dioxin level in the water. The study was not peer reviewed or published and, to our knowledge, has never been cited in any subsequent reputable study concerning herbicide exposure.

Even assuming that U.S. Navy ships used a distillation process to obtain drinking water from the ocean (VA has been unable to obtain official confirmation of this from the Department of Defense), VA's scientific experts have noted many problems with this study that caution against placing significant reliance on the study. In particular, the authors of the Australian study themselves noted that there was substantial uncertainty in their assumptions regarding the concentration of dioxin that may have been present in estuarine waters during the Vietnam War. Further, although distillation concentrated the dioxin level in the water, the concentrating effect was shown to depend upon the amount of sediment in the water, such that a large sediment level, consistent with estuarine waters, could significantly reduce the concentrating

effect. Moreover, even with the concentrating effect found in the Australian study, the levels of exposure estimated in this study are not at all comparable to the exposures experienced by veterans who served on land where herbicides were applied. This is true even if we were to assume that a person drank only such distilled water and did so for an extended tour.

A few commenters cited other studies that discuss generally the nature of air and water pollution, the manner in which certain pesticides can be borne by the wind, and the effect of water-borne pesticides on marine life. None of these studies bears significantly on the specific question whether herbicides used, and as administered, by the U.S. military during the Vietnam Era could have been blown by the wind into the ocean, or into inland waters that then carried the chemical into the ocean, to reach a boat offshore and result in any significant risk of herbicide exposure. Similarly, the studies do not suggest that if those herbicides could have been so transported, they could then be transmitted through a distillation process (assuming that one was used by U.S. ships) into drinking water, and then consumed by military personnel in any measurable quantity. One study merely indicated that Agent Orange is carcinogenic, a fact that VA does not dispute.

Further, even if the studies show that herbicide exposure in offshore waters is possible in some circumstances, they do not provide a basis for maintaining a provision construed by the Veterans Court to impose a broad presumption of herbicide exposure based on receipt of the Vietnam Service Medal (VSM). The purpose of the presumption of herbicide exposure is to eliminate the need for case-by-case showings of exposure where there is a reasonable basis for presuming the fact. The possibility of exposure in certain circumstances of offshore service does not, in our view, establish a basis for presuming exposure in all circumstances involving offshore service or receipt of the VSM.

In our view, the cited studies are of minimal relevance to the instant action for the additional reason that the M21-1 provisions were not intended to establish a substantive rule, but to implement the congressional intent underlying the statutory presumption of herbicide exposure in 38 U.S.C. 1116(f). The commenters do not suggest that Congress relied upon the cited studies in enacting § 1116(f), but appear only to argue that the cited studies would independently support a presumption of herbicide exposure for veterans who served offshore. It is VA's policy not to

issue substantive rules through its M21-1 manual or other internal documents, but through notice-and-comment rule making and subsequent codification in the Code of Federal Regulations.

Because the Veterans Court's conclusion that the M21-1 provisions established a substantive rule is inconsistent with VA's intent in issuing the M21-1 provision, VA is rescinding the M21-1 provisions. As stated in the notice of proposed rule making, VA will shortly issue a proposed revision to its governing regulation, 38 CFR 3.307(a)(6)(iii), to clarify our interpretation of 38 U.S.C. 1116(f). The issue of whether and to what extent the cited studies bear upon the congressional intent underlying § 1116(f) is most appropriately dealt with in the context of that rulemaking.

Additionally, we note that many VSM recipients did not even serve on ships off the shore of Vietnam. The VSM was awarded to all members of the Armed Forces who served between July 3, 1965, and March 28, 1973, either: (1) in Vietnam and contiguous waters and airspace thereafter; or (2) in Thailand, Laos, or Cambodia, or airspace thereafter, in direct support of operations in Vietnam. *See* Army Reg. 600-8-22, para. 2-13.). Clearly, the studies cited by commenters would not affect our decision as to veterans who served in Thailand, Laos, or Cambodia, or in airspace far above the jungles of Vietnam. If commenters relying on these studies believe the studies are relevant to the question whether Vietnam service should be extended to the waters off the shore of Vietnam, we direct readers to the revision of 38 CFR 3.307(a)(6)(iii), which we expect will be proposed before May 2008, and which will directly address the requirement of service on land in Vietnam. For the foregoing reasons, the Australian study and the other studies cited by commenters do not cause us to alter our decision to rescind the Manual M21-1 provisions.

Similar to the above category of comments, several commenters argued that there is no scientific basis for VA to take the position that veterans who served on ships were not exposed to herbicides during that service. These comments misunderstand the nature of VA's action. This action would not result in a finding or presumption that veterans who served on ships were not exposed to herbicides; it would merely clarify that such veterans are not automatically presumed to have been exposed and that the issue of exposure must be resolved on a case-by-case basis to the same extent as most other factual

issues involved in claims for VA benefits.

Comments Based on Personal Experience

The second group of comments received related the personal experiences of veterans who suffer from cancer and other ailments that can be caused by exposure to Agent Orange. While we are sympathetic to the needs of these veterans, Congress has been quite clear that VA cannot presume exposure to herbicides simply because a veteran has a disease linked to exposure to herbicides. Again, section 1116(f) states that a veteran with such a disease is presumed exposed only if he “served in the Republic of Vietnam.” To the extent that these commenters seek relief in their own individual cases, these comments are beyond the scope of this notice. The issue presented here is whether VA should rescind a Manual M21-1 provision that the Veterans Court misinterpreted as requiring VA to presume exposure for any veteran who received the VSM.

Comments Related to Haas Litigation

The third category of comments received includes comments presenting the same statutory-interpretation arguments that have been presented to the Federal Circuit in the *Haas* litigation. These comments assert that the language of 38 U.S.C. 1116 plainly requires that offshore service be considered service “in the Republic of Vietnam” for purposes of that statute. We do not agree. In its *Haas* opinion, the Veterans Court held that neither the language nor the legislative history of § 1116 reflects a clear intent to treat offshore service as service “in the Republic of Vietnam.” *Haas*, 20 Vet. App. at 264–68. We therefore make no change based on these comments, but we note that this issue remains pending before the Federal Circuit.

Additionally, some commenters suggested that VA, by this action, was usurping the power of the courts. We do not agree. VA has the legal right to engage in rulemaking and the legal obligation to interpret title 38, United States Code. As the Federal Circuit has

held, the fact that a court has interpreted VA’s regulations does not bar VA from later revising those regulations. See *National Organization of Veterans’ Advocates v. Secretary of Veterans Affairs*, 260 F.3d 1365, 1373–74 (Fed. Cir. 2001). This action in no way usurps the court’s authority to review our actions in this regard.

Other Comments

In addition to the categories of comments addressed above, we received the following specific comments. First, one commenter asked why the proposed rescission did not address “any action [VA] may contemplate to sever service connection” granted based upon the Manual M21-1 provisions. We have no plans to undertake such action. The same commenter asked whether a claimant who had been presumed exposed to herbicides based on the Manual M21-1 provision would now, post-rescission, not be presumed exposed if he filed a claim based on a new disease. VA has never interpreted the Manual M21-1 provision to require a presumption of service connection for every veteran who received the VSM. (In fact, this is precisely why VA denied Mr. Haas’ claim.) That interpretation was made by the Veterans Court, not by VA. Therefore, if a veteran had been presumed exposed to herbicides before this rescission, it is because the evidence in his file, viewed as a whole, supported applying the presumption in the particular case.

The same commenter added that if VA believes that other evidence besides the award of the VSM is relevant to a finding of service in Vietnam, then VA should identify such evidence. This comment is beyond the scope of this rescission, which simply removes from the Manual M21-1 a provision that required VA to consider the VSM in connection with a claim for a disability allegedly caused by herbicide exposure. In this regard, the commenter may wish to review and comment on our revision of 38 CFR 3.307(a)(6)(iii).

Another commenter stated that he “can understand why blue water sailors [i.e., sailors who served off the coast of Vietnam] would be more closely

scrutinized, but not automatically deemed ineligible.” Removal of the Manual M21-1 provisions would not render blue water sailors ineligible for benefits based on herbicide exposure. Such veterans could establish service connection for herbicide-related conditions by submission of evidence establishing exposure to herbicides during service, just as they always could. If a veteran is eligible for that presumption, then, as a result, VA will not further scrutinize that veteran’s claim on the issue of exposure. We are rescinding this misinterpreted Manual M21-1 provision precisely because, like the commenter, VA believes that blue water veterans’ claims must be subjected to greater scrutiny than claims by veterans who served on land. Blue water veterans who received the VSM can directly establish the fact of their exposure with evidence of contact with herbicides or evidence that they actually served on land.

Several comments related to the exposure of veterans who served in Thailand, Cambodia and/or Laos. Persons who received the VSM could have served in these regions. However, because we have no confirmed evidence of the extent of the possible exposure of such persons to herbicides, and no statutory mandate to consider such persons to have been exposed, we make no change to our decision based on these comments.

Based on the foregoing, VA rescinds the following manual provisions describing service in Vietnam for the purposes of the presumption of exposure to herbicides: M21-1, pt. III, para. 4.08(k)(1)–(2) (November 8, 1991); M21-1, pt. III, para. 4.24(g)(1)–(2), change 23 (October 6, 1993); M21-1, pt. III, para. 4.24(g)(1)–(2), change 41 (July 12, 1995); M21-1, pt. III, para. 4.24(g)(1)–(2), change 76 (June 1, 1999); M21-1, pt. III, para. 4.24(e)(1)–(2), change 88 (February 27, 2002).

Approved: April 8, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

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