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## EDITORIAL STAFF

Director of Communications:  
Jack Gardner

Editor:

Elaine S. Knapp

Assistant Editor:

Jennifer Stoffel

Editorial Assistant:

Susan Morrisette

Composer:

Linda Bowman

## STATE GOVERNMENT NEWS—

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## Council of State Governments Offices

**HEADQUARTERS:** P.O. Box 11910, Iron Works Pike, Lexington, Ky. 40578; (606) 252-2291  
**EASTERN:** 1500 Broadway, 18th Floor, New York, N.Y. 10036; (212) 221-3630  
**MIDWESTERN:** 203 North Wabash Ave., Chicago, Ill. 60601; (312) 236-4011  
**SOUTHERN:** 3384 Peachtree Rd. N.E., Atlanta, Ga. 30326; (404) 266-1271  
**WESTERN:** 165 Post St., 5th Floor, San Francisco, Calif. 94108; (415) 986-3760  
**WASHINGTON:** Hall of the States, 444 N. Capitol St., Washington, D.C. 20001; (202) 624-5450

# Reapportionment—Dividing the Power

BY CAROLYN KENTON, CSG, Lexington

The decennial struggle for controlling political power and influence is in full swing. The process of recarving the political pie, which is called redistricting, was triggered by the 1980 census on the congressional and the state legislative levels.

## Congressional Redistricting

The political composition of Congress will be altered by the redistribution of seats among the states due to population shifts. In addition, it appears as though most states will have redrawn congressional district lines prior to the 1982 elections. Six states will have only one congressman and require no districting—Alaska, Delaware, North Dakota, South Dakota, Vermont and Wyoming. Another 14 states—Alabama, Arkansas, Idaho, Indiana, Iowa, Mississippi, Nebraska, Nevada, North Carolina, Oklahoma, Oregon, Tennessee, Texas and Virginia—have redrawn congressional district lines to conform to the 1980 census figures. Of the remaining 30 states, eight are expected to address the issue before the first of the year.

The standard for drawing congressional districts is simple and straightforward. The districts must be as nearly equal in population as possible. So far, the U.S. Supreme Court has not been willing to interject any other criterion except that imposed by the Voting Rights Act and the equal protection provisions of the 14th and 15th Amendments to the U.S. Constitution.

The new congressional districts appear to be satisfying the court's requirements for "one man, one vote." Eight of the 14 new congressional plans have an overall population difference between the largest and smallest district of less than 1 percent. The remaining six have a population difference of 2-3 percent or less.

## Gerrymandering Charged

The reliance on population equality gives redistricting cartographers leeway in drawing lines and leaves the door open to gerrymandering.

Partisan battles in the states have been intense. In states controlled by a single party—governor and legislature—the party out of power and some political observers have accused the controlling party of gerrymandering. Republican Gov. John Spellman of Washington considered the Republican-drawn plan so badly gerrymandered that he vetoed

it. In Indiana, the legislature and governor apparently tried to change the congressional delegation from the present 6-5 Democratic edge to a 7-3 Republican edge (Indiana lost one congressman). To accomplish this, two existing Democratic districts were divided into four new ones and three Democratic congressmen were placed into one district.

States with divided political control—one or more houses of the legislature controlled by the opposition party—have also suffered problems. Democratic Gov. Richard Lamm of Colorado has vetoed two congressional plans drawn by the Republican legislature although the largest and smallest districts had a population difference of only 41 people in one plan.

The governors of Idaho, Oregon and Tennessee allowed the opposing legislative party's congressional plans to become law without their signatures.

Three states—Illinois, Minnesota and Missouri—have suits pending which would declare the existing congressional districts invalid, therefore requiring that they be redrawn before new elections could be held. These suits were filed after an apparent political impasse on the enactment of a plan developed by the parties in the legislature and/or the governor.

The majority of congressional districts will be redrawn through the normal legislative process. The exceptions are Hawaii and Montana, where commissions are responsible, and Connecticut, where a commission will be appointed to draw them because the legislature was unable to meet an Aug. 1 deadline.

Plans will be prepared in Iowa by the Legislative Service Bureau and in Maryland by the governor, but the legislatures must still act on them. Generally speaking, however, congressional districts are much easier for state legislators to redraw than are legislative districts.

## Legislative Redistricting

State legislatures have doggedly plunged ahead with their own redistricting. Redistricting is expected to be completed before the next legislative election in all states except Kansas, Kentucky, Maine, Massachusetts, Montana and New York. To date, 22 states have adopted a plan for one or both legislative houses.

The Texas and Virginia house plans have been ruled unconstitutional. The Texas Supreme Court ruled the house plan split counties unnecessarily in violation of the state constitution. The Texas plan will now be drawn by the Legislative Redistricting Board which will also draw the senate districts. In Virginia, a three-judge federal district court ruled the house plan invalid because of the large disparity—over 26 percent—between the largest and smallest districts. The court allowed the election for delegates to the house to proceed on schedule this fall, but shortened their terms to one year and required the legislature to redraw the house plan before Feb. 1982.

## State Legislative Criteria Differs

The rules governing legislative redistricting as set out by the U.S. Su-

(continued)



preme Court are more complex than those for congressional redistricting, and so are the redistricting mechanisms used by the states. Population equality, although important, is not the only consideration the states can use in drawing districts, and single-member districts are not required.

In addition, the states may choose to use less than the total U.S. census figures or not use the federal census figures at all. Kansas and Massachusetts use a state census as the basis for their redistricting, although Kansas plans to switch to the federal census in 1990. Hawaii uses registered voters, and Alaska has exempted transient military personnel from its population base.

States may choose other criteria such as maintaining political jurisdictional lines if they apply the policy uniformly and have a rational and justifiable reason, and if it does not violate the provisions of the Voting Rights Act.

Of the 39 new member redistricting plans—including Kansas and excluding the voided Texas and Virginia house plans—the overall population range between the largest and smallest district in 12 chambers is less than 5 percent. In another 19, the overall range is between 5 and 10 percent. One chamber has a range of 10 to 15 percent, and seven chamber plans have an overall range of over 15 percent between the largest and smallest district. The plans were drawn

by the legislature in 17 states and by boards in the remaining four states.

The use of a board or commission to redistrict state legislatures has grown. Spurred by the efforts of such organizations as Common Cause, 15 states have a formal agency or advisory mechanism for redistricting. Another 11 states designate an agency to redistrict if the legislature fails to perform in a specified period of time. So far, this backup mechanism has been used by Connecticut for congressional districting and Illinois and Texas for legislative districting. In addition, petitions are circulating in South Dakota and Ohio for this fall's ballot to alter the apportionment process. The proposed constitutional

## 1981 REAPPORTIONMENT PLANS, MAXIMUM POPULATION DEVIATIONS (CSG Reapportionment Service, September 1981)

State or other jurisdiction	Senate			House			Congress		
	Percent deviation in actual vs. average population per seat		Average population each seat(a)	Percent deviation in actual vs. average population per seat		Average population each seat(a)	Percent deviation in actual vs. average population per seat		Average population each seat(a)
	Greatest +	-		Greatest +	-		Greatest +	-	
Alabama.....	...	...	...	...	...	...	1.33	1.12	555,723
Alaska.....	5.80	3.97	18,456(b)	5.81	4.18	9,228(b)	One Congressman	...	400,481
Arkansas.....	4.78	4.37	65,300	4.98	4.17	22,855	0.72	0.1	571,378
Connecticut.....	2.40	1.52	86,322	4.42	3.92	20,580	...	...	...
Delaware.....	+/- 9.80		28,344	+/- 3.80		14,518	One Congressman	...	595,225
Georgia.....	4.99	5.00	97,576	4.95	4.97	30,357	...	...	...
Idaho.....	...	...	...	...	...	...	0.02	0.02	471,968
Indiana.....	2.07	1.97	109,803	5.30	14.63	54,901	0.99	0.91	549,010
Iowa.....	0.32	0.39	58,268	0.99	0.79	29,134	0.03	0.02	485,564
Kansas.....	3.10	3.40	53,982(c)	5.00	4.90	18,874(c)	...	...	...
Mississippi.....	...	...	...	...	...	...	0.02	0.02	509,128
Nebraska.....	4.76	4.67	72,041	Unicameral			0.08	0.15	523,333
Nevada.....	4.16	4.02	38,056	4.73	4.97	19,028	> +/- 1.0		399,592
New Jersey.....	5.13	2.57	184,104	5.13	2.57	184,104(d)	...	...	...
North Carolina.....	12.67	10.02	117,489	12.94	10.68	48,954	1.31	1.40	534,039
North Dakota.....	...	...	...	...	...	...	One Congressman	...	652,695
Oklahoma.....	2.94	2.66	63,026	5.07	5.91	29,953	0.33	0.25	504,211(e)
Oregon.....	2.62	1.11	87,700(f)	2.75	2.59	43,600	0.08	0.03	526,533
Pennsylvania.....	1.04	0.95	237,334(g)	1.27	1.13	58,456(g)	...	...	...
South Carolina.....	...	...	...	4.95	4.80	25,155	...	...	...
South Dakota.....	5.99	6.50	19,663(e)	5.90	6.50	9,832(d,e,f)	One Congressman	...	690,178
Tennessee.....	0.73	0.93	139,114	1.42	1.72	46,371	1.29	1.14	510,083
Texas.....	...	...	458,908	4.82	4.60	94,856(h)	0.16	0.12	526,977
Vermont.....	...	...	...	...	...	...	One Congressman	...	511,456
Virginia.....	4.35	6.30	133,657	12.47	14.16	53,453(h)	0.79	1.02	534,628
Washington.....	2.40	2.10	84,289(f)	2.40	2.10	84,289(f)	...	...	(f)
Wyoming.....	39.50	24.20	15,694	29.10	60.30	7,357	One Congressman	...	470,816

(a) Population figures in most instances are based on the 1980 federal census.  
 (b) Excludes transient military population.  
 (c) Legislative redistricting was based on state conducted census.  
 (d) More than one legislator runs for office from a senate district.  
 (e) A constitutional referendum petition is being circulated to invalidate the current plan. South Dakota: The

referendum would create single-member senate districts with one senator and two house members elected from each district.  
 (f) Court suit filed challenging validity of existing or new plan.  
 (g) Preliminary plan. Pennsylvania: Challenges to the plan have been filed. Hearings were scheduled for September 24-25.  
 (h) This plan was declared unconstitutional.

## Reapportionment

(continued)

amendment in South Dakota would establish single-member senate districts and other criteria for redistricting.

Republicans are threatening to circulate legislative referendum petitions to repeal redistricting laws which they believe are unfair in Oklahoma (congressional) and California (legislative and congressional).

The state political stories of legislative and congressional redistricting will continue to unfold for at least the coming year. So far the courts have barely been involved, but they will undoubtedly make a contribution before the process is over.

CSG will continue to follow and report on state activities. More detailed information on individual plans or current activities can be obtained by contacting the Council's Reapportionment Information Service.

### Redistricting Snag Delays New York City Primary Election

The New York City primary was delayed in September when a federal court ruled the city had failed to comply with the federal Voting Rights Act in redrawing council district lines.

The court's action, which was upheld by the U.S. Supreme Court, held that the city had failed to obtain the necessary pre-clearance from the U.S. Justice Department for any changes in voting procedure. It did not go so far as to uphold the plaintiff's contention that the new district lines discriminated against minorities.

The city reached an agreement with the Justice Department to allow all but city council elections to be held Sept. 22.

### Suit Filed over Kentucky Education Budget Cuts

The Kentucky Education Association has filed suit asking that education spending cuts ordered by Gov. John Y. Brown Jr. be declared unconstitutional. The suit in circuit court charges that the legislature should decide on cuts and that the reductions are "inequitable, discriminatory, and arbitrary."

Gov. Brown ordered the cuts, rather than calling the legislature into special session. Recent reductions affecting education amount to more than \$70 million.

## Stated Briefly

### Louisiana Transfers Local Prisoners

Louisiana Gov. David C. Treen has announced that eligible prisoners have been transferred from parish jails to the Department of Corrections as of Sept. 1. Reassessment of the state prisons resulted in room to house 1,348 more prisoners, an 18 percent increase, in fiscal 1981-82.

### Accounting Manual Offered by Iowa

The Iowa Department of Substance Abuse (IDSA) has developed a Project Level Accounting Manual which tells how to establish and maintain a basic bookkeeping system that meets audit requirements and how to provide separate accounting for various funding sources. It also provides management information. The manual is used by substance abuse programs within and outside of Iowa. Copies can be obtained for \$12 from the IDSA, Suite 202, 505 Fifth Ave., Des Moines, Iowa 50319, or call Allen Vander Linden, (515) 281-3641.

### College Tuition Rates Rise

Average tuition rates at public four-year colleges and universities shot up 16 percent the past year, according to a survey by the College Board. The rise is the largest in a decade and does not reflect increases announced since May. Many schools have raised rates since then due to lower than anticipated appropriations from state legislatures. Average tuition rates are up 13 percent at private colleges.

### Costs to Be Shared in Three Mile Island Cleanup

Pennsylvania Gov. Dick Thornburgh's cost-sharing proposal for cleanup of the disabled Three Mile Island nuclear power plant won support recently. The Edison Electric Institute, an electric utilities' trade association, pledged its members to paying \$192 million over six years.

The owners of the plant, General Public Utilities, have agreed to pay \$335 million. The U.S. General Accounting Office in August recommended a national cost-sharing approach to Congress, but no federal action has been taken.

### Wisconsin Budget Increases Transit Aid

Wisconsin's 1981-83 budget, signed by Gov. Lee S. Dreyfus July 29, includes \$58.6 million for urban mass transportation programs and ridesharing (S. 85-24). Beginning in 1982, state aid will be available to cover up to 30 percent of the total operating costs of the state's urban transit systems.

### Two States and U.S. Reach Desegregation Agreement for Colleges

Missouri and Louisiana have reached agreement with the U.S. Justice Department on plans to desegregate public colleges. A consent decree filed in federal court in New Orleans, if approved by the court, would end a lawsuit filed by the department in 1974.

### Legislators Hold Off on Funding Decision for Higher Education

A special session of the Texas Legislature has adjourned without resolving the controversy over the future of state construction funds for public higher education.

The lawmakers will watch for the results of a pending lawsuit to restore a state property tax of 10 cents per \$100 valuation. The tax had provided funds for 17 colleges and universities. The House did pass a proposal to repeal the tax; the Senate voted for a new rate of 3 cents per \$100.

### States' Tax Base Reflects Shifting Wealth

Alaska has the largest tax base per capita of the states—more than twice (213 percent) the nation's average.

The top five states in per capita tax wealth are Alaska, Wyoming (190 percent), Nevada (164 percent), Texas (121 percent) and California (116 percent), according to the Advisory Commission on Intergovernmental Relations' (ACIR) preliminary estimates of 1979 tax capacity. The estimates account for tax bases available to states including property, income, sales, motor fuels and the value of extracted natural resources.



⊕ HEADQUARTERS OFFICE  
(606) 252-2291  
P.O. Box 11410  
Irish Woods Plaza  
Lexington, Kentucky 40518

★ EASTERN OFFICE  
(212) 221-3630  
1500 Broadway, 18th Floor  
New York, New York 10036

★ MIDWESTERN OFFICE  
(312) 76-4011  
201 North La Salle Avenue  
Chicago, Illinois 60601

★ SOUTHERN OFFICE  
(404) 266-1271  
3364 Peachtree Road, N.E.  
Atlanta, Georgia 30326

★ WESTERN OFFICE  
(415) 986-3760  
181 Post Street, 5th Floor  
San Francisco, California 94108

⊕ WASHINGTON OFFICE  
(202) 624-5450  
1st of the States  
444 North Capitol Street  
Washington, D.C. 20001

## Affiliated and Cooperating Organizations

The Articles of Organization of the Council of State Governments recognize two forms of association with the Council by groups of state officials—affiliated and cooperating. The Council presently recognizes 33 such groups—seven affiliated and 26 cooperating.

For organizations affiliated with the Council, the state services agency is authorized to provide financial assistance and secretariat and other staff services.

The seven affiliated organizations of the Council are the:

- National Conference of State Legislatures,
- Conference of Chief Justices,
- National Association of Attorneys General,
- National Conference of Lieutenant Governors,
- National Association of State Purchasing Officials,
- Conference of State Court Administrators, and
- National Association of State Auditors, Comptrollers and Treasurers.

The Council's Articles of Organization also permit its executive committee to recognize other groups and associations of state officials as cooperating organizations and maintain continuing cooperative arrangements with such organizations.

The cooperating organizations include the:

- National Conference of Commissioners on Uniform State Laws,
- Parole and Probation Compact Administrators' Association,
- Association of Juvenile Compact Administrators,
- Interstate Conference on Water Problems,
- National Association of State Mental Health Program Directors,

- Adjutants General Association of the United States,
- National Conference on Uniform Reciprocal Enforcement of Support,
- Association of State and Interstate Water Pollution Control Administrators,
- National Association of State Boating Law Administrators,
- National Association of State Civil Defense Directors,
- Association of State Correctional Administrators,
- National Association of State Units on Aging,
- National Association of Extradition Officials,
- National Association of State Juvenile Delinquency Program Administrators,
- State Personnel Administrators Association,
- Council of State Administrators of Vocational Rehabilitation,
- National Association for State Information Systems,
- National Association of Regulatory Utility Commissioners,
- Coastal States Organization,
- Federation of Tax Administrators,
- National Association of Tax Administrators,
- Conference of State Sanitary Engineers,
- National Conference of States on Building Codes and Standards,
- National Association of State Departments of Agriculture,
- National Conference of State Criminal Justice Planning Administrators, and
- National Conference of State General Services Officers.

# California Reapportionment Proposal

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OFFICE OF THE GOVERNOR  
Sacramento, Calif. 95814  
Larry Thomas, Press Secretary  
916-445-4571 11-14-83

RELEASE: Immediate

#583

COUNCIL OF STATE GOVERNMENTS

A proposed legislative constitutional amendment to place the responsibility for reapportionment with a nonpartisan commission of eight state Court of Appeal justices was submitted today to the legislative counsel on behalf of Governor George Deukmejian.

The proposal will be introduced in the legislature in January and fulfills the governor's pledge to recommend a fair and nonpartisan mechanism for redrawing the state's congressional, state Senate, Assembly and Board of Equalization districts.

If approved, California would join 10 states where reapportionment is accomplished by commissions and not by legislative bodies directly affected by it. Jurists are utilized in several states in a backup role to break deadlocks.

If the legislature places the measure on the ballot and it is approved by California voters, the proposal calls for the independent commission---with the assistance of professional staff---to redraw district lines for the 1986 California elections.

Subsequent commissions would be impanelled each ten years to reapportion the state following the decennial federal census.

The constitutional amendment mandates the drawing of districts which provide fair representation for all Californians, including racial, ethnic and language minorities, and which promote meaningful political competition.

The commission would be compelled by the Constitution to create districts which are geographically compact, which minimize the division of <sup>municipalities, boroughs, local neighborhoods, villages</sup> cities and counties, and which do not favor political parties or legislative incumbents.

The amendment calls for each state Senate district to be composed of two adjacent <sup>representative</sup> Assembly districts, and for each Board of Equalization ~~district to be composed of 10 state Senate districts.~~ The districts are to be as equal in population as possible.

"In my judgment, the public is frustrated by a reapportionment process which has been motivated by <sup>political party</sup> legislative self-interest instead of by the demonstrated public desire for fair and competitive districts," the <sup>governor</sup> said in a statement.

"The public legitimately expects the goal of reapportionment is not to assure that current political parties and office holders have safe seats for a decade," he said. "By taking redistricting out of the hands of the ~~Legislature~~ <sup>State System</sup> and by asking it be accomplished by respected senior appellate justices, we will have assured the public that the process will be fair, nonpartisan, and as objective as possible."

Later today, the proposed constitutional amendment also will be submitted as a proposed initiative to the attorney general for preparation of title and summary.

The governor said he would prefer that the process be changed by action of the legislature, but in the event the legislature is not responsive an initiative campaign would be undertaken to permit a vote on putting in place the commission before the 1986 elections.

This is how it would work:

Twenty days following voter ratification of the amendment, the Judicial Council will provide to the Secretary of State the names of present state Court of Appeal justices with no previous legislative experience and who have served on the court for more than five years.

The names will be divided into two groups: those appointed by Democratic governors and those appointed by Republican governors.

The amendment directs the president of the University of California or his representative---under the supervision of the Secretary of State---to draw by lot four justices from each group. Additionally, one non-voting member each will be selected by the governor and by the highest ranking constitutional officer of the opposing party. The commission will have professional staff to assist in accomplishing its task in a timely manner.

The commission budget will not exceed one half of the amount spent by the legislature to draft the present legislative districts.

If any vacancy occurs among the voting members, the president of the University of California will be directed to draw a replacement justice by employing the same procedure.

The proposal calls for the commission to hold its initial meeting 20 days later and to select a chairman and vice chairman who were appointed to the judiciary by governors of opposing parties.

After completing an extensive public hearing process, the commission will utilize computers to redraw legislative districts that meet the criteria of the amendment.

Once approved by the commission, the redistricting program could not be amended or invalidated by the legislature. It would be subject to the referendum process and exclusive judicial review by the California Supreme Court.

However, if an impasse exists among the commissioners, the commission will draw by lot to disqualify one voting member in order to break the deadlock. If the impasse continues, another commissioner will be disqualified by lot two days later.

Commission members will receive no salary but will be compensated for necessary expenses.

"It is my hope that the legislature will respond positively to the will of the people who are irritated by the present process which too often rewards incumbency at the expense of fair representation and meaningful political competition," Deukmejian said.

NOV 21 1983  
STATES INFORMATION CENTER

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HJR

64

February 22, 1984

The following materials were used to determine HJR 64:

1. 98th Congress House of Representatives Report 98-592
2. H.R. 1961, An Act to amend title 38, U.S. Code to provide disability and death allowances to veterans and survivors of veterans who served in Southeast Asia during the Vietnam era and those who participated in atomic tests or the occupation of Hiroshima and Nagasaki
3. Veterans Administration Federal Benefits for Veterans and Dependents (January 1983, pages 5-6 dealing with Agent Orange benefits)
4. Three newspaper clippings entitled: "Way cleared for Agent Orange trial", Anchorage Daily News 2/15/84; "Agent Orange study ongoing", Fairbanks Daily News-Miner 2/15/84; and "Twins sought for Vietnam study", The Anchorage Times 2/12/84.
5. Other comments attached.

AGENT ORANGE AND ATOMIC VETERANS RELIEF ACT

JANUARY 25, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MONTGOMERY, from the Committee on Veterans Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1961]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to which was referred the bill (H.R. 1961) to amend title 38, United States Code, to provide a presumption of service connection for the occurrence of certain diseases related to exposure to herbicides or other environmental hazards or conditions in veterans who served in Southeast Asia during the Vietnam era, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Agent Orange and Atomic Veterans Relief Act".

Sec. 2. The purpose of this act is to provide certain benefits—

(1) to veterans and the survivors of veterans who served in Southeast Asia during the Vietnam era and suffer from diseases that may be attributable to exposure to Agent Orange; and

(2) to veterans and the survivors of veterans who participated in atomic tests or the occupation of Hiroshima and Nagasaki and suffer from diseases that may be attributable to ionizing radiation, notwithstanding that there is insufficient medical evidence to conclude that such diseases are service connected.

Sec. 3. (a) Title 38, United States Code, is amended by inserting after chapter 13 the following new chapter:

## "CHAPTER 14—DISABILITY AND DEATH ALLOWANCES FOR CERTAIN VETERANS AND SURVIVORS

"Sec.

- "451. Agent Orange veterans and survivors.
- "452. Atomic veterans and survivors.
- "453. Rates of disability and death allowances.
- "454. Other benefits.
- "455. Termination of chapter.

### "§ 451. Agent Orange veterans and survivors

"(a) In the case of a veteran who served on active duty in Southeast Asia during the Vietnam era and who while on active duty suffers from a disease described in subsection (b) of this section, the Administrator shall pay a disability allowance to the veteran and, if the veteran dies from such disease, a death allowance to the survivors of the veteran. Such allowances shall be paid at the rates prescribed in section 453 of this title.

"(b) The diseases referred to in subsection (a) of this section are the following:

- "(1) Soft-tissue sarcoma becoming manifest within 20 years from the date of the veteran's departure from southeast Asia.
- "(2) Porphyria cutanea tarda becoming manifest within one year from the date of the veteran's departure from Southeast Asia.
- "(3) Chloracne becoming manifest within one year from the date of the veteran's departure from Southeast Asia.

"(c) Benefits may not be paid under this section with respect to a veteran—

- "(1) where there is affirmative evidence that the disease described in subsection (b) of this section was not incurred by the veteran during service in Southeast Asia during the Vietnam era;
- "(2) where there is affirmative evidence that an intercurrent injury or disease which is a recognized cause of any of the diseases described in subsection (b) of this section has been suffered between the date of the veteran's separation from service and the onset of such disease.

### "§ 452. Atomic veterans and survivors

"(a) In the case of a veteran who while on active duty participated in the testing of an atomic bomb or device, or who while on active duty participated in the occupation of Hiroshima or Nagasaki during World War II, and who within 20 years from the date of the veteran's participation in the test or occupation suffers from a disease described in subsection (b) of this section, the Administrator shall pay a disability allowance to the veteran and, if the veteran dies from such disease, a death allowance to the survivors of the veteran. Such allowances shall be paid at the rates prescribed in section 453 of this title.

"(b) The diseases referred to in subsection (a) of this section are the following:

- "(1) Leukemia.
- "(2) Polycythemia vera.
- "(3) Carcinoma of the thyroid.

"(c) Benefits may not be paid under this section with respect to a veteran—

- "(1) where there is affirmative evidence that the disease described in subsection (b) of this section was not incurred by the veteran during service described in the first sentence of subsection (a) of this section; or
- "(2) where there is affirmative evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases described in subsection (b) of this section has been suffered between the date of the veteran's separation from service and the onset of such disease.

### "§ 453. Rates of disability and death allowances

"A disability allowance payable to a veteran under this chapter shall be paid at the rates provided in chapter 11 of this title, based upon the degree of disability of the veteran attributable to the disease establishing eligibility for such allowance. A death allowance payable under this section to the survivors of a veteran shall be paid to such survivors based upon the eligibility requirements and rates applicable to payments under chapter 13 of this title.

### "§ 454. Other benefits

"A disease establishing eligibility for a disability allowance under this chapter shall be treated for purposes of all other laws of the United States (other than chapters 11 and 13 of this title) as if such disease were service connected, and receipt of a disability allowance under this chapter shall be treated for purposes of all other laws of the United States as if such allowance were service-connected compensation

under chapter 11 of this title. Receipt of a death allowance under this chapter shall be treated for purposes of all other laws of the United States as if such allowance were dependency and indemnity compensation under chapter 13 of this title.

**"§ 455. Termination of chapter**

"This chapter shall terminate on the first day of the first month beginning after the end of the one-year period beginning on the date the Administrator submits to the appropriate committees of Congress the first report required by section 307(b)(2) of the Veterans Health Programs Extension and Improvement Act of 1979 (Public Law 96-151)."

(b) The tables of chapters at the beginning of title 38, United States Code, and at the beginning of part II of such title, are amended by inserting after the item relating to chapter 13 the following new item:

"14. Disability and Death Allowances for Certain Veterans and Survivors..... 451".

SEC. 4. This Act shall take effect on October 1, 1983. No benefit may be paid for any period before such date by reason of the enactment of this Act.

**Amend the title so as to read:**

A bill to amend title 38, United States Code, to provide disability and death allowances to veterans and the survivors of veterans who served in Southeast Asia during the Vietnam era and suffer from diseases that may be attributable to exposure to the herbicide known as "Agent Orange" and to veterans and the survivors of veterans who participated in atomic tests or the occupation of Hiroshima and Nagasaki and suffer from diseases that may be attributable to ionizing radiation.

**INTRODUCTION**

On April 26 and 27 and July 12, 1983, the Subcommittee on Compensation, Pension and Insurance conducted hearings on the bill, H.R. 1961, introduced on March 8, 1983, by the Honorable Tom Daschle, to authorize temporary monetary benefits, pending the results and receipt of the epidemiological study mandated by Public Law 96-151, for Vietnam veterans who suffer from soft-tissue sarcoma, porphyria cutanea tarda (PCT) and chloracne. The bill, as introduced, would provide a statutory presumption of service connection for any veteran who served in Southeast Asia during the Vietnam era and who later is shown to have one of the conditions identified in the bill. There would be no time limit for the initial manifestation of the disabilities under the original bill.

Two major veterans' organizations in testimony before the Committee strongly opposed the bill on the basis that there was not sufficient credible scientific evidence to warrant a presumption of service-connection. Other service organizations supported the bill as introduced.

The Subcommittee received testimony from a number of Members of Congress, representatives of the Veterans' Administration, the Department of the Air Force, the Centers for Disease Control (CDC) of the Department of Health and Human Services, the Armed Forces Institute of Pathology, a number of veterans' organizations and from members of the scientific community and other interested individuals.

On July 28, 1983, the Subcommittee adopted an amendment in the nature of a substitute offered by the Chairman of the Subcommittee, the Honorable Douglas Applegate, and recommended the bill, as amended, to the full Committee.

On November 3, 1983, the full Committee adopted an amendment offered by the Honorable John Paul Hammerschmidt, to include benefits for certain veterans who participated in the testing

of nuclear devices or who served in the occupation forces in Hiroshima or Nagasaki immediately after World War II and, by a vote of 30 to 0, ordered the bill, as amended, to be reported to the House.

## BACKGROUND

### AGENT ORANGE

During the 9-year period from 1961 through 1969, the herbicide Agent Orange was used in South Vietnam primarily for the purpose of denying the enemy the cover of dense jungle foliage. Two phenoxy herbicides, 2,4-D and 2,4,5-T were used to formulate Agent Orange. Each of these components has been used extensively in agriculture since the mid-1940's. During this 9-year period, approximately 78 million pounds of 2,4,5-T were used domestically in the United States; while between 1961 and 1971, approximately 52 million pounds of 2,4,5-T were disseminated in South Vietnam. The 2,4,5-T contained the contaminant dioxin, a compound formed during the production processes and highly toxic to certain animal species. The amount of dioxin disseminated in the United States during the 9-year period between 1961 and 1969 was probably at least four times the amount disseminated in South Vietnam, according to an Air Force witness before the Committee.

The Committee recognizes the use of Agent Orange in Vietnam has caused much apprehension and concern among some Vietnam veterans and their families, giving rise to controversy. Much publicity has been given to the alleged ill-health effects among some Vietnam veterans which they attribute to exposure to the dioxin in Agent Orange.

Since 1978 the Committee on Veterans' Affairs has held the following hearings on this issue:

October 11, 1978, Subcommittee on Medical Facilities and Benefits.

February 25, 1980, Subcommittee on Medical Facilities and Benefits.

July 22, 1980, Subcommittee on Medical Facilities and Benefits.

September 16, 1980, Subcommittee on Medical Facilities and Benefits.

May 6, 1981, Subcommittee on Oversight and Investigations.

September 15, 1982, Subcommittee on Oversight and Investigations.

April 26, 27 and July 12, 1983, Subcommittee on Compensation, Pension and Insurance.

May 3, 1983, Subcommittee on Oversight and Investigations.

Dozens of witnesses have testified with widely divergent views on the issue. ~~The question of toxicity of dioxin is not in doubt — dioxin is one of the most highly toxic substances known to the scientific community, although its toxicity for humans is unknown.~~ What is less clear is how much exposure to the dioxin was experienced by Vietnam veterans, how much exposure can be expected to produce long-term health effects, and at what rate, or frequency, if any, are

these effects being experienced by veterans who served in Southeast Asia.

While a number of professionals in the scientific community have stated that some Vietnam veterans are suffering a high rate of cancers, skin and liver conditions, as well as a multiplicity of other conditions, there are no data or studies which substantiate this. There is no consensus of opinion in the scientific community that exposure to dioxin causes any identifiable disability other than chloracne.

Because of the concern and apprehension in the veteran community, the Congress mandated in Public Law 96-151 an epidemiological study on the effects of exposure to Agent Orange. At the suggestion of the Chairman and Ranking Minority Member of the Committee and other Members of the Congress, responsibility for conducting the study was transferred from the Veterans' Administration to the CDC in 1982. The study is expected to cost between \$70 million and \$100 million when it is completed. The sum of \$2.3 million was allocated to the CDC by the Veterans' Administration in fiscal year 1983, and \$53,974,000 is contained in Public Law 96-181 for the conduct of the study. Additional amounts will probably be necessary in future appropriations acts. Spokesmen for the CDC have projected the completion date of the study to be between 1987 and 1989.

There are numerous scientific human studies currently underway related to Agent Orange, dioxins and the Vietnam experience as a whole. The costs for the more than 67 projects involving the Veterans' Administration, the Environmental Protection Agency, and the Departments of Health and Human Services, Defense and Agriculture are quoted as \$150 million from fiscal years 1980 to 1985 and beyond. One of the more significant efforts now underway is an epidemiological study (known as the *Ranch Hand* Study) of Air Force personnel assigned to do the actual spraying of the herbicides. Approximately 1,300 servicemen were assigned to this unit from 1962 to 1971 and were the individuals who loaded the chemical on aircraft and flew the spraying missions. This group probably received more exposure, and on a repeated basis, than any other unit in Vietnam, although it is the position of many that ground troops may have experienced a higher level of exposure than those personnel involved in the air-spraying operations.

The first phase of the *Ranch Hand* Study on mortality was released in August 1983. Because of the small number of deaths the data contained no significant findings. No unusual grouping of causes of death was shown. The next phase of the study on morbidity is expected to be released in February or March 1984 and is expected to reflect the current health status of this group.

Veterans who believe they have been exposed to Agent Orange have complained of a variety of illnesses for which they seek medical treatment and disability compensation. These illnesses include, among others, skin conditions, cancers, nervousness, numbness in extremities, vision and/or hearing impairments, birth defects in their offspring, and reduced libido. Veterans have also complained about the paucity of scientific information available on the health effects of Agent Orange and the perceived delays in the VA's response.

The VA maintains that it has responded to veterans' concerns from the outset by initiating health programs to identify veterans who may have been exposed and by implementing research projects on health effects and prompt implementation of Public Law 97-72 that authorizes the VA to treat Vietnam veterans for conditions that may be attributable to Agent Orange. ~~Since 1978 the VA has provided physical examinations for Vietnam veterans who thought they were exposed to Agent Orange.~~

~~Current law requires the Veterans' Administration to provide in-patient and out-patient care and treatment to veterans who may have been exposed to Agent Orange while serving in Vietnam for any disability that may have resulted from such exposure, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with exposure to Agent Orange.~~

The VA maintains a registry of all veterans who come to VA hospitals and health care facilities for Agent Orange examinations. The registry also contains information collected during the examination. As of October 1, 1983, 125,649 veterans had received the initial examination and about 75 percent of the key information had been entered into a computer.

~~As of October 1, 1983, veterans had filed 18,518 disability claims with the VA for disorders they attribute to Agent Orange exposure. Only half of these claimants had any disability at all. The other half either claimed no disability or had none diagnosed on physical examination. Of the 9,170 who had a diagnosed disability, 7,709 were denied because the evidence failed to show the condition had its inception in service.~~

~~The VA knows that the skin disorder, chloracne, is causally related to Agent Orange exposure. Ninety-five percent of the remainder of 1,461 (16 percent) claims which were granted service connection were for skin conditions and the remaining 5 percent were for cancer, psychiatric, and neurological conditions, among others.~~

The VA denied 7,709 claims after there was a confirmed diagnosis of the condition for which the veteran had filed a claim. The denied claims fall into the following categories: 4,959 for various skin conditions other than chloracne; 2,484 for nervousness and headache or fatigue; 926 for paralysis or numbness; 841 for gastrointestinal or genito-urinary conditions; 567 for malignancies which include leukemia, lymphoma, melanoma, and Hodgkin's disease; 333 for impaired sexual activity; 472 for eye, ear, nose and throat pathology, 299 for lung conditions; 263 for cardiovascular conditions, and 152 claims denied for miscellaneous conditions.

~~Under current VA policy the resolution of disability claims for conditions that are now defined as non-service connected (and therefore denied) will depend on the results of scientific studies which are now either pending or underway. Since it is expected that these studies will take years to complete, a spokesman for the VA has testified before the committee that "it may well be that the Congress cannot wait for scientific answers in the short term, in which case it may well be that the sociopolitical aspect of this problem will have to be addressed."~~

~~Members of the Committee have demonstrated their strong desire to respond to the apprehension and concern among some Vietnam veterans and their families about the possible long-term health effects that may have been caused by their exposure to the herbicide Agent Orange while serving in South Vietnam. Extensive hearings have been held, and it is generally agreed that there is insufficient credible scientific evidence that this group of veterans has demonstrated they are experiencing any higher incidence or frequency of medical problems related to their possible exposure to dioxin while in service as to warrant a statutory presumption that such medical problems are related to military service. Notwithstanding this fact, the Committee is proposing the temporary payment of benefits for certain disabilities until the Agent Orange Epidemiological Study has been completed and the results of such study are submitted to the Congress.~~

#### ATOMIC VETERANS

Beginning in 1945 and continuing until 1963, the U.S. Government exploded approximately 235 nuclear devices in the atmosphere over the American Southwest and Pacific Ocean. The Department of Defense estimates that approximately 220,000 military personnel participated in those tests. Additional personnel may have been exposed while in the occupation forces in Japan after the atomic bombings of Hiroshima and Nagasaki in 1945. Many of these troops were exposed to low-level ionizing radiation which may or may not have been accurately documented with proper exposure devices or methodologies. To compound the problem, there is limited scientific understanding of the relationship between exposure to low doses of ionizing radiation and subsequent health problems.

Public concern about the health effects of low-level ionizing radiation has been heightened in recent years by the results of several studies. Since 1902, when cancer was first attributed to overexposure to X-rays, the U.S. Government has spent close to \$2 billion (approximately \$80 million per year in recent years) for research on the health effects of exposure to low-level ionizing radiation. At least 80,000 scientific papers on the subject have been published worldwide. While much has been learned about the carcinogenic effects of high doses of radiation exposure, scientists still are uncertain how low-level ionizing radiation exposure causes cancer, and how to predict the effects of exposure to low doses of ionizing radiation.

The Subcommittee on Oversight and Investigations held a hearing on May 24, 1983, to review Federal studies on health effects of low-level radiation exposure and implementation of Public Law 97-72. Included among the witnesses were spokespersons from the VA, the Center for Environmental Health (which is part of the CDC of the Department of Health and Human Services), the Defense Nuclear Agency, the National Academy of Sciences, Members of Congress, and representatives of a number of veterans' organizations.

The CDC conducted a study of the participants in the atmospheric nuclear test *Smoky*. There were 3,217 persons confirmed as present during the detonation of *Smoky* on August 31, 1957. The

CDC could not locate or determine the vital status of only 145 participants. Of the remaining 3,072 (95.5 percent of the total), CDC reviewed the death certificates of the 146 who are deceased and contacted the remaining 2,926 participants or their next of kin. Only 20 of those contacted refused to be included in the study.

According to United States mortality statistics, 365 deaths from all causes would have been expected in this population to date. In fact, there have been 320 deaths in *Smoky* participants.

CDC also calculated the expected number of cancer deaths for this population to be 64.3. In fact, they found 64. Of deaths from leukemia, 9 were found compared to 3.1 expected. This difference is statistically significant.

One other disease, polycythemia vera, was also found to have occurred at a higher than expected frequency in the nuclear test participants. CDC expected no more than 1 case but found 4. This disease, which is characterized by an inappropriate increase in the number and production of red blood cells, has not been previously shown to be caused by ionizing radiation.

In summary, the study of *Smoky* participants by the CDC found an increased frequency of the occurrence of leukemia and polycythemia vera. The study did not find evidence of increased frequency of cancer or death from cancer, but did observe less than the number of total deaths expected. Seymour Jablon of the National Academy of Sciences testified concerning his studies into the mortality among 52,000 veterans who had participated in five atmospheric tests, including the test series of which *Smoky* was a part (code-name PLUMBBOB). In contrast to the CDC findings concerning only *Smoky* participants, which Jablon's work verified, preliminary results show no excess mortality from leukemia, nor from other forms of cancer or other illnesses, among this much larger study cohort. He also testified that, given the timing of the introduction of the Hiroshima/Nagasaki occupation forces, none could have received radiation doses exceeding one-tenth rad.

There is an extensive body of information, mostly from follow-up studies of the health histories of the Japanese who were exposed at Hiroshima and Nagasaki, about the health effects of radiation exposure caused by nuclear detonation. However, there is very little information specifically related to veterans who were exposed during the weapons test program.

Public Law 98-160, signed by the President on November 21, 1983, requires the Administrator of Veterans' Affairs to consider the feasibility of conducting an epidemiological study of the effects of low-level ionizing radiation on veterans who participated in the testing of nuclear devices or who were in the occupation forces at Hiroshima and Nagasaki immediately after World War II. If such a study is conducted it would be by an outside entity—not the Veterans' Administration.

It is expected that this study, if conducted, will be completed and submitted to the Congress well before the results of the Agent Orange epidemiological study are available. In the event the radiation study is received by the Congress prior to receipt of the Agent Orange epidemiological study, and should it contain clear evidence as to the health effects of radiation exposure suffered by

veterans, the Committee will at that time exercise its right to consider and recommend such legislation as it deems appropriate.

Veterans exposed to ionizing radiation while participating in nuclear tests, or the occupation of Hiroshima or Nagasaki, have a slightly stronger basis for consideration. Studies have shown a slightly higher incidence of leukemia and polycythemia vera among participants of the *Smoky* test. Similar data reflecting increased health problems among veterans who served in Vietnam and who may have been exposed to Agent Orange are lacking. Although current evidence indicates that some veterans exposed to ionizing radiation are experiencing serious medical problems, available data falls far short of meeting the test that the exercise of sound medical judgment reflects that these disabilities are related to military service.

According to information furnished by the Defense Nuclear Agency, the duration of the military occupation of Hiroshima and Nagasaki was relatively short. The first U.S. units to occupy Hiroshima arrived October 6, 1945. U.S. Forces in Hiroshima were relieved by an Australian unit on March 6, 1946, and U.S. occupation in the vicinity came to an end at that time. The first advance party of the U.S. occupation force (about 12 personnel) arrived in Nagasaki on September 16, 1945. The last units departed Nagasaki in June 1946. The occupation of these two sites was completely within the World War II period as defined in title 38, United States Code.

Some Members of the Committee feel it would be better to wait for the results of the Agent Orange Epidemiological Study being conducted by the CDC before granting benefits for disabilities contained in the bill. Some feel that Congress should abide by its longstanding tradition that benefits should be paid only where substantive evidence is clearly available to establish that the disabling conditions existed while on active duty or are clearly related to such period of service. It was apparent, however, that this option did not reflect the view of all Members of the Committee and the reported bill represents a compromise on the highly emotional issues.

#### SUMMARY OF THE REPORTED BILL

The reported bill, H.R. 1961, would provide that effective October 1, 1989, a temporary disability (or death) allowance would be payable to veterans who served in Southeast Asia during the Vietnam era and who later suffer from one of three conditions: soft-tissue sarcoma, porphyria cutanea tarda (a liver condition known as PCT), or chloracne (a skin condition). The soft-tissue sarcoma must be shown to exist within 20 years from date of departure from Southeast Asia and the other two disabilities, porphyria cutanea tarda (PCT) and chloracne must be manifested within 1 year from such departure. Monetary benefits would be paid at the rates prescribed in chapter 11 and chapter 13 of title 38, United States Code. Derivative benefits which flow from chapters 11 and 13 would also be available to persons eligible under the new chapter 14. Benefits would terminate under the sunset clause 1 year after the epidemiological study authorized by Public Law 96-151 is submitted to the Congress.

The reported bill would also provide that effective October 1, 1983, a temporary disability (or death) allowance would be payable to veterans who, while in service participated in the testing of a nuclear device or who served in the occupation forces at Hiroshima or Nagasaki after the bombing in 1945 and who, within 20 years after such participation, suffers from cancer of the thyroid, polycythemia vera (a bone marrow disease) or leukemia. These benefits would be available under the same eligibility criteria and procedures as provided for veterans exposed to Agent Orange. Veterans eligible for benefits under the reported bill must have been physically present at or near the test site at the time of detonation or shortly thereafter and not simply involved in the planning of the test.

The Committee intends that receipt of this new benefit be treated as if it were receipt of disability compensation or DIC for purposes of all Federal laws other than chapters 11 and 13 of title 38.

#### SECTION-BY-SECTION ANALYSIS

Section 1 provides that this act may be cited as the Agent Orange and Atomic Veterans Relief Act.

Section 2 declares the act's purposes—to provide benefits to veterans who served in Southeast Asia during the Vietnam era, and their survivors, if the veteran suffers or dies from a disease that may be attributable to Agent Orange exposure, and to veterans who participated in atomic tests or the occupation of Hiroshima or Nagasaki and their survivors, if the veteran suffers or dies from a disease that may be attributable to ionizing radiation, notwithstanding the lack of medical evidence sufficient to conclude that the disease is service connected.

Section 3 provides the statutory language for the new chapter 14.

Subsection (a) of section 3 would amend title 38, United States Code, by adding a new chapter 14 titled "Disability and Death Allowances for Certain Veterans and Survivors," consisting of new sections 451 through 455.

New section 451, relating to Agent Orange veterans and survivors, would consist of subsections (a) through (c).

Subsection (a) of new section 451 would require the VA to pay, at rates established under new section 452, a "disability allowance" to any veteran who served on active duty in Southeast Asia during the Vietnam era and after such service suffers from a disease described in subsection (b) of this new section, and a "death allowance" to any such veteran's survivors, if the veteran died from the disease.

Subsection (b) of new section 451 would establish as diseases referred to in subsection (a), the following three: soft-tissue sarcoma appearing within 20 years of the veteran's departure from Southeast Asia; porphyria cutanea tarda appearing within 1 year of the veteran's departure from Southeast Asia, and chloracne appearing within 1 year of the veteran's departure from Southeast Asia.

Subsection (c) of new section 451 would bar the payment of benefits under this section if there is affirmative evidence that the veteran's disease was not incurred during his or her Southeast Asian

service or is a result of an intercurrent injury or another disease sustained post-service.

New section 452, relating to atomic veterans and survivors, would consist of subsections (a) through (c).

Subsection (a) of new section 452 would require the VA to pay, at rates established under new section 453, a disability allowance to any veteran who participated during the veteran's military service by being present at the detonation of an atomic bomb or device, or the occupation of Hiroshima or Nagasaki by the United States forces during World War II, and who, within 20 years after such participation, suffers from a disease described in subsection (b) of this new section, and a death allowance to any such veteran's survivors, if the veteran died from the disease.

Subsection (b) of new section 452 would establish, as diseases referred to in subsection (a), the following three: leukemia, polycythemia vera, and carcinoma of the thyroid.

Subsection (c) of new section 452 would bar the payment of benefits under this section if there is affirmative evidence that the veteran's disease was not incurred as a result of his or her participation in the testing of an atomic bomb or device, or military occupation of Hiroshima or Nagasaki, or is the result of an intercurrent injury or another disease sustained postservice.

~~New section 453, relating to rates payable as section 451 or 452 disability and death allowances, would key veterans' rates to compensation rates payable to veterans under chapter 11 of title 38, United States Code, according to the degree of disability, and survivors' rates and eligibility criteria to dependency and indemnity compensation rates and criteria under chapter 13 of title 38.~~

~~New section 454, relating to other benefits, would provide that a disease that established a veteran's or survivor's eligibility for section 451 benefits shall be considered as if it were service connected for purposes of all Federal laws (except chapters 11 and 13 of title 38), shall be treated as if the benefit were compensation or dependency and indemnity compensation, as appropriate, for purposes of Federal law.~~

New section 455, relating to termination, would provide for the termination of new chapter 14 authority to grant benefits 1 year after the VA's submission to Congress of the first report required by section 307(b)(2) of Public Law 96-151, the statute mandating a comprehensive epidemiological study of the effects of Agent Orange exposure on veterans' health.

Subsection (b) of section 3 would amend the chapter tables at the beginning of title 38 and the beginning of part II of such title to reflect the insertion of the new chapter 14.

Section 4 would provide for an effective date of October 1, 1983, and rule out payment of section 451 benefits for any period prior to that date.

#### OVERSIGHT FINDINGS

No oversight findings have been submitted to the Committee by the Committee on Government Operations.

## BUDGET STATEMENT

As required by the Rules of the House, the following letter was received from the Congressional Budget Office concerning the cost of H.R. 1961, as amended.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, D.C., November 8, 1983.

Hon. G. V. MONTGOMERY,  
Chairman, Committee on Veterans' Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate of H.R. 1961, the Agent Orange and Atomic Veterans Relief Act, as ordered reported by the House Committee on Veterans' Affairs, November 3, 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER, *Director.*

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1961.
  2. Bill title: Agent Orange and Atomic Veterans Relief Act.
  3. Bill status: As ordered reported by the House Committee on Veterans' Affairs, November 3, 1983.
  4. Bill purpose: This bill would provide a new category of benefits identical in dollar amounts to those provided under veterans' disability compensation and dependency and indemnity compensation (DIC). Eligibility for these benefits would be limited to:
    - veterans who served in Southeast Asia during the Vietnam era and who suffer from soft-tissue sarcoma, porphyria cutanea tarda, or chloracne.
    - the survivors of veterans who served in Southeast Asia during the Vietnam era and who died of soft-tissue sarcoma, porphyria cutanea tarda, or chloracne.
    - veterans who participated in atomic tests or the occupation of Hiroshima or Nagasaki and who suffer from leukemia, polycythemia vera, or carcinoma of the thyroid.
    - the survivors of veterans who participated in atomic tests or the occupation of Hiroshima or Nagasaki and who died from leukemia, polycythemia vera, or carcinoma of the thyroid.
- The stated effective date of the bill is October 1, 1983. Claims for benefits approved within 1 year of the enactment date, therefore, would be paid retroactively to October 1, 1983.
5. Estimated cost to the Federal Government:

(By fiscal year, in millions of dollars)

	1984	1985	1986	1987	1988
Required budget authority.....	4.7	4.9	5.2	5.3	5.4
Estimated outlays.....	4.7	4.9	5.2	5.3	5.4

The cost of this bill would fall in budget function 700.

This bill would result in additional future Federal liabilities through an extension of an existing entitlement and would require subsequent appropriation action to provide the necessary budget authority. The figures shown as "Required Budget Authority" represent an estimate of the additional budget authority needed to cover the estimated obligations that would result from enactment of H.R. 1961.

Basis of Estimate:

#### AGENT ORANGE EXPOSURE

~~Soft-tissue sarcomas.~~ There is no commonly accepted medical definition of which types of malignancies fall into the category of soft-tissue sarcomas. For the purpose of this estimate, ~~the definition used by the National Cancer Institute (NCI)~~ was employed. Under NCI's definition, malignancies of the hematic and lymphatic systems are not included as soft-tissue sarcomas. If a broader definition were applied by the Veterans' Administration (VA) in implementing this provision, the cost could be substantially higher than that included in the estimate above.

According to information from the NCI, the normal incidence of soft-tissue sarcoma among males aged 25 to 40 years is approximately 13 new cases per year per million. Since about 2.4 million veterans served in the Republic of Vietnam, at least 31 such veterans would be expected to develop soft-tissue sarcomas each year, independent of any effects of Agent Orange. At this time, there is insufficient data available to prove or disapprove any connection between Agent Orange exposure and the development of soft-tissue sarcomas. This estimate, therefore, is based on the normal incidence of the disease. If a causal relationship should exist, however, resulting in a higher than normal incidence of the disease among veterans with service in Southeast Asia, the cost of this proposal would be greater than shown.

It is estimated that between 600-650 Vietnam era veterans with Southeast Asian service have developed soft-tissue sarcomas between the time of their discharge and October 1, 1983. It was assumed that approximately 85 percent of these veterans have died of the disease. Thus, it is estimated that enactment of this provision would result in approximately 100 veteran cases and 500 survivor cases in 1984. The level of affected cases would be expected to grow to 150 and 560, respectively, by 1988. All veteran cases were assumed to receive benefits at the 100 percent disability level, and survivors were assumed to receive benefits equal to the average DIC benefit.

~~Porphyria cutanea tarda.~~ ~~Porphyria cutanea tarda (PCT) is a condition of the liver that can occur in certain individuals with a genetic predisposition, after a substantial chemical insult to the body.~~ According to information from the VA's medical staff, the genetic predisposition to this condition is found in about 6 percent of the population. It would, thus, be expected that nearly 150,000 veterans with Vietnam service have the potential for developing PCT.

Heavy exposure to Agent Orange could cause this condition in a genetically predisposed individual; however, the onset of the condi-

tion would be expected to occur fairly soon after exposure. It is, therefore, assumed that the vast majority of veterans suffering from Agent Orange-related PCT experienced the onset of the condition prior to discharge or soon enough after discharge to have established service-connection for disability compensation benefits under current law. The few veteran or survivor cases likely to result from this provision are not anticipated to have a significant budgetary impact.

~~Active and residual chloracne~~—Under current law and regulation, the VA presumes service-connection in the case of chloracne among veterans with Vietnam service. It is, therefore, expected that all veterans suffering from chloracne will be eligible for disability compensation benefits under current law and would not apply for benefits under this provision.

#### RADIATION EXPOSURE

According to the staff of the House Veterans' Affairs Committee (HVAC), approximately 230,000 service members may have been exposed to ionizing radiation while in military service as a result of their participation in either atomic weapons testing or the post-World War II occupation of Hiroshima or Nagasaki. Since 1967 the VA has kept track of the claims filed for benefits under disability compensation and DIC that are based on exposure to radiation. Less than 3,700 such claims have been filed during this period of nearly 17 years.

H.R. 1961 limits eligibility in this category to veterans or the survivors of veterans who contracted one of the covered diseases within 20 years of their in-service exposure to radiation. This 20-year time limit was reached by 1970 for veterans participating in the occupation of Hiroshima and Nagasaki and by 1982 for veterans participating in atomic weapons testing.

*Leukemia.*—The VA approves under current law the majority of claims from veterans and the survivors of veterans in these categories who suffer from or die of leukemia. It is unlikely that any veterans of the occupation of Nagasaki or Hiroshima who contracted leukemia prior to 1970 would still be alive today. The number of denied claims from survivors of such veterans in which the veteran died of leukemia has been nominal.

The VA has denied 110 claims since 1967 from veterans suffering from leukemia who participated in atomic weapons testing. The above estimate assumes that these 110 denied claims would result in approximately 20 veteran and 50 survivor claims for benefits under this provision. Veterans were assumed to receive benefits at the 100 percent disability level and survivors at the average benefit level for DIC cases.

*Polycythemia vera.*—This is a very rare disease of the bone marrow, which is not necessarily fatal nor extremely disabling. The average disability rating for veterans receiving disability compensation for polycythemia vera is 30 percent. Because of the rarity of this disease and its relatively low disability rating, it was assumed that claims for benefits under this provision would not result in a significant cost.

*Carcinoma of the thyroid.*—Of the 3,700 claims for compensation and DIC benefits based on radiation exposure, none have been denied in which the veteran suffered from or died of cancer of the thyroid. For this reason, the cost of providing benefits for such cases under this provision was assumed to be insignificant.

6. Estimated cost to State and local governments: The Congressional Budget Office has determined that the budgets of State and local governments would not be directly affected by the enactment of this bill.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 5, 1983, CBO submitted an estimate of H.R. 1961, as introduced. This version of the bill, which only covered benefits to veterans with service in Southeast Asia during the Vietnam era, was estimated to result in the following cost:

(By fiscal year, in millions of dollars)

	1984	1985	1986	1987	1988
Required budget authority.....	4.1	4.4	4.7	4.9	5.1
Estimated outlays.....	4.1	4.4	4.7	4.9	5.1

9. Estimate prepared by: K. W. Shepherd.

10. Estimate approved by: C. G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

#### Cost

The Committee concurs with the CBO cost estimate.

#### INFLATIONARY IMPACT STATEMENT

The enactment of the reported bill would have no inflationary impact.

#### AGENCY REPORT

The Committee received the following letter from the Veterans' Administration on H.R. 1961, as introduced:

VETERANS' ADMINISTRATION,  
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,  
Washington, D.C., April 25, 1983

Hon. G. V. (SONNY) MONTGOMERY,  
Chairman, Committee on Veterans' Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to present the views of the Veterans' Administration on H.R. 1961, 98th Congress, the proposed "Vietnam Veterans Agent Orange Relief Act." I share with you and other Members of Congress the desire for a meaningful Federal response to the fears of veterans who served in Vietnam that their exposure to Agent Orange may have long-term adverse effects on their health. However, we consider the approach taken

in H.R. 1961 inadvisable given the present state of scientific knowledge.

The controversies arising from the Government's use of Agent Orange in Vietnam are not yet resolved. Before turning to the Veterans' Administration's observations concerning the several issues raised by H.R. 1961, I would like to emphasize that the potential cost of paying compensation based on any Agent-Orange-caused disabilities played no part in our deliberations on this measure. The Federal Government, since its beginning, has fulfilled its sacred obligation to veterans disabled in the line of duty and will continue to do so.

The devastating wars of this century, and the need to maintain peacetime forces in order to assure the defense of our Nation, have been accompanied by legislative and programmatic developments intended to assure that no veteran's reasonable claim to compensation is denied. This is true whether the disability results from a combat wound, service-incurred disease, in-service accident, psychological trauma resulting from combat or other conditions of military service, or exposure to a substance known or later discovered to have adverse health effects.

We are immensely proud of our agency's record of achievement. It can safely be maintained that our compensation program is the finest in the world, both in terms of the number of veterans we serve and in the amount of benefits paid. Moreover, the American people—who fund this program with their taxes—have given it overwhelming support, as has the Congress of the United States.

The preservation and integrity of the compensation program are among the highest priorities of the Veterans' Administration.

There are certainly many veterans suffering from illnesses they ascribe to exposure to that herbicide, especially its contaminant dioxin. Although scientific evidence is lacking, there are persons in the medical and scientific communities who contend that exposure may lead to a host of disorders that appear long after the exposure has ceased. There are also organizations and individuals who believe very sincerely that the Veterans' Administration has not responded adequately to the issues involved.

As guardians of the public trust, Congress and the Administration share, I believe, a commonality of aims respecting these issues. The compensation program must be attuned to justifiable conclusions about the connection between Agent Orange exposure and disorders possibly arising from that exposure. At the same time we must do our best to avoid taking steps that have the potential for undermining the program's credibility and legitimacy because of inconclusive scientific evidence. I know that you and other Members will give careful and thorough consideration to the bill, keeping in mind the commonality of aims to which I have previously alluded.

H.R. 1961 is intended to assist veterans who served in Southeast Asia during the Vietnam era establish entitlement to service-connected disability compensation if they are currently suffering from one of the disorders specified in the bill. It would do this by amending section 312 of title 38, United States Code, in order to provide for a special presumption of service connection applicable only to these veterans.

The bill is based on the premise that each of the specified disorders, no matter how long after military service symptoms appear, can be attributed to exposure to a phenoxy herbicide in service. During the period 1962 to 1971, phenoxy herbicides, including Agent Orange, were used in Vietnam. As I have noted, H.R. 1961 is an effort to respond to the widespread concern that exposure to Agent Orange, especially its contaminant dioxin, may have long-term adverse effects on veterans' health.

Authority to award compensation on the basis of the presumption provided for in the bill would terminate 1 year after submission to Congress of the comprehensive epidemiological study mandated by Public Law 96-151. This "sunset" provision is analogous to the sunset provision applicable to VA health care for certain disorders possibly associated with phenoxy herbicide exposure, authorized by Public Law 97-72. Both sunset provisions recognize the current uncertainties as to the long-term effects of exposure.

The Agent Orange controversy, as it relates to individual veterans' compensation claims, involves two basic questions: (1) whether the veteran was exposed, and (2) whether the veteran's disability results from the exposure. H.R. 1961, it should be noted, does not require any evidence of exposure; it would afford the presumption to any veteran who served in Southeast Asia during the Vietnam era (1964-1975). We have previously made public our decision to resolve the issue of exposure in a manner favorable to veterans; unless there is affirmative evidence to the contrary, we are prepared to presume exposure if a veteran served in Vietnam 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 giving veterans the benefit of the doubt.

There may be, however, some cases in which affirmative evidence refutes even the possibility of exposure, and, therefore, our policy is necessarily qualified. The lack of any similar qualification in H.R. 1961, in our view, is unjustifiable. We observe also that affording the presumption to veterans who served in Southeast Asia—a far broader region than Vietnam, embracing areas where no phenoxy herbicides were used—inappropriately expands the category of veterans intended to be benefited.

Our principal concerns, however, relate to the concept of an open-ended presumption that would be established by the bill and to the conclusions it embodies as to the specific disorders chloracne, porphyria cutanea tarda (PCT), and the several malignancies grouped as soft-tissue sarcoma. (The bill would also authorize presumptive service connection for additional disorders, provided for by regulation, that "medical research" has shown "may be" attributable to chemical exposure or environmental hazards or conditions. This requirement is vague—rules creating such presumptions should be based only on well-accepted, scientifically valid findings—and also unnecessary in view of the Administrator's current authority to issue regulations.)

The post-service presumption periods provided for in section 312(a) of title 38 are appropriate for chronic diseases whose inception in service may not be recorded because the development of pathology is gradual and insidious. They are justifiable when reason-

ably supported by medical knowledge as to the pathological courses of the particular diseases.

Congress has wisely set time limits on these presumptive provisions; unless symptoms of the disease appear within a specified period of time after service, the presumption is not available. The section 312(a) presumption, together with the time limits, assures that no veteran's reasonable claim is overlooked but also does not dictate grants of service connection when there is no evidence of service incurrence and it is not reasonable to infer service origin.

Reputable studies have concluded that dioxin exposure may result, within a relatively short period, in chloracne. PCT resulting from exposure also appears within a few weeks. On the other hand, no studies have shown that exposure results in the initial appearance of these disorders after lengthy delays. Our current authorities are adequate, without the need of a presumption, to award service connection and compensation, if appropriate, in cases of chloracne or PCT appearing within expected time limits after the exposure. Requiring us to award service connection for initial occurrence of these disorders long after the exposure incidents is, we believe, unjustifiable in the absence of any evidence indicating they are latent effects of exposure.

As I have noted, individuals in whom these relatively rare disorders appear begin to suffer symptoms soon after exposure, ordinarily within days or weeks. Chloracne is a skin disorder caused by exposure to certain chlorine-containing chemicals, including dioxin. In its more serious manifestations, it causes discomfort and disfigurement. Most cases clear up within a year or two after the exposure ceases, but in a few, the disorder persists. The Veterans' Administration acknowledges that chloracne can result from exposure to Agent Orange during service in Vietnam and has established procedures to assure careful and liberal consideration of all claims based on this disorder.

Since 1978, we have awarded service connection in 1,225 skin disorder cases involving veterans who served in Vietnam. We have scrutinized more than 3,000 claims for service-connected benefits to determine whether there are indications of chloracne. Those cases in which it was believed this diagnosis was at least possible were further reviewed by a VA dermatologist, and 13 have been examined in person by dermatologists at prestigious private clinics.

Although all of these cases involve skin disorders of various types and all involve veterans who served in Vietnam, only one case of possible chloracne has been identified. We will, of course, continue our investigations of this issue.

H.R. 1961 would also extend presumption of service connection for "chloracneform lesions." This is a term not found in medical or scientific literature, but can be taken to mean "lesions resembling chloracne." As certain common skin disorders may resemble chloracne, this term is overly broad and would, we believe, cause unnecessary confusion.

PCT, an uncommon liver disorder, can be triggered by exposure to various chemicals including alcohol. There is no evidence that PCT is a latent effect of exposure. Each attack ordinarily subsides in about a year after contact with the chemical ceases, but prolonged exposure, as in chronic alcoholism, may cause permanent

damage to the liver. An attack of PCT induced by Agent Orange or exposure to any other chemical during service in Vietnam years ago would not be expected to impair a veteran's health today. As is the case with cholecystitis, we regard our current authorities as fully adequate to assure proper consideration of PCT claims based on exposures during military service. As a technical matter, the proper application of section 313 of title 38, United States Code, making section 312 presumptions rebuttable if there is evidence of an intercurrent cause, would reduce the likelihood of awards of service connection based on the PCT presumption, if enacted.

The issue as to whether the malignancies grouped as "soft-tissue sarcomas" result from phenoxy herbicide exposure presents a problem of far greater complexity. There is considerable uncertainty in the scientific community on this issue. Advocates of the belief that exposure "causes" soft-tissue sarcoma generally cite studies involving cancer victims believed to have been exposed to phenoxy herbicides whose first symptoms appeared long after the exposure. Because it is well established that exposure to radiation and other agents like asbestos and benzene may result in the latent development of malignancy, these advocates reason by analogy that phenoxy herbicide exposure "causes" soft-tissue sarcoma. The vital question is, therefore, the weight that should be given to the studies they cite.

"Soft tissue sarcomas" are a group of malignant tumors, or cancers. Any sarcoma arises in a body cell that does not cover a body surface, form glandular tissue, or line certain body cavities. "Soft tissue" excludes sarcomas in "hard tissues" such as bone or cartilage. Hence, soft tissue sarcomas arise from such body tissues as muscles, tendons, blood vessels, fat, and connective tissues.

Certain cancers share some characteristics of soft-tissue sarcomas but are not placed in that group. These include most brain tumors and the so-called blood cancers, chiefly the leukemias. Some authorities include tumors of the lymph nodes—the lymphomas—with the soft-tissue sarcomas. The World Health Organization "International Classification of Tumors, No. 3, Histological Typing of Soft Tissue Tumors," however, excludes lymphomas and appears to be adequate for purposes of defining the malignancies in this category.

There is no evidence that all soft-tissue sarcomas have a common etiology or cause. These malignancies differ from one another as to how rapidly they grow and spread, how they are treated, and the results that treatment achieves. However, all are considered lethal if not successfully treated.

These malignancies are rare. According to the National Cancer Institute, they comprise 2.76 percent of all cancer cases in men aged 25 to 29 and 0.58 percent of all cancer cases in men aged 55 to 59; the percentage declines because other types of cancers become increasingly common with age. Lymphomas, sometimes included with soft-tissue sarcomas, contribute another 5.21 percent at ages 25 to 29 and 2.40 percent at ages 55 to 59.

Although there is no evidence establishing a common cause for these sarcomas, some malignancies in the group are known to be associated with exposure to environmental hazards. For example,

malignant mesothelioma is known to be caused by asbestos exposure, and angiosarcoma of the liver by exposure to vinyl chloride.

Because these malignancies are rare, it is difficult to devise adequate techniques to investigate their causes. A series of studies in Sweden using the "case/control" method grouped the soft-tissue sarcomas together in order to investigate whether Swedish foresters and farmers exposed to herbicides and a chemical known as chlorophenol in their work, suffered latent malignancies of this type. These studies have been carefully reviewed by Richard D. Remington, Dean of the School of Public Health, University of Michigan, at the request of the Office of Technology Assessment and determined to have been carefully conducted and well reported with results that *suggest* a relationship between herbicide exposure and soft-tissue sarcomas. Significantly, Dr. Remington pointed out the limitations of the case/control methodology and found the Swedish studies inadequate to permit definite conclusions.

Investigations in the United States based on studies of industrial workers have also suggested a phenoxo-compound connection with soft-tissue sarcomas. In addition, an East German investigation of malignant neoplasms among pesticide sprayers and agricultural technicians tends to support the Swedish studies by finding a single case of soft-tissue "malignancy," which probably was a soft-tissue sarcoma.

Other studies, in Finland, New Zealand, Great Britain, the Netherlands, and Italy have not confirmed the Swedish studies. In addition, a separate investigation of Swedish forestry workers casts some doubt on the Swedish studies.

We do not disagree with Dr. Remington's conclusions as to the credibility and limitations of the Swedish studies. They lay a predicate for further investigation and do not rule out the possibility of a causal link. They do not, however, provide a reasonable basis upon which to favorably decide VA compensation claims.

We recognize the importance of careful scientific analysis in matters of this kind, and have appended to this report detailed background papers concerning these diseases.

The comprehensive epidemiological study mandated by Public Law No. 96-151, together with other ongoing studies including some devoted specifically to the soft-tissue sarcoma issue, may resolve many of the controversial questions raised by the use of Agent Orange in Vietnam. As I stated at the outset of this report, we must work toward the dual objectives of fair compensation for any Agent-Orange-caused disabilities and avoidance of steps that would compromise the integrity of the program. At this point, there is no evidence that either chloracne or PCT is a delayed effect of exposure, and we believe the provisions of H.R. 1961 respecting these disorders are not justified. We do not believe it has been satisfactorily demonstrated that exposure can cause soft-tissue sarcoma.

Accordingly, we oppose the enactment of H.R. 1961. In view of the current state of scientific findings, enactment would compromise the integrity of the compensation program and engender unfounded fears among Vietnam veterans that lethal illnesses may yet befall them as a result of having answered duty's call. Our binding moral obligation to veterans who have given so much de-

mands that we act responsibly in all matters affecting the compensation program.

If the soft-tissue sarcoma presumption in H.R. 1961 were to be enacted, we estimate compensation benefit costs in fiscal year 1984 ranging from \$2 million to \$11 million, with the range for DIC benefits \$2.5 million to \$18.7 million. Benefit costs for future fiscal years would be comparable. A range of estimates is necessary because of uncertainty as to which malignancies are to be covered. Administrative costs would be sizable in the first fiscal year and are anticipated to be \$6.2 million, but would level off during subsequent fiscal years to less than \$500,000 in fiscal year 1988.

Costs relating to chloracne are estimated as insignificant. We can only speculate with regard to costs resulting from the inclusion of "chloracneform lesions."

As PCT is a relatively uncommon disorder, we would not anticipate benefit costs exceeding \$1 million in any fiscal year from the PCT presumption.

Advice has been received from the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

HARRY N. WALTERS,  
Administrator.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

• • • • •

PART II. GENERAL BENEFITS

CHAPTER	Sec.
11. Compensation for Service-Connected Disability or Death.....	301
13. Dependency and Indemnity Compensation for Service-Connected Deaths..	401
14. Disability and Death Allowances for Certain Veterans and Survivors.....	451

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• • • • •

## CHAPTER 14. DISABILITY AND DEATH ALLOWANCES FOR CERTAIN VETERANS AND SURVIVORS

Sec.

- 451. Agent Orange veterans and survivors.
- 452. Atomic veterans and survivors.
- 453. Rates of disability and death allowances.
- 454. Other benefits.
- 455. Termination of chapter.

### § 451. Agent Orange veterans and survivors

(a) *In the case of a veteran who served on active duty in Southeast Asia during the Vietnam era and who after such service suffers from a disease described in subsection (b) of this section, the Administrator shall pay a disability allowance to the veteran and, if the veteran dies from such disease, a death allowance to the survivors of the veteran. Such allowances shall be paid at the rates prescribed in section 453 of this title.*

(b) *The diseases referred to in subsection (a) of this section are the following:*

- (1) *Soft-tissue sarcoma becoming manifest within 20 years from the date of the veteran's departure from Southeast Asia.*
- (2) *Porphyria cutanea tarda becoming manifest within one year from the date of the veteran's departure from Southeast Asia.*
- (3) *Chloracne becoming manifest within one year from the date of the veteran's departure from Southeast Asia.*

(c) *Benefits may not be paid under this section with respect to a veteran—*

- (1) *where there is affirmative evidence that the disease described in subsection (b) of this section was not incurred by the veteran during service in Southeast Asia during the Vietnam era; or*
- (2) *where there is affirmative evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases described in subsection (b) of this section has been suffered between the date of the veteran's separation from service and the onset of such disease.*

### § 452. Atomic veterans and survivors

(a) *In the case of a veteran who while on active duty participated in the testing of an atomic bomb or device, or who while on active duty participated in the occupation of Hiroshima or Nagasaki during World War II, and who within 20 years from the date of the veteran's participation in the test or occupation suffers from a disease described in subsection (b) of this section, the Administrator shall pay a disability allowance to the veteran and, if the veteran dies from such disease, a death allowance to the survivors of the veteran. Such allowances shall be paid at the rates prescribed in section 453 of this title.*

(b) *The diseases referred to in subsection (a) of this section are the following:*

- (1) *Leukemia.*
- (2) *Polycythemia vera.*
- (3) *Carcinoma of the thyroid.*

*(c) Benefits may not be paid under this section with respect to a veteran—*

*(1) where there is affirmative evidence that the disease described in subsection (b) of this section was not incurred by the veteran during service described in the first sentence of subsection (a) of this section; or*

*(2) where there is affirmative evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases described in subsection (b) of this section has been suffered between the date of the veteran's separation from service and the onset of such disease.*

***§ 453. Rates of disability and death allowances***

*A disability allowance payable to a veteran under this chapter shall be paid at the rate provided in chapter 11 of this title, based upon the degree of disability of the veteran attributable to the disease establishing eligibility for such allowance. A death allowance payable under this section to the survivors of a veteran shall be paid to such survivors based upon the eligibility requirements and rates applicable to payments under chapter 13 of this title.*

***§ 454. Other benefits***

*A disease establishing eligibility for a disability allowance under this chapter shall be treated for purposes of all other laws of the United States (other than chapters 11 and 13 of this title) as if such disease were service connected and receipt of a disability allowance under this chapter shall be treated for purposes of all other laws of the United States as if such allowance were service-connected compensation under chapter 11 of this title. Receipt of a death allowance under this chapter shall be treated for purposes of all other laws of the United States as if such allowance were dependency and indemnity compensation under chapter 13 of this title.*

***§ 455. Termination of chapter***

*This chapter shall terminate on the first day of the first month beginning after the end of the one-year period beginning on the date the Administrator submits to the appropriate committees of Congress the first report required by section 307(b)(2) of the Veterans Health Programs Extension and Improvement Act of 1979 (Public Law 96-151).*

\* \* \* \* \*

## ADDITIONAL VIEWS

The Veterans' Affairs Committee took an important first step in reporting an amended version of H.R. 1961. However, even with the passage of this legislation, questions relating to Agent Orange compensation will be considered for some time. Many veterans will continue to be frustrated by the inability of this legislation to meet their legitimate needs.

Two steps in our view would greatly address these concerns. One is the creation of an independent advisory committee to objectively analyze all new and existing scientific evidence pertaining to dioxin exposure. The second would create an open, public procedure by which the VA can clarify how much and what kind of proof is still necessary before additional Agent Orange claims can be approved. These proposals were offered in the form of an amendment to H.R. 1961 during Committee consideration of the bill. They were rejected on a 17-13 vote of the Committee.

Results from several scientific studies are expected in the months ahead which should reveal a great deal more about Agent Orange and its effects on humans. Yet, in the words of the Congressional Research Service the impact of these studies will be unclear, as "the VA has not established any formal criteria for how their policies might be altered by scientific findings." Therefore, the discovery of illness in a medical or scientific study could easily go ignored. The proposal offered in the Committee would have ensured that as these new studies are published there will be a certain and orderly process to determine study conclusions and their relevancy to veterans' compensation claims.

There is also a great deal of concern about the decision making process within the Veterans' Administration with respect to Agent Orange compensation. There are no standards or guidelines available by which the agency justifies its position that no illness, except chloracne, results from Agent Orange exposure. The Daschle/Smith amendment would have established a procedure by which the agency would provide justification for their decision with regard to compensation for various disease categories. Other Federal agencies such as the Environmental Protection Agency and Occupational Safety and Health Administration involved in assessing toxic chemical risk follow clear and established guidelines for making such determinations. It is a matter of sound public policy and we see no reason why the Veterans' Administration should be exempt from such a requirement.

After several days of hearings on H.R. 1961 it became abundantly clear that an Advisory Committee was necessary simply to sort out the conflicting viewpoints on the many scientific studies and their relationship to Agent Orange claims. Independent analysis of this information would ensure that viewpoints contrary to agency positions receive fair and expeditious consideration.

There are also distinct advantages in this approach for the Veterans' Administration. The VA Administrator ultimately selects Advisory Committee members, determines when they meet and whether or not compensation is even warranted. Agency decisions on compensation could be corroborated by Advisory Committee recommendations.

It is therefore our belief that as additional scientific studies are released, the Advisory Committee would have ensured fair and expeditious analysis of information directly relevant to Agent Orange claims. It is our hope that the Committee will renew consideration of these proposals during the second session of the 98th Congress.

TOM DASCHLE.  
CHRISTOPHER SMITH.  
ROBERT EDGAR.  
MARCY KAPTUR.  
MATTHEW MARTINEZ.  
HARLEY STAGGERS, Jr.  
JIM SLATTERY.  
BILL RICHARDSON.  
JOHN BRYANT.  
FRANK HARRISON.  
TIM PENNY.  
LANE EVANS.

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National

# Twins sought for Vietnam study

Associated Press

Washington — The government is about to undertake a nationwide search for 30,000 veterans who are twins so it can compare the health of men who served in the Vietnam war with their brothers who did not.

The purpose: to see if anything in the Vietnam experience was damaging to servicemen's physical or emotional health or had a long-term effect on their re-adjustment as civilians.

All 15,000 pairs of fraternal and identical twins will be surveyed by mail. From the results, researchers will select for interviews, physical exams and close scrutiny 360 pairs of identical twins who split up during the war — one twin going to the war zone and one stayed elsewhere.

Researchers hope the investigation will shed light on whether Agent Orange has damaged the health of men exposed to it, as thousands of veterans claim. Twelve million gallons of the plant killer, and its dangerous contaminant, dioxin, were sprayed during the war to reveal communist troops' hiding places and to destroy crops.

The study will also provide information on Post-Traumatic Stress Disorder. It is

psychiatric syndrome similar to what older veterans called "battle fatigue" or "shell shock," but is said to be an even more serious problem for Vietnam veterans because of the hostile reception many encountered when they came home.

In addition, broader findings — into the entire relationship "between service in Vietnam and long-term health and socio-economic status" — are expected, according to the Veterans Administration.

"We believe that this study will provide the most sensitive means for detecting subtle effects of Vietnam service and will therefore justify the necessary considerable expenditure," Dr. Donald Custis, the VA's medical director, told a congressional subcommittee last year in outlining preliminary plans.

Since identical twins share the same genetic and environmental influences in their developing years, they provide an ideal group for comparison. Whatever health differences show up can likely be ascribed to the Vietnam experience.

The search for the twins will get under way April 1 and will probably take 2 1/2 years and cost \$480,000, the VA estimated in papers submitted to the Office of Management and

Budget.

Under a paperwork-reduction law, OMB's approval is necessary before any government agency adds to the public's paperwork burden.

"Although the first use of this register will be to assess the effects of Vietnam service, the twin register will be an important national resource for future studies of the influence of inheritance and environmental factors on human disease," the VA told OMB.

The VA contracted with the National Academy of Sciences to conduct the research and the academy farmed out the survey work to the National Opinion Research Center at the University of Chicago.

Feasibility studies suggested it will not be hard to find enough twins.

The analysis showed there may be as many as 17,000 pairs in the American population in which one brother served in the war zone while his twin did not.

All told, it was found that there are 400,000 pairs of twins among the 25 million males born between 1939 and 1953 and that half of the twins are veterans.

## Agent Orange study ongoing

ATLANTA (AP)—The Centers for Disease Control expects no findings from its year-old assignment to study Agent Orange until 1987, and even then the \$75 million project might not show whether the herbicide harmed Americans in Vietnam, a researcher warns.

"It needs to be pointed out that at the end of a long and arduous and expensive investigation we may not come up with the answers we hope to come up with," said Robert Diefenbach, a public health adviser with the project.

An estimated 12 million gallons of the poison were sprayed in Vietnam to destroy jungle growth. The Veterans Administration, which has received more than 19,000 Agent Orange compensation claims from Vietnam vets, says there is no proof that exposure was harmful.

Veterans' groups maintain that exposure to Agent Orange causes cancer, liver disease and skin ailments and causes birth defects in the children of servicemen exposed to it.

In January 1983, the VA turned over its investigation to the CDC.

The "research protocol"—the investigation's formal, detailed outline—is nearing final approval. But Diefenbach said there will be "no findings before 1987," and the study could take even longer.

"Our mandate is to find out what

long-term health results there were," he said.

The CDC's study is in three phases: One on men exposed to the herbicide during the heavy spraying years of 1967 and 1968; a second into the long-term health effects of "simply having been in Vietnam" at the peak of American involvement in the war, between 1968 and 1971, and a third assessing the rates at which Vietnam vets are contracting "certain cancers," Diefenbach said.

For the first two parts of the investigation, the government will locate and study 30,000 subjects, split into five equal groups: Troops very likely to have been exposed to Agent Orange, men in the same time and place but probably not exposed, men serving in other areas of Vietnam during the spraying years, men serving in Vietnam during other times and men serving in the Army in the late 1960s but stationed in other countries.

## Way cleared for Agent Orange trial

The Associated Press

WASHINGTON — A Supreme Court justice refused Tuesday to interfere with a massive class action lawsuit against manufacturers of Agent Orange and other herbicides used by the U.S. military during the Vietnam War.

Justice Thurgood Marshall rejected an emergency request by the manufacturers that would have frozen certain

pretrial proceedings and may have postponed the trial's scheduled May 7 starting date.

The trial is to be presided over by U.S. District Judge Jack Weinstein in New York City.

Potentially included in the class of plaintiffs are millions of individuals, including veterans of the U.S., Australian and New Zealand armed

forces who served in Vietnam from 1961 to 1972, as well as their spouses, parents and children.

The suit charges that exposure to the dioxin contained in Agent Orange caused cancer, birth defects and numerous other ailments. Still pending before the full Supreme Court is an appeal by the chemical companies named as defendants.

*The Daily News 2/15/84*



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98TH CONGRESS  
2D SESSION

# H. R. 1961

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## IN THE SENATE OF THE UNITED STATES

JANUARY 31 (legislative day, JANUARY 30), 1984

Received; and held at the desk pending further disposition pursuant to the order  
of January 30, 1984

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## AN ACT

To amend title 38, United States Code, to provide disability and death allowances to veterans and the survivors of veterans who served in Southeast Asia during the Vietnam era and suffer from diseases that may be attributable to exposure to the herbicide known as "Agent Orange" and to veterans and the survivors of veterans who participated in atomic tests or the occupation of Hiroshima and Nagasaki and suffer from diseases that may be attributable to ionizing radiation.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Vietnam Veterans Agent
- 4 Orange Relief Act".

1        SEC. 2. The purpose of this Act is to provide certain  
2 benefits—

3            (1) to veterans and the survivors of veterans who  
4        served in Southeast Asia during the Vietnam era and  
5        suffer from diseases that may be attributable to expo-  
6        sure to Agent Orange; and

7            (2) to veterans and the survivors of veterans who  
8        participated in atomic tests or the occupation of Hiro-  
9        shima and Nagasaki and suffer from diseases that may  
10       be attributable to ionizing radiation,  
11 notwithstanding that there is insufficient medical evidence to  
12 conclude that such diseases are service connected.

13        SEC. 3. (a) Title 38, United States Code, is amended by  
14 inserting after chapter 13 the following new chapter:

15        **CHAPTER 14—DISABILITY AND DEATH ALLOW-**  
16        **ANCES FOR CERTAIN VETERANS AND SURVI-**  
17        **VORS**

“Sec.

“451. Agent Orange veterans and survivors.

“452. Atomic veterans and survivors.

“453. Rates of disability and death allowances.

“454. Other benefits.

“455. Termination of chapter.

18        **“§ 451. Agent Orange veterans and survivors**

19            “(a) In the case of a veteran who served on active duty  
20 in Southeast Asia during the Vietnam era and who after such  
21 service suffers from a disease described in subsection (b) of  
22 this section, the Administrator shall pay a disability allow-

1 ance to the veteran and, if the veteran dies from such dis-  
2 ease, a death allowance to the survivors of the veteran. Such  
3 allowances shall be paid at the rates prescribed in section  
4 453 of this title.

5 “(b) The diseases referred to in subsection (a) of this  
6 section are the following:

7 “(1) Soft-tissue sarcoma becoming manifest within  
8 twenty years from the date of the veteran's departure  
9 from Southeast Asia.

10 “(2) Porphyria cutanea tarda becoming manifest  
11 within one year from the date of the veteran's depart-  
12 ure from Southeast Asia.

13 “(3) Chloracne becoming manifest within one year  
14 from the date of the veteran's departure from South-  
15 east Asia.

16 “(c) Benefits may not be paid under this section with  
17 respect to a veteran—

18 “(1) where there is affirmative evidence that the  
19 disease described in subsection (b) of this section was  
20 not incurred by the veteran during service in Southeast  
21 Asia during the Vietnam era; or

22 “(2) where there is affirmative evidence to estab-  
23 lish that an intercurrent injury or disease which is a  
24 recognized cause of any of the diseases described in  
25 subsection (b) of this section has been suffered between

1 the date of the veteran's separation from service and  
2 the onset of such disease.

3 "§ 452. Atomic veterans and survivors

4 "(a) In the case of a veteran who while on active duty  
5 participated in the testing of an atomic bomb or device, or  
6 who while on active duty participated in the occupation of  
7 Hiroshima or Nagasaki during World War II, and who  
8 within twenty years from the date of the veteran's participa-  
9 tion in the test or occupation suffers from a disease described  
10 in subsection (b) of this section, the Administrator shall pay a  
11 disability allowance to the veteran and, if the veteran dies  
12 from such disease, a death allowance to the survivors of the  
13 veteran. Such allowances shall be paid at the rates prescribed  
14 in section 453 of this title.

15 "(b) The diseases referred to in subsection (a) of this  
16 section are the following:

17 "(1) Leukemia.

18 "(2) Polycythemia vera.

19 "(3) Carcinoma of the thyroid.

20 "(c) Benefits may not be paid under this section with  
21 respect to a veteran—

22 "(1) where there is affirmative evidence that the  
23 disease described in subsection (b) of this section was  
24 not incurred by the veteran during service described in  
25 the first sentence of subsection (a) of this section; or

1           “(2) where there is affirmative evidence to estab-  
2           lish that an intercurrent injury or disease which is a  
3           recognized cause of any of the diseases described in  
4           subsection (b) of this section has been suffered between  
5           the date of the veteran’s separation from service and  
6           the onset of such disease.

7   **“§ 453. Rates of disability and death allowances**

8           “A disability allowance payable to a veteran under this  
9           chapter shall be paid at the rates provided in chapter 11 of  
10          this title, based upon the degree of disability of the veteran  
11          attributable to the disease establishing eligibility for such al-  
12          lowance. A death allowance payable under this section to the  
13          survivors of a veteran shall be paid to such survivors based  
14          upon the eligibility requirements and rates applicable to pay-  
15          ments under chapter 13 of this title.

16   **“§ 454. Other benefits**

17          “A disease establishing eligibility for a disability allow-  
18          ance under this chapter shall be treated for purposes of all  
19          other laws of the United States (other than chapters 11 and  
20          13 of this title) as if such disease were service connected, and  
21          receipt of a disability allowance under this chapter shall be  
22          treated for purposes of all other laws of the United States as  
23          if such allowance were service-connected compensation under  
24          chapter 11 of this title. Receipt of a death allowance under  
25          this chapter shall be treated for purposes of all other laws of

1 the United States as if such allowance were dependency and  
2 indemnity compensation under chapter 13 of this title.

3 "§ 455. Termination of chapter

4 "This chapter shall terminate on the first day of the first  
5 month beginning after the end of the one-year period begin-  
6 ning on the date the Administrator submits to the appropriate  
7 committees of Congress the first report required by section  
8 307(b)(2) of the Veterans Health Programs Extension and  
9 Improvement Act of 1979 (Public Law 96-151)."

10 (b) The tables of chapters at the beginning of title 38,  
11 United States Code, and at the beginning of part II of such  
12 title, are amended by inserting after the item relating to  
13 chapter 13 the following new item:

"14. Disability and Death Allowances for Certain Veterans  
and Survivors ..... 451".

14 SEC. 4. This Act shall take effect on October 1, 1983.  
15 No benefit may be paid for any period before such date by  
16 reason of the enactment of this Act.

Passed the House of Representatives January 30,  
1984.

Attest: BENJAMIN J. GUTERIE,  
Clerk.

AGENT ORANGE

50 percent 2,4-D (2,4-dichlorophenoxyacetic acid)  
50 percent 2,4,5-T (2,4,5-trichlorophenoxyacetic acid)

From 1962 to 1971, approximately 18.65 million gallons of herbicide compounds were applied over more than five million acres of Vietnam. Agent Orange accounted for more than 11.22

The phenoxy herbicides, 2,4-D and 2,4,5-T, are contaminated with dioxins, unavoidable by-products formed during the manufacturing process.

The contaminant of 2,4-D, HCDD (hexachlorodibenzo-p-dioxin), has been found to be teratogenic (causing birth defects) and fetotoxic (causing fetal deaths) in laboratory animals at the parts per million and billion levels.

The contaminant of 2,4,5-T, TCDD (2,3,7,8-tetrachlorodibenzo-p-dioxin), is not only a more powerful teratogen and fetotoxin, but has caused death, damage to liver, kidney and heart, deterioration of bone marrow and lymphoid tissue, thymic atrophy, cellular alterations, genetic damage, and cancer in laboratory animals at the parts per billion and trillion levels.

Over 40 million pounds of phenoxy herbicides are applied annually over millions of acres across the United States for killing weeds and unwanted vegetation on rangeland, pastureland, forestland, rights-of-way, crops, and home gardens. 2,4-D and 2,4,5-T are the most widely used.

Workers exposed to dioxin in trichlorophenol and other chlorophenol plants have suffered from a skin disease known as chloracne since the mid-1930's. The severity of chloracne ranges from acne-like boils to disfiguring, burn-like lesions. Other symptoms of dioxin poisoning suffered by these workers include damage to liver and other internal organs, nervous disorders, memory and concentration disturbances, loss of sight and hearing, numbness in the extremities, fatigue, headaches, dizziness, insomnia, loss of sex drive, extreme weight loss, depression, serious psychological disturbances, and cancer.

In the United States, commercial applications of 2,4,5-T have caused skin rashes, intestinal disorders, damage to internal organs, nervous disorders, memory and concentration disturbances, numbness in the extremities, headaches, dizziness, fatigue, chronic illnesses, miscarriages, spontaneous abortions, birth deformities, and cancer in humans living in sprayed areas.

Application of Agent Orange in Vietnam was approximately 12 times more concentrated than commercial application levels in the United States. The level of dioxin contamination in 2,4,5-T used in the United States averages 0.03 ppm; in Vietnam, contamination levels ranged from 1.0 ppm to 50.0 ppm. The concentration of dioxin, as applied in Vietnam, was approximately 500 times more concentrated than commercial applications used in the United States. More than 360 pounds of TCDD were deposited over Vietnam.

Since the mid-1960's, Vietnam has experienced an alarming increase in the rate of stillbirths, miscarriages, spontaneous abortions, birth abnormalities, birth deformities, and various cancers. Liver cancer, almost unheard of before the war, is now the second-leading form of cancer there.

TCDD is one million times more fetus-deforming thanthalidomide; its level of toxicity is such that one ounce can kill 800,000 people.

## AGENT ORANGE

-2-

An estimated 2.8 million veterans served in Vietnam, as well as thousands of civilian personnel. Thus far, thousands are known to be suffering from a variety of symptoms, including skin rashes, damage to liver, kidney, heart, and other internal organs, lymphatic diseases, nervous disorders, memory and concentration disturbances, loss of sight and hearing, numbness in the extremities, fatigue, chronic illnesses, headaches, dizziness, insomnia, loss of sex drive, extreme weight loss, severe depression, serious psychological disturbances, and various cancers. The women who served and the wives of those who served have suffered an unusual rate of miscarriages and spontaneous abortions. Their children have been affected by an unusual number of birth defects.

### References:

- "Agent Orange: Vietnam's Deadly Fog", WBBM-TV (CBS) Chicago, March 23, 1978
- Buu-Hoi, N.P., et al. 1972b. Organs as targets of "dioxin" (2,3,7,8-tetrachloro-dibenzo-p-dioxin) intoxication. *Naturwissenschaften*, 59(4):174-175.
- Courtney, C.D. and J.A. Moore, 1971. Teratology studies with 2,4,5-trichlorophenoxyacetic acid and 2,4,7,8-tetrachlorodibenzo-p-dioxin. *Toxicol. Appl. Pharm.*, 20(3):396-403.
- Evaluation of Carcinogenic, Teratogenic and Mutagenic Activities of Selected Pesticides and Industrial Chemicals. Prepared by Bionetics Research Labs under contract with the National Cancer Institute, 1968.
- Gupta, B.N., et al, 1973. Pathologic effects of 2,3,7,8-tetrachlorodibenzo-p-dioxin in laboratory animals. *Environmental Health Perspectives*, 5:124-140.
- "Health Effects of Exposure to Herbicide Orange in South Vietnam Should Be Resolved", Report by the Comptroller General of the United States, General Accounting Office, April 6, 1979.
- "The Politics of Poison", KRON-TV San Francisco, April 25, 1979.
- Whiteside, T., "The Pendulum and the Toxic Cloud", *The New Yorker*, July 25, 1977.
- Whiteside, Thomas, 1970. "Deioliation", New York: Ballantine/Friends of the Earth.
- Various other studies, reports, articles, etc. too numerous to list.

February 29, 1984

TO: Representative Mitch Abood  
Chairman, House State Affairs Committee

FROM: Representative John Ringstad  
Co-Chairman, House Resources Committee

RE: HJR 64

I feel that the veterans mentioned in H.R. 1961 should receive the disability and death benefits which would be accorded to them in compliance with Title 38, Chapters 11 and 13.

This bill states that veterans who served in Southeast Asia during the Vietnam "era" would be eligible effective October 1, 1983, for a temporary disability (or death) allowance if they later suffered from one of three conditions: soft-tissue sarcoma, PCT (a liver condition), and/or chloracne (a skin condition). Monetary benefits would be paid at the rates prescribed in Chapters 11 and 13 of Title 38 of the U.S. Code.

Benefits would terminate one year after Congress receives the epidemiological study, now being conducted by the Centers for Disease Control in Atlanta, Ga. Experts say that will occur in late 1987 or 1988.

As of October 1, 1983, 18,518 claims had been filed with the VA for disorders veterans attributed to Agent Orange. Of these half had disabilities.

Under current VA policy, disability claims not presently covered by that agency will depend on the studies now underway or pending. A spokesman for the VA has told Congress that it may well be that "the Congress cannot wait for scientific answers in the short term..."

The scientific experts agree that there is no question of the toxicity of dioxin. It is one of the most highly toxic substances known to the scientific community, but its toxicity for humans is unknown.

In deciding to back this Joint Resolution, I have reviewed statements by Dr. Luke G. Tedeschi, forensic scientist and Director of Laboratories at Framingham Union Hospital in Framingham, Mass.; and Major Alvin Young, Ph.D., plant physiologist and special assistant for Environmental Sciences, Agent Orange Projects Office of the Veterans Administration. These two men are believed by the scientific community to be the foremost authorities in the U.S. on Agent Orange.

The immediate or acute effects of dioxin (the contaminant) in Agent Orange are well-known and involve chloracne, liver ailments and neurological disorders. It is the long-term or chronic effects of dioxin which are not known.

Should our Vietnam veterans and the veterans of the World War II era have to wait and suffer for years until something is done?

There are specific ailments which this bill covers:

For Vietnam veterans disability and death allowances are constrained to chloracne, soft-tissue sarcoma and PCT- a liver disease.

For those veterans who participated in atomic tests or the occupation of Hiroshima and Nagasaki allowances are limited to leukemia, polycythemia vera, a rare disease of the bone marrow and to carcinoma of the thyroid.

The survivors of these veterans are then entitled to benefits according to Title 38, Chapters 11 and 13.

What concerns many veterans even more than their own conditions is the thought that Agent Orange (dioxin) could be teratogenic. There is no proof presently that dioxin is or is not teratogenic.

The scientists of our time have not yet disentangled the Agent Orange chain. Evidence that something is not right is the list of accidents and exposures of people to dioxin.

More than 70 workers at the Midland, Mich. plant of Dow Co. in 1964 suffered chloracne (the hallmark of dioxin exposure), fatigue, lassitude, depression, skin eruptions and weight loss.

On June 10, 1976, in Seveso, Italy, an explosion showered those in several adjacent communities with a cloud of dioxin.

IN 1949, an explosion at a Monsanto Co. plant in Nitro, W.V. involved 228 workers. According to Tedaschi, the workers complained of the same symptoms as those that the Vietnam veterans would complain of several decades later. They included chloracne, shortness of breath, intolerance to cold, tender liver, loss of sensation, fatigue, nervousness, depression, irritability, insomnia and vertigo.

There have been other incidents. The veterans wonder why Times Beach, Mo., and not Vietnam? They are referring to the buy-out of Times Beach

by the federal government and the refusal of the federal government to acknowledge their exposure to dioxin.

I feel by backing House Joint Resolution 64, the Alaska State Legislature can send a message to our veterans that we care. Incidentally, Alaska has the most Vietnam veterans per capita in the U.S.

HJR

77

# STATE OF ALASKA

## HUMAN RIGHTS COMMISSION

BILL SHEFFIELD, GOVERNOR

431 WEST 7TH AVENUE  
SUITE 105  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-7474

August 24, 1983

Representative Jerry Ward  
P.O. Box 2716  
Anchorage, AK 99510

Dear Representative Ward:

This is in reply to your request for information from our agency on March 10, 1983. Mark Ertischek, the Hearing Advocate and Acting Executive Director at the time of your request, assigned this response to a staff member who left the Commission in April. Quite frankly, Mr. Ward, it appears that your information request was lost in the transition between staff members. Please accept my apology for this oversight. I will attempt to answer your questions at this time as best I can.

1. You asked about the average time delay between the time a complaint is filed and the time an investigator is assigned. In general, at the time a complaint is filed, it is reviewed by the Regional Director of the investigative unit and where appropriate a resolution conference is scheduled and an investigator assigned to the case. Therefore, there should be approximately two weeks between the complaint filing and the scheduling of the conference on most cases. Due to limited staffing, there is however a delay of one to two months between the filing of the complaint and the date of the resolution.
2. You asked about the average length of time before an investigation is completed. I cannot give you an average time on all open cases before the Commission at this time; however, the Equal Employment Opportunity Commission (EEOC) keeps records on the Alaska Commission's average processing time of EEOC case resolutions in federal FY 83. The average processing time recorded by EEOC in June, 1983 was 295 days.
3. In general cases are assigned on a first come, first serve basis. This means that an early resolution of cases is attempted soon after filing (unless the case is inappropriate for a resolution conference). Your question whether priority is given to cases where complainant shows "irreparable harm" as in the instance of a case of firing in retaliation for filing a complaint. In some respects, irreparable harm exists whenever a person is discriminated

against. Under our statutes, the Alaska Commission cannot award compensation for suffering the humiliation of discrimination. However, the Commission is able to award "make whole" relief which in a discharge case would include backpay from the date of discrimination to the time when the agreement is signed or even in some instances frontpay until the complainant is awarded a job of equal value either by the discrimination or other employers. In all cases in which jobs are lost or denied, the complainant has an obligation to mitigate damages by seeking other jobs for which they are qualified.

To respond to your question directly, we do not give priority to cases of irreparable harm such as you have described.

4. These year end statistics are compiled from our annual report for the years 1975-1982 inclusive:

Calendar Year	Complaints Filed	Complaints Closed	Complaints Unassigned for Investigation
1975	646	434	322
1976	777	589	488
1977	603	638	422
1978	406	534	241
1979	305	417	104
1980	278	377	123
1981	233	261	97
1982	292	319	128

I am also including for your information the latest case processing statistics from our quarterly meeting in Kodiak on July 28 and 29th. I feel certain that if you look carefully at the report you will note the growing number of cases over 180 days in process. I previously communicated to you our concern about the age of our cases and expressed to you in that letter our goal of completing most cases within 180 days. It seems likely that under the present staffing pattern we will be unable to reach that goal.

The Human Rights Commission has experienced underfunding in personal services over the last five years and in fact, in FY 83, was forced to leave one position vacant during the entire fiscal year. In FY 84, our staff has been reduced to 25 employees. The forecast for FY 85 is even more gloomy since our programs is personal services intensive and a decrease in funding is being predicted. Our FY 85 Budget Submission will include proposals to eliminate 1 - 3½ positions at the 95% - 85% service levels. When faced with decreased funding, we have no alternative but to cut positions.

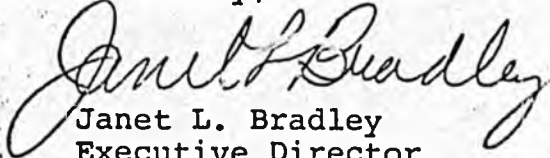
Representative Ward

-3-

8/24/83

I hope that this reply is responsive to your inquiry. I would be pleased to schedule a time to discuss your concerns in person at your convenience.

Sincerely,



Janet L. Bradley  
Executive Director

JLB:lv  
Enclosure

HJR 77 Allows:

Continued operations of the Federal Surplus Property Program under P.L. 94-519.

The program is administered by the Department of Administration, Division of General Services & Supply, under authority of AS 44.71.020-.040, and is 100% self sustaining as required by law.

During the past two fiscal years (FY 82 and FY 83), this program provided:

equipment and supplies with original values exceeding 4.5 million dollars at a total client cost of approximately 360,000, or less than 8% of original costs.

Of the 4.5 million, approximately 3.65 were received by State and other public agencies, 78,000 by non-profit health and 774,000 to public non-profit education.

The program provides the only avenue by which state and other public agencies may obtain surplus Federal equipment and supplies, frequently being the determining factor in whether or not a recognized public need can be addressed.

Failure to pass this resolution and adopt this permanent plan will result in immediate suspension of the program by the Federal government, loss of program benefits to the residents of Alaska, termination of at least six self-sustaining half-time jobs and loss of an unknown number of projects sustained by the program.

5/1101/0508-01

# MEMORANDUM

# State of Alaska

TO: Arthur H. Peterson  
Assistant Attorney General  
Office of the Attorney General

DATE: April 24, 1984

FILE NO

TELEPHONE NO

465-2167

FROM: Robert W. Head, Sr. *RWH*  
Property Manager  
State and Federal Property  
Division of General Services & Supply  
Department of Administration

SUBJECT: Resolution on Federal  
Surplus and AG File  
377-142-84

THRU: Rebecca Burch  
Special Assistant  
to the Commissioner  
Department of Administration

I have reviewed the attached draft of the resolution addressing the Federal Surplus Property program with Mr. W. W. Gunn of GSA's Region 10 office.

We find nothing that would seem to require revision, and Mr. Gunn is conducting research to address your concerns regarding authorship and legitimacy of the June 30, 1984 deadline declaration, by GSA.

Additional information should be available within a day or two.

RWH/c.ik  
Attachment  
20/11D2/0424-02

# MEMORANDUM

# State of Alaska

TO: Robert W. Head, Sr.  
Property Manager, State &  
Federal Property  
Division of General Services &  
Supply  
Department of Administration


DATE: April 20, 1984

FILE NO: 377-142-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Attached draft reso-  
lution, etc., re  
federal surplus  
property

By: Arthur H. Peterson   
Assistant Attorney General

Attached are copies of the drafts of the resolution, the cover memo to the governor, and the transmittal letter to the legislature. Please review these items, phone the feds if you think it appropriate or advisable, and return your comments to me soon so that the package can be put in final form and delivered to the governor within a few days.

AHP/jb

Attachments

# MEMORANDUM

# State of Alaska

TO: A.M. "Bud" Saylor  
Deputy Director  
Department of Administration  
Division of General Services & Supply

DATE: April 16, 1984

FILE NO:

TELEPHONE NO: 465-2283

FROM: *RWH*  
Robert W. Head, Sr.  
Property Manager, State  
& Federal Property  
Department of Administration  
Division of General Services & Supply

SUBJECT: Status of PL 94-519

Telephone conversation with B. Losche, G.S.A., Auburn, Washington, indicates there has been no action that might supercede Public Law 94-519.

RWH/dn

# MEMORANDUM

# State of Alaska

TO Ben Harding, Special Assistant  
Office of the Governor

DATE: September 15, 1983

FILE NO: 657

TELEPHONE NO: 465-3562

FROM

*JAH*  
Jay A. Hogan, Associate Director  
Office of Management and Budget  
Division of Governmental  
Coordination

SUBJECT: CTS 3251559

This memorandum is in response to the letter from the Federal General Services Administration (GSA) that you forwarded to this office.

The Division of General Services and Supply, Department of Administration, is aware of the Federal requirement to develop and achieve legislative approval for a permanent plan of operation for the transfer of surplus Federal property to the State of Alaska. The Division, with the approval of Commissioner Rudd and the Office of the Governor, intends to introduce a bill to the 1984 legislative session in order to meet the Federal requirements.

The Division of General Services and Supply has well-established channels of communication with the GSA. A copy of GSA's letter has been forwarded to the Director of the Division, Mr. Bob Link. The Division will prepare a reply to the GSA letter.

sa

cc/attachment: Bob Link, Director, Division of General Services and Supply, Department of Administration  
Rebecca Burch, Special Assistant to the Commissioner, Department of Administration

*Bob* →



CTSD 3251559

RECEIVED  
SEP 07 1983

AUG 30 1983

GOVERNOR'S OFFICE

Honorable William Sheffield  
Governor of Alaska  
State Capitol  
Juneau, Alaska 99801

Dear Governor Sheffield:

The Federal Property and Administrative Services Act of 1949, as amended, which governs the transfer for donation of Federal surplus personal property to the States, requires that each State submit a permanent plan of operation for its State Agency for Surplus Property (SASP). The Director of your State agency was advised on January 5, 1982, (copy enclosed) that the deadline for submission of permanent plans is June 30, 1984. We are bringing this matter to your attention at this time as failure to submit the required plan could necessitate our deferring further allocations of property to your State.

Your review of this matter and a reply by November 15, 1983, assuring us that we will receive the permanent plan prior to June 30, 1984, will be appreciated.

Sincerely,

  
J. L. MITCHELL  
Assistant Administrator

Enclosure

OFFICE OF  
MANAGEMENT & BUDGET  
SEP 09 1983  
GOVERNMENTAL  
COORDINATION

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

DIVISION OF GENERAL SERVICES AND SUPPLY

Bill Sheffield, Governor

POUCH C (MS-0210)  
JUNEAU, ALASKA 99811

(907) 465-2167

September 14, 1983

Mr. W. W. Gunn  
General Services Administration  
Personal Property Management Branch  
Code 10FB-P  
Auburn, WA 98002

Dear Mr. Gunn:

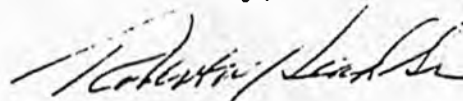
Enclosed you will find the "finished" State plan, revised to reflect the suggestions/recommendations you so generously offered.

Unless you find reasons for additional revision, we will plan on submitting this version to the Legislature shortly after they convene.

If you do find areas that need further revising/refining, please feel free to express your thoughts for consideration.

The assistance and cooperation you have extended in this project is genuinely appreciated.

Sincerely,



Robert W. Head, Sr.  
State Property Manager

RWH/sn  
N/1101/0912-02  
Enclosure

State of Alaska  
Permanent Plan of Operations

1. AUTHORITY

The Department of Administration, State of Alaska, is authorized by Sections 44.71.020 - 44.71.040 of the Alaska Statutes to acquire, warehouse, and distribute surplus property to all eligible donees in the State, to enter into cooperative agreements pursuant to the provisions of Federal Property Management Regulations (FPMR), 101-44.026, and to undertake actions and provide additional assurances as set forth in the plan.

Sixty (60) calendar days prior to submission of this plan to the Administrator of General Services (GSA), general public notice of the proposed plan was published and interested parties were given a period of thirty (30) calendar days in which to submit comments. These comments, together with a delineation of the relative needs and resources of all public agencies and other eligible donees were taken into consideration in the development of this plan.

2. DESIGNATION OF THE STATE AGENCY

The plan shall be administered by the State and Federal Property Management Section, Division of General Services and Supply, Department of Administration. The Section, hereinafter called the State agency, has complete responsibility and authority to carry out the requirements of acquiring, warehousing, and distributing Federal surplus property in the State of Alaska, pursuant to the provisions of Federal Property and Administrative Services Act of 1949, as amended (the Act). The Section is administered by the Property Manager, State and Federal Property, and supervised by the Section Supervisor. Staffing structure is shown in Attachment A, physical facilities are described in Attachment B.

### 3. INVENTORY CONTROLS AND ACCOUNTING SYSTEMS

#### A. Inventory Controls

- (1) Immediately upon arrival at the warehouse, property will be moved into the receiving area for check-in. If personnel are not immediately available, the property will be held in a protected area until it can be checked in. Shipping documents, and the applicable SF 123 and its attachments, will be used to check and identify property. Overage and shortage reports and SF 123's will be prepared in accordance with the requirements of the Federal Property Management Regulation (FPMR) 101-44.115 and mailed to the GSA regional office. Upon verification of the description, condition, and quantity of the property, a warehouse property tag will be prepared and attached to the item, or the item will be otherwise physically marked or binned, to identify it as follows:
  - (a) Application number
  - (b) Item number
  - (c) Description, including serial number, if known.
  - (d) Unit of issue
  - (e) Unit service and handling charge
- (2) Following verification of received information, stock records will be prepared on all items having an individual acquisition cost of \$10.00 or more. All action, including receipt, issue and inventory status, will be recorded on this card. The stock record card will be retained in file for three years after the property has been issued.
- (3) A complete physical inventory of all material in possession of the State agency will be taken annually. Shortages and overages will be listed on the annual inventory report. This report will be used to record inventory adjustments and must be approved by the supervisor before posting to stock cards. Adjustments will be made only when all reasonable efforts have been exhausted to determine the reason for variance. A letter to this effect, signed by the supervisor, will be attached to the completed inventory documents.

#### B. Accounting Systems

State approved double entry accounting system will be used. It will include a chart of accounts, a general ledger with accounts for all assets, liabilities, income and expense and journals for all original record of transactions. It will identify and separately account for funds accumulated from service charges. Monthly and fiscal year-end reports will be provided for management visibility and program control.

#### 4. RETURN OF DONATED PROPERTY

- A. When a determination has been made that property has not been put in use by a donee within one year from the date of receipt of the property, or when the donee has not used the property for one year thereafter under the terms and conditions of the Application Certification and Agreement Form signed by the Administrative Officer or other authorized representative of the donee as a condition of eligibility and repeated on the reverse side of each Issue Document, the donee, if property is still usable as determined by the State agency must:
- (1) Return the property at its own expense to the State agency warehouse, (or)
  - (2) Retransfer the property to another eligible donee as directed by the State agency, (or)
  - (3) Make such other disposal of the property as the State agency may direct.
- B. The State agency will periodically emphasize this requirement when corresponding and meeting with donees and when surveying the utilization of donated property at donee facilities. Property returned by a donee will be received into inventory stock control for reissuance to other donees.

#### 5. FINANCING AND SERVICE CHARGES

- A. A revolving fund, established by legislative action, finances the acquisition and distribution of surplus federal property. This fund is maintained by the collection of service and handling charges and is designed to pay the actual expenses of current operations, to purchase necessary equipment, and to maintain a working capital reserve.
- B. Service charges will be based on the prorated preceding fiscal year expenses incurred by the agency, including but not limited to the following major cost areas: personnel, transportation, utilities, fuels, telephone, warehousing and storage, compliance, insurance, printing, supplies and travel. Service charges will be assessed at a rate designed to cover all costs involved in the acquisition and distribution of surplus property.

The service charges will be fair and equitable in relation to the service performed. Emphasis will be placed on keeping the service charge to a minimum but at the same time providing the necessary service and to operate the agency on a sound financial basis. Other factors considered in determining service charges include original acquisition cost, present value, screening cost, quantity, condition, desirability of property, transportation cost, loading and unloading cost, packing and crating, administrative cost, repair and

rehabilitation, utilization and compliance audits, and delivery to donees when required.

As a general guide based on the above listed factors and following exceptions, the following schedule is to be used in determining service charges:

<u>Percent</u>	<u>Original Acquisition Cost</u>
0 - 40	\$ 0 - 200
0 - 20	\$ 201 - 4,000
0 - 15	\$ 4,001 - 15,000
0 - 10	\$15,001 - upward

(not to exceed \$10,000 per any one item)

Exceptions - special or extraordinary cost may be added to the service charge if not calculated as part of the above. Any such costs which are anticipated will be discussed with the donee prior to issue and/or shipment. Consideration may be given to:

- (1) Rehabilitated property - direct costs for rehabilitating property.
  - (2) Overseas property - additional direct costs for returning the property to the United States.
  - (3) Long-haul property - charges for major items with unusual loading, unloading, or hauling costs.
  - (4) Special handling - for dismantling, packing, crating, shipping, delivery, and other extraordinary handling charges.
  - (5) Screening - extraordinary costs incurred in screening.
- C. If the working capital reserve should reflect an excessive amount, service charges will be adjusted downward until an even balance is realized. In the event the program is terminated, assets will be converted to cash and will be divided among the participating donees of the preceding twelve months, based on a proration of the amount of service charges paid by each donee during that period.
- D. Minimum service charges may be assessed in cases where the State agency provides minimum services and no direct costs are involved. These charges reflect the basic costs of document processing as well as the administrative costs of the State agency.

When the self-service donee screens and picks up his own property, the optional minimum charges will be not less than \$50.00, plus \$2.00 for each line-item beyond one. If the donee is notified of the availability of property by a special notice issued by the Agency, there shall be an additional charge of \$5.00.

When the donee picks up property at the holding agency, the normal service charge may be reduced to reflect the savings realized by the Alaska Surplus Property Management Section by not having to transport the property.

When an item issued to a self-service donee is subject to Federal restrictions and mandatory compliance inspections, there shall be added to the minimum charge the estimated cost of such inspections. Subject to Federal regulations, compliance reviews may be made by having the donee submit a written report stating that the property is in use and what it is being used for, thus eliminating mandatory on-site visits. In this event, there shall be an additional charge of only \$10.00 multiplied by the number of such reports required.

When services of special screening or consultation are requested by the self-service donee and performed by the Agency, the charge for such services shall be \$20.00 per hour for each employee assigned to provide such special service, calculated to the nearest half-hour increment, with a minimum of one half-hour per person assigned. Travel, per diem and other direct costs may be added to the charge.

- E. Service charge funds remitted by donees will be used for the operation of the Agency and the benefit of the participating donees, and for no other purpose. All service charges will be used only to fund the cost of State Agency operations and, subject to State law, to improve or acquire office and warehousing facilities, purchase necessary equipment and supplies, and to repair and rehabilitate equipment, including purchase of replacement parts.

#### 6. TERMS AND CONDITIONS ON DONABLE PROPERTY

- A. (1) The State agency will require each eligible donee, as a condition of eligibility, to file with the agency an Application Certification and Agreement Form outlining the certifications and agreements, and the terms, conditions, reservations and restrictions under which all Federal surplus personnel property will be donated. Each form must be signed by the Chief Executive Officer of the donee agreeing to these requirements prior to the donation of any surplus property. The certifications and agreements, and the terms, conditions, reservations and restrictions will be printed on the reverse side of each State agency issue document. The issue documents are included in part 14, "Forms", of this plan.
- (2) The following periods of restriction are established by the State Agency on all items of property with a unit acquisition cost of \$3,000 or more, and on all passenger motor vehicles.
  - (a) All passenger motor vehicles: 18 months from the date the property is placed in use.
  - (b) Items with a unit acquisition cost of \$3,000 or more: 18 months from the date the property is placed in use.

- (c) Aircraft (except combat type) and Vessels 50 feet or more in length, with a unit acquisition cost of \$3,000 or more: 60 months from the date the property is placed in use. Such donations shall be subject to the requirements of the Conditional Transfer Document, Enclosures 14.3 and 14.4.
  - (d) Aircraft, combat type: restricted in perpetuity. Donation of combat type aircraft shall be subject to the requirements of a Conditional Transfer Document, Enclosure 14.2.
- (3) The State agency may reduce the period of restriction on items of property falling within the provisions of Paragraph 6a (2), (b) and (c) at the time of donation for good and sufficient reason such as the condition of the property, or the proposed use (secondary, cannibalization, etc.), but in no case shall the period of restriction be less than the 12 months from the date the property is put into use.
  - (4) The State agency, at its discretion and when considered appropriate, may impose such terms, conditions, reservations and restrictions as it deems reasonable on the use of donable property other than passenger motor vehicles and items with a unit acquisition cost of over \$3,000 or more.
- B.
- (1) The State agency may amend, modify, or grant release of any term, condition, reservation, or restriction it has imposed on donated items of personal property in accordance with prescribed standards provided that the conditions pertinent to each situation have been affirmatively demonstrated to the prior satisfaction of the State agency and made a matter of public record.
  - (2) The State agency will impose on the donation of any surplus item of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as the General Services Administration may determine necessary because of the characteristics of the property.
  - (3) The State agency will impose on all donees the statutory requirement that all items donated must be placed into use within one year of donation and be used for one year after being placed in use, or returned to the State agency, while the property is still usable, or otherwise handled in accordance with the provisions of Part 4 of the plan.

## 7. NONUTILIZED DONABLE PROPERTY

- A. (1) All property in the possession of the State agency for 18 months, which cannot be utilized by eligible donees shall be reported to the General Services Administration for disposal authorization in accordance with FPMR 101-44.205. In accordance with this regulation the State agency shall:

- (a) Transfer the property to another State or Federal agency,  
OR
  - (b) List the property for public sale by (or with approval of)  
the GSA, OR
  - (c) Abandon or destroy the property (on receipt of GSA  
approval).
- (2) In the event of disposal by transfer to another agency or by  
public sale, the State agency may seek such reimbursement as is  
authorized in accordance with FPMR 101-44.205.

## 8. FAIR AND EQUITABLE DISTRIBUTION

The State agency will make property available to the eligible donees in the State on a fair and equitable basis. When eligible donees indicate an interest in property it will be distributed on a fair and equitable basis, considering their need, resources and ability to utilize the property.

- A. Advisory bodies and public and private groups may submit information to assist the Alaska Surplus State agency in determining the relative needs and resources of donees, utilization of property by donees, and distribution of property to fill existing needs.

This information may be communicated in writing or orally at any time by the bodies or groups. Once the State agency knows of these bodies or groups and their areas of interest, the Agency will contact the appropriate bodies or groups, either in writing or orally, when deemed necessary to carry out the intent of the program.

Such bodies and groups will be invited to submit expressions of need and interest to the Agency, which will in turn forward such submissions to GSA.

Factors considered in determining relative needs, resources and ability to utilize the property will include:

### (1) Relative needs

In considering the request of potential recipients, the criteria for determining the relative needs will include:

- (a) Size and type of program conducted.
- (b) Contemplated use and frequency of use.
- (c) Economic condition of agency, activity or institution.
- (d) Critical or urgent need.
- (e) Geographical location (urban, suburban or rural).
- (f) Interest and expression of need on the part of the donee in the property available.

(2) Relative resources

In considering the request of potential recipients, the criteria for determining relative resources will include:

- (a) Funding source and availability (grants, donations, taxes, etc.).
- (b) Feasibility of acquisition from other source(s).

(3) Ability to utilize.

In considering request of potential recipients, the criteria for evaluating ability to utilize property will include:

- (a) urgency of the need
- (b) When item can be put in use.
- (c) Length of time in contemplated usage.
- (d) Availability of funds to repair or maintain property in use.
- (e) Ability of the donee to select and remove property from the distribution center or Federal activity on a timely basis.
- (f) Type and quantity of property received by the donee to date, and proper utilization of such prior acquisition(<sup>1/2</sup>).

- B. (1) The State agency operates a distribution center to serve the eligible donees in the distribution of available property. To insure that eligible donees located a greater distance from the distribution center will receive equity in the distribution of desirable items, all donees are invited to submit a listing of major items needed such as, vehicles, construction equipment, materials handling equipment, machine tools, generators, air compressors, business machines, boats, aircraft, large electronic and scientific type items, etc. The agency employees will be guided by these requests in their research and selection of property. This equipment (major items) will be distributed on the basis of need, resources, and ability to utilize the property as outlined in Section A. above. The distribution center is open for donees to visit seven and one half hours per day, five days a week, excluding recognized State holidays.
- (2) Small miscellaneous items will be available on a supermarket plan, with quantity limits to any one donee depending upon the total quantity on hand.

(3) Periodically, special notices will be mailed to donees listing property available for distribution.

a) Frequency of such notices will be determined by agency workload and accumulations of available inventory.

C. The State agency will recommend to General Services Administration the certification of donee screeners determined to be qualified and needed in accordance with FPMR 101-44.116. The State agency will, insofar as practical, economical, and considering equitable distribution among its donees, select that property requested by the donees, and agency will arrange for direct pickup or shipment of the property to the donee if requested to do so.

D. Donees that experience a local disaster or loss of property due to fire, flood, tornado, etc. will temporarily be given priority for all requested items of property. Special efforts will be made to locate and distribute needed property to them.

E. Where competing requests are received for property items, the State agency will make a determination as to the recipient based on the evaluation of the criteria in paragraph A. above.

## 9. ELIGIBILITY

A. (1) The State agency will attempt to contact and instruct all known potential donees in the State on the procedures to follow to establish their eligibility for participation in the Federal surplus property program. In establishing a listing of the potential donees, the State agency will use the following standards and guidelines set forth in FPMR 101-44.207 as well as the following guides:

### (a) Public agencies

1. Listing of cities, towns, and villages.
2. Listing of boroughs, judiciary, State departments, divisions, councils, commission, institutions, etc.
3. Listings of local departments, divisions, commissions, councils, etc.

### (b) Non-profit, tax-exempt units.

1. State departments and others for listings of all local units approved or licensed by them.
2. Existing listing of entities now eligible to participate in the Federal surplus property program.
3. Inquiries, letters, telephone calls, etc., received relative to eligibility.

- (2) Contacts will be made by letter, telephone, informational bulletins supplemented when necessary by news releases, and attendance at general meetings and conferences with above groups to discuss the surplus property program.
- (3) In order to establish eligibility, each entity will be required to file with the State agency:
  - (a) An Application Certification and Agreement Form signed by the chief executive officer accepting the terms and conditions under which property will be transferred.
  - (b) A written authorization signed by the chief administrator or executive head of the donee activity, or a resolution of the Governing Board designating one or more representatives to act for the applicant, obligate any necessary funds, and execute issue documents.
  - (c) Assurance of Compliance with GSA Regulations under Title VI of the Civil Rights Act of 1964, Section 606 of Title VI of the Federal Property and Administrative Services Act of 1949, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, and Section 303 of the Age Discrimination Act of 1975.
  - (d) The full legal name of applicant (donee), address and telephone number and their status as a public agency or non-profit tax-exempt educational or public health unit.
  - (e) Details and scope of their program including their different activities and functions.
  - (f) Financial information, if necessary, to help in evaluation of their relative needs and resources.
  - (g) Proof of donee's tax-exemption under Section 501 of the Internal Revenue Code of 1954 (for non-profit units only).
  - (h) Proof that the applicant is approved, accredited or licensed (when applicable) in accordance with FPMR 101-44.207.
  - (i) In addition to the above requirements, the agency will request listing as to the types and kinds of equipment, vehicles, machines or other items they need.

(4) All approvals of eligibility will be up-dated as follows:

- (a) In sequence with expiration of any license required by donee (possible annual, semi-annual, etc.).
- (b) Every three years, if there is no license required or if license expiration period exceeds three years.

#### 10. COMPLIANCE AND UTILIZATION

All items having an acquisition cost of \$3,000 or more and passenger motor vehicles will be marked or coded in the stock records file in a manner that provides obvious identification. Separate warehouse issues will be prepared for each item with an acquisition cost of \$3,000 or more, and passenger motor vehicles; an additional statement, pointing out utilization requirements will be typed on the face of the issue document advising the donee that this item must be placed in use within one year and used for a period of 18 months thereafter.

All passenger motor vehicles, and any other motor vehicle requiring licensing by the Department of Motor Vehicles will be licensed, with the State agency shown as lien holder. When the vehicle has been utilized in accordance with all instructions and restrictions, and the period of restriction has expired, the State agency will release the cleared title to the donee.

At least once during the period of restriction, State agency personnel will review all issues of items with an acquisition cost of \$3,000 or more and all passenger motor vehicles, to determine whether or not these items are being utilized in accordance with the purposes for which they were acquired. At the same time, a review will be made of other items issued to make certain that Federal surplus property items are being used as indicated on the applicable issue document(s).

Also, during the review the State agency representative will insure that the donee is complying with any special handling conditions or use limitations imposed by GSA on items of Federal surplus property in accordance with FPMR 101-44.108. The review will include a survey of the donee's compliance with the statutory requirement that all items of Federal surplus property acquired by the donee be placed into use within one year of acquisition and used for one year thereafter. Written reports on utilization and compliance reviews will be made a part of the applicable donee file. Whenever there is any indication of misuse, noncompliance, or alleged fraud, the proper steps will be taken to correct the discrepancy, including a report to the F.B.I. if appropriate. GSA will be notified of all findings/indications of noncompliance, or apparent misuse/fraud. The State agency may take action to prosecute cases of fraud or misuse and will assist GSA and other Federal and State agencies in investigating such cases.

While on-site compliance review is planned for performance by personnel of the State agency, compliance letters/forms may be used to satisfy this requirement except for items with an acquisition cost of \$3,000 or more and/or for passenger motor vehicles. Exceptions to on-site compliance reviews may be made by GSA if the State Agency can show that such reviews are physically or economically unfeasible to perform.

## 11. AUDIT

### A. Internal

An internal fiscal audit of the State agency will be conducted every two years with a full report of findings, recommendations, and corrective actions taken, submitted to the Commissioner of the Department of Administration and a copy to GSA.

### B. External

An external audit, with primary emphasis on program operations and fiscal accounting will be conducted by the Legislative Budget and Audit Committee every two years, on the year(s) alternate to the internal audit schedule.

This (external) audit will examine the State agency's conformance to the State Plan of Operations, applicable State statutes and Regulations, and requirements of Public Law 94.519 and 41.CFR 101.44.

Audit results will be submitted to the Commissioner, Department of Administration, as will response(s) to recommendations and corrective action taken. A copy of the external audit report, recommendations, corrective actions and other correspondence pertinent to the audit, will be forwarded to GSA.

GSA representatives may review State agency operations periodically and may, for appropriate reasons, conduct its own audit of the State agency following due notice to the Governor of the reasons for such audit. Financial records and all other books and records of the State agency shall be made available to all authorized Federal agencies/representatives.

## 12. COOPERATIVE AGREEMENTS

The Department of Administration is authorized under Alaska Statute 44.71.020 (d) to enter into cooperative agreements with any Federal agency authorized by law, for the utilization by such Federal agency, with or without payment or reimbursement, of the property, facilities, personnel and services of the State Agency in carrying out any such program, and for making available to the State Agency with or without reimbursement, property, facilities, personnel or services of such Federal agency in connection with such utilization.

### 13. LIQUIDATION

If and when a determination is made to liquidate the State agency, advance notice will be given to GSA in accordance with the specific requirements of FPMR 101-44.202(c) (14) with the reason for liquidation; schedule of time to effect the closure; and report to GSA of the property on hand for retransfer, destruction, or sale. At liquidation, physical assets will be converted to cash, and the proceeds will be used first to satisfy all liabilities. Any remaining funds will be distributed to donees on a pro-rata basis as determined by donee participation during the previous twelve month period. Records and accounting information will be retained for two years after closure.

### 14. FORMS

Enclosure 14.1, copy of Terms, conditions, reservations and restrictions on reverse of warehouse Issue/Invoice.

Enclosure 14.2, Conditional Transfer Document - Combat Type Aircraft.

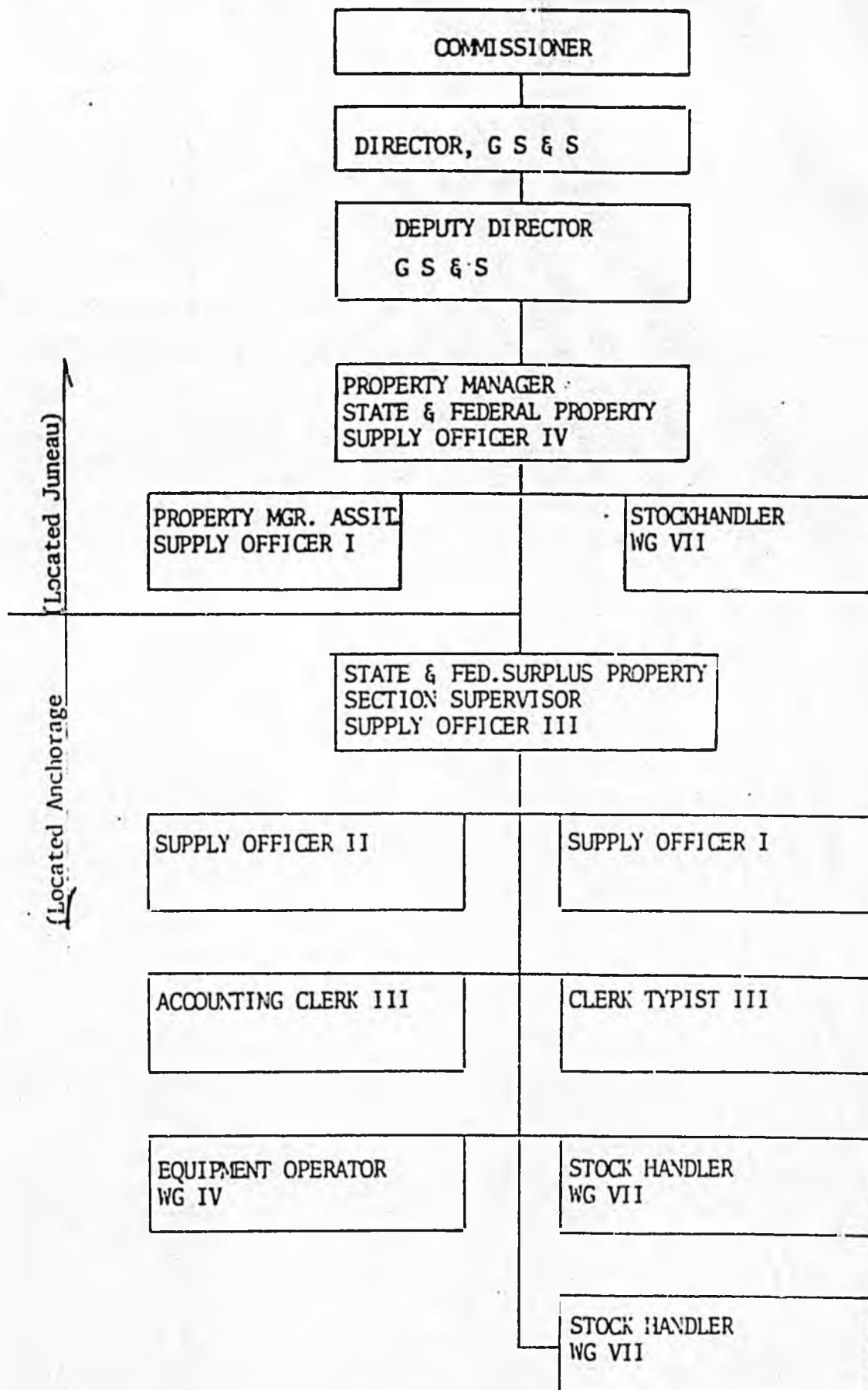
Enclosure 14.3, Conditional Transfer Document - Noncombat Type Aircraft.

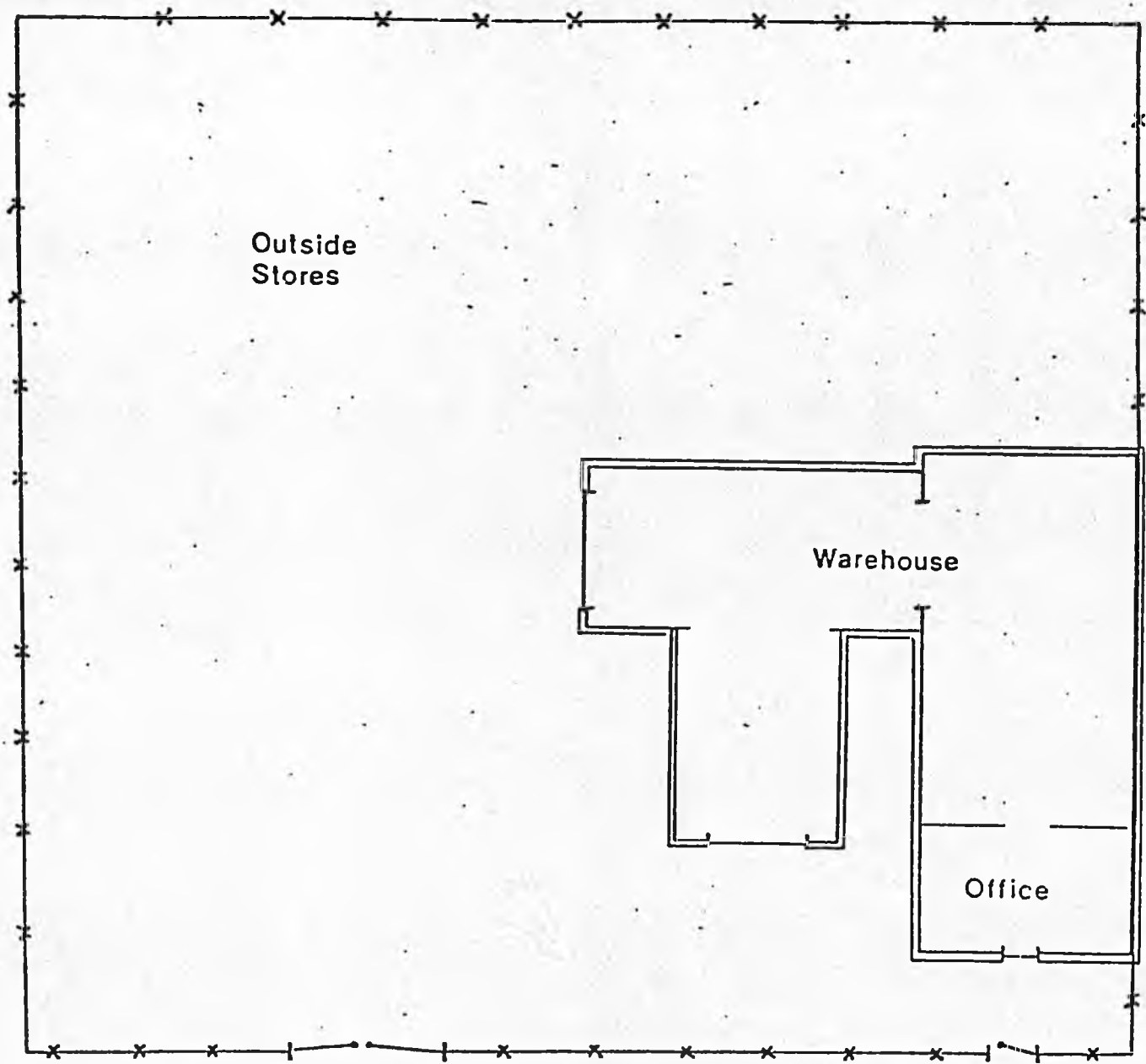
Enclosure 14.4, Conditional Transfer Document - Vessel.

### 15. RECORDS

Copies of Form 123 allocations, warehouse issue sheets, invoice documents, log books, and all other official records of the agency will be maintained for three years. Documents concerning items subject to restriction will be maintained for three years, or for one year beyond the expiration of the restriction period whichever is longer. Records for property in compliance status will be maintained for one year after the case is closed.

STATE AND FEDERAL PROPERTY  
ORGANIZATIONAL CHART EFFECTIVE JULY 1, 1963





- Buildings & Grounds owned by State of Alaska
- Inside Storage - - 9,000 sq ft
- Outside Storage - - 50,000 sq ft

**(a) THE DONEE CERTIFIES THAT:**

(1) It is a public agency; or a nonprofit educational or public health institution or organization, exempt from taxation under Section 501 of the Internal Revenue Code of 1954, within the meaning of Section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, and the regulations of the Administrator of General Services.

(2) If a public agency; the property is needed and will be used by the recipient for carrying out or promoting for the residents of a given political area one or more public purposes, or, if a nonprofit tax-exempt institution or organization, the property is needed for and will be used by the recipient for educational or public health purposes, and including research for such purpose. The property is not being acquired for any other use or purpose, or for sale or other distribution; or for permanent use outside the State, except with prior approval of the State agency.

(3) Funds are available to pay all costs and charges incident to donation.

(4) This transaction shall be subject to the nondiscrimination regulations governing the donation of surplus personal property issued under Title VI of the Civil Rights Act of 1964, section 606 of Title VI of the Federal Property and Administrative Services Act of 1949, as amended, section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments of 1972, as amended, and section 303 of the Age Discrimination Act of 1975.

**(b) THE DONEE AGREES TO THE FOLLOWING FEDERAL CONDITIONS:**

(1) All items of property shall be placed in use for the purpose(s) for which acquired within one year of receipt and shall be continued in use for such purpose(s) for one year from the date the property was placed in use. In the event the property is not so placed in use, or continued in use, the donee shall immediately notify the State agency, and at the donee's expense, return such property to the State agency, or otherwise make the property available for transfer or other disposal by the State agency, provided the property is still usable as determined by the State agency.

(2) Such special handling or use limitations as are imposed by General Services Administration (GSA) on any item(s) of property listed hereon.

(3) In the event the property is not so used or handled as required by (b) (1) and (2), title and right to the possession of such property shall at the option of GSA revert to the United States of America and upon demand the donee shall release such property to such person as GSA or its designee shall direct.

**(c) THE DONEE AGREES TO THE FOLLOWING CONDITIONS IMPOSED BY THE STATE AGENCY, APPLICABLE TO ITEMS WITH A UNIT ACQUISITION COST OF \$3,000 OR MORE AND PASSENGER MOTOR VEHICLES, REGARDLESS OF ACQUISITION COST, EXCEPT VESSELS 50 FEET OR MORE IN LENGTH AND AIRCRAFT.**

(1) The property shall be used only for the purpose(s) for which acquired and for no other purpose(s).

(2) There shall be a period of restriction which will expire after such property has been used for the purpose(s) for which acquired for a period of 18 months from the date the property is placed in use, except for such items of major equipment, listed hereon, on which the State agency designates a further period of restriction.

(3) In the event the property is not so used as required by (c) (1) and (2) and Federal restrictions (b) (1) and (2) have expired then title and right to the possession of such property shall at the option of the State agency revert to the State of Alaska and the donee shall release such property to such person as the State agency shall direct.

**(d) THE DONEE AGREES TO THE FOLLOWING TERMS, RESERVATIONS AND RESTRICTIONS**

(1) From the date it receives the property listed hereon and through the period(s) of time the conditions imposed by (b) and (c) above remain in effect, the donee shall not sell, trade, lease, lend, bail, cannibalize, encumber, or otherwise dispose of such property, or remove it permanently, for use outside the State, without the prior approval of GSA under (b) or the State agency under (c). The proceeds from any sale, trade, lease, loan, bailment, encumbrance or other disposal of the property, when such action is authorized by GSA or by the State agency, shall be remitted promptly by the donee to GSA or the State agency, as the case may be.

(2) In the event any of the property listed hereon is sold, traded, leased, loaned, bailed, cannibalized, encumbered, or otherwise disposed of by the donee from the date it receives the property through the period(s) of time the conditions imposed by (b) and (c) remain in effect, without the prior approval of GSA or the State agency, the donee, at the option of GSA or the State agency shall pay to GSA or the State agency, as the case may be, the proceeds of the disposal or the fair market value or the fair rental value of the property at the time of such disposal, as determined by GSA or the State agency.

(3) If at any time, from the date it receives the property through the period(s) of time the conditions imposed by (b) and (c) remain in effect, any of the property listed hereon is no longer suitable, usable, or further needed by the donee for the purpose(s) for which acquired, the donee shall promptly notify the State agency, and shall, as directed by the State agency, return the property to the State agency, release the property to another donee or another State agency, a department or agency of the United States, sell or otherwise dispose of the property. The proceeds from any sale shall be remitted promptly by the donee or the State agency.

(4) The donee shall make reports to the State agency on the use, condition, and location of the property listed hereon, and on other pertinent matters as may be required from time to time by the State agency.

(5) At the option of the State agency, the donee may abrogate the conditions set forth in (c) and the terms, reservations and restrictions pertinent thereto in (d) by payment of an amount as determined by the State agency.

**(e) THE DONEE AGREES TO THE FOLLOWING CONDITIONS, APPLICABLE TO ALL ITEMS OF PROPERTY LISTED HEREON.**

(1) The property acquired by the donee is on an "as is," "where is" basis, without warranty of any kind.

(2) Where a donee carries insurance against damages to or loss of property due to fire or other hazards and where loss of or damage to donated property with unexpired terms, conditions, reservations or restrictions, occurs, the State agency will be entitled to reimbursement from the donee out of the insurance proceeds, of an amount equal to the unamortized portion of the fair value of the damaged or destroyed donated items.

**(f) TERMS AND CONDITIONS APPLICABLE TO THE DONATION OF AIRCRAFT AND VESSELS (50 FEET OR MORE IN LENGTH) HAVING AN ACQUISITION COST OF \$3,000 OR MORE, REGARDLESS OF THE PURPOSE FOR WHICH ACQUIRED:**

The donation shall be subject to the terms, conditions, reservation and restrictions set forth in the Conditional Transfer Document executed by the authorized donee representatives.

**(g) THE DONEE AGREES TO THE FOLLOWING TERMS AND CONDITIONS IMPOSED BY THE STATE AGENCY APPLICABLE TO ITEMS WITH A UNIT ACQUISITION COST OF UNDER \$3,000. NONE.**

COMBAT-TYPE AIRCRAFT CONDITIONAL TRANSFER DOCUMENT

KNOW ALL MEN BY THESE PRESENTS: That the United State of America acting by and through the State of \_\_\_\_\_, State Agency for Surplus Property or State Agency for Federal Property Assistance (hereinafter called the Donor) pursuant to the powers and authority contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, for and in consideration of and in reliance upon the representations of \_\_\_\_\_ whose address is \_\_\_\_\_

\_\_\_\_\_ (hereinafter called the Donee) that the property hereinafter described is required in the furtherance of the Donee's program and that such property will be used solely in connection with such programs and more specifically for all the following purposes:

in accordance with the proposed program and plan as set forth in the Donee's "Letter of Intent" dated \_\_\_\_\_, as amended \_\_\_\_\_, which Expression of Interest is hereby incorporated herein and made a part hereof, and for no other purpose, does hereby deliver, sell, assign, and transfer all rights, title, and interest in and to the following described combat-type aircraft, aircraft engines, and propellers,

together with all engines, appurtenances, and accessories attached thereto or installed therein (all of which are hereinafter referred to as the Property), which has been determined to have a fair value of \$ \_\_\_\_\_, unto the Donee to have and to hold the Property, all singular forever, this donation being made on an "as is, where is" basis without warranty of any kind, and delivery made at the present location of the Property regardless of where the same may be situated or the condition thereof; Subject, however, to the following conditions:

1. The Donee agrees that the aircraft Property shall not be used for flight purposes.
2. The Property shall be placed in use by the Donee for the purpose stated above no later than 12 months after acquisition thereof and shall be used thereafter for such purpose in perpetuity.
3. In the event the aircraft Property is not placed in use by the Donee within 12 months of receipt and used thereafter in the perpetuity, the Donee, within 30 days after the Property has ceased to be used, shall provide notice thereof, in writing to the Donor, or otherwise make the Property available for transfer, provided the Property is still usable as determined by the Donor, or otherwise dispose of the Property as the Donor may direct.

4. In the event the Property is not so used or handled as required by (1), (2), and (3), above, title and right to the possession of the Property shall at the option of the Donor revert to the United States of America. Upon demand the Donee shall, as directed by the Donor, or its designee, release the property to such person or agency as may be designated, sell the Property, or otherwise dispose of the Property. Any sale shall be for the benefit and account of the United States of America.

5. The Donee shall make reports to the Donor on the use, condition, and location of the Property and on other pertinent matters as may be required from time to time by the Donor.

6. The Donee shall not sell, trade, lease, lend, bail, encumber, cannibalize, or dismantle for parts, or otherwise dispose of the aircraft Property or any parts thereof, without prior written approval of the Donor. Any sale, trade, lease, loan, bailment, encumbrance, cannibalization, or other disposal of the Property, when such action is authorized in writing by the Donor, shall be for the benefit and account of the United States of America.

7. In the event the aircraft Property is no longer suitable, usable, or further needed by the Donee for the purpose for which acquired, the Donee shall promptly notify the Donor and shall as directed by the Donor:

- (a) Release the Property to another Donee or State agency;
- (b) Release the Property to a department or agency of the United States;
- (c) Release the Property to such other institution or agency as may be determined to have need therefor;
- (d) Sell the Property for the benefit and account of the United State of America;
- (e) Render the Property completely unfit and useless for any purpose except for the recovery of its basic material content, the same to be performed in a manner satisfactory to the Donor and the material content to be disposed of in accordance with instructions of the Donor, as appropriate, or its designee; or
- (f) Otherwise dispose of the aircraft Property.

8. In the vent the aircraft Property is disposed of without prior written approval, or is used for a purpose other than the purpose stated, the Donee, at the option of the Donor, shall be liable to the United States of America for the proceeds of the disposal, the fair market value, or the fair rental value of the aircraft Property at the time of such unauthorized transaction or use, as determined by the Donor.

9. In the event of a breach by the Donee, or its successor in function, of any of the above conditions, whether caused by the legal inability of the said Donee or its successor in function, interest in and to the said aircraft Property shall, at the option of the Donor, forthwith revert to and become the property of the United States of America, and the Donee, or its successors or assigns, shall forfeit all of its or their rights, title, and interest in and to the said aircraft Property.

10. The Donor shall not grant waivers, amendments, releases, or terminate any of the terms and conditions enumerated in (1) through (9), above, concerning the use or disposal of the aircraft Property, or issue disposal instructions to the Donee for the aircraft without the prior written concurrence of the General Services Administration or its successor in function.

11. The Donor, with the prior written concurrence of the General Services Administration or its successor in function, may terminate such of the above conditions as it determines to be appropriate.

IN WITNESS WHEREOF, the Donor has duly executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

United States of America, Acting by and  
through the \_\_\_\_\_  
State Agency for Surplus Property or  
State Agency for Federal Property Assistance

By: \_\_\_\_\_

Title: \_\_\_\_\_

DONEE:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Institute or Organization: \_\_\_\_\_

CITY of \_\_\_\_\_ )  
COUNTY of \_\_\_\_\_ )  
STATE of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is the person who executed the foregoing instrument and that such

instrument was executed under duly delegated authority on behalf of the \_\_\_\_\_ State Agency for Surplus Property or State Agency for Federal Property Assistance, and acknowledged the foregoing instrument to be the free act and deed of the State of \_\_\_\_\_.

Given under my hand and official seal the day and year above written.

Notary Public in and for the  
City of \_\_\_\_\_  
County of \_\_\_\_\_  
State of \_\_\_\_\_

(SEAL)

My Commission Expires: \_\_\_\_\_

CITY of \_\_\_\_\_ )  
COUNTY of \_\_\_\_\_ )  
STATE of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is the person who executed the foregoing instrument on behalf of said \_\_\_\_\_ and acknowledges to me that he was authorized to execute the foregoing instrument and that he executed the same as a free act and deed of said \_\_\_\_\_.

Given under my hand and official seal the day and year above written.

Notary Public in and for the  
City of \_\_\_\_\_  
County of \_\_\_\_\_  
State of \_\_\_\_\_

(SEAL)

My Commission Expires: \_\_\_\_\_

NON-COMBAT-TYPE AIRCRAFT CONDITIONAL TRANSFER DOCUMENT

KNOW ALL MEN BY THESE PRESENTS: That the United States of America acting by and through the State of \_\_\_\_\_, State Agency for Surplus Property (hereinafter called the Donor) pursuant to the powers and authority contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended for and in consideration of and in reliance upon the representations of \_\_\_\_\_ whose address is \_\_\_\_\_

(hereinafter called the Donee) that the Property hereinafter described is required in the furtherance of the Donee's program and that such property will be used solely in connection with such programs and more specifically for all the following purposes:

in accordance with the proposed program and plan as set forth in the Donee's "Letter of Intent" dated \_\_\_\_\_, as amended \_\_\_\_\_, which Expression of Interest is hereby incorporated herein and made a part hereof, and for no other purpose, does hereby deliver, sell, assign, and transfer all of its rights, title, and interest in and to the following described noncombat-type aircraft, aircraft engines, and propellers,

together with all engines, appurtenances, and accessories attached thereto or installed therein, (all of which are hereinafter referred to as the Property), which has been determined to have a fair value of \$ \_\_\_\_\_, unto the Donee to have and to hold the Property, all singular forever, this donation being made on an "as is," "where is" basis without warranty of any kind, and delivery made at the present location of the Property regardless of where the same may be situated or the condition thereof; Subject, However, to the following conditions:

1. The Donee agrees to apply to the Federal Aviation Administration for registration of the Property which is intended for flight purposes within 30 days of the receipt of a fully executed copy of this instrument. The Donee's application for registration shall include a fully executed copy of this instrument.
2. The Property shall be placed in use for the purpose stated above no later than 12 months after acquisition thereof, and used for a 12 month period thereafter.

3. In the event the Donee does not apply to the Federal Aviation Administration for registration of the Property which is intended for flight operations, (or other uses unless registration is waived by the Donor) or in the event the aircraft Property is not placed in use within 12 months of receipt, and used for a 12 month period thereafter, the Donee, within 30 days after the Property has ceased to be used, provide notice thereof, in writing to the Donor, and at the Donee's expense, available for transfer, provided the property is still usable as determined by the Donor, or otherwise dispose of the Property as the Donor may direct.
4. In the event the Property is not so used or handled as required by (1), (2), and (3) above, title and right to the possession of the Property shall at the option of the Donor revert to the United States of America. Upon demand the Donee shall, as directed by the Donor, or its designee, release the Property to such person or agency as may be designated, sell the Property, or otherwise dispose of the Property. Any sale shall be for the benefit and account of the United States of America.
5. There shall be a further period of restriction beginning on the date the Property has been used for the period prescribed in (2) above. This period will expire after the Property has been used for the purpose stated for a period of 48 months.
6. During the period of restriction prescribed in (5) above, the Property shall be used only for the purpose stated.
7. During the periods of restriction prescribed in (2) and (5) above, the Donee shall make reports to the Donor on the use, condition, and location of the Property and on other pertinent matters as may be required from time to time by such Donor.
8. At the expiration of the period of restriction, prescribed in (5) above, a release document shall be executed by the Donor and be forwarded to the Donee.
9. During the periods of restriction prescribed in (2) and (5) above, the Donee shall not sell, trade, lease, lend, bail, cannibalize, encumber, or otherwise dispose of the Property, or remove it permanently for use outside the State, without the prior written approval of the Donor under (2), or under (5) above. The proceeds from any sale, trade, lease, loan, bailment, encumbrance, or other disposal of the Property during the period of restriction set forth in (2) above, when such action is authorized by the Donor shall be for the benefit and account of the United States of America, or for the benefit and account of the State of \_\_\_\_\_ during the period of restriction set forth in (5) above.
10. In the event, during the periods of restriction prescribed in (2) and (5) above, the Property is sold, traded, leased, loaned, bailed, encumbered, or otherwise disposed of without prior written approval, the Donee, at the option of the Donor shall be liable for the proceeds of the disposal, the fair market value, or the fair rental value of the Property at the time of such unauthorized transaction or use, as determined by the Donor.
11. If at any time, from the date the Donee receives the Property through the periods of restriction prescribed in (2) and (5) above, the Property is no

longer suitable, usable, or further needed by the Donee for the purpose for which acquired, the Donee shall promptly notify the Donor and shall as directed by the Donor:

- (a) Release the Property to another Donee or State agency; or
- (b) Release the Property to a Department or Agency of the United States; or
- (c) Release the Property to such other institution or agency as may be determined to have need therefore; or
- (d) Sell the Property with the proceeds remitted promptly from the Donee to the Donor; or
- (e) Render the Property completely unfit and useless for any purpose except for the recovery of its basic material content, the same to be performed in a manner satisfactory to the Donor and the material content to be disposed of in accordance with instructions of the Donor; or
- (f) Otherwise dispose of the Property.

12. At the option of the Donor, the Donee may obtain abrogation of the terms and conditions set forth in (5) through (11) above by payment of an amount determined by the Donor.

13. The Donor, may waive any, or may terminate all of the terms and conditions set forth in (5) through (11) above, and give unrestricted title to the Property in favor of the Donee whenever such action is determined to be appropriate.

IN WITNESS WHEREOF, the Donor has duly executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

United States of America, Acting by and through the \_\_\_\_\_ State Agency for Surplus Property

By: \_\_\_\_\_

Title: \_\_\_\_\_

DONEE:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Institute or Organization: \_\_\_\_\_

\_\_\_\_\_

CITY of \_\_\_\_\_ )  
COUNTY of \_\_\_\_\_ )  
STATE of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is the person who executed the foregoing instrument and that such instrument was executed under duly delegated authority on behalf of the \_\_\_\_\_ State Agency for Surplus Property or State Agency for Federal Property Assistance, and acknowledged the foregoing instrument to be the free act and deed of the State of \_\_\_\_\_.

Given under my hand and official seal the day and year above written.

\_\_\_\_\_  
Notary Public in and for the  
City of \_\_\_\_\_  
County of \_\_\_\_\_  
State of \_\_\_\_\_

(SEAL)

My Commission Expires: \_\_\_\_\_

CITY of \_\_\_\_\_ )  
COUNTY of \_\_\_\_\_ )  
STATE of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is the person who executed the foregoing instrument on behalf of said \_\_\_\_\_ and acknowledges to me that he was authorized to execute the foregoing instrument and that he executed the same as a free act and deed of said \_\_\_\_\_.

Given under my hand and official seal the day and year above written.

\_\_\_\_\_  
Notary Public in and for the  
City of \_\_\_\_\_  
County of \_\_\_\_\_  
State of \_\_\_\_\_

(SEAL)

My Commission Expires: \_\_\_\_\_

VESSEL CONDITIONAL TRANSFER DOCUMENT

KNOW ALL MEN BY THESE PRESENTS: That the United States of America acting by and through the State of \_\_\_\_\_, State Agency for Surplus Property (hereinafter called the Donor) pursuant to the powers and authority contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended for and in consideration of and in reliance upon the representations of \_\_\_\_\_ whose address is

\_\_\_\_\_ (hereinafter called the Donee) that the Property hereinafter described is required in the furtherance of the Donee's program and that such property will be used solely in connection with such programs and more specifically for all the following purposes:

in accordance with the proposed program and plan as set forth in the Donee's "Letter of Intent" dated \_\_\_\_\_, as amended \_\_\_\_\_, which expression of interest is hereby incorporated herein and made a part hereof, and for no other purpose, does hereby deliver, sell, assign, and transfer all rights, title, and interest in and to the following described vessel:

together with all engines, appurtenances, and accessories attached thereto or installed therein (all of which are hereinafter referred to as the Property), which has been determined to have a fair value of \$ \_\_\_\_\_, unto the Donee to have and to hold the said Property, all and singular forever, this donation being made on an "as is," "where is" basis without warranty of any kind and delivery is made at the present location of the Property regardless of where the same may be situated or the condition thereof:

SUBJECT, HOWEVER, to the following conditions:

1. The Donee agrees to obtain documentation of the vessel under the applicable laws of the United States and regulations promulgated thereunder and the applicable laws of the several States governing the documentation of said Property and at all times to maintain such documentation. Under written request and sufficient evidence to justify such action, the Donor, may waive the requirement for documentation in the case of donated vessels which are to be permanently moored on land and never to be used again on the waterways.
2. The Donee agrees to record this Vessel Conditional Transfer Document with the Coast Guard Documentation Officer at the port of documentation of the Property within sixty days after the receipt of the fully executed Vessel Conditional Transfer Document. If documentation is waived under (1) above, the requirement for registration may also be waived.