

conclusion that those substances, considered in isolation, are themselves agents “known or presumed to be associated with service in the Southwest Asia theater of operations during the Persian Gulf War” for purposes of VA’s duty to establish presumptions of service connection. Section 1603 of Public Law 105–277 describes the scope of NAS’ inquiry. Section 1603(c)(1) directs NAS to “identify the biological, chemical, or other toxic agents, environmental or wartime hazards, or preventive medicines or vaccines to which members of the Armed Forces who served in the Southwest Asia Theater of operations during the Persian Gulf War may have been exposed by reason of such service.” Section 1603(d) of that statute provides that, in identifying substances to which Gulf War veterans “may have been exposed,” NAS will consider, among other things, oil fire byproducts. In contrast, section 1602 of Public Law 105–277 does not direct the Secretary to establish presumptions of service connection for the health effects of every substance to which Gulf War veterans “may have been exposed,” but requires presumptions only for the health effects of exposure to substances known or presumed to be “associated with” service in the Gulf War. Congress used different language in section 1602 and 1603 of Public Law 105–277, and we must conclude that the different language was intended to have different meanings. See *Bank of America National Trust & Savings Ass’n v. 203 N. LaSalle St. Partnership*, 526 U.S. 434, 450 (1999); *Russello v. United States*, 464 U.S. 16, 23 (1983). Congress reasonably defined the scope of NAS’ inquiry broadly, to include consideration of all substances to which veterans may have been exposed during the Gulf War, irrespective of whether the exposures were unique to Gulf War service or common to all service. In defining VA’s regulation-writing obligations, however, Congress reasonably required VA to establish presumptions of service connection only for the health effects of substances that are “associated with” Gulf War service. As noted above, that limitation furthers Congress’ purpose of establishing presumptions for the unique health concerns of Gulf War veterans and also avoids the inequity of establishing presumptions exclusively for Gulf War veterans based on exposures that are common to most veterans.

Our conclusion that the hydrazines and combustion products in question, in isolation, cannot at this time be

determined to be “associated with” Gulf War service is not intended to suggest that they are irrelevant to further investigations of Gulf War veterans’ health or that they may not in any circumstance form the basis for presumptions of service connection under Public Law 105–277. In the event future evidence links any illnesses to a combination of exposures associated with Gulf War service, whether or not including exposure to fuels, combustion products, and propellants, VA may establish presumptions of service connections for such illnesses pursuant to Public Law 105–277.

This determination also in no way prevents veterans from obtaining service connection for the health effects discussed in the NAS report where the potential for above-normal exposures was present in service. Under established current procedures, VA develops and considers evidence concerning events or aspects of service that may contribute to the incurrence of an illness. Accordingly, if a veteran’s occupation in service, such as a firefighter or mechanic, entailed above-normal exposure to combustion products, VA will give due consideration to that unique exposure in determining whether service connection is warranted for a health effect known to be associated with such exposure. Similarly, if a veteran served in a role that may have involved exposure to hydrazines, VA will evaluate that factor in determining whether service connection is warranted for a disease associated with such exposure. These standards apply to claims by veterans of any period of service, and are not dependent upon any presumption of service connection. A presumption of service connection is not needed for the purpose of establishing a link between exposure to combustion products or hydrazines and any disease identified in the NAS report as associated with such exposures, because those health effects are generally well known and, in any event, the NAS report itself provides significant additional evidence of such an association. Accordingly, the determination not to establish a generally applicable presumption based on the NAS report will not preclude the grant of benefits to any individual whose service entailed the type of exposure NAS found to be associated with an increased risk of disease incurrence.

#### V. Conclusion

After careful review of the findings of the 2004 NAS report, “Gulf War & Health Vol. 3: Fuels, Combustion Products, and Propellants,” and other

pertinent information including reports from DoD on potential exposure of U.S. service members, the Secretary has determined that the scientific evidence presented in the 2004 NAS report and other information available to the Secretary indicates that no new presumption of service connection is warranted for any of the illnesses described in the 2004 NAS report.

Approved: August 21, 2008.

**James B. Peake,**

*Secretary of Veterans Affairs.*

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## DEPARTMENT OF VETERANS AFFAIRS

### Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Executive Committee to the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will meet October 6–7, 2008, at the Marriott West Chase, Houston, Texas. The sessions will begin at 8 a.m. each day and end at 4:30 p.m. on October 6 and at noon on October 7. The meeting is open to the public.

The NAC consists of 63 national organizations and advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The Executive Committee consists of 18 representatives from the NAC member organizations.

On October 6, agenda topics will include: NAC goals and objectives, minutes of April 2008 NAC meeting, Veterans Health Administration update, VAVS update on the Voluntary Service program’s activities since the 2008 NAC annual meeting, Parke Board update, evaluations of the 2008 NAC annual meeting and plans for the 2009 NAC annual meeting (to include workshops and plenary sessions). On October 7, agenda topics will include: Recommendations from the 2008 NAC annual meeting, subcommittee reports, standard operating procedure revisions, 2010 NAC annual meeting planning, and new business.

No time will be allocated at this meeting for receiving presentations from the public. However, interested persons may either attend or file statements with the Committee. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Ms. Laura Balun,

Designated Federal Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Balun

can be contacted by phone at (202) 461-7300.

Dated: August 21, 2008.

By direction of the Secretary.

**E. Philip Riggan,**

*Committee Management Officer.*

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