

Each such description shall include a justification or rationale for the planned or proposed action.

“(g) DEFINITIONS.—For the purposes of this section:

“(1) The term ‘gender-specific health effects’ includes—

“(A) effects on female reproductive capacity and reproductive organs;

“(B) effects on reproductive outcomes;

“(C) effects on female-specific organs and tissues; and

“(D) other effects unique to the physiology of females.

“(2) The term ‘Vietnam era’ has the meaning given such term in section 101(29) of title 38, United States Code.”

AGENT ORANGE STUDY; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 96-151, title III, §307, Dec. 20, 1979, 93 Stat. 1097, as amended by Pub. L. 97-72, title IV, §401, Nov. 3, 1981, 95 Stat. 1061; Pub. L. 98-542, §8(a), Oct. 24, 1984, 98 Stat. 2731, directed that a protocol be designed for an epidemiological study of the long-term health effects of Agent Orange on Armed Forces personnel who served in Vietnam, and that reports be submitted to Congress describing results with comments and recommendations.

§ 1116A. Presumptions of service connection for veterans who served offshore of the Republic of Vietnam

(a) SERVICE CONNECTION.—For the purposes of section 1110 of this title, and subject to section 1113 of this title, a disease covered by section 1116 of this title becoming manifest as specified in that section in a veteran who, during active military, naval, or air service, served offshore of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

(b) EXPOSURE.—A veteran who, during active military, naval, or air service, served offshore of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, shall be presumed to have been exposed during such service to an herbicide agent unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

(c) EFFECTIVE DATE OF AWARD.—(1) Except as provided by paragraph (2), the effective date of an award under this section shall be determined in accordance with section 5110 of this title.

(2)(A) Notwithstanding subsection (g) of section 5110 of this title, the Secretary shall determine the effective date of an award based on a claim under this section for an individual described in subparagraph (B) by treating the date on which the individual filed the prior claim specified in clause (i) of such subparagraph as the date on which the individual filed the claim so awarded under this section.

(B) An individual described in this subparagraph is a veteran, or a survivor of a veteran, who meets the following criteria:

(i) The veteran or survivor submitted a claim for disability compensation on or after September 25, 1985, and before January 1, 2020, for a disease covered by this section, and the claim was denied by reason of the claim not establishing that the disease was incurred or aggravated by the service of the veteran.

(ii) The veteran or survivor submits a claim for disability compensation on or after January 1, 2020, for the same condition covered by the prior claim under clause (i), and the claim is approved pursuant to this section.

(d) DETERMINATION OF OFFSHORE.—Notwithstanding any other provision of law, for purposes of this section, the Secretary shall treat a location as being offshore of Vietnam if the location is not more than 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia and intersecting the following points:

| Points Geographic Names | Latitude North | Longitude East |
|--|----------------|----------------|
| At Hon Nhan Island, Tho Chu Archipelago Kien Giang Province | 9°15.0' | 103°27.0' |
| At Hon Da Island southeast of Hon Khoai Island Minh Hai Province | 8°22.8' | 104°52.4' |
| At Tai Lon Islet, Con Dao Islet in Con Dao-Vung Toa Special Sector | 8°37.8' | 106°37.5' |
| At Bong Lai Islet, Con Dao Islet | 8°38.9' | 106°40.3' |
| At Bay Canh Islet, Con Dao Islet | 8°39.7' | 106°42.1' |
| At Hon Hai Islet (Phu Qui group of islands) Thuan Hai Province | 9°58.0' | 109°5.0' |
| At Hon Doi Islet, Thuan Hai Province | 12°39.0' | 109°28.0' |
| At Dai Lanh point, Phu Khanh Province | 12°53.8' | 109°27.2' |
| At Ong Can Islet, Phu Khanh Province | 13°54.0' | 109°21.0' |
| At Ly Son Islet, Nghia Binh Province | 15°23.1' | 109° 9.0' |
| At Con Co Island, Binh Tri Thien Province | 17°10.0' | 107°20.6' |

(e) HERBICIDE AGENT.—In this section, the term “herbicide agent” has the meaning given that term in section 1116(a)(3) of this title.

(Added Pub. L. 116-23, §2(a), June 25, 2019, 133 Stat. 966.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 116-23, §2(g), June 25, 2019, 133 Stat. 969, provided that: “The amendments made by this section [enacting this section and amending section 1710 of this title] shall take effect on January 1, 2020.”

IMPLEMENTATION

Pub. L. 116-23, §2(c), June 25, 2019, 133 Stat. 968, provided that:

“(1) GUIDANCE.—Notwithstanding section 501 of such title, the Secretary of Veterans Affairs may issue guidance to implement section 1116A of title 38, United States Code, as added by subsection (a), before prescribing new regulations under such section.

“(2) UPDATES.—(A) Not later than 120 days after the date of the enactment of this Act [June 25, 2019], the Secretary shall submit a report to the Committees on Veterans' Affairs of the House of Representatives and the Senate regarding the plans of the Secretary—

“(i) to conduct outreach under subsection (d); and
 “(ii) to respond to inquiries from veterans regarding claims for disability compensation under section 1116A of title 38, United States Code, as added by subsection (a) of this section.

“(B) On a quarterly basis during the period beginning on the date of the enactment of this Act and ending on the date on which regulations are prescribed to carry out such section 1116A, the Secretary shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate updates on the status of such regulations.

“(3) PENDING CASES.—

“(A) AUTHORITY TO STAY.—The Secretary may stay a claim described in subparagraph (B) until the date on which the Secretary commences the implementation of such section 1116A.

“(B) CLAIMS DESCRIBED.—A claim described in this subparagraph is a claim for disability compensation—

“(i) relating to the service and diseases covered by such section 1116A; and

“(ii) that is pending at the Veterans Benefits Administration or the Board of Veterans' Appeals on or after the date of the enactment of this Act and before the date on which the Secretary commences the implementation of such section 1116A.”

OUTREACH

Pub. L. 116-23, §2(d), June 25, 2019, 133 Stat. 968, provided that:

“(1) REQUIREMENT.—The Secretary of Veterans Affairs shall conduct outreach to inform veterans described in paragraph (2) of the ability to submit a claim for disability compensation under section 1116A of title 38, United States Code, as added by subsection (a). Such outreach shall include the following:

“(A) The Secretary shall publish on the website of the Department a notice that a veterans [sic] described in paragraph (2) may submit or resubmit a claim for disability compensation under such section 1116A.

“(B) The Secretary shall notify in writing the veteran service organization community of the ability of veterans described in paragraph (2) to submit or resubmit claims for disability compensation under such section 1116A.

“(2) VETERAN DESCRIBED.—A veteran described in this paragraph is a veteran who, during active military, naval, or air service, served offshore of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975.”

§ 1116B. Presumption of herbicide exposure for certain veterans who served in Korea

(a) PRESUMPTION OF SERVICE-CONNECTION.—(1) For the purposes of section 1110 of this title, and subject to section 1113 of this title, a disease specified in subsection (b) that becomes manifest as specified in that subsection in a veteran described in paragraph (2) shall be considered to have been incurred or aggravated in the line of duty in the active military, naval, or air service, notwithstanding that there is no record of evidence of such disease during the period of such service.

(2) A veteran described in this paragraph is a veteran who, during active military, naval, or air service, served in or near the Korean Demilitarized Zone (DMZ), during the period beginning on September 1, 1967, and ending on August 31, 1971.

(b) DISEASES.—A disease specified in this subsection is—

(1) a disease specified in paragraph (2) of subsection (a) of section 1116 of this title that becomes manifest as specified in that paragraph; or

(2) any additional disease that—

(A) pursuant to subchapter VII of this chapter, the Secretary determines in regulations warrants a presumption of service-connection by reason of having positive association with exposure to an herbicide agent; and

(B) becomes manifest within any period prescribed in such regulations.

(c) HERBICIDE AGENT.—For purposes of this section, the term “herbicide agent” has the meaning given such term in section 1821(d) of this title.

(Added Pub. L. 116-23, §3(a), June 25, 2019, 133 Stat. 969; amended Pub. L. 117-168, title II, §202(d)(2), Aug. 10, 2022, 136 Stat. 1775.)

Editorial Notes

AMENDMENTS

2022—Subsec. (b)(2)(A). Pub. L. 117-168 inserted “pursuant to subchapter VII of this chapter,” before “the Secretary determines”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 116-23, §3(d), June 25, 2019, 133 Stat. 970, provided that: “The amendments made by this section [enacting this section] shall take effect on January 1, 2020.”

IMPLEMENTATION

Pub. L. 116-23, §3(c), June 25, 2019, 133 Stat. 970, provided that:

“(1) GUIDANCE.—Notwithstanding section 501 of such title, the Secretary of Veterans Affairs may issue guidance to implement section 1116B of title 38, United States Code, as added by subsection (a), before prescribing new regulations under such section.

“(2) UPDATES.—(A) Not later than 120 days after the date of the enactment of this Act [June 25, 2019], the Secretary shall submit a report to the Committees on Veterans' Affairs of the House of Representatives and the Senate regarding the plans of the Secretary to respond to inquiries from veterans regarding claims for disability compensation under section 1116B of title 38, United States Code, as added by subsection (a) of this section.

“(B) On a quarterly basis during the period beginning on the date of the enactment of this Act and ending on the date on which regulations are prescribed to carry out such section 1116B, the Secretary shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate updates on the status of such regulations.

“(3) PENDING CASES.—

“(A) AUTHORITY TO STAY.—The Secretary may stay a claim described in subparagraph (B) until the date on which the Secretary commences the implementation of section 1116B of title 38, United States Code, as added by subsection (a).

“(B) CLAIMS DESCRIBED.—A claim described in this subparagraph is a claim for disability compensation—

“(i) relating to the service and diseases covered by such section 1116B; and

“(ii) that is pending at the Veterans Benefits Administration or the Board of Veterans' Appeals on or after the date of the enactment of this Act and before the date on which the Secretary commences the implementation of such section 1116B.”