

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by Pub. L. 89-311 effective first day of second calendar month following Oct. 31, 1965, see section 9 of Pub. L. 89-311, set out as a note under section 1114 of this title.

Pub. L. 89-137, § 2, Aug. 26, 1965, 79 Stat. 576, provided that: "The foregoing provisions of this Act [amending this section and former section 1504 of this title] shall become effective on the first day of the second calendar month which begins following the date of enactment of this Act [Aug. 26, 1965]."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-499, § 2, June 8, 1960, 74 Stat. 165, provided that: "The amendments made by this Act [amending this section] shall take effect on the first day of the second calendar month which begins after the date of enactment of this Act [June 8, 1960]."

REPEAL

Pub. L. 97-253, title IV, § 405(c), Sept. 8, 1982, 96 Stat. 803, cited as a credit to this section, was repealed by Pub. L. 97-306, §§ 107, 108, Oct. 14, 1982, 96 Stat. 1431, 1432, eff. Oct. 1, 1982.

SAVINGS PROVISION

Pub. L. 89-137, § 1(c), Aug. 26, 1965, 79 Stat. 576, provided that: "Any veteran-trainee receiving subsistence allowance on the date of the enactment of this Act [Aug. 26, 1965] while pursuing a course of vocational rehabilitation authorized by chapter 31 of title 38, United States Code [former section 1501 et seq. of this title], shall not have such allowance reduced by reason of the amendments contained in such Act [amending this section and former section 1504 of this title]."

DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES

For increases in rates and limitations on Department of Veterans Affairs disability compensation and dependency and indemnity compensation, see notes set out under section 1114 of this title.

§ 1116. Presumptions of service connection for diseases associated with exposure to certain herbicide agents; presumption of exposure for veterans who served in certain locations

(a)(1) For the purposes of section 1110 of this title, and subject to section 1113 of this title—

(A) a disease specified in paragraph (2) of this subsection becoming manifest as specified in that paragraph in a veteran who performed covered service; and

(B) each additional disease (if any) that (i) the Secretary determines in regulations prescribed under this section warrants a presumption of service-connection by reason of having positive association with exposure to an herbicide agent, and (ii) becomes manifest within the period (if any) prescribed in such regulations in a veteran who performed covered service, and while so serving was exposed to that herbicide agent,

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.

(2) The diseases referred to in paragraph (1)(A) of this subsection are the following:

(A) Non-Hodgkin's lymphoma becoming manifest to a degree of disability of 10 percent or more.

(B) Each soft-tissue sarcoma becoming manifest to a degree of disability of 10 percent

or more other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma.

(C) Chloracne or another acneform disease consistent with chloracne becoming manifest to a degree of disability of 10 percent or more within one year after the last date on which the veteran performed covered service.

(D) Hodgkin's disease becoming manifest to a degree of disability of 10 percent or more.

(E) Porphyria cutanea tarda becoming manifest to a degree of disability of 10 percent or more within a year after the last date on which the veteran performed covered service.

(F) Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea) becoming manifest to a degree of disability of 10 percent or more.

(G) Multiple myeloma becoming manifest to a degree of disability of 10 percent or more.

(H) Diabetes Mellitus (Type 2).

(I) Parkinsonism.

(J) Bladder cancer.

(K) Hypothyroidism.

(L) Monoclonal gammopathy of undetermined significance.

(M) Hypertension.

(3) For purposes of this section, the term "herbicide agent" means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975.

(b) The Secretary shall ensure that any determination made on or after the date of the enactment of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 regarding a presumption of service connection based on exposure to an herbicide agent under this section is made pursuant to subchapter VII of this chapter, including with respect to assessing reports received by the Secretary from the National Academy of Sciences under section 3 of the Agent Orange Act of 1991 (Public Law 102-4).

(c) For purposes of establishing service connection for a disability or death resulting from exposure to a herbicide agent, including a presumption of service-connection under this section, a veteran who performed covered service,¹ shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

(d) In this section, the term "covered service" means active military, naval, air, or space service—

(1) performed in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975;

(2) performed in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on June 30, 1976, without regard to where on the

¹ So in original. The comma probably should not appear.

base the veteran was located or what military job specialty the veteran performed;

(3) performed in Laos during the period beginning on December 1, 1965, and ending on September 30, 1969;

(4) performed in Cambodia at Mimot or Krek, Kampong Cham Province during the period beginning on April 16, 1969, and ending on April 30, 1969; or

(5) performed on Guam or American Samoa, or in the territorial waters thereof, during the period beginning on January 9, 1962, and ending on July 31, 1980, or served on Johnston Atoll or on a ship that called at Johnston Atoll during the period beginning on January 1, 1972, and ending on September 30, 1977.

(Added Pub. L. 102-4, §2(a)(1), Feb. 6, 1991, 105 Stat. 11, §316; renumbered §1116 and amended Pub. L. 102-83, §5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-446, title V, §505, title XII, §1201(e)(6), Nov. 2, 1994, 108 Stat. 4664, 4685; Pub. L. 104-275, title V, §505(b), Oct. 9, 1996, 110 Stat. 3342; Pub. L. 106-419, title IV, §404(a)(1), Nov. 1, 2000, 114 Stat. 1864; Pub. L. 107-103, title XII, §201(a)(1)(A), (b)-(c)(2)(A), (d)(1), Dec. 27, 2001, 115 Stat. 987, 988; Pub. L. 116-283, div. H, title XCI, §9109, Jan. 1, 2021, 134 Stat. 4785; Pub. L. 117-168, title II, §202(d)(1), title IV, §§403(b), (d), 404(b), (c), Aug. 10, 2022, 136 Stat. 1775, 1780-1782.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, referred to in subsec. (b), is the date of enactment of Pub. L. 117-168, which was approved Aug. 10, 2022.

Section 3 of the Agent Orange Act of 1991, referred to in subsec. (b), is section 3 of Pub. L. 102-4, which is set out as a note below.

AMENDMENTS

2022—Pub. L. 117-168, §403(d), substituted “certain locations” for “the Republic of Vietnam” in section catchline.

Subsec. (a)(1). Pub. L. 117-168, §403(b)(1), which directed substitution of “performed covered service” for “, during active military, naval, air, or space service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975”, wherever appearing in section, was executed by making the substitution for “, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975” in subpars. (A) and (B) to reflect the probable intent of Congress.

Subsec. (a)(2)(C), (E). Pub. L. 117-168, §403(b)(2), which directed substitution of “performed covered service” for “performed active military, naval, air, or space service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975” wherever appearing in section, was executed by making the substitution for “performed active military, naval, or air service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975” to reflect the probable intent of Congress.

Subsec. (a)(2)(L). Pub. L. 117-168, §404(b), added subpar. (L).

Subsec. (a)(2)(M). Pub. L. 117-168, §404(c), added subpar. (M).

Subsec. (b). Pub. L. 117-168, §202(d)(1)(A), (B), added subsec. (b) and struck out former subsec. (b) which required the Secretary to prescribe regulations based on

determination of a positive association between the occurrence of a disease in humans and exposure to an herbicide agent.

Subsec. (c). Pub. L. 117-168, §403(b)(1), which directed substitution of “performed covered service” for “, during active military, naval, air, or space service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975”, wherever appearing in section, was executed by making the substitution for “, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975” to reflect the probable intent of Congress.

Pub. L. 117-168, §202(d)(1)(A), (C), redesignated subsec. (f) as (c) and struck out former subsec. (c) which related to determinations of presumption of service connection between diseases and exposure to herbicide agents and issuance of regulations based on such determinations.

Subsec. (d). Pub. L. 117-168, §§202(d)(1)(A), 403(b)(3), added subsec. (d) and struck out former subsec. (d) which provided for continuation of compensation if a disease was determined no longer to be presumed as service connected.

Subsec. (e). Pub. L. 117-168, §202(d)(1)(A), struck out subsec. (e). Text read as follows: “Subsections (b) through (d) shall cease to be effective on September 30, 2015.”

Subsec. (f). Pub. L. 117-168, §202(d)(1)(C), redesignated subsec. (f) as (c).

2021—Subsec. (a)(2)(I) to (K). Pub. L. 116-283 added subpars. (I) to (K).

2001—Pub. L. 107-103, §201(c)(2)(A), amended section catchline generally. Prior to amendment, catchline read as follows: “Presumptions of service connection for diseases associated with exposure to certain herbicide agents”.

Subsec. (a)(2)(F). Pub. L. 107-103, §201(a)(1)(A), struck out “within 30 years after the last date on which the veteran performed active military, naval, or air service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975” before period at end.

Subsec. (a)(2)(H). Pub. L. 107-103, §201(b), added subpar. (H).

Subsec. (a)(3), (4). Pub. L. 107-103, §201(c)(1)(B), redesignated par. (4) as (3). Former par. (3) redesignated as subsec. (f).

Subsec. (e). Pub. L. 107-103, §201(d)(1), substituted “on September 30, 2015” for “10 years after the first day of the fiscal year in which the National Academy of Sciences transmits to the Secretary the first report under section 3 of the Agent Orange Act of 1991”.

Subsec. (f). Pub. L. 107-103, §201(c)(1)(A), (C), redesignated subsec. (a)(3) as (f), substituted “For purposes of establishing service connection for a disability or death resulting from exposure to a herbicide agent, including a presumption of service-connection under this section, a veteran” for “For the purposes of this subsection, a veteran”, and struck out “and has a disease referred to in paragraph (1)(B) of this subsection” after “May 7, 1975.”

2000—Subsec. (a)(2)(F). Pub. L. 106-419 inserted “of disability” after “to a degree”.

1996—Subsec. (a)(1)(A). Pub. L. 104-275, §505(b)(2), substituted “during the period beginning on January 9, 1962, and ending on May 7, 1975” for “during the Vietnam era”.

Subsec. (a)(1)(B). Pub. L. 104-275, §505(b)(1), substituted “during the period beginning on January 9, 1962, and ending on May 7, 1975,” for “during the Vietnam era”.

Subsec. (a)(2)(C), (E), (F). Pub. L. 104-275, §505(b)(2), substituted “during the period beginning on January 9, 1962, and ending on May 7, 1975” for “during the Vietnam era”.

Subsec. (a)(3). Pub. L. 104-275, §505(b)(1), substituted “during the period beginning on January 9, 1962, and ending on May 7, 1975,” for “during the Vietnam era”.

Subsec. (a)(4). Pub. L. 104-275, §505(b)(2), substituted “during the period beginning on January 9, 1962, and ending on May 7, 1975” for “during the Vietnam era”.

1994—Subsec. (a)(1)(B). Pub. L. 103-446, §1201(e)(6), substituted “(i)” for “(1)” and “(ii)” for “(2)”.

Subsec. (a)(2)(D) to (G). Pub. L. 103-446, §505, added subpars. (D) to (G).

1991—Pub. L. 102-83, §5(a), renumbered section 316 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83, §5(c)(1), substituted “1110” for “310” and “1113” for “313” in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117-168, title IV, §403(e), Aug. 10, 2022, 136 Stat. 1781, provided that: “The amendments made by this section [amending this section and section 1710 of this title] shall take effect on the date of the enactment of this Act [Aug. 10, 2022] and shall apply as follows:

“(1) On the date of the enactment of this Act for claimants for dependency and indemnity compensation under chapter 13 of title 38, United States Code, and for veterans whom the Secretary of Veterans Affairs determines are—

“(A) terminally ill;

“(B) homeless;

“(C) under extreme financial hardship;

“(D) more than 85 years old; or

“(E) capable of demonstrating other sufficient cause.

“(2) On October 1, 2022, for everyone not described in paragraph (1).”

Pub. L. 117-168, title IV, §404(d), Aug. 10, 2022, 136 Stat. 1782, provided that:

“(1) MONOCLONAL GAMMOPATHY OF UNDETERMINED SIGNIFICANCE.—

“(A) IN GENERAL.—The amendment made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 2022] and shall apply as follows:

“(i) On the date of the enactment of this Act for claimants for dependency and indemnity compensation under chapter 13 of title 38, United States Code, and for veterans whom the Secretary of Veterans Affairs determines are—

“(I) terminally ill;

“(II) homeless;

“(III) under extreme financial hardship;

“(IV) more than 85 years old; or

“(V) capable of demonstrating other sufficient cause.

“(ii) On October 1, 2022, for everyone not described in clause (i).

“(B) RETROACTIVE APPLICATION.—Notwithstanding any Federal court decisions or settlements in effect on the day before the date of the enactment of this Act, the Secretary of Veterans Affairs shall award retroactive claims for a condition under section 1116(a)(2)(L) of title 38, United States Code, as added by subsection (b) of this section, only to claimants for dependency and indemnity compensation under chapter 13 of such title described in subparagraph (A)(i) of this paragraph.

“(2) HYPERTENSION.—

“(A) IN GENERAL.—The amendment made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 2022] and shall apply as follows:

“(i) On the date of the enactment of this Act for claimants for dependency and indemnity compensation under chapter 13 of title 38, United States Code, and for veterans whom the Secretary of Veterans Affairs determines are—

“(I) terminally ill;

“(II) homeless;

“(III) under extreme financial hardship;

“(IV) more than 85 years old; or

“(V) capable of demonstrating other sufficient cause.

“(ii) On October 1, 2026, for everyone not described in subparagraph (A).

“(B) RETROACTIVE APPLICATION.—Notwithstanding any Federal court decisions or settlements in effect on the day before the date of the enactment of this Act, the Secretary of Veterans Affairs shall award retroactive claims for a condition under section 1116(a)(2)(M) of title 38, United States Code, as added by subsection (c) of this section, only to claimants for dependency and indemnity compensation under chapter 13 of such title described in subparagraph (A)(i) of this paragraph.”

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-103, title II, §201(a)(1)(B), Dec. 27, 2001, 115 Stat. 987, provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect January 1, 2002.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-275 effective Jan. 1, 1997, with no benefit to be paid or provided by reason of such amendment for any period before such date, see section 505(d) of Pub. L. 104-275, set out as a note under section 101 of this title.

COMPTROLLER GENERAL BRIEFING AND REPORT ON REPEALING MANIFESTATION PERIOD FOR PRESUMPTIONS OF SERVICE CONNECTION FOR CERTAIN DISEASES ASSOCIATED WITH EXPOSURE TO CERTAIN HERBICIDE AGENTS

Pub. L. 116-315, title II, §2011, Jan. 5, 2021, 134 Stat. 4979, provided that:

“(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 5, 2021], the Comptroller General of the United States shall provide to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a briefing on preliminary observations of the Comptroller General, and not later than 240 days after the date of such briefing, provide such committees a briefing and submit to such committees a final report, on the efforts of the Secretary of Veterans Affairs to provide benefits, including compensation and health care, to veterans—

“(1) who during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975; and

“(2) in whom chloracne, porphyria cutanea tarda, or acute or subacute peripheral neuropathy have manifested.

“(b) ELEMENTS.—The report required by subsection (a) shall include the following:

“(1) A description of how the Secretary establishes a service connection for a disease described in paragraph (2) of subsection (a) manifesting in veterans, including the number of veterans described in paragraph (1) of such subsection who have filed a claim for a benefit associated with a disease described in paragraph (2) of such subsection.

“(2) A description of how claims adjudicators of the Department of Veterans Affairs determine service connection for a disease described in subparagraph (C) or (E) of section 1116(a)(2) of title 38, United States Code, when documentation proving the presence of the disease during the manifestation period set forth in such subparagraphs for the disease is not available.

“(3) A description of the expected effect of repealing the manifestation period from such subparagraphs, including the expected effect on the number of claims for benefits the Department will receive, an estimate of the cost to the Department of such repeal, and a review of the scientific evidence regarding such repeal.

“(4) A review of all claims submitted to the Secretary for compensation under chapter 11 of such title that are associated with a disease described in

subsection (a)(2), including the type of proof presented to establish a service connection for the manifestation of the disease based on exposure to a herbicide agent.

“(5) Recommendations on how the Department can better adjudicate claims for benefits, including compensation, submitted to the Department that are associated with a disease described in paragraph (2) of subsection (a) for veterans described in paragraph (1) of such subsection.

“(6) An assessment of such other areas as the Comptroller General considers appropriate to study.

“(c) ADMINISTRATIVE ACTION.—Not later than 120 days after the date on which the Comptroller General of the United States submits the report required under subsection (a), the Secretary shall commence carrying out the recommendations submitted under subsection (b)(5) to the degree that the Secretary is authorized to carry out the recommendations by a statute that was in effect on the day before the date of the enactment of this Act.

“(d) HERBICIDE AGENT DEFINED.—In this section, the term ‘herbicide agent’ has the meaning given such term in section 1116(a)(3) of title 38, United States Code.”

TOXIC EXPOSURE

Pub. L. 114-315, title VI, subtitle C, Dec. 16, 2016, 130 Stat. 1579, provided that:

“SEC. 631. DEFINITIONS.

“In this subtitle:

“(1) ARMED FORCES.—The term ‘Armed Forces’ means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard.

“(2) DESCENDANT.—The term ‘descendant’ means, with respect to an individual, the biological child or grandchild of that individual.

“(3) TOXIC EXPOSURE.—The term ‘toxic exposure’ means a condition in which an individual inhaled or ingested an agent determined to be hazardous to the health of the individual or the agent came in contact with the skin or eyes of the individual in a manner that could be hazardous to the health of the individual.

“(4) VETERAN.—The term ‘veteran’ has the meaning given that term in section 101 of title 38, United States Code.

“SEC. 632. NATIONAL ACADEMY OF MEDICINE ASSESSMENT ON RESEARCH RELATING TO THE DESCENDANTS OF INDIVIDUALS WITH TOXIC EXPOSURE.

“(a) IN GENERAL.—

“(1) AGREEMENT.—Not later than 180 days after the date of the enactment of this Act [Dec. 16, 2016], the Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Medicine under which the National Academy of Medicine conducts an assessment on scientific research relating to the descendants of individuals with toxic exposure.

“(2) ALTERNATE ORGANIZATION.—

“(A) IN GENERAL.—If the Secretary is unable within the period prescribed in paragraph (1) to enter into an agreement described in such paragraph with the National Academy of Medicine on terms acceptable to the Secretary, the Secretary shall seek to enter into such an agreement with another appropriate organization that—

“(i) is not part of the Federal Government;

“(ii) operates as a not-for-profit entity; and

“(iii) has expertise and objectivity comparable to that of the National Academy of Medicine.

“(B) TREATMENT.—If the Secretary enters into an agreement with another organization as described in subparagraph (A), any reference in this section to the National Academy of Medicine shall be treated as a reference to the other organization.

“(b) ELEMENTS.—The assessment conducted pursuant to the agreement entered into under subsection (a) shall include the following:

“(1) A scientific review of the scientific literature regarding toxicological and epidemiological research on descendants of individuals with toxic exposure.

“(2) An assessment of areas requiring further scientific study relating to the descendants of veterans with toxic exposure.

“(3) An assessment of the scope and methodology required to conduct adequate scientific research relating to the descendants of individuals with toxic exposure, including—

“(A) the types of individuals to be studied, including veterans with toxic exposure and the descendants of those veterans;

“(B) the number of veterans and descendants described in subparagraph (A) to be studied;

“(C) the potential alternatives for participation in such a study, including whether it would be necessary for participants to travel in order to participate;

“(D) the approximate amount of time and resources needed to prepare and conduct the research; and

“(E) the appropriate Federal agencies to participate in the research, including the Department of Defense and the Department of Veterans Affairs.

“(4) The establishment of categories, including definitions for each such category, to be used in assessing the evidence that a particular health condition is related to toxic exposure, such as—

“(A) sufficient evidence of a causal relationship;

“(B) sufficient evidence of an association;

“(C) limited or suggestive evidence of an association;

“(D) inadequate or insufficient evidence to determine whether an association exists; and

“(E) limited or suggestive evidence of no association.

“(5) An analysis of—

“(A) the feasibility of conducting scientific research to address the areas that require further study as described under paragraph (2);

“(B) the value and relevance of the information that could result from such scientific research; and

“(C) for purposes of conducting further research, the feasibility and advisability of accessing additional information held by a Federal agency that may be sensitive.

“(6) An identification of a research entity or entities with—

“(A) expertise in conducting research on health conditions of descendants of individuals with toxic exposure; and

“(B) an ability to conduct research on those health conditions to address areas requiring further scientific study as described under paragraph (2).

“(c) REPORT.—The agreement entered into under subsection (a) shall require the National Academy of Medicine to submit, not later than 2 years after entering into such agreement, to the Secretary of Veterans Affairs, the Committee on Veterans' Affairs of the Senate, and the Committee on Veterans' Affairs of the House of Representatives—

“(1) the results of the assessment conducted pursuant to such agreement, including such recommendations as the National Academy of Medicine considers appropriate regarding the scope and methodology required to conduct adequate scientific research relating to the descendants of veterans with toxic exposure; and

“(2) a determination regarding whether the results of such assessment indicate that it is feasible to conduct further research regarding health conditions of descendants of veterans with toxic exposure, including an explanation of the basis for the determination.

“(d) CERTIFICATION.—

“(1) IN GENERAL.—Not later than 90 days after receiving the results of the assessment and determination under subsection (c), the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House

of Representatives a certification of the understanding of the Secretary, based on such results and determination, regarding the feasibility of conducting further research regarding health conditions of descendants of veterans with toxic exposure that is expressed by such results and determination.

“(2) BASIS FOR CERTIFICATION.—The certification submitted under paragraph (1) shall include an explanation of the basis for the certification.

“SEC. 633. ADVISORY BOARD ON RESEARCH RELATING TO HEALTH CONDITIONS OF DESCENDANTS OF VETERANS WITH TOXIC EXPOSURE WHILE SERVING IN THE ARMED FORCES.

“(a) ESTABLISHMENT.—Unless the Secretary of Veterans Affairs certifies under section 632(d) that the results of the assessment and determination under section 632(c) indicate that it is not feasible to conduct further research regarding health conditions of descendants of veterans with toxic exposure, not later than 180 days after receiving such results and determination, the Secretary shall establish an advisory board (in this section referred to as the ‘Advisory Board’) to advise the Secretary in the selection of a research entity or entities under section 634, advise such entity or entities in conducting research under such section, and advise the Secretary with respect to the activities of such entity or entities under such section.

“(b) MEMBERSHIP.—

“(1) COMPOSITION.—The Secretary, in consultation with the National Academy of Medicine, the Director of the National Institute of Environmental Health Sciences, and such other heads of Federal agencies as the Secretary determines appropriate—

“(A) shall select not more than 13 voting members of the Advisory Board, of whom—

“(i) not less than two shall be members of organizations exempt from taxation under section 501(c)(19) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(19)];

“(ii) not less than two shall be descendants of veterans with toxic exposure while serving as members of the Armed Forces; and

“(iii) not less than seven shall be health professionals, scientists, or academics who are not employees of the Federal Government and have expertise in—

“(I) birth defects;

“(II) developmental disabilities;

“(III) epigenetics;

“(IV) public health;

“(V) the science of environmental exposure or environmental exposure assessment;

“(VI) the science of toxic substances; or

“(VII) medical and research ethics; and

“(B) may select not more than two nonvoting members who are employees of the Federal Government and who are otherwise described in subparagraph (A)(iii).

“(2) CHAIR.—The Secretary shall select a Chair from among the members of the Advisory Board selected under paragraph (1)(A).

“(3) TERMS.—

“(A) IN GENERAL.—Each member of the Advisory Board shall serve a term of 2 or 3 years as determined by the Secretary.

“(B) REAPPOINTMENT.—At the end of the term of a member of the Advisory Board, the Secretary may reselect the member for another term, except that no member may serve more than 4 consecutive terms.

“(c) DUTIES.—The Advisory Board shall—

“(1) advise the Secretary in the selection of a research entity or entities to conduct research under section 634 from among those identified under section 632(b)(6);

“(2) advise such entity or entities and assess the activities of such entity or entities in conducting such research;

“(3) develop a research strategy for such entity or entities based on, but not limited to, the results of the assessment conducted under section 632;

“(4) advise the Secretary with respect to the activities of such entity or entities under section 634;

“(5) submit recommendations to be included by such entity or entities in the report under section 634(d)(2)(C); and

“(6) not less frequently than semiannually, meet with the Secretary and representatives of such entity or entities on the research conducted by such entity or entities under section 634.

“(d) MEETINGS.—The Advisory Board shall meet at the call of the Chair, but not less frequently than semiannually.

“(e) COMPENSATION.—The members of the Advisory Board shall serve without compensation.

“(f) EXPENSES.—The Secretary of Veterans Affairs shall determine the appropriate expenses of the Advisory Board.

“(g) PERSONNEL.—

“(1) IN GENERAL.—The Chair may, without regard to the civil service laws and regulations, appoint an executive director of the Advisory Board, who shall be a civilian employee of the Department of Veterans Affairs, and such other personnel as may be necessary to enable the Advisory Board to perform its duties.

“(2) APPROVAL.—The appointment of an executive director under paragraph (1) shall be subject to approval by the Advisory Board.

“(3) COMPENSATION.—The Chair may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

“SEC. 634. RESEARCH RELATING TO HEALTH CONDITIONS OF DESCENDANTS OF VETERANS WITH TOXIC EXPOSURE WHILE SERVING IN THE ARMED FORCES.

“(a) IN GENERAL.—Unless the Secretary of Veterans Affairs certifies under section 632(d) that the results of the assessment and determination under section 632(c) indicate that it is not feasible to conduct further research regarding health conditions of descendants of veterans with toxic exposure, not later than 1 year after receiving such results and determination, the Secretary shall (in consultation with the advisory board established under section 633 (in this section referred to as the ‘Advisory Board’)) enter into an agreement with one or more research entities identified under section 632(b)(6) (excluding an entity of the Department of Veterans Affairs) to conduct research on health conditions of descendants of veterans with toxic exposure while serving as members of the Armed Forces (in this section referred to as the ‘research entity or entities’).

“(b) RESEARCH.—

“(1) IN GENERAL.—To the extent included in the research strategy developed by the Advisory Board under section 633(c)(3), the research entity or entities shall conduct research on health conditions of descendants of veterans with toxic exposure while serving as members of the Armed Forces.

“(2) STUDIES.—In conducting research under paragraph (1), the research entity or entities may study any veteran, at the election of the veteran, identified under section 632(b)(3)(A) as a type of individual to be studied in order to conduct adequate scientific research relating to the descendants of veterans with toxic exposure.

“(3) CATEGORIZATION.—In conducting research under paragraph (1), the research entity or entities shall assess, using the categories established under section 632(b)(4), the extent to which a health condition of a descendant of a veteran is related to the toxic exposure of the veteran while serving as a member of the Armed Forces.

“(c) AVAILABILITY OF RECORDS.—

“(1) IN GENERAL.—The Secretary of Defense, the Secretary of Veterans Affairs, and the head of each

Federal agency identified under section 632(b)(3)(E) shall make available to the research entity or entities records held by the Department of Veterans Affairs, the Department of Defense, the Armed Forces, that Federal agency, or any other source under the jurisdiction of any such Federal agency or the Armed Forces, as appropriate, that the research entity or entities determine are necessary to carry out this section.

“(2) MECHANISM FOR ACCESS.—The Secretary of Veterans Affairs, the Secretary of Defense, and the head of each Federal agency identified under section 632(b)(3)(E) shall jointly establish a mechanism for access by the research entity or entities to records made available under paragraph (1).

“(d) ANNUAL REPORT.—

“(1) IN GENERAL.—Not later than 1 year after commencing the conduct of research under this section, and not later than September 30 each year thereafter, each research entity with which the Secretary has entered into an agreement under subsection (a) shall, in consultation with the Advisory Board, submit to the Secretary of Veterans Affairs, the Committee on Veterans' Affairs of the Senate, and the Committee on Veterans' Affairs of the House of Representatives a report on the functions of such entity under this section during the year preceding the submittal of the report.

“(2) ELEMENTS.—Each report submitted under paragraph (1) shall include the following:

“(A) A summary of the research efforts that have been completed during the year preceding the submittal of the report and that are ongoing as of the date of the submittal of the report.

“(B) A description of any findings made during such year in carrying out such research efforts.

“(C) Recommendations for administrative or legislative action made by the Advisory Board based on such findings, which may include recommendations for further research under this section.

“(3) UPON REQUEST.—Upon the request of any organization exempt from taxation under section 501(c)(19) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(19)], the Secretary of Veterans Affairs may transmit to such organization a copy of a report received by the Secretary under paragraph (1).”

REPORT ON TIME LIMIT FOR PRESUMPTION OF CANCER CAUSED BY HERBICIDE AGENT

Pub. L. 107–103, title II, § 201(a)(2)–(4), Dec. 27, 2001, 115 Stat. 987, provided that:

“(2) The Secretary of Veterans Affairs shall enter into a contract with the National Academy of Sciences, not later than six months after the date of the enactment of this Act [Dec. 27, 2001], for the performance of a study to include a review of all available scientific literature on the effects of exposure to an herbicide agent containing dioxin on the development of respiratory cancers in humans and whether it is possible to identify a period of time after exposure to herbicides after which a presumption of service-connection for such exposure would not be warranted. Under the contract, the National Academy of Sciences shall submit a report to the Secretary setting forth its conclusions. The report shall be submitted not later than 18 months after the contract is entered into.

“(3) For a period of six months beginning on the date of the receipt of the report of the National Academy of Sciences under paragraph (2), the Secretary may, if warranted by clear scientific evidence presented in the National Academy of Sciences report, initiate a rule-making under which the Secretary would specify a limit on the number of years after a claimant's departure from Vietnam after which respiratory cancers would not be presumed to have been associated with the claimant's exposure to herbicides while serving in Vietnam. Any such limit under such a rule may not take effect until 120 days have passed after the publication of a final rule to impose such a limit.

“(4)(A) Subject to subparagraphs (B) and (C), if the Secretary imposes such a limit under paragraph (3),

that limit shall be effective only as to claims filed on or after the effective date of that limit.

“(B) In the case of any veteran whose disability or death due to respiratory cancer is found by the Secretary to be service-connected under section 1116(a)(2)(F) of title 38, United States Code, as amended by paragraph (1), such disability or death shall remain service-connected for purposes of all provisions of law under such title notwithstanding the imposition, if any, of a time limit by the Secretary by rulemaking authorized under paragraph (3).

“(C) Subparagraph [sic] (B) does not apply in a case in which—

“(i) the original award of compensation or service connection was based on fraud; or

“(ii) it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge.”

AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES

Pub. L. 102–4, § 3, Feb. 6, 1991, 105 Stat. 13, as amended by Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–86, title V, § 503(a), (b)(1), Aug. 14, 1991, 105 Stat. 424, 425; Pub. L. 107–103, title II, § 201(d)(2), Dec. 27, 2001, 115 Stat. 988; Pub. L. 113–175, title IV, § 407, Sept. 26, 2014, 128 Stat. 1905; Pub. L. 114–58, title IV, § 408, Sept. 30, 2015, 129 Stat. 535; Pub. L. 114–228, title IV, § 411, Sept. 29, 2016, 130 Stat. 941; Pub. L. 115–62, title IV, § 410, Sept. 29, 2017, 131 Stat. 1165; Pub. L. 115–251, title I, § 127, Sept. 29, 2018, 132 Stat. 3170; Pub. L. 116–159, div. E, title IV, § 5404, Oct. 1, 2020, 134 Stat. 751, provided that:

“(a) PURPOSE.—The purpose of this section is to provide for the National Academy of Sciences, an independent nonprofit scientific organization with appropriate expertise which is not part of the Federal Government, to review and evaluate the available scientific evidence regarding associations between diseases and exposure to dioxin and other chemical compounds in herbicides.

“(b) AGREEMENT.—The Secretary shall seek to enter into an agreement with the National Academy of Sciences for the Academy to perform the services covered by this section. The Secretary shall seek to enter into such agreement not later than two months after the date of the enactment of the Veterans' Benefits Programs Improvement Act of 1991 [Aug. 14, 1991].

“(c) REVIEW OF SCIENTIFIC EVIDENCE.—Under an agreement between the Secretary and the National Academy of Sciences under this section, the Academy shall review and summarize the scientific evidence, and assess the strength thereof, concerning the association between exposure to an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era and each disease suspected to be associated with such exposure.

“(d) SCIENTIFIC DETERMINATIONS CONCERNING DISEASES.—(1) For each disease reviewed, the Academy shall determine (to the extent that available scientific data permit meaningful determinations)—

“(A) whether a statistical association with herbicide exposure exists, taking into account the strength of the scientific evidence and the appropriateness of the statistical and epidemiological methods used to detect the association;

“(B) the increased risk of the disease among those exposed to herbicides during service in the Republic of Vietnam during the Vietnam era; and

“(C) whether there exists a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the disease.

“(2) The Academy shall include in its reports under subsection (g) a full discussion of the scientific evidence and reasoning that led to its conclusions under this subsection.

“(e) RECOMMENDATIONS FOR ADDITIONAL SCIENTIFIC STUDIES.—The Academy shall make any recommendations it has for additional scientific studies to resolve areas of continuing scientific uncertainty relating to herbicide exposure. In making recommendations for

further study, the Academy shall consider the scientific information that is currently available, the value and relevance of the information that could result from additional studies, and the cost and feasibility of carrying out such additional studies.

“(f) SUBSEQUENT REVIEWS.—An agreement under subsection (b) shall require the National Academy of Sciences—

“(1) to conduct as comprehensive a review as is practicable of the evidence referred to in subsection (c) that became available since the last review of such evidence under this section; and

“(2) to make its determinations and estimates on the basis of the results of such review and all other reviews conducted for the purposes of this section.

“(g) REPORTS.—(1) The agreement between the Secretary and the National Academy of Sciences shall require the Academy to transmit to the Secretary and the Committees on Veterans' Affairs of the Senate and House of Representatives periodic written reports regarding the Academy's activities under the agreement. Such reports shall be submitted at least once every two years (as measured from the date of the first report).

“(2) The first report under this subsection shall be transmitted not later than the end of the 18-month period beginning on the date of the enactment of this Act [Feb. 6, 1991]. That report shall include (A) the determinations and discussion referred to in subsection (d), (B) any recommendations of the Academy under subsection (e), and (C) the recommendation of the Academy as to whether the provisions of each of sections 6 through 9 [set out below] should be implemented by the Secretary. In making its recommendation with respect to each such section, the Academy shall consider the scientific information that is currently available, the value and relevance of the information that could result from implementing that section, and the cost and feasibility of implementing that section. If the Academy recommends that the provisions of section 6 should be implemented, the Academy shall also recommend the means by which clinical data referred to in that section could be maintained in the most scientifically useful way.

“(h) LIMITATION ON AUTHORITY.—The authority to enter into agreements under this section shall be effective for a fiscal year to the extent that appropriations are available.

“(i) SUNSET.—This section shall cease to be effective on September 30, 2022.

“(j) ALTERNATIVE CONTRACT SCIENTIFIC ORGANIZATION.—If the Secretary is unable within the time period prescribed in subsection (b) to enter into an agreement with the National Academy of Sciences for the purposes of this section on terms acceptable to the Secretary, the Secretary shall seek to enter into an agreement for the purposes of this section with another appropriate scientific organization that is not part of the Government and operates as a not-for-profit entity and that has expertise and objectivity comparable to that of the National Academy of Sciences. If the Secretary enters into such an agreement with another organization, then any reference in this section and in section 1116 [formerly 316] of title 38, United States Code (as added by section 2), to the National Academy of Sciences shall be treated as a reference to the other organization.

“(k) LIABILITY INSURANCE.—(1) The Secretary may provide liability insurance for the National Academy of Sciences or any other contract scientific organization to cover any claim for money damages for injury, loss of property, personal injury, or death caused by any negligent or wrongful act or omission of any person referred to in paragraph (2) in carrying out any of the following responsibilities of the Academy or such other organization, as the case may be, under an agreement entered into with the Secretary pursuant to this section:

“(A) The review, summarization, and assessment of scientific evidence referred to in subsection (c).

“(B) The making of any determination, on the basis of such review and assessment, regarding the matters

set out in clauses (A) through (C) of subsection (d)(1), and the preparation of the discussion referred to in subsection (d)(2).

“(C) The making of any recommendation for additional scientific study under subsection (e).

“(D) The conduct of any subsequent review referred to in subsection (f) and the making of any determination or estimate referred to in such subsection.

“(E) The preparation of the reports referred to in subsection (g).

“(2) A person referred to in paragraph (1) is—

“(A) an employee of the National Academy of Sciences or other contract scientific organization referred to in paragraph (1); or

“(B) any individual appointed by the President of the Academy or the head of such other contract scientific organization, as the case may be, to carry out any of the responsibilities referred to in such paragraph.

“(3) The cost of the liability insurance referred to in paragraph (1) shall be made from funds available to carry out this section.

“(4) The Secretary shall reimburse the Academy or person referred to in paragraph (2) for the cost of any judgments (if any) and reasonable attorney's fees and incidental expenses, not compensated by the liability insurance referred to in paragraph (1) or by any other insurance maintained by the Academy, incurred by the Academy or person referred to in paragraph (2), in connection with any legal or administrative proceedings arising out of or in connection with the work to be performed under the agreement referred to in paragraph (1). Reimbursement of the cost of such judgments, attorney's fees, and incidental expenses shall be paid from funds appropriated for such reimbursement or appropriated to carry out this section, but in no event shall any such reimbursement be made from funds authorized pursuant to section 1304 of title 31, United States Code.”

RESULTS OF EXAMINATIONS AND TREATMENT OF VETERANS FOR DISABILITIES RELATED TO EXPOSURE TO CERTAIN HERBICIDES OR TO SERVICE IN VIETNAM

Pub. L. 102-4, § 6, Feb. 6, 1991, 105 Stat. 15, as amended by Pub. L. 102-83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that:

“(a) IN GENERAL.—Subject to subsections (d) and (e), the Secretary of Veterans Affairs shall compile and analyze, on a continuing basis, all clinical data that (1) is obtained by the Department of Veterans Affairs in connection with examinations and treatment furnished to veterans by the Department after November 3, 1981, by reason of eligibility provided in section 1710(e)(1)(A) of title 38, United States Code, and (2) is likely to be scientifically useful in determining the association, if any, between the disabilities of veterans referred to in such section and exposure to dioxin or any other toxic substance referred to in such section or between such disabilities and active military, naval, or air service in the Republic of Vietnam during the Vietnam era.

“(b) ANNUAL REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives an annual report containing—

“(1) the information compiled in accordance with subsection (a);

“(2) the Secretary's analysis of such information;

“(3) a discussion of the types and incidences of disabilities identified by the Department of Veterans Affairs in the case of veterans referred to in subsection (a);

“(4) the Secretary's explanation for the incidence of such disabilities;

“(5) other explanations for the incidence of such disabilities considered reasonable by the Secretary; and

“(6) the Secretary's views on the scientific validity of drawing conclusions from the incidence of such disabilities, as evidenced by the data compiled under subsection (a), about any association between such

disabilities and exposure to dioxin or any other toxic substance referred to in section 1710(e)(1)(A) of title 38, United States Code, or between such disabilities and active military, naval, or air service, in the Republic of Vietnam during the Vietnam era.

“(c) FIRST REPORT.—The first report under subsection (b) shall be submitted not later than one year after the effective date of this section [see subsec. (e) of this section].

“(d) FUNDING.—The authority of the Secretary to carry out this section is effective in any fiscal year only to the extent or in the amount specifically provided in statutory language in appropriations Acts.

“(e) EFFECTIVE DATE.—(1) This section shall take effect at the end of the 90-day period beginning on the date on which the first report of the National Academy of Sciences under section 3(g) [set out above] is received by the Secretary, except that this section shall not take effect if the Secretary, after receiving that report and before the end of that 90-day period—

“(A) determines that it is not feasible or cost-effective to carry out this section or that carrying out this section would not make a material contribution to the body of scientific knowledge concerning the health effects in humans of herbicide exposure; and

“(B) notifies the Committees on Veterans' Affairs of the Senate and House of Representatives of the Secretary's determination and the reasons therefor.

“(2) In making a determination under this subsection, the Secretary shall give great weight to the views and recommendations of the Academy expressed in that report with respect to the implementation of this section.”

TISSUE ARCHIVING SYSTEM

Pub. L. 102-4, §7, Feb. 6, 1991, 105 Stat. 16, provided that:

“(a) ESTABLISHMENT OF SYSTEM.—Subject to subsections (e) and (f), for the purpose of facilitating future scientific research on the effects of exposure of veterans to dioxin and other toxic agents in herbicides used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam era, the Secretary of Veterans Affairs shall establish and maintain a system for the collection and storage of voluntarily contributed samples of blood and tissue of veterans who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era.

“(b) SECURITY OF SPECIMENS.—The Secretary shall ensure that the tissue is collected and stored under physically secure conditions and that the tissue is maintained in a condition that is useful for research referred to in subsection (a).

“(c) AUTHORIZED USE OF SPECIMENS.—The Secretary may make blood and tissue available from the system for research referred to in subsection (a). The Secretary shall carry out this section in a manner consistent with the privacy rights and interests of the blood and tissue donors.

“(d) LIMITATIONS ON ACCEPTANCE OF SAMPLES.—The Secretary may prescribe such limitations on the acceptance and storage of blood and tissue samples as the Secretary considers appropriate consistent with the purpose specified in subsection (a).

“(e) FUNDING.—The authority of the Secretary to carry out this section is effective in any fiscal year only to the extent or in the amount specifically provided in statutory language in appropriations Acts.

“(f) EFFECTIVE DATE.—(1) This section shall take effect at the end of the 90-day period beginning on the date on which the first report of the National Academy of Sciences under section 3(g) [set out above] is received by the Secretary, except that this section shall not take effect if the Secretary, after receiving that report and before the end of that 90-day period—

“(A) determines that it is not feasible or cost-effective to carry out this section or that carrying out this section would not make a material contribution to the body of scientific knowledge concerning the health effects in humans of herbicide exposure; and

“(B) notifies the Committees on Veterans' Affairs of the Senate and House of Representatives of the Secretary's determination and the reasons therefor.

“(2) In making a determination under this subsection, the Secretary shall give great weight to the views and recommendations of the Academy expressed in that report with respect to the implementation of this section.”

SCIENTIFIC RESEARCH FEASIBILITY STUDIES PROGRAM

Pub. L. 102-4, §8, Feb. 6, 1991, 105 Stat. 17, provided that:

“(a) ESTABLISHMENT OF PROGRAM.—Subject to subsections (e) and (f), the Secretary of Veterans Affairs shall establish a program to provide for the conduct of studies of the feasibility of conducting additional scientific research on—

“(1) health hazards resulting from exposure to dioxin;

“(2) health hazards resulting from exposure to other toxic agents in herbicides used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam era; and

“(3) health hazards resulting from active military, naval, or air service in the Republic of Vietnam during the Vietnam era.

“(b) PROGRAM REQUIREMENTS.—(1) Under the program established pursuant to subsection (a), the Secretary shall, pursuant to criteria prescribed pursuant to paragraph (2), award contracts or furnish financial assistance to non-Government entities for the conduct of studies referred to in subsection (a).

“(2) The Secretary shall prescribe criteria for (A) the selection of entities to be awarded contracts or to receive financial assistance under the program, and (B) the approval of studies to be conducted under such contracts or with such financial assistance.

“(c) REPORT.—The Secretary shall promptly report the results of studies conducted under the program to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

“(d) CONSULTATION WITH THE NATIONAL ACADEMY OF SCIENCES.—(1) To the extent provided under any agreement entered into by the Secretary and the National Academy of Sciences under this Act [Pub. L. 102-4, see Short Title of 1991 Amendments note under section 101 of this title]—

“(A) the Secretary shall consult with the Academy regarding the establishment and administration of the program under subsection (a); and

“(B) the Academy shall review the studies conducted under contracts awarded pursuant to the program and the studies conducted with financial assistance furnished pursuant to the program.

“(2) The agreement shall require the Academy to submit to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives any recommendations that the Academy considers appropriate regarding any studies reviewed under the agreement.

“(e) FUNDING.—The authority of the Secretary to carry out this section is effective in any fiscal year only to the extent or in the amount specifically provided in statutory language in appropriations Acts.

“(f) EFFECTIVE DATE.—(1) This section shall take effect at the end of the 90-day period beginning on the date on which the first report of the National Academy of Sciences under section 3(g) [set out above] is received by the Secretary, except that this section shall not take effect if the Secretary, after receiving that report and before the end of that 90-day period—

“(A) determines that it is not feasible or cost-effective to carry out this section or that carrying out this section would not make a material contribution to the body of scientific knowledge concerning the health effects in humans of herbicide exposure; and

“(B) notifies the Committees on Veterans' Affairs of the Senate and House of Representatives of the Secretary's determination and the reasons therefor.

“(2) In making a determination under this subsection, the Secretary shall give great weight to the

views and recommendations of the Academy expressed in that report with respect to the implementation of this section."

BLOOD TESTING OF CERTAIN VIETNAM-ERA VETERANS

Pub. L. 102-4, § 9, Feb. 6, 1991, 105 Stat. 18, as amended by Pub. L. 102-83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that:

"(a) BLOOD TESTING.—Subject to subsections (d) and (e), in the case of a veteran described in section 1710(e)(1)(A) of title 38, United States Code, who—

"(1) has applied for medical care from the Department of Veterans Affairs; or

"(2) has filed a claim for, or is in receipt of disability compensation under chapter 11 of title 38, United States Code,

the Secretary of Veterans Affairs shall, upon the veteran's request, obtain a sufficient amount of blood serum from the veteran to enable the Secretary to conduct a test of the serum to ascertain the level of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) which may be present in the veteran's body.

"(b) NOTIFICATION OF TEST RESULTS.—Upon completion of such test, the Secretary shall notify the veteran of the test results and provide the veteran a complete explanation as to what, if anything, the results of the test indicate regarding the likelihood of the veteran's exposure to TCDD while serving in the Republic of Vietnam.

"(c) INCORPORATION IN SYSTEM.—The Secretary shall maintain the veteran's blood sample and the results of the test as part of the system required by section 7 [set out above].

"(d) FUNDING.—The authority of the Secretary to carry out this section is effective in any fiscal year only to the extent or in the amount specifically provided in statutory language in appropriations Acts, but such amount shall not exceed \$4,000,000 in any fiscal year.

"(e) EFFECTIVE DATE.—(1) This section shall take effect at the end of the 90-day period beginning on the date on which the first report of the National Academy of Sciences under section 3(g) [set out above] is received by the Secretary, except that this section shall not take effect if the Secretary, after receiving that report and before the end of that 90-day period—

"(A) determines that it is not feasible or cost-effective to carry out this section or that carrying out this section would not make a material contribution to the body of scientific knowledge concerning the health effects in humans of herbicide exposure; and

"(B) notifies the Committees on Veterans' Affairs of the Senate and House of Representatives of the Secretary's determination and the reasons therefor.

"(2) In making a determination under this subsection, the Secretary shall give great weight to the views and recommendations of the Academy expressed in that report with respect to the implementation of this section."

STUDY OF EFFECT OF VIETNAM EXPERIENCE ON HEALTH STATUS OF WOMEN VIETNAM VETERANS

Pub. L. 99-272, title XIX, § 19031, Apr. 7, 1986, 100 Stat. 385, provided that:

"(a) REQUIREMENT FOR EPIDEMIOLOGICAL STUDY.—(1)(A) Except as provided in paragraph (2), the Administrator of Veterans' Affairs shall provide for the conduct of an epidemiological study of any long-term adverse health effects (particularly gender-specific health effects) which have been experienced by women who served in the Armed Forces of the United States in the Republic of Vietnam during the Vietnam era and which may have resulted from traumatic experiences during such service, from exposure during such service to phenoxy herbicides (including the herbicide known as Agent Orange), to other herbicides, chemicals, or medications that may have deleterious health effects, or to environmental hazards, or from any other experience or exposure during such service.

"(B) The Administrator may include in the study conducted under this paragraph an evaluation of the means of detecting and treating long-term adverse health effects (particularly gender-specific health effects) found through the study.

"(2)(A) If the Administrator, in consultation with the Director of the Office of Technology Assessment, determines that it is not feasible to conduct a scientifically valid study of an aspect of the matters described in paragraph (1)—

"(i) the Administrator shall promptly submit to the appropriate committees of the Congress a notice of that determination and the reasons for the determination; and

"(ii) the Director, not later than 60 days after the date on which such notice is submitted to the committees, shall submit to such committees a report evaluating and commenting on such determination.

"(B) The Administrator is not required to study any aspect of the matters described in paragraph (1) with respect to which a determination is made and a notice is submitted pursuant to subparagraph (A)(i).

"(C) If the Administrator submits to the Congress notice of a determination made pursuant to subparagraph (A) that it is not scientifically feasible to conduct the study described in paragraph (1)(A), this section (effective as of the date of such notice) shall cease to have effect as if repealed by law.

"(3) The Administrator shall provide for the study to be conducted through contracts or other agreements with private or public agencies or persons.

"(b) APPROVAL OF PROTOCOL.—(1) The study required by subsection (a) shall be conducted in accordance with a protocol approved by the Director of the Office of Technology Assessment.

"(2) Not later than July 1, 1986, the Administrator shall publish a request for proposals for the design of the protocol to be used in conducting the study under this section.

"(3) In considering any proposed protocol for use or approval under this subsection, the Administrator and the Director shall take into consideration—

"(A) the protocol approved under section 307(a)(2)(A)(i) of the Veterans Health Programs Extension and Improvement Act of 1979 (Public Law 96-151; 38 U.S.C. 219 note [1116 note]); and

"(B) the experience under the study being conducted pursuant to that protocol.

"(c) OTA REPORTS.—(1) Concurrent with the approval or disapproval of any protocol under subsection (b)(1), the Director shall submit to the appropriate committees of the Congress a report—

"(A) explaining the reasons for the Director's approval or disapproval of the protocol, as the case may be; and

"(B) containing the Director's conclusions regarding the scientific validity and objectivity of the protocol.

"(2) If the Director has not approved a protocol under subsection (b)(1) by the last day of the 180-day period beginning on the date of the enactment of this Act [Apr. 7, 1986], the Director—

"(A) shall, on such day, submit to the appropriate committees of the Congress a report describing the reasons why the Director has not approved such a protocol; and

"(B) shall, each 60 days thereafter until such a protocol is approved, submit to such committees an updated report on the report required by clause (A).

"(d) OTA MONITORING OF COMPLIANCE.—(1) In order to ensure compliance with the protocol approved under subsection (b)(1), the Director shall monitor the conduct of the study under subsection (a).

"(2)(A) The Director shall submit to the appropriate committees of the Congress, at each of the times specified in subparagraph (B), a report on the Director's monitoring of the conduct of the study pursuant to paragraph (1).

"(B) A report shall be submitted under subparagraph (A)—

“(i) before the end of the 6-month period beginning on the date on which the Director approves the protocol referred to in paragraph (1);

“(ii) before the end of the 12-month period beginning on such date; and

“(iii) annually thereafter until the study is completed or terminated.

“(e) DURATION OF STUDY.—The study conducted pursuant to subsection (a) shall be continued for as long after the date on which the first report is submitted under subsection (f)(1) as the Administrator determines that there is a reasonable possibility of developing, through such study, significant new information on the health effects described in subsection (a)(1).

“(f) REPORTS.—(1) Not later than 24 months after the date of the approval of the protocol pursuant to subsection (b)(1) and annually thereafter, the Administrator shall submit to the appropriate committees of the Congress a report containing—

“(A) a description of the results obtained, before the date of such report, under the study conducted pursuant to subsection (a); and

“(B) any administrative actions or recommended legislation, or both, and any additional comments which the Administrator considers appropriate in light of such results.

“(2) Not later than 90 days after the date on which each report required by paragraph (1) is submitted, the Administrator shall publish in the Federal Register, for public review and comment, a description of any action that the Administrator plans or proposes to take with respect to programs administered by the Veterans' Administration based on—

“(A) the results described in such report;

“(B) the comments and recommendations received on that report; and

“(C) any other available pertinent information.

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'