

(c) TOXIC EXPOSURE RISK ACTIVITY DEFINED.—In this section, the term “toxic exposure risk activity” has the meaning given that term in section 1710(e)(4) of this title.

(Added Pub. L. 117-168, title III, §303, Aug. 10, 2022, 136 Stat. 1779.)

§ 1167.¹ Mental health consultations

(a) IN GENERAL.—Not later than 30 days after the date on which a veteran submits to the Secretary a claim for compensation under this chapter for a service-connected disability relating to a mental health diagnosis, the Secretary shall offer the veteran a mental health consultation to assess the mental health needs of, and care options for, the veteran.

(b) AVAILABILITY.—The Secretary shall—

(1) offer a veteran a consultation under subsection (a) without regard to any previous denial or approval of a claim of that veteran for a service-connected disability relating to a mental health diagnosis; and

(2) ensure that a veteran offered a mental health consultation under subsection (a) may elect to receive such consultation during the one-year period beginning on the date on which the consultation is offered or during such longer period beginning on such date as the Secretary considers appropriate.

(c) RULE OF CONSTRUCTION.—A consultation provided to a veteran under this section shall not be construed as a determination that any disability of such veteran is service-connected for the purposes of any benefit under the laws administered by the Secretary.

(Added Pub. L. 117-328, div. V, title IV, §404(a)(1), Dec. 29, 2022, 136 Stat. 5512.)

SUBCHAPTER VII—DETERMINATIONS RELATING TO PRESUMPTIONS OF SERVICE CONNECTION BASED ON TOXIC EXPOSURE

§ 1171. Procedures to determine presumptions of service connection based on toxic exposure; definitions

(a) PROCEDURES.—The Secretary shall determine whether to establish, or to remove, presumptions of service connection based on toxic exposure pursuant to this subchapter, whereby—

(1) under section 1172 of this title—

(A) the Secretary provides—

(i) public notice regarding what formal evaluations the Secretary plans to conduct; and

(ii) the public an opportunity to comment on the proposed formal evaluations;

(B) the working group established under subsection (b) of such section provides—

(i) advice to the Secretary on toxic-exposed veterans and cases in which veterans who, during active military, naval, air, or space service, may have experienced a toxic exposure or their dependents may have experienced a toxic exposure while the veterans were serving in the active military, naval, air, or space service;

(ii) recommendations to the Secretary on corrections needed in the Individual Longitudinal Exposure Record to better reflect veterans and dependents described in clause (i); and

(iii) recommendations to the Secretary regarding which cases of possible toxic exposure should be reviewed;

(2) the Secretary provides for formal evaluations of such recommendations under section 1173 of this title and takes into account reports received by the Secretary from the National Academies of Sciences, Engineering, and Medicine under section 1176 of this title; and

(3) the Secretary issues regulations under section 1174 of this title.

(b) DEFINITIONS.—In this subchapter:

(1) The term “illness” includes a disease or other condition affecting the health of an individual, including mental and physical health.

(2) The term “Individual Longitudinal Exposure Record” includes—

(A) service records;

(B) any database maintained by the Department of Defense and shared with the Department of Veterans Affairs to serve as a central portal for exposure-related data that compiles, collates, presents, and provides available occupational and environmental exposure information to support the needs of the Department of Defense and the Department of Veterans Affairs; or

(C) any successor system to a database described in subparagraph (B).

(Added Pub. L. 117-168, title II, §202(a), Aug. 10, 2022, 136 Stat. 1767.)

Statutory Notes and Related Subsidiaries

CORRECTION OF EXPOSURE RECORDS BY MEMBERS OF THE ARMED FORCES AND VETERANS

Pub. L. 117-168, title VIII, §803, Aug. 10, 2022, 136 Stat. 1802, provided that:

“(a) IN GENERAL.—The Secretary of Veterans Affairs shall coordinate with the Secretary of Defense to provide a means for veterans to update their records as necessary to reflect exposures to occupational or environmental hazards by such member or veteran in the Individual Longitudinal Exposure Record.

“(b) EVIDENCE.—

“(1) PROVISION OF EVIDENCE.—To update a record under subsection (a), a veteran shall provide such evidence as the Secretary of Veterans Affairs considers necessary.

“(2) REGULATIONS.—The Secretary of Veterans Affairs shall prescribe by regulation the evidence considered necessary under paragraph (1).

“(c) DEFINITIONS.—In this section:

“(1) INDIVIDUAL LONGITUDINAL EXPOSURE RECORD.—The term ‘Individual Longitudinal Exposure Record’ has the meaning given such term in section 1171 of title 38, United States Code, as added by section 202.

“(2) TOXIC EXPOSURE.—The term ‘toxic exposure’ has the meaning given such term in section 101 of title 38, United States Code, as amended by section 102(b).”

§ 1172. Annual notice and opportunity for public comment

(a) NOTICE REQUIRED.—(1)(A) Not less frequently than once each year, the Secretary shall

¹ Another section 1167 is set out preceding section 1168.

publish in the Federal Register notice of the formal evaluations that the Secretary plans to conduct pursuant to section 1173 of this title.

(B) Each notice published under subparagraph (A) shall include, for each formal evaluation referred to in the notice, an explanation as to why the military environmental exposures and adverse health outcomes that are the subject of the formal evaluation were chosen by the Secretary for formal evaluation under section 1173 of this title.

(2)(A) With each notice published under paragraph (1), the Secretary shall seek public comment on the military environmental exposures and adverse health outcomes that are the subject of the formal evaluations referred to in the notice.

(B) The Secretary shall—

(i) consider all public comment received under subparagraph (A); and

(ii) publish in the Federal Register a response to the comments received under subparagraph (A).

(3)(A) For each notice published under paragraph (1), the Secretary shall hold an open meeting for members of the public to voice their comments in response to the notice.

(B) To help evaluate presumptions of service connection, the Secretary shall, not less frequently than quarterly, collaborate with, partner with, and give weight to the advice of veterans service organizations and such other stakeholders as the Secretary considers appropriate.

(4) Failure to include a military environmental exposure or adverse health effect in a Federal Register notice published pursuant to subsection (a) shall not preclude the Secretary from initiating a formal evaluation of such exposure or health effect.

(b) WORKING GROUP.—(1) The Secretary shall establish a working group within the Department (in this section referred to as the “Working Group”).

(2) The Working Group shall include personnel of the Veterans Health Administration and the Veterans Benefits Administration.

(3) The Secretary shall consult with, and seek the advice of, the Working Group with respect to cases in which—

(A) a veteran may have, during active military, naval, air, or space service, experienced a toxic exposure; or

(B) a dependent of a veteran may have experienced a toxic exposure during the active military, naval, air, or space service of the veteran.

(c) ASSESSMENTS.—(1) The Working Group shall assess cases of the toxic exposure of veterans and their dependents that occurred during active military, naval, air, or space service, including by conducting ongoing surveillance and reviewing such exposure described in scientific literature, media reports, information from veterans, and information from Congress.

(2) The assessments under paragraph (1) shall cover suspected and known toxic exposures occurring during active military, naval, air, or space service, including by identifying and evaluating new and emerging toxic exposures that

are not recognized under existing presumptions of service connection.

(3) The Working Group may conduct an assessment under paragraph (1) in response to a comment received under paragraph (2) or (3) of subsection (a).

(4) The Working Group shall, in consultation with the Secretary of Defense, on a periodic basis, assess the Individual Longitudinal Exposure Record to ensure the accuracy of data collected.

(d) DEVELOPMENT OF RECOMMENDATIONS.—(1) Following an assessment of a case of the toxic exposure of veterans that occurred during active military, naval, air, or space service under subsection (c), or their dependents, the Working Group may develop a recommendation for formal evaluation under section 1173 of this title to conduct a review of the health effects related to the case of exposure if the Working Group determines that the research may change the current understanding of the relationship between an exposure to an environmental hazard and adverse health outcomes in humans.

(2) Upon receipt of evidence suggesting that previous findings regarding the periods and locations of exposure covered by an existing presumption of service connection are no longer supported, the Working Group may nominate such evidence for formal evaluation under section 1173 of this title to modify the periods and locations.

(e) REPORTS BY THE WORKING GROUP.—Not less frequently than once each year, the Working Group shall submit to the Secretary, the Committee on Veterans' Affairs of the Senate, and the Committee on Veterans' Affairs of the House of Representatives, and make publicly available, a report on—

(1) recommendations developed under subsection (d), if any; and

(2) recommendations for such legislative or administrative action as the Working Group considers necessary for the Working Group to be more effective in carrying out the requirements of this section.

(f) RESPONSES BY SECRETARY.—In response to each report submitted under subsection (e), the Secretary shall, not later than 30 days after receiving the report, initiate a formal evaluation pursuant to section 1173 of this title.

(Added Pub. L. 117-168, title II, §202(a), Aug. 10, 2022, 136 Stat. 1768.)

§ 1173. Formal evaluation of recommendations

(a) FORMAL EVALUATIONS.—The Secretary shall establish a process to conduct a formal evaluation with respect to each recommendation made by the Working Group under section 1172 of this title.

(b) EVIDENCE, DATA, AND FACTORS.—The Secretary shall ensure that each formal evaluation under subsection (a) covers the following:

(1) Scientific evidence, based on the review of available scientific literature, including human, toxicological, animal, and methodological studies, and other factors.

(2) Claims data, based on the review of claim rate, grant rate, and service connection prevalence, and other factors.