

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.

(3) Other factors the Secretary determines appropriate, such as—

(A) the level of disability and mortality caused by the health effects related to the case of toxic exposure being evaluated;

(B) the quantity and quality of the information available and reviewed;

(C) the feasibility of and period for generating relevant information and evidence;

(D) whether such health effects are combat- or deployment-related;

(E) the ubiquity or rarity of the health effects; and

(F) any time frame during which a health effect must become manifest.

(c) CONDUCT OF EVALUATIONS.—(1) The Secretary shall ensure that each formal evaluation under subsection (a)—

(A) reviews scientific evidence in a manner that—

(i) conforms to principles of scientific and data integrity;

(ii) is free from suppression or distortion of scientific or technological findings, data, information, conclusions, or technical results; and

(B)(i) evaluates the likelihood that a positive association exists between an illness and a toxic exposure while serving in the active military, naval, air, or space service; and

(ii) assesses the toxic exposures and illnesses and determines whether the evidence supports a finding of a positive association between the toxic exposure and the illness.

(2) In carrying out paragraph (1)(B)(ii), a formal evaluation under subsection (a) shall include reviewing all relevant data to determine the strength of evidence for a positive association based on the following four categories:

(A) The “sufficient” category, where the evidence is sufficient to conclude that a positive association exists.

(B) The “equipose and above” category, where the evidence is sufficient to conclude that a positive association is at least as likely as not, but not sufficient to conclude that a positive association exists.

(C) The “below equipose” category, where the evidence is not sufficient to conclude that a positive association is at least as likely as not, or is not sufficient to make a scientifically informed judgment.

(D) The “against” category, where the evidence suggests the lack of a positive association.

(d) RECOMMENDATION FOR ESTABLISHING A PRESUMPTION OF SERVICE CONNECTION.—Not later than 120 days after the date on which a formal evaluation is commenced, the element of the Department that conducts the evaluation shall submit to the Secretary a recommendation with respect to establishing a presumption of service connection for the toxic exposure and illness, or modifying an existing presumption of service connection, covered by the evaluation.

(Added Pub. L. 117–168, title II, §202(a), Aug. 10, 2022, 136 Stat. 1769.)

**§ 1174. Regulations regarding presumptions of service connection based on toxic exposure**

(a) ACTION UPON RECOMMENDATION.—Not later than 160 days after the date on which the Secretary receives a recommendation to establish or modify a presumption of service connection under section 1173 of this title—

(1) if the Secretary determines, in the discretion of the Secretary, that the presumption, or modification, is warranted, the Secretary shall—

(A) commence issuing regulations in accordance with the provisions of subchapter II of chapter 5 of title 5 (commonly referred to as the Administrative Procedures Act) setting forth the presumption or commence revising regulations to carry out such modification; and

(B) include in such regulations any time frame during which a health effect must become manifest; or

(2) if the Secretary determines, in the discretion of the Secretary, that the presumption, or modification, is not warranted, the Secretary shall publish in the Federal Register a notice of the determination, including the reasons supporting the determination.

(b) REMOVAL OF PRESUMPTION.—(1)(A) The Secretary may—

(i) issue a regulation to remove an illness from a presumption of service connection previously established pursuant to a regulation issued under subsection (a); and

(ii) issue a regulation to remove a presumption of service connection established pursuant to title IV of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 if the Secretary concludes that evidence suggests the lack of a positive association between the disease and the toxic exposure.

(B) Under subparagraph (A)(ii), the Secretary shall not consider the lack of evidence as sufficient to support a decision for removal of a presumption.

(2) Whenever an illness is removed from regulations pursuant to paragraph (1), or the periods and locations of exposure covered by a presumption of service connection are modified under subsection (a)—

(A) a veteran who was awarded compensation under chapter 11 of this title for such illness on the basis of the presumption provided under such regulations before the effective date of the removal or modification shall continue to be entitled to receive compensation on that basis;

(B) a survivor of a veteran who was awarded dependency and indemnity compensation under chapter 13 of this title for the death of a veteran resulting from such illness on the basis of such presumption shall continue to be entitled to receive dependency and indemnity compensation on such basis; and

(C) no veteran or survivor covered under subparagraph (A) or (B) shall have their compensation reduced solely because of the removal of an illness pursuant to paragraph (1).

(Added Pub. L. 117–168, title II, §202(a), Aug. 10, 2022, 136 Stat. 1770.)