

(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 “equipoise 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 equipoise” 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.)

Editorial Notes

REFERENCES IN TEXT

Title IV of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, referred to in subsec. (b)(1)(A)(ii), is title IV of Pub. L. 117-168, Aug. 10, 2022, 136 Stat. 1780, which enacted section 1120 of this title, amended sections 1112, 1113, 1116, 1117, and 1710 of this title, and enacted provisions set out as notes under sections 101, 1116, and 1120 of this title. For complete classification of title IV to the Code, see Tables.

§ 1175. Authority to modify process; congressional oversight

(a) IN GENERAL.—The Secretary may modify the process under which the working group established under subsection (b) of section 1172 of this title conducts assessments under such section, the Secretary conducts formal evaluations under section 1173 of this title, and issues regulations under section 1174 of this title if—

(1) such evaluations cover the evidence, data, and factors required by subsection (b) of such section 1173; and

(2) a period of 180 days has elapsed following the date on which the Secretary submits the notice under subsection (b) regarding the modification.

(b) NOTICE.—If the Secretary proposes to modify the process under which the working group established under subsection (b) of section 1172 of this title conducts assessments under such section, the process under which the Secretary conducts formal evaluations under section 1173 of this title, or issues regulations under section 1174 of this title, 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 notice of the proposed modifications containing the following:

(1) A description of the proposed modifications.

(2) A description of any exceptions to the requirements of such sections that are proposed because of limited available scientific evidence, and a description of how such evaluations will be conducted.

(Added Pub. L. 117-168, title II, §202(a), Aug. 10, 2022, 136 Stat. 1771.)

§ 1176. Agreement with National Academies of Sciences, Engineering, and Medicine concerning toxic exposures

(a) PURPOSE.—The purpose of this section is to provide for the National Academies of Sciences, Engineering, and Medicine (in this section referred to as the “Academies”), an independent nonprofit scientific organization with appropriate expertise that is not part of the Federal Government, to review and evaluate the available scientific evidence regarding associations between diseases and toxic exposures.

(b) AGREEMENT.—(1) The Secretary shall seek to enter into a five-year agreement with the Academies to perform the services covered by this section.

(2) The Secretary shall seek to enter into an agreement described in paragraph (1) not later than 60 days after the date of the enactment of the Sergeant First Class Heath Robinson Hon-

oring our Promise to Address Comprehensive Toxics Act of 2022.

(3) An agreement under this section may be extended in five-year increments.

(c) REVIEW OF SCIENTIFIC EVIDENCE.—Under an agreement between the Secretary and the Academies under this section, the Academies shall review and summarize the scientific evidence, and assess the strength thereof, concerning the association between toxic exposures during active military, naval, air, or space service and each disease suspected to be associated with such exposure in the human population.

(d) SCIENTIFIC DETERMINATIONS CONCERNING DISEASES.—For each disease reviewed under subsection (c), the Academies shall determine, to the extent that available scientific data permit meaningful determinations—

(1) whether an association exists between toxic exposures and the occurrence of the disease, taking into account the strength of the scientific evidence and the appropriateness of the statistical and epidemiological methods used to detect the association;

(2) the increased risk of the disease among those reporting toxic exposures during active military, naval, air, or space service;

(3) whether there exists a plausible biological mechanism or other evidence of a positive association between the toxic exposure and the occurrence of the disease; and

(4) determine the strength of evidence for a positive association based on categories furnished under section 1173 of this title.

(e) COOPERATION OF FEDERAL AGENCIES.—The head of each relevant Federal agency, including the Secretary of Defense, shall cooperate fully with the Academies in performing the services covered by this section.

(f) RECOMMENDATIONS FOR ADDITIONAL SCIENTIFIC STUDIES.—(1) Under an agreement between the Secretary and the Academies under this section, the Academies shall make any recommendations for additional scientific studies to resolve areas of continuing scientific uncertainty relating to toxic exposures.

(2) In making recommendations under paragraph (1), the Academies shall consider—

(A) the scientific information that is available at the time of the recommendation;

(B) the value and relevance of the information that could result from additional studies; and

(C) the cost and feasibility of carrying out such additional studies.

(g) REPORTS.—(1)(A) Under an agreement between the Secretary and the Academies under this section, not later than one year after the date of the enactment of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, the Academies shall submit to the Secretary, the Committee on Veterans' Affairs of the Senate, and the Committee on Veterans' Affairs of the House of Representatives an initial report on the activities of the Academies under the agreement.

(B) The report submitted under subparagraph (A) shall include the following:

(i) The determinations described in subsection (d).