

## As Amended by COST of War Act

### 38 U.S.C. §1116. Presumptions of service connection for diseases associated with exposure to certain herbicide agents; presumption of exposure for veterans who served in ~~the Republic of Vietnam~~ 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 ~~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~~ 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 ~~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~~ 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 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.

(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 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.

(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) Hypertension.

(M) Monoclonal gammopathy of undetermined significance.

(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 Comprehensive and Overdue Support for Troops of War Act of 2021 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).'

~~(b)(1) Whenever the Secretary determines, on the basis of sound medical and scientific evidence, that a positive association exists between (A) the exposure of humans to an herbicide agent, and (B) the occurrence of a disease in humans, the Secretary shall prescribe regulations providing that a presumption of service connection is warranted for that disease for the purposes of this section.~~

~~(2) In making determinations for the purpose of this subsection, the Secretary shall take into account (A) reports received by the Secretary from the National Academy of Sciences under section 3 of the Agent Orange Act of 1991, and (B) all other sound medical and scientific information and analyses available to the Secretary. In evaluating any study for the purpose of making such determinations, the Secretary shall take into consideration whether the results are statistically significant, are capable of replication, and withstand peer review.~~

~~(3) An association between the occurrence of a disease in humans and exposure to an herbicide agent shall be considered to be positive for the purposes of this section if the credible evidence for the association is equal to or outweighs the credible evidence against the association.~~

~~(c)~~

~~—(1)~~

~~(A) Not later than 60 days after the date on which the Secretary receives a report from the National Academy of Sciences under section 3 of the Agent Orange Act of 1991, the Secretary shall determine whether a presumption of service connection is warranted for each disease covered by the report. If the Secretary determines that such a presumption is warranted, the Secretary, not later than 60 days after making the determination, shall issue proposed regulations setting forth the Secretary's determination.~~

~~(B) If the Secretary determines that a presumption of service connection is not warranted, the Secretary, not later than 60 days after making the determination, shall publish in the Federal Register a notice of that determination. The notice shall include an explanation of the scientific basis for that determination. If the disease already is included in regulations providing for a presumption of service connection, the Secretary, not later than 60 days after publication of the notice of a determination that the presumption is not warranted, shall issue proposed regulations removing the presumption for the disease.~~

~~—(2) Not later than 90 days after the date on which the Secretary issues any proposed regulations under this subsection, the Secretary shall issue final regulations. Such regulations shall be effective on the date of issuance.~~

~~(d) Whenever a disease is removed from regulations prescribed under this section—~~

~~—(1) a veteran who was awarded compensation for such disease on the basis of the presumption provided in subsection (a) before the effective date of the removal shall continue to be entitled to receive compensation on that basis; and~~

~~—(2) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from such disease on the basis of such presumption shall continue to be entitled to receive dependency and indemnity compensation on such basis.~~

~~(e) Subsections (b) through (d) shall cease to be effective on September 30, 2015.~~

(cf) 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 ~~\_, 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~~ performed covered service, 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, or air service—~~

~~\_\_\_\_\_ (1) performed in the Republic of Vietnam during the period beginning on January 9, 1962, and 14 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 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, Kompon 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 II, §201(a)(1)(A), (b)-(c)(2)(A), (d)(1), Dec. 27, 2001, 115 Stat. 987 , 988.)

## **§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:

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

(e) Herbicide Agent.-In this section, the term "herbicide agent" has the meaning given that term in [section 1116\(a\)\(3\) of this title](#).

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

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

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

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

(b) Diseases.-A disease specified in this subsection is-

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

(2) any additional disease that-

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

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

(c) Herbicide Agent.-For purposes of this section, the term "herbicide agent" has the meaning given such term in [section 1821\(d\) of this title](#).

(Added [Pub. L. 116-23, §3\(a\), June 25, 2019, 133 Stat. 969](#) .)