

As Added by COST of War Act

38 U.S.C. SUBCHAPTER VII—RESEARCH AND DETERMINATIONS RELATING TO PRESUMPTIONS OF SERVICE CONNECTION BASED ON TOXIC EXPOSURE

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SUBCHAPTER VII—RESEARCH AND 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, to modify, or to remove, presumptions of service connection based on toxic exposure pursuant to this subchapter, whereby—

 (1) the Toxic Exposure Review Commission advises the Secretary and makes recommendations pursuant to section 1172 of this title;

 (2) the National Academies of Sciences, Engineering, and Medicine, reviews and evaluates the available scientific evidence pursuant to an agreement under section 1173 of this title;

 (3) the Working Group under section 1174 of this title evaluates the conclusions of the National Academies of Sciences, Engineering, and Medicine pursuant to the agreement described in paragraph (2) and makes recommendations to the Secretary under such section; and

 (4) the Secretary prescribes regulations under section 1175 of this title.

(b) ILLNESS DEFINED.—In this subchapter, the term ‘illness’ includes a disease or other condition affecting the health of an individual.

(c) NONAPPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to an entity established under this subchapter.

§ 1172. Toxic Exposure Review Commission

(a) ESTABLISHMENT.—The Secretary shall establish an independent commission to be known as the ‘Toxic Exposure Review Commission’ (in this section referred to as the ‘Commission’).

(b) PURPOSE.—The Commission shall—

 (1) advise the Secretary on questions relating to toxic exposures that require scientific research; and

 (2) assist in the consideration of possible presumptions of service connection relating to toxic exposure.

(c) DUTIES.—

(1) The Commission shall carry out the following duties:

(A) Collect any relevant information from the Department of Defense and other sources to identify possible toxic exposures relating to service during active duty, active duty for training, or inactive duty training in order to determine the need for a comprehensive review under an agreement with the National Academies of Sciences, Engineering, and Medicine under section 1173 of this title.

(B) Recommend to the Secretary, by majority vote, whether a review should be conducted under an agreement with the National Academies of Sciences, Engineering, and Medicine under section 1173 of this title.

(C) Recommend to the Secretary, by majority vote, whether new, independent studies regarding the health outcomes of toxic exposures, or any other new, independent studies that the Commission deems necessary and appropriate, should be conducted.

(D) Annually report to Congress on progress regarding the duties set forth in subparagraphs (A) through (C), any recommendations made to the Secretary, and any responses of the Secretary to such recommendations.

(2)(A) Relevant information may be collected under paragraph (1)(A) from the following:

(i) Any Federal agency as the Commission considers necessary to carry out this section.

(ii) Public meetings or hearings, which may be held to take such testimony and receive such evidence as the Commission considers advisable to carry out the duties of the Commission.

(B) Upon request of the chairperson of the Commission, the head of a Federal agency shall furnish information collected under subparagraph (A)(i) to the Commission unless such information is classified.

(d) MEMBERSHIP.—

(1)

(A) The Commission shall be composed of nine members, appointed as follows:

(i) Two members appointed by the majority leader of the Senate.

(ii) Two members appointed by the minority leader of the Senate.

(iii) Two members appointed by the Speaker of the House of Representatives.

(iv) Two members appointed by the minority leader of the House of Representatives.

(v) One member appointed by the Secretary.

(B) The initial members of the Commission shall be appointed under subparagraph (A) not later than 180 days after the date of the enactment of the Comprehensive and Overdue Support for Troops of War Act of 2021.

(2) In appointing individuals under paragraph (1)(A), the majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, the minority leader of the House of Representatives, and the Secretary shall jointly ensure that at least five members of the Commission are scientists or health care professionals—

(A) of whom—

(i) one has a background in the field of respiratory medicine;

(ii) one has a background in the field of endocrinology and metabolic medicine;

(iii) one has a background in hematology;

(iv) one has a background in oncology; and

(v) one has a background in occupational and environmental health; and

(B) who are not officials or employees of the Federal Government.

(3) In appointing individuals under paragraph (1)(A), the majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, the minority leader of the House of Representatives, and the Secretary shall jointly ensure that at least two members of the Commission represent an organization recognized by the Secretary for the representation of veterans under section 5902 of this title.

(4) In appointing individuals under paragraph (1)(A), the majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, the minority leader of the House of Representatives, and the Secretary shall jointly give consideration to including in the Commission at least one member who works with survivors of illnesses relating to toxic exposures and has a background in the field of study of toxic exposures.

(e) MEETINGS.—

(1) The Commission shall meet not less frequently than twice each year.

(2)(A) Each meeting of the Commission shall be open to the public.

(B) All the proceedings, information, and deliberations of the Commission shall be available for review by the public.

(C) Meetings of the Commission may be carried out through the use of telephonic or other appropriate telecommunication technology if the Commission determines that such technology will allow the members to communicate simultaneously.

(f) CHAIRPERSON AND VICE CHAIR.—At the initial meeting of the Commission under subsection (e), the Commission shall select a chairperson and vice chairperson from among the members of the Commission by a majority vote of the members of the Commission.

(g) PERIOD OF APPOINTMENT; VACANCIES.—

(1) A member of the Commission shall be appointed for a term that may not exceed four years.

(2) The Secretary shall ensure that terms of members of the Commission are staggered so that no such terms end on the same date.

(3) A vacancy in the Commission shall be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

(4) In appointing the initial members of the Commission, each official who is authorized to appoint two members of the Commission shall appoint—

(A) one member whose term expires after two years; and

(B) one member whose term expires after four years.

(h) PAY.—

(1) Members of the Commission shall serve without pay.

(2) Each member of the Commission who is an officer or employee of the United States shall serve without compensation in addition to that received for service as an officer or employee of the United States.

(3) Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(i) DIRECTOR OF STAFF.—

(1) The Commission shall appoint a Director who—

(A) has not served as an employee of the Department during the one-year period preceding the date of such appointment; and

(B) is not otherwise barred or prohibited from serving as Director under Federal ethics laws and regulations, by reason of post-employment conflict of interest.

(2) The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

(j) STAFF.—

(1) Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

(2) The Director may make such appointments without regard to the provisions of title 5 governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-15 of the General Schedule.

(3)(A) Not more than two-thirds of the personnel employed by or detailed to the Commission may be on detail from the Department.

(B) Not more than half of the professional analysts of the Commission staff may be persons detailed from the Department to the Commission.

(4) Subject to paragraph (3), the head of any Federal agency, upon the request of the Director, may detail any of the personnel of that agency to the Commission to assist the Commission in carrying out its duties under this section.

(5) The Commission may secure directly from any Federal agency such information as the Commission considers necessary to carry out this section. Upon request of the chairperson of the Commission, the head of such agency shall furnish such information to the Commission, unless such information is classified.

(k) OTHER AUTHORITY. —

(1) The Commission may procure by contract, to the extent funds are available, the temporary or

intermittent services of experts or consultants pursuant to section 3109 of title 5.

(2) To the extent funds are available, the Commission may lease real property and acquire personal property either of its own accord or in consultation with the General Services Administration.

(l) COMMUNICATIONS.—

(1)(A) Except as provided in subparagraph (B), no person may restrict an employee of the Department in communicating with the Commission.

(B) Subparagraph (A) does not apply to a communication that is unlawful.

(2) All ex parte communications with the Commission shall be made part of the public record.

(m) RESPONSES BY SECRETARY.—In response to each report submitted under subsection (c)(1), the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives and make available to the public a report on—

(1) the findings and opinions of the Secretary with respect to the report most recently submitted under subsection (c)(1); and

(2) whether the Secretary intends to nominate for review under an agreement with the National Academies of Sciences, Engineering, and Medicine under section 1173 of this title the review recommended by the Committee in the report, and if not, an explanation of why, including citations and sources; and

(3) whether the Secretary intends to follow any other recommendations made by the Commission.

§ 1173. Science review agreement

(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 exposure to toxic substances.

(b) AGREEMENT.—

(1) The Secretary shall seek to enter into a 10-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 Comprehensive and Overdue Support for Troops of War Act of 2021.

(3) An agreement under this section may be extended in five-year or 10-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 exposure to toxic substances during active military, naval, or air service and each illness suspected to be associated with such exposure in the human population.

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

determinations—

(1) whether an association exists between exposure to toxic substances 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 subject to toxic substances during active military, naval, or air service; and

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

(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 substances.

(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) Under an agreement between the Secretary and the Academies under this section, for each review conducted under subsection (c), 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.

(2) The report submitted under subparagraph (1) shall include the following:

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

(B) A full explanation of the scientific evidence and reasoning that led to such determinations.

(C) Any recommendations of the Academies under subsection (f).

(h) ALTERNATIVE CONTRACT SCIENTIFIC ORGANIZATION.—

(1) If the Secretary is unable to enter into an agreement with the Academies 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—

(A) is not part of the Federal Government;

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

(C) has expertise and objectivity comparable to that of the Academies.

(2) If the Secretary enters into an agreement with another organization as described in paragraph (1), any reference in this subchapter to the National Academies of Sciences, Engineering, and Medicine shall be treated as a reference to the other organization.

§ 1174. Working group on presumptions of service connection

(a) ESTABLISHMENT.—The Secretary shall establish a working group (in this section referred to as the ‘Working Group’)—

(1) to evaluate the conclusions of the National Academies of Sciences, Engineering, and Medicine contained in each report submitted under section 1173(g) of this title; and

(2) to develop and submit to the Secretary a recommendation within 60 days of the Secretary’s receipt of a report under section 1173(g) of this title with respect to whether—

(A) to establish a presumption of service connection between each toxic exposure and illness covered by a report described in paragraph (1); or

(B) to modify an existing presumption of service connection covered by a report described in paragraph (1).

(b) RECOMMENDATIONS.—

(1) In making a recommendation under subsection (a)(2), the Working Group shall, if the Working Group determines that additional research, studies, or reports are appropriate before making a final recommendation with respect to establishing or modifying a presumption of service connection, submit to the Secretary a description of such appropriate additional research, studies, or reports.

(2) In making a recommendation under subsection (a)(2), the Working Group shall consider only the positive association between a toxic exposure and an illness.

(3) Concurrent with the submittal of recommendations under subsection (a)(2), the Working Group shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a description of such recommendation.

§ 1175. Regulations regarding presumptions of service connection based on toxic exposure

(a) ACTION UPON WORKING GROUP RECOMMENDATION.—Not later than 60 days after the date on which the Secretary receives a recommendation to establish or modify a presumption of service connection under section 1174(a)(2) of this title—

(1) if the Secretary determines that the presumption, or modification, is warranted, the Secretary shall issue proposed regulations setting forth the presumption or revise regulations to carry out such modification; or

(2) if the Secretary determines 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, and all materials the Secretary relied upon for the determination.

(b) FINAL REGULATION.—Not later than 90 days after the date on which the Secretary issues any proposed regulations under subsection (a)(1), the Secretary shall issue final regulations. Such regulations shall be effective on the date of issuance.

(c) REMOVAL OF PRESUMPTION.—

(1) The Secretary may issue regulations to remove an illness from a presumption of service connection previously established pursuant to a regulation issued under subsection (b).

(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 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; and

(B) a survivor of a veteran who was awarded dependency and indemnity compensation 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.

(1) if the Secretary determines that the presumption, or modification, is warranted, the Secretary shall issue proposed regulations setting forth the presumption or revise regulations to carry out such modification; or

(2) if the Secretary determines 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) FINAL REGULATION.—Not later than 90 days after the date on which the Secretary issues any proposed regulations under subsection (a)(1), the Secretary shall issue final regulations. Such regulations shall be effective on the date of issuance.

(c) REMOVAL OF PRESUMPTION.—

(1) The Secretary may issue regulations to remove an illness from a presumption of service connection previously established pursuant to a regulation issued under subsection (b).

(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 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; and

(B) a survivor of a veteran who was awarded dependency and indemnity compensation 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.