

Public Law 98-542
98th Congress

An Act

To require the Administrator of Veterans' Affairs to prescribe regulations regarding the determination of service connection of certain disabilities of veterans who were exposed to dioxin in the Republic of Vietnam while performing active military, naval, or air service or to radiation from nuclear detonations while performing such service, to provide interim benefits for certain disabilities and deaths, and for other purposes.

Oct. 24, 1984
[H.R. 1961]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Veterans' Dioxin
and Radiation
Exposure
Compensation
Standards Act.
38 USC 354 note.

SHORT TITLE

SECTION 1. This Act may be cited as the "Veterans' Dioxin and Radiation Exposure Compensation Standards Act".

FINDINGS

SEC. 2. The Congress makes the following findings:

38 USC 354 note.

(1) Veterans who served in the Republic of Vietnam during the Vietnam era and veterans who participated in atmospheric nuclear tests or the American occupation of Hiroshima or Nagasaki, Japan, are deeply concerned about possible long-term health effects of exposure to herbicides containing dioxin or to ionizing radiation.

(2) There is scientific and medical uncertainty regarding such long-term adverse health effects.

(3) In section 102 of Public Law 97-22, the Congress responded to that uncertainty by authorizing priority medical care at Veterans' Administration facilities for any disability of a veteran who may have been so exposed (even though there is insufficient medical evidence linking such disability with such exposure) unless the disability is found to have resulted from a cause other than the exposure.

(4) The Congress has further responded to that medical and scientific uncertainty by requiring, in section 307 of Public Law 96-151 and section 601 of Public Law 98-160, the conduct of thorough epidemiological studies of the health effects experienced by veterans in connection with exposure both to herbicides containing dioxin and (if not determined to be scientifically infeasible) to radiation, and by requiring in Public Law 97-414, the development of radioepidemiological tables setting forth the probabilities of causation between various cancers and exposure to radiation.

38 USC 219 note.
97 Stat. 1006.
38 USC 219 note.

21 USC 301 note.

(5) There is some evidence that chloracne, porphyria cutanea tarda, and soft tissue sarcoma are associated with exposure to certain levels of dioxin as found in some herbicides and that most types of leukemia, malignancies of the thyroid, female breast, lung, bone, liver, and skin, and polycythemia vera are associated with exposure to certain levels of ionizing radiation.

(6) As of the date of the enactment of this Act, there are sixty-six federally sponsored research projects being conducted relating to herbicides containing dioxin, at a cost to the Federal Government in excess of \$130,000,000 and, as of 1981, federally sponsored research projects relating to ionizing radiation were costing the Federal Government more than \$115,000,000.

(7) The initial results of one project—an epidemiological study, conducted by the United States Air Force School of Aerospace Medicine, of the health status of the “Ranch Hand” veterans who carried out the loading and aerial spraying of herbicides containing dioxin in Vietnam and in the process came into direct skin contact with such herbicides in their most concentrated liquid form—were released on February 24, 1984, and contained the conclusion “that there is insufficient evidence to support a cause and effect relationship between herbicide exposure and adverse health in the Ranch Hand group at this time”.

(8) The “film badges” which were originally issued to members of the Armed Forces in connection with the atmospheric nuclear test program have previously constituted a primary source of dose information for veterans (and survivors of veterans) filing claims for Veterans’ Administration disability compensation or dependency and indemnity compensation in connection with exposure to radiation.

(9) These film badges often provide an incomplete measure of radiation exposure, since they were not capable of recording inhaled, ingested, or neutron doses (although the Defense Nuclear Agency currently has the capability to reconstruct individual estimates of such doses), were not issued to most of the participants in nuclear tests, often provided questionable readings because they were shielded during the detonation, and were worn for only limited periods during and after each nuclear detonation.

(10) Standards governing the reporting of dose estimates in connection with radiation-related claims for Veterans’ Administration disability compensation vary among the several branches of the Armed Forces, and no uniform minimum standards exist.

(11) The Veterans’ Administration has not promulgated permanent regulations setting forth specific guidelines, standards, and criteria for the adjudication of claims for Veterans’ Administration disability compensation based on exposure to herbicides containing dioxin or to ionizing radiation.

(12) Such claims (especially those involving health effects with long latency periods) present adjudicatory issues which are significantly different from issues generally presented in claims based upon the usual types of injuries incurred in military service.

(13) It has always been the policy of the Veterans’ Administration and is the policy of the United States, with respect to individual claims for service connection of diseases and disabilities, that when, after consideration of all evidence and material of record, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of a claim, the benefit of the doubt in resolving each such issue shall be given to the claimant.

PURPOSE

SEC. 3. The purpose of this Act is to ensure that Veterans' Administration disability compensation is provided to veterans who were exposed during service in the Armed Forces in the Republic of Vietnam to a herbicide containing dioxin or to ionizing radiation in connection with atmospheric nuclear tests or in connection with the American occupation of Hiroshima or Nagasaki, Japan, for all disabilities arising after that service that are connected, based on sound scientific and medical evidence, to such service (and that Veterans' Administration dependency and indemnity compensation is provided to survivors of those veterans for all deaths resulting from such disabilities). 38 USC 354 note.

REQUIREMENT IN TITLE 38, UNITED STATES CODE, RELATING TO REGULATIONS

SEC. 4. Section 354(a) of title 38, United States Code, is amended—
(1) by striking out the comma after "disabilities" and inserting in lieu thereof "(1)"; and
(2) by inserting before the period a comma and "and (2) the provisions required by section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act".

REQUIREMENT FOR AND CONTENT OF REGULATIONS

SEC. 5. (a) In carrying out the responsibilities of the Administrator of Veterans' Affairs under section 354(a)(2) of title 38, United States Code, and in order to promote consistency in claims processing and decisions, the Administrator shall prescribe regulations to— 38 USC 354 note.

(1) establish guidelines and (where appropriate) standards and criteria for the resolution of claims for benefits under laws administered by the Veterans' Administration where the criteria for eligibility for a benefit include a requirement that a death or disability be service connected and the claim of service connection is based on a veteran's exposure during service—

(A) in the Republic of Vietnam during the Vietnam era to a herbicide containing dioxin, or

(B) in connection with such veteran's participation in atmospheric nuclear tests or with the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, to ionizing radiation from the detonation of a nuclear device; and

(2) ensure that, with respect to those claims, the policy of the United States described in section 2(13) is carried out.

(b)(1)(A) The guidelines required to be established in regulations prescribed under this section shall include guidelines governing the evaluation of the findings of scientific studies relating to the possible increased risk of adverse health effects of exposure to herbicides containing dioxin or of exposure to ionizing radiation. Those guidelines shall require that, in the evaluation of those studies, the Administrator shall take into account whether the results are statistically significant, are capable of replication, and withstand peer review.

(B) The evaluations described in subparagraph (A) shall be made by the Administrator of Veterans' Affairs after receiving the advice of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards (established under

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section 6). Those evaluations shall be published in the notice section of the Federal Register.

(C) The standards and criteria required to be established in regulations prescribed under this section shall include provisions governing the use in the adjudication of individual claims of the Administrator's evaluations made under subparagraph (B).

(2)(A)(i) In prescribing regulations under this section, the Administrator (after receiving the advice of the Advisory Committee and of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards regarding the diseases described in subparagraph (B)) shall make determinations, based on sound medical and scientific evidence, with respect to each disease described in subparagraph (B) as to whether service connection shall, subject to division (ii) of this subparagraph, be granted in the adjudication of individual cases. In making determinations regarding such diseases, the Administrator shall give due regard to the need to maintain the policy of the United States with respect to the resolution of contested issues as set forth in section 2(13). The Administrator shall set forth in such regulations such determinations, with any specification (relating to exposure or other relevant matter) of limitations on the circumstances under which service connection shall be granted, and shall implement such determinations in accordance with such regulations.

(ii) If the Administrator makes a determination, pursuant to this subparagraph, that service connection shall be granted in the case of a disease described in subparagraph (B), the Administrator shall specify in such regulations that, in the adjudication of individual cases, service connection shall not be granted where there is sufficient affirmative evidence to the contrary or evidence to establish that an intercurrent injury or disease which is a recognized cause of the described disease has been suffered between the date of separation from service and the onset of such disease or that the disability is due to the veteran's own willful misconduct.

(iii) With regard to each disease described in subparagraph (B), the Administrator shall include in the regulations prescribed under this section provisions specifying the factors to be considered in adjudicating issues relating to whether or not service connection should be granted in individual cases and the circumstances governing the granting of service connection for such disease.

(B) The diseases referred to in subparagraph (A) are those specified in section 2(5) and any other disease with respect to which the Administrator finds (after receiving and considering the advice of the appropriate panel of the Scientific Council established under section 6(d)(2)) that there is sound scientific or medical evidence indicating—

(i) a connection to exposure to a herbicide containing dioxin, in the case of a veteran who was exposed to that herbicide during such veteran's service in the Republic of Vietnam during the Vietnam era, or

(ii) a connection to exposure to ionizing radiation, in the case of a veteran who was exposed to ionizing radiation in connection with such veteran's participation in an atmospheric nuclear test or with the American occupation of Hiroshima or Nagasaki, Japan, before July 1, 1946.

(3) The regulations prescribed under this section shall include—

(A) specification of the maximum period of time after exposure to such herbicide or ionizing radiation for the development of those diseases; and

(B) a requirement that a claimant filing a claim based upon a veteran's exposure to a herbicide containing dioxin or to ionizing radiation from the detonation of a nuclear device may not be required to produce evidence substantiating the veteran's exposure during active military, naval, or air service if the information in the veteran's service records and other records of the Department of Defense is not inconsistent with the claim that the veteran was present where and when the claimed exposure occurred.

(c)(1) The Administrator of Veterans' Affairs shall develop the regulations required by this section (and any amendment to those regulations) through a public review and comment process in accordance with the provisions of section 553 of title 5, United States Code. That process may include consideration by the Administrator of the recommendations of the Veterans' Advisory Committee on Environmental Hazards and the Scientific Council thereof (established under section 6) with respect to the proposed regulations, and that process shall include consideration by the Administrator of the recommendations of the Committee and the Council with respect to the final regulations and proposed and final amendments to such regulations. The period for public review and comment shall be completed not later than ninety days after the proposed regulations or proposed amendments are published in the Federal Register.

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(2)(A) Not later than one hundred and eighty days after the date of the enactment of this Act, the Administrator shall develop and publish in the Federal Register a proposed version of the regulations required to be prescribed by this section.

(B) Not later than three hundred days after the date of the enactment of this Act, the Administrator shall publish in the Federal Register the final regulations (together with explanations of the bases for the guidelines, standards, and criteria contained therein) required to be prescribed by this section.

ADVISORY COMMITTEE ON ENVIRONMENTAL HAZARDS

SEC. 6. (a) The advisory committee referred to in subsections (b) and (c) of section 5, to be known as the Veterans' Advisory Committee on Environmental Hazards (hereinafter in this section referred to as the "Committee") shall consist of fifteen members appointed by the Administrator of Veterans' Affairs after requesting and considering recommendations from veteran organizations, including—

38 USC 354 note.

(1) eleven individuals (of whom none may be members of the Armed Forces on active duty or employees of the Veterans' Administration or the Department of Defense and not more than three may be employees of other Federal departments or agencies), appointed, after requesting and considering the recommendations of the heads of Federal entities with particular expertise in biomedical and environmental science, including—

(A) three individuals who are recognized medical or scientific authorities in fields pertinent to understanding the health effects of exposure to dioxin;

(B) three individuals who are recognized medical or scientific authorities in fields pertinent to understanding the health effects of exposure to ionizing radiation; and

(C) five individuals who are recognized medical or scientific authorities in fields, such as epidemiology and other scientific disciplines, pertinent to determining and assessing the health effects of exposure to dioxin or ionizing radiation in exposed populations; and

(2) four individuals from the general public, including at least one disabled veteran, having a demonstrated interest in and experience relating to veterans' concerns regarding exposure to dioxin or ionizing radiation.

(b) The Committee shall include, as ex officio, nonvoting members, the Chief Medical Director and the Chief Benefits Director of the Veterans' Administration, or their designees.

(c) The Committee shall submit to the Administrator any recommendations it considers appropriate for administrative or legislative action.

(d)(1) The eleven members of the Committee described in subsection (a)(1) shall, in addition to serving as members of the Committee, constitute a Scientific Council of the Committee (hereinafter in this section referred to as the "Council").

(2) The Council shall be divided into (A) an eight-member panel with responsibility for evaluating scientific studies relating to possible adverse health effects of exposure to dioxin, and (B) an eight-member panel with responsibility for evaluating scientific studies relating to possible adverse health effects of exposure to ionizing radiation.

Reports.

(3) The Council shall make findings and evaluations regarding pertinent scientific studies and shall submit to the Committee and the Administrator directly periodic reports on such findings and evaluations.

(e) The Administrator shall designate one of the members to chair the Committee and another member to chair the Council.

(f) The Administrator shall determine the terms of service and pay and allowances of members of the Committee, except that a term of service of any member may not exceed three years. The Administrator may reappoint any member for additional terms of service.

(g) The Administrator shall provide administrative support services and fiscal support for the Committee.

NUCLEAR RADIATION MATTERS INVOLVING OTHER AGENCIES

38 USC 354 note.

SEC. 7. (a) In connection with the duties of the Director of the Defense Nuclear Agency, as Department of Defense Executive Agent for the Nuclear Test Personnel Review Program, relating to the preparation of radiation dose estimates with regard to claims for Veterans' Administration disability compensation and dependency and indemnity compensation under chapters 11 and 13, respectively, of title 38, United States Code—

38 USC 301 et seq., 401 et seq.

(1) the Secretary of Defense shall prescribe guidelines (and any amendment to those guidelines) through a public review and comment process in accordance with the provisions of section 553 of title 5, United States Code—

(A) specifying the minimum standards governing the preparation of radiation dose estimates in connection with claims for such compensation,

(B) making such standards uniformly applicable to the several branches of the Armed Forces, and

(C) requiring that each such estimate furnished to the Veterans' Administration and to any veteran or survivor include information regarding all material aspects of the radiation environment to which the veteran was exposed and which form the basis of the claim, including inhaled, ingested, and neutron doses; and

(2) the Secretary of Health and Human Services, through the Director of the National Institutes of Health, shall—

(A) conduct a review of the reliability and accuracy of scientific and technical devices and techniques (such as "whole body counters") which may be useful in determining previous radiation exposure;

(B) submit to the Administrator of Veterans' Affairs and the Committees on Veterans' Affairs of the House of Representatives and the Senate, not later than July 1, 1985, a report regarding the results of such review, including information concerning the availability of such devices and techniques, the categories of exposed individuals as to whom use of such devices and techniques may be appropriate, and the reliability and accuracy of dose estimates which may be derived from such devices and techniques; and

Report.

(C) enter into an interagency agreement with the Administrator of Veterans' Affairs for the purpose of assisting the Administrator in identifying agencies or other entities capable of furnishing services involving the use of such devices and techniques.

(b) The Administrator of Veterans' Affairs, in resolving material differences between a radiation dose estimate, from a credible source, submitted by a veteran or survivor and a radiation dose estimate prepared and transmitted by the Director of the Defense Nuclear Agency, shall provide for the preparation of a radiation dose estimate by an independent expert, who shall be selected by the Director of the National Institutes of Health and who shall not be affiliated with the Defense Nuclear Agency, and the Administrator shall provide for the consideration of such independent estimate in connection with the adjudication of the claim for Veterans' Administration compensation.

AMENDMENTS TO REGULATIONS

SEC. 8. (a) Paragraph (3) of section 307(b) of the Veterans' Health Programs Extension and Improvement Act of 1979 (38 U.S.C. 219 note) is amended to read as follows:

"(3) Immediately after the submission of each report under paragraph (2), the Administrator, based on the results described in such report and the comments and recommendations included therein and any other available pertinent information, shall evaluate the need for any amendments to regulations, prescribed pursuant to section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, for the resolution of claims for service connection based on the exposure specified in subsection (a)(1)(A) of such

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section. To the extent that the Administrator determines that any amendments to such regulations are needed, the Administrator, not later than 90 days after such submission, shall develop and publish in the Federal Register, for public review and comment, proposed amendments to such regulations.”.

38 USC 219 note.

(b) Paragraph (5) of section 601(a) of the Veterans' Health Care Amendments of 1983 (Public Law 98-160; 97 Stat. 1007) is amended by redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following new subparagraph (B):

“(B) Immediately after the submission of each report under subparagraph (A), the Administrator, based on the results described in such report and the comments and recommendations included therein and any other available pertinent information, shall evaluate the need for any amendments to regulations, prescribed pursuant to section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, for the resolution of claims for service connection based on the exposure specified in subsection (a)(1)(B) of such section. To the extent that the Administrator determines that any amendments to such regulations are needed, the Administrator, not later than 90 days after such submission, shall develop and publish in the Federal Register, for public review and comment, proposed amendments to such regulations.”.

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INTERIM BENEFITS FOR DISABILITY OR DEATH IN CERTAIN CASES

38 USC 354 note.

SEC. 9. (a)(1) In the case of a veteran—

(A) who served in the active military, naval, or air service in the Republic of Vietnam during the Vietnam era; and

(B) who has a disease described in subsection (b) that became manifest within one year after the date of the veteran's most recent departure from the Republic of Vietnam during that service,

the Administrator shall (except as provided in subsection (c)) pay a monthly disability benefit to the veteran in accordance with this section.

(2) If a veteran described in paragraph (1) dies from the disease, the Administrator shall pay a monthly death benefit to the survivors of the veteran in accordance with this section.

(b) The diseases referred to in subsection (a) are chloracne and porphyria cutanea tarda.

(c) Benefits may not be paid under this section with respect to a disease occurring in a veteran—

(1) where there is affirmative evidence that the disease was not incurred by the veteran during service in the Republic of Vietnam during the Vietnam era;

(2) where there is affirmative evidence to establish that an intercurrent injury or disease which is a recognized cause of the disease was suffered by the veteran between the date of the veteran's most recent departure from the Republic of Vietnam during active military, naval, or air service and the onset of the disease; or

(3) if the Administrator determines, based on evidence in the veteran's service records and other records of the Department of Defense, that the veteran was not exposed to dioxin during active military, naval, or air service in the Republic of Vietnam during the Vietnam era.

(d)(1) A disability benefit payable to a veteran under this section for a disease described in subsection (b) shall be paid at the rate at which compensation would be payable under chapter 11 of title 38, United States Code, to that veteran for the disability resulting from that disease if the disability were determined to be service-connected.

38 USC 301 *et seq.*

(2) A death benefit payable under this section to the survivors of a veteran shall be paid to such survivors based upon the eligibility requirements (other than the requirement that death be the result of a service-connected or compensable disability) and at the rates that are applicable to dependency and indemnity compensation under chapter 13 of that title.

38 USC 401 *et seq.*

(e) A benefit may not be paid under this section with respect to a disease or the death of a veteran for any month for which compensation is payable to that veteran for that disease under chapter 11 of title 38, United States Code, or for which dependency and indemnity compensation is payable for that death under chapter 13 of such title.

(f) A disease establishing eligibility for a disability or death benefit under this section shall be treated for purposes of all other laws of the United States (other than chapters 11 and 13 of title 38, United States Code) as if such disease were service connected. The receipt of a disability benefit under this section shall be treated for purposes of all other laws of the United States as if such benefit were compensation under chapter 11 of such title, and the receipt of a death benefit under this section shall be treated for purposes of all other laws of the United States as if such benefit were dependency and indemnity compensation under chapter 13 of title 38, United States Code.

(g) For the purposes of this section:

(1) The term "Administrator" means the Administrator of Veterans' Affairs.

(2) The term "Vietnam era" means the period beginning on August 5, 1964, and ending on May 7, 1975.

(3) The term "veteran" has the meaning given that term in paragraph (2) of section 101 of title 38, United States Code, and includes a person who died in the active military, naval, or air service.

(4) The terms "service-connected" and "active military, naval, or air service" have the meanings given those terms in paragraphs (16) and (24), respectively, of section 101 of title 38, United States Code.

Effective date.

(h)(1) This section takes effect as of October 1, 1984. No benefit may be paid under this section for a period before that date.

(2) No benefit may be paid under this section for a period after September 30, 1986.

Approved October 24, 1984.

LEGISLATIVE HISTORY—H.R. 1961 (S. 1651):

HOUSE REPORT No. 98-592 (Comm. on Veterans' Affairs).
CONGRESSIONAL RECORD, Vol. 130 (1984):

Jan. 30, considered and passed House.

May 22, considered and passed Senate, amended.

Oct. 3, House concurred in Senate amendments with amendments.

Oct. 4, Senate concurred in House amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 43 (1984):

Oct. 24, Presidential statement.