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111th CONGRESS

HR 0000, a Companion Bill to S 0000

The Agent Orange Supplemental Act of 2009

To amend Title 38, Part II, Chapter 11, Subchapter II by adding Section 1119 to authorize and clarify the award of benefits for those Veterans who served during the Vietnam Era, but did so outside the Vietnam Theater of Operations, and were presumed to have been exposed to herbicides.

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA

January, 2009 Mr. Filner introduced the following bill; it is co-sponsored by Representatives:

A BILL

To amend Title 38 USC to authorize the award of benefits to Veterans presumed to have been exposed to certain herbicides while serving in locations outside the Vietnam Theater of Operations during the period beginning on January 9, 1962, and ending on May 7, 1975.

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

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) Short Title- This Act may be cited as the 'Agent Orange Supplemental Act of 2009'

(b) References- Wherever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. CLARIFICATION OF AUTHORITY TO ESTABLISH PRESUMPTIONS BASED ON HERBICIDE EXPOSURE; CONFIRMATION OF RETROACTIVE PAYMENT.

(a) Title 38, Part II, Chapter 11, Subchapter II is amended by adding at the end the following new section:

Sec. 1119. Presumptions of service connection for diseases associated with exposure to certain herbicide agents; presumption of exposure for veterans who served during the Vietnam Era but outside of the Vietnam Theater of Operations.

(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 outside the Vietnam Theater of Operations during the period beginning on January 9, 1962, and ending on May 7, 1975; 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 outside the Vietnam Theater of Operations during the period beginning on January 9, 1962, and ending on May 7, 1975, 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

(B) Each soft-tissue sarcoma other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma.

(C) Chloracne or another acneform disease consistent with chloracne.

(D) Hodgkin's disease.

(E) Porphyria cutanea tarda

(F) Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)

(G) Multiple myeloma

(H) Diabetes Mellitus (Type 2).

(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 locations outside the Vietnam Theater of Operations during the period beginning on January 9, 1962, and ending on May 7, 1975.

(4) For purposes of this section, the term "Vietnam Theater of Operations" is defined as The Republic of Vietnam, The inland waterways of the Republic of Vietnam, the waters off shore of the Republic of Vietnam, and in the sky above the Republic of Vietnam, and in Thailand, Laos, and Cambodia during the period beginning on January 9, 1962, and ending on May 7, 1975.

(5) For purposes of this section, the term "Outside the Vietnam Theater of Operations" is defined as any and all locations identified by the



Department of Defense as a base, installation, unit, ship, aircraft, or other military entity on or in which herbicides were used, stored, shipped from, or through.

(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, 2030.

(f) 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 outside the Vietnam Theater of Operations 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 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. Locations identified by the Department of Defense as having been a location, base, unit, ship, aircraft, or other military installation where herbicides were used, stored, or shipped from or through.

(g) Presumptions established pursuant to this section shall be considered to be presumptions established pursuant to the Agent Orange Act of 1991. Awards based on such presumptions are subject to section 5110 of this title and may be made effective earlier than the effective date of the regulation establishing the presumption, and must be made back to the date of first claim.

(h) Applicability-- The provisions of section 1119(g) as added by this Act apply to any determination made on or after the date of enactment of this Act, or prior to it back to the date of first claim.



(i) The Secretary of the Department of Veterans Affairs is directed to proceed with all dispatch to process the claims pending from Veterans who are affected by this act, and all new claims filed under the provisions of this act.

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