EFFECTIVE DATE OF 1996 AMENDMENT

Section 422(b), (c) of Pub. L. 104–204 provided that:

''(b)(1) The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1996.

''(2) Section 1151 of title 38, United States Code (as amended by subsection (a)), shall govern all administrative and judicial determinations of eligibility for benefits under such section that are made with respect to claims filed on or after the effective date set forth in paragraph (1) [Oct. 1, 1996], including those based on original applications and applications seeking to reopen, revise, reconsider, or otherwise readjudicate on any basis claims for benefits under such section 1151 or any provision of law that is a predecessor of such section.

''(c) Nothwithstanding [sic] subsection (b)(1), section 421(d) [set out as a note under section 1801 of this title], or any other provision of this Act [see Tables for classification], section 421 [enacting sections 1801 to 1806 of this title, amending section 5312 of this title, and enacting provisions set out as notes under section 1801 of this title] and this section [amending this section] shall not take effect until October 1, 1997, unless legislation other than this Act is enacted to provide for an earlier effective date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–433 effective Oct. 1, 1976, see section 406 of Pub. L. 94–433, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–825 effective first day of second calendar month which begins after Oct. 15, 1962, see section 7 of Pub. L. 87–825, set out as a note under section 110 of this title.

§ 1152. Persons heretofore having a compensable status

The death and disability benefits of this chapter shall, notwithstanding the service requirements thereof, be granted to persons heretofore recognized by law as having a compensable status, including persons whose claims are based on war or peacetime service rendered before April 21, 1898.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1124, § 352; renumbered § 1152, Pub. L. 102–83, § 5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102–83 renumbered section 352 of this title as this section.

§ 1153. Aggravation

A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1124, § 353; renumbered § 1153, Pub. L. 102–83, § 5(a), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102–83 renumbered section 353 of this title as this section.

§ 1154. Consideration to be accorded time, place, and circumstances of service

(a) The Secretary shall include in the regulations pertaining to service-connection of disabilities (1) additional provisions in effect requiring that in each case where a veteran is seeking service-connection for any disability due consideration shall be given to the places, types, and circumstances of such veteran's service as shown by such veteran's service record, the official history of each organization in which such veteran served, such veteran's medical records, and all pertinent medical and lay evidence, and (2) the provisions required by section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98–542; 98 Stat. 2727).

(b) In the case of any veteran who engaged in combat with the enemy in active service with a military, naval, or air organization of the United States during a period of war, campaign, or expedition, the Secretary shall accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran. Service-connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service-connection in each case shall be recorded in full.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1124, § 354; Pub. L. 94–433, title IV, § 404(20), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 98–542, § 4, Oct. 24, 1984, 98 Stat. 2727; Pub. L. 102–54, § 14(b)(1), June 13, 1991, 105 Stat. 282; renumbered § 1154 and amended Pub. L. 102–83, §§ 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406.)

REFERENCES IN TEXT

Section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, referred to in subsec. (a), is set out below.

AMENDMENTS

1991—Pub. L. 102–83, § 5(a), renumbered section 354 of this title as this section.

Pub. L. 102–54, § 14(b)(1)(A), inserted a comma after ''place'' in section catchline.

Subsec. (a). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator''.

Pub. L. 102–54, § 14(b)(1)(B), inserted before period at end ''(Public Law 98–542; 98 Stat. 2727)''.

Subsec. (b). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator''.

1984—Subsec. (a). Pub. L. 98–542 designated existing provisions as cl. (1) and added cl. (2).

1976—Subsec. (a). Pub. L. 94–433 substituted ''such veteran's'' for ''his'' in three places and ''such veteran'' for ''he''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–433 effective Oct. 1, 1976, see section 406 of Pub. L. 94–433, set out as a note under section 1101 of this title.

RADIATION DOSE RECONSTRUCTION PROGRAM OF DEPARTMENT OF DEFENSE

Pub. L. 108–183, title VI, § 601, Dec. 16, 2003, 117 Stat. 2667, provided that:

''(a) REVIEW OF MISSION, PROCEDURES, AND ADMINISTRATION.—(1) The Secretary of Veterans Affairs and the

Secretary of Defense shall jointly conduct a review of the mission, procedures, and administration of the Radiation Dose Reconstruction Program of the Department of Defense.

''(2) In conducting the review under paragraph (1), the Secretaries shall—

''(A) determine whether any additional actions are required to ensure that the quality assurance and quality control mechanisms of the Radiation Dose Reconstruction Program are adequate and sufficient for purposes of the program; and

''(B) determine the actions that are required to ensure that the mechanisms of the Radiation Dose Reconstruction Program for communication and interaction with veterans are adequate and sufficient for purposes of the program, including mechanisms to permit veterans to review the assumptions utilized in their dose reconstructions.

''(3) Not later than 90 days after the date of the enactment of this Act [Dec. 16, 2003], the Secretaries shall jointly submit to Congress a report on the review under paragraph (1). The report shall set forth—

''(A) the results of the review;

''(B) a plan for any actions determined to be required under paragraph (2); and

''(C) such other recommendations for the improvement of the mission, procedures, and administration of the Radiation Dose Reconstruction Program as the Secretaries jointly consider appropriate.

''(b) ON-GOING REVIEW AND OVERSIGHT.—The Secretaries shall jointly take appropriate actions to ensure the on-going independent review and oversight of the Radiation Dose Reconstruction Program, including the establishment of the advisory board required by subsection (c).

''(c) ADVISORY BOARD.—(1) In taking actions under subsection (b), the Secretaries shall jointly appoint an advisory board to provide review and oversight of the Radiation Dose Reconstruction Program.

''(2) The advisory board under paragraph (1) shall be composed of the following:

''(A) At least one expert in historical dose reconstruction of the type conducted under the Radiation Dose Reconstruction Program.

''(B) At least one expert in radiation health matters.

''(C) At least one expert in risk communications matters.

''(D) A representative of the Department of Veterans Affairs.

''(E) A representative of the Defense Threat Reduction Agency.

''(F) At least three veterans, including at least one veteran who is a member of an atomic veterans group.

''(3) The advisory board under paragraph (1) shall—

''(A) conduct periodic, random audits of dose reconstructions under the Radiation Dose Reconstruction Program and of decisions by the Department of Veterans Affairs on claims for service connection of radiogenic diseases;

''(B) assist the Department of Veterans Affairs and the Defense Threat Reduction Agency in communicating to veterans information on the mission, procedures, and evidentiary requirements of the Radiation Dose Reconstruction Program; and

''(C) carry out such other activities with respect to the review and oversight of the Radiation Dose Reconstruction Program as the Secretaries shall jointly specify.

''(4) The advisory board under paragraph (1) may make such recommendations on modifications in the mission or procedures of the Radiation Dose Reconstruction Program as the advisory board considers appropriate as a result of the audits conducted under paragraph (3)(A).''

REVIEW OF DOSE RECONSTRUCTION PROGRAM OF THE DEFENSE THREAT REDUCTION AGENCY

Pub. L. 106–419, title III, §305, Nov. 1, 2000, 114 Stat. 1853, provided that:

''(a) REVIEW BY NATIONAL ACADEMY OF SCIENCES.—Not later than 30 days after the date of the enactment of this Act [Nov. 1, 2000], the Secretary of Defense shall enter into a contract with the National Academy of Sciences to carry out periodic reviews of the program of the Defense Threat Reduction Agency of the Department of Defense known as the 'dose reconstruction program'.

''(b) REVIEW ACTIVITIES.—The periodic reviews of the dose reconstruction program under the contract under subsection (a) shall consist of the periodic selection of random samples of doses reconstructed by the Defense Threat Reduction Agency in order to determine—

''(1) whether or not the reconstruction of the sampled doses is accurate;

''(2) whether or not the reconstructed dosage number is accurately reported;

''(3) whether or not the assumptions made regarding radiation exposure based upon the sampled doses are credible; and

''(4) whether or not the data from nuclear tests used by the Defense Threat Reduction Agency as part of the reconstruction of the sampled doses is accurate.

''(c) DURATION OF REVIEW.—The periodic reviews under the contract under subsection (a) shall occur over a period of 24 months.

''(d) REPORT.—(1) Not later than 60 days after the conclusion of the period referred to in subsection (c), the National Academy of Sciences shall submit to Congress a report on its activities under the contract under this section.

''(2) The report shall include the following:

''(A) A detailed description of the activities of the National Academy of Sciences under the contract.

''(B) Any recommendations that the National Academy of Sciences considers appropriate regarding a permanent system of review of the dose reconstruction program of the Defense Threat Reduction Agency.''

IONIZING RADIATION REGISTRY

Pub. L. 99–576, title II, §232, Oct. 28, 1986, 100 Stat. 3264, as amended by Pub. L. 102–83, §§5(c)(2), 6(h), Aug. 6, 1991, 105 Stat. 406, 408, provided that:

''(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Veterans Affairs shall establish and maintain a special record to be known as the 'Ionizing Radiation Registry' (hereinafter in this section referred to as the 'Registry').

''(b) CONTENT OF REGISTRY.—Except as provided in subsection (c), the Registry shall include the following information:

''(1) A list containing the name of each veteran who was exposed to ionizing radiation under the conditions described in section 1710(e)(1)(B) of title 38, United States Code, and who—

''(A) applies for hospital or nursing home care from the Department of Veterans Affairs under chapter 17 of such title;

''(B) files a claim for compensation under chapter 11 of such title on the basis of a disability which may be associated with the exposure to ionizing radiation; or

''(C) dies and is survived by a spouse, child, or parent who files a claim for dependency and indemnity compensation under chapter 13 of such title on the basis of the exposure of such veteran to ionizing radiation.

''(2) Medical data relating to each veteran listed in the Registry, including—

''(A) the veteran's medical history, latest health status recorded by the Department of Veterans Affairs, physical examinations, and clinical findings; and

''(B) a statement describing birth defects, if any, in the natural children of the veteran.

''(3) Data on claims for the compensation referred to in paragraph (1), including decisions and determinations of the Department of Veterans Affairs relating to such claims.

''(4) An estimate of the dose of radiation to which each veteran listed in the Registry was exposed under the conditions described in section 1710(e)(1)(B) of such title.

''(c) VETERANS SUBMITTING CLAIMS BEFORE DATE OF ENACTMENT.—If in the case of a veteran described in subsection (b)(1) the application or claim referred to in such subsection was submitted or filed before October 28, 1986, the Secretary shall include in the Registry, to the extent feasible, such veteran's name and the data and information described in subsection (b) relating to the veteran.

''(d) CONSOLIDATION OF EXISTING INFORMATION.—(1) For the purpose of establishing and maintaining the Registry, the Secretary of Veterans Affairs shall compile and consolidate—

''(A) relevant information maintained by the Veterans Benefits Administration and the Veterans Health Administration of the Department of Veterans Affairs;

''(B) relevant information maintained by the Defense Nuclear Agency of the Department of Defense; and

''(C) any relevant information maintained by any other element of the Department of Veterans Affairs or the Department of Defense.

''(2) With respect to a veteran whose name is included in the Registry and for whom the information in the Registry is not complete, the Secretary of Veterans Affairs shall include information described in paragraph (1) with respect to that veteran (A) to the extent that such information is reasonably available in records of the Department of Veterans Affairs or Department of Defense, or (B) if such information is submitted by the veteran after October 28, 1986.

''(e) DEPARTMENT OF DEFENSE INFORMATION.—The Secretary of Defense shall furnish to the Secretary of Veterans Affairs such information maintained by the Department of Defense as the Secretary of Veterans Affairs considers necessary to establish and maintain the Registry.

''(f) DEFINITION.—For the purpose of this section, the term 'veteran' has the meaning given that term in section 101(2) of title 38, United States Code, and includes a person who died in the active military, naval, or air service.

''(g) EFFECTIVE DATE.—The Registry shall be established not later than 180 days after the date of the enactment of this Act [Oct. 28, 1986].''

VETERANS' DIOXIN AND RADIATION EXPOSURE COMPENSATION STANDARDS; CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

Sections 1–3 of Pub. L. 98–542, as amended by Pub. L. 102–4, § 10(a), (b), Feb. 6, 1991, 105 Stat. 19, provided that:

''SHORT TITLE

''SECTION 1. This Act [amending this section, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 1116 of this title] may be cited as the 'Veterans' Dioxin and Radiation Exposure Compensation Standards Act'.

''FINDINGS

''SEC. 2. The Congress makes the following findings:

''(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 [see Tables for classification], the Congress responded to that uncertainty by authorizing priority medical care at Veterans' Administration [now Department of Veterans Affairs] 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 [set out as a note under section 1116 of this title] and section 601 of Public Law 98–160 [set out below], 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 [see Tables for classification], the development of radioepidemiological tables setting forth the probabilities of causation between various cancers and exposure to radiation.

''(5) There is some evidence 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 [Oct. 24, 1984], 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 [now Department of Veterans Affairs] 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 [now Department of Veterans Affairs] disability compensation vary among the several branches of the Armed Forces, and no uniform minimum standards exist.

''(11) The Veterans' Administration [now Department of Veterans Affairs] 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 [now Department of Veterans Affairs] 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 [now Department of Veterans Affairs] disability compensation is provided to veterans who were exposed 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).''

[Amendment by Pub. L. 102–4 to sections 2 and 3 of Pub. L. 98–542, set out above, effective at the end of the six-month period beginning on Feb. 6, 1991, except as otherwise provided, see section 10(e) of Pub. L. 102–4, set out below under sections 5 to 7 of Pub. L. 98–542.]

REQUIREMENT FOR AND CONTENT OF REGULATIONS; ADVISORY COMMITTEE ON ENVIRONMENTAL STANDARDS; NUCLEAR RADIATION MATTERS INVOLVING OTHER AGENCIES

Sections 5–7 of Pub. L. 98–542, as amended by Pub. L. 100–321, § 2(c), May 20, 1988, 102 Stat. 486; Pub. L. 102–4, § 10(c), (d), Feb. 6, 1991, 105 Stat. 19, 20; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that:

''REQUIREMENT FOR AND CONTENT OF REGULATIONS

''SEC. 5. (a) In carrying out the responsibilities of the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] under section 1154(a)(2) [formerly 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—

''(1) establish guidelines and (where appropriate) standards and criteria for the resolution of claims for benefits under laws administered by the Veterans' Administration [now Department of Veterans Affairs] 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 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) [set out above] 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 ionizing radiation. Those guidelines shall require that, in the evaluation of those studies, the Administrator [now Secretary] 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 [now Secretary of Veterans Affairs] after receiving the advice of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards (established under 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 [now Secretary's] evaluations made under subparagraph (B).

''(2)(A)(i) In prescribing regulations under this section, the Administrator [now Secretary] (after receiving the advice of the Advisory Committee and 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) [set out above]. 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 [now Secretary] 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 [now Secretary] 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) [set out above] and any other disease with respect to which the Administrator [now Secretary] finds (after receiving and considering the advice of the Scientific Council established under section 6(d)(2)) that there is sound scientific or medical evidence indicating 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 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 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 [now Secretary of Veterans Affairs] shall develop the regulations required by this section (and any amendment to those regulations) through a public review and com-

ment 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.

''(2)(A) Not later than one hundred and eighty days after the date of the enactment of this Act [Oct. 24, 1984], the Administrator [now Secretary] 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 [Oct. 24, 1984], the Administrator [now Secretary] 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 nine members appointed by the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] after requesting and considering recommendations from veteran organizations, including—

''(1) six individuals (of whom none may be members of the Armed Forces on active duty or employees of the Veterans' Administration [now Department of Veterans Affairs] 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 ionizing radiation; and

''(B) three 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 ionizing radiation in exposed populations; and

''(2) three 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 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 [now Under Secretary for Health and Under Secretary for Benefits of the Department of Veterans Affairs], or their designees.

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

''(d)(1) The six 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 have responsibility for evaluating scientific studies relating to possible adverse health effects of exposure to ionizing radiation.

''(3) The Council shall make findings and evaluations regarding pertinent scientific studies and shall submit to the Committee, the Administrator [now Secretary], and the Committees on Veterans' Affairs of the Senate and House of Representatives directly periodic reports on such findings and evaluations.

''(e) The Administrator [now Secretary] shall designate one of the members to chair the Committee and another member to chair the Council.

''(f) The Administrator [now Secretary] 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 [now Secretary] shall provide administrative support services and fiscal support for the Committee.

''NUCLEAR RADIATION MATTERS INVOLVING OTHER AGENCIES

''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 [now Department of Veterans Affairs] disability compensation and dependency and indemnity compensation under chapters 11 and 13, respectively, of title 38, United States Code—

''(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 [now Department of Veterans Affairs] 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 [now Secretary 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

''(C) enter into an interagency agreement with the Administrator of Veterans' Affairs [now Secretary 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 [now Secretary 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 [now Department of Veterans Affairs] compensation.''

[Pub. L. 102–4, § 10(e), Feb. 6, 1991, 105 Stat. 20, as amended by Pub. L. 102–86, title V, § 503(b)(2), Aug. 14, 1991, 105 Stat. 425, provided that:

[''(1) Except as provided in paragraph (2), the amendments made by this section [amending sections 2 and 3 of Pub. L. 98–542, set out above, and sections 5 and 6 of Pub. L. 98–542, set out above] shall take effect at the end of the two-month period beginning on the date of the enactment of the Veterans' Benefits Programs Improvement Act of 1991 [Aug. 14, 1991].

[''(2)(A) If the Secretary of Veterans Affairs determines before the end of such period that the Environmental Hazards Advisory Committee established under section 6 of Public Law 98–542 (38 U.S.C. 354 note) [set out above] has completed its responsibilities under that section and the directives of the Secretary pursuant to the Nehmer case court order, the amendments made by this section shall take effect as of the date of such determination.

[''(B) For purposes of this paragraph, the term 'Nehmer case court order' means the court order dated May 2, 1989, in the case of Nehmer v. Department of Veterans Affairs, in the United States district court for the northern district of California (civil action docket number C–86–6160 TEH).

[''(3) If the Secretary makes a determination under paragraph (2), the Secretary shall promptly publish in the Federal Register a notice that such determination has been made and that such amendments have thereby taken effect as of the date of such determination.'']

IDENTIFICATION OF ACTIVITIES INVOLVING EXPOSURE TO IONIZING RADIATION BEFORE JANUARY 1, 1970

Section 10 of Pub. L. 98–542, as added by Pub. L. 102–578, § 3, Oct. 30, 1992, 106 Stat. 4774, provided that:

''(a) IN GENERAL.—(1) In order to determine whether activities (other than the tests or occupation activities referred to in section 5(a)(1)(B) [probably means section 5(a)(1), set out above]) resulted in the exposure of veterans to ionizing radiation during the service of such veterans that occurred before January 1, 1970, and whether adverse health effects have been observed or may have resulted from such exposure in a significant number of such veterans, the Advisory Committee established under section 6 [set out above] shall—

''(A) review all available scientific studies and other relevant information relating to the exposure of such veterans to ionizing radiation during such service;

''(B) identify any activity during which significant numbers of veterans received exposure; and

''(C) on the basis of such review, submit to the Secretary of Veterans Affairs a report containing the recommendation of the Advisory Committee on the feasibility and appropriateness for the purpose of the determination under this paragraph of any additional investigation with respect to any activity of such veterans during such service.

''(2) Upon the request of the Advisory Committee, the Secretary of Veterans Affairs (after seeking such assistance from the Secretary of Defense as is necessary and appropriate) shall make available to the Advisory Committee records and other information relating to the service referred to in paragraph (1) that may assist the Advisory Committee in carrying out the review and recommendation referred to in that paragraph.

''(3) The Advisory Committee shall submit to the Secretary of Veterans Affairs the report referred to in paragraph (1)(C) not later than August 1, 1993.

''(b) INVESTIGATION PLAN AND REPORT.—(1) Upon receipt of the report referred to in subparagraph (C) of subsection (a)(1), the Secretary of Veterans Affairs shall—

''(A) identify which of the activities referred to in that subparagraph, if any, that the Secretary intends to investigate more fully for the purpose of making the determination referred to in that subsection; and

''(B) prepare a plan (including a deadline for the plan) to carry out that investigation and make that determination.

''(2) Not later than December 1, 1993, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

''(A) a list of the activities identified by the Secretary pursuant to paragraph (1)(A) and the basis of such identification;

''(B) a copy of the report of the Advisory Committee referred to in subsection (a)(1)(C); and

''(C) the plan referred to in paragraph (1)(B).''

INTERIM BENEFITS FOR DISABILITY OR DEATH IN CERTAIN CASES

Section 9 of Pub. L. 98–542 provided for payment of interim monthly disability benefits to veterans who had served in Vietnam during Vietnam era and who had diseases chloracne and porphyria cutanea tarda which manifested themselves within one year after date of veteran's most recent departure from Vietnam, but with no such interim benefits to be paid after Sept. 30, 1986.

RADIATION EXPOSURE STUDY AND GUIDE

Pub. L. 98–160, title VI, Nov. 21, 1983, 97 Stat. 1006, as amended by Pub. L. 98–542, § 8(b), Oct. 24, 1984, 98 Stat. 2732, provided for the conduct of an epidemiological study of long-term adverse health effects of exposure to ionizing radiation from detonation of nuclear devices in connection with tests of such devices or in connection with occupation of Hiroshima and Nagasaki, Japan, between Sept. 11, 1945, and July 1, 1946, and provided for reports to Congress on studies made together with recommendations as to necessary legislation.

§ 1155. Authority for schedule for rating disabilities

The Secretary shall adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combination of injuries. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations. The schedule shall be constructed so as to provide ten grades of disability and no more, upon which payments of compensation shall be based, namely, 10 percent, 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, 80 percent, 90 percent, and total, 100 percent. The Secretary shall from time to time readjust this schedule of ratings in accordance with experience. However, in no event shall such a readjustment in the rating schedule cause a veteran's disability rating in effect on the effective date of the readjustment to be reduced unless an improvement in the veteran's disability is shown to have occurred.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1125, § 355; Pub. L. 98–223, title I, § 101(c), Mar. 2, 1984, 98 Stat. 38; renumbered § 1155 and amended Pub. L. 102–83, §§ 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404–406; Pub. L. 102–86, title I, § 103(a), Aug. 14, 1991, 105 Stat. 414.)

AMENDMENTS

1991—Pub. L. 102–86 amended this section as in effect before the redesignations made by Pub. L. 102–83, § 5, by inserting at end ''However, in no event shall such a readjustment in the rating schedule cause a veteran's disability rating in effect on the effective date of the readjustment to be reduced unless an improvement in the veteran's disability is shown to have occurred.''