

115TH CONGRESS
1ST SESSION

S. 75

To provide for the reconsideration of claims for disability compensation for veterans who were the subjects of experiments by the Department of Defense during World War II that were conducted to assess the effects of mustard gas or lewisite on people, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2017

Mrs. McCASKILL (for herself and Mr. BLUNT) introduced the following bill;
which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To provide for the reconsideration of claims for disability compensation for veterans who were the subjects of experiments by the Department of Defense during World War II that were conducted to assess the effects of mustard gas or lewisite on people, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Arla Harrell Act”.

5 **SEC. 2. FINDINGS.**

6 Congress makes the following findings:

1 (1) During World War II, the Government car-
2 ried out a program of testing mustard gas and lew-
3 isite exposure on members of the Armed Forces.
4 This program was classified and participating mem-
5 bers were threatened with dishonorable discharges
6 and imprisonment if they revealed their participa-
7 tion.

8 (2) On July 12, 1973, a fire at the National
9 Personnel Records Center destroyed more than
10 16,000,000 official military personnel files. The
11 records affected more than 80 percent of members
12 and former members of the Army who were dis-
13 charged between November 1, 1912, and January 1,
14 1960. As a result, due to no fault of their own, vet-
15 erans who were subjected to testing under the pro-
16 gram are unable to rely on a full and complete
17 record of their service to produce proof that they
18 were subjected to such testing.

19 (3) The Armed Forces did not fully acknowl-
20 edge its role in the program until the last of the ex-
21 periments was declassified in 1975, 30 years after
22 testing under the program was completed and 2
23 years after the fire destroyed military records at the
24 National Personnel Records Center.

1 (4) The oath of secrecy was not effectively lifted
 2 until 1991, 46 years after the testing was completed,
 3 further hampering the ability of veterans to provide
 4 proof that they were subjected to the testing.

5 (5) The Department of Veterans Affairs is rely-
 6 ing on incomplete information to adjudicate claims,
 7 which often provides conflicting data regarding vet-
 8 erans' mustard gas or lewisite exposure due to rec-
 9 ordkeeping failures outside of the veterans' control.

10 (6) The Department has rejected approximately
 11 90 percent of claims for benefits under laws admin-
 12 istered by the Secretary of Veterans Affairs relating
 13 to mustard gas or lewisite exposure.

14 (7) Veterans who participated in the mustard
 15 gas or lewisite testing were not afforded the same
 16 opportunity to provide evidence of their exposure for
 17 disability compensation and ought to be afforded
 18 unique consideration.

19 **SEC. 3. RECONSIDERATION OF CLAIMS FOR DISABILITY**
 20 **COMPENSATION FOR VETERANS WHO WERE**
 21 **THE SUBJECTS OF MUSTARD GAS OR LEW-**
 22 **ISITE EXPERIMENTS DURING WORLD WAR II.**

23 (a) RECONSIDERATION OF CLAIMS FOR DISABILITY
 24 COMPENSATION IN CONNECTION WITH EXPOSURE TO
 25 MUSTARD GAS OR LEWISITE.—

1 (1) IN GENERAL.—The Secretary of Veterans
2 Affairs, in consultation with the Secretary of De-
3 fense, shall reconsider all claims for compensation
4 described in paragraph (2) and make a new deter-
5 mination regarding each such claim.

6 (2) CLAIMS FOR COMPENSATION DESCRIBED.—
7 Claims for compensation described in this paragraph
8 are claims for compensation under chapter 11 of
9 title 38, United States Code, that the Secretary of
10 Veterans Affairs determines are in connection with
11 exposure to mustard gas or lewisite during active
12 military, naval, or air service during World War II
13 and that were denied before the date of the enact-
14 ment of this Act.

15 (3) PRESUMPTION OF EXPOSURE.—In carrying
16 out paragraph (1), if the Secretary of Veterans Af-
17 fairs or the Secretary of Defense makes a deter-
18 mination regarding whether a veteran experienced
19 full-body exposure to mustard gas or lewisite, such
20 Secretary—

21 (A) shall presume that the veteran experi-
22 enced full-body exposure to mustard gas or lew-
23 isite, as the case may be, unless proven other-
24 wise; and

(B) may not use information contained in the DoD and VA Chemical Biological Warfare Database or any list of known testing sites for mustard gas or lewisite maintained by the Department of Veterans Affairs or the Department of Defense as the sole reason for determining that the veteran did not experience full-body exposure to mustard gas or lewisite.

(4) REPORT.—Not later than 90 days after the date of the enactment of this Act, and not less frequently than once every 90 days thereafter, the Secretary of Veterans Affairs shall submit to the appropriate committees of Congress a report specifying any claims reconsidered under paragraph (1) that were denied during the 90-day period preceding the submittal of the report, including the rationale for each such denial.

(b) DEVELOPMENT OF POLICY.—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs and the Secretary of Defense shall jointly establish a policy for processing future claims for compensation under chapter 11 of title 38, United States Code, that the Secretary of Veterans Affairs determines are in connection with exposure to mustard gas or

1 lewisite during active military, naval, or air service during
2 World War II.

3 (c) INVESTIGATION AND REPORT BY SECRETARY OF
4 DEFENSE.—Not later than 180 days after the date of the
5 enactment of this Act, the Secretary of Defense shall—

6 (1) for purposes of determining whether a site
7 should be added to the list of the Department of De-
8 fense of sites where mustard gas or lewisite testing
9 occurred, investigate and assess sites where—

10 (A) the Army Corps of Engineers has un-
11 covered evidence of mustard gas or lewisite test-
12 ing; or

13 (B) more than two veterans have sub-
14 mitted claims for compensation under chapter
15 11 of title 38, United States Code, in connec-
16 tion with exposure to mustard gas or lewisite at
17 such site and such claims were denied; and

18 (2) submit to the appropriate committees of
19 Congress a report on experiments conducted by the
20 Department of Defense during World War II to as-
21 sess the effects of mustard gas and lewisite on peo-
22 ple, which shall include—

23 (A) a list of each location where such an
24 experiment occurred, including locations inves-
25 tigated and assessed under paragraph (1);

1 (B) the dates of each such experiment; and

2 (C) the number of members of the Armed
3 Forces who were exposed to mustard gas or
4 lewisite in each such experiment.

5 (d) INVESTIGATION AND REPORT BY SECRETARY OF
6 VETERANS AFFAIRS.—Not later than 180 days after the
7 date of the enactment of this Act, the Secretary of Vet-
8 erans Affairs shall—

9 (1) investigate and assess—

10 (A) the actions taken by the Secretary to
11 reach out to individuals who had been exposed
12 to mustard gas or lewisite in the experiments
13 described in subsection (c)(2)(A); and

14 (B) the claims for disability compensation
15 under laws administered by the Secretary that
16 were filed with the Secretary and the percent-
17 age of such claims that were denied by the Sec-
18 retary; and

19 (2) submit to the appropriate committees of
20 Congress—

21 (A) a report on the findings of the Sec-
22 retary with respect to the investigations and as-
23 sessments carried out under paragraph (1); and

1 (B) a comprehensive list of each location
 2 where an experiment described in subsection
 3 (c)(2)(A) was conducted.

4 (e) DEFINITIONS.—In this section:

5 (1) The terms “active military, naval, or air
 6 service”, “veteran”, and “World War II” have the
 7 meanings given such terms in section 101 of title 38,
 8 United States Code.

9 (2) The term “appropriate committees of Con-
 10 gress” means—

11 (A) the Committee on Veterans’ Affairs,
 12 the Committee on Armed Services, and the Spe-
 13 cial Committee on Aging of the Senate; and

14 (B) the Committee on Veterans’ Affairs
 15 and the Committee on Armed Services of the
 16 House of Representatives.

17 (3) The term “full-body exposure”, with respect
 18 to mustard gas or lewisite, has the meaning given
 19 that term by the Secretary of Defense.

○