

117TH CONGRESS
1ST SESSION

S. 437

To amend title 38, United States Code, to concede exposure to airborne hazards and toxins from burn pits under certain circumstances, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2021

Mr. SULLIVAN (for himself and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to concede exposure to airborne hazards and toxins from burn pits under certain circumstances, 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 “Veterans Burn Pits
5 Exposure Recognition Act of 2021”.

6 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) The health of some members of the Armed
2 Forces and veterans who served in certain locations,
3 often multiple times, may have been affected by
4 their service near burn pits and other sources of air-
5 borne hazards.

6 (2) Determining the location of burn pits, and
7 the scope of health effects associated to exposure, re-
8 mains the subject of much investigation, research,
9 and good faith efforts by the Department of Vet-
10 erans Affairs, the Department of Defense, other gov-
11 ernment agencies, and the National Academies of
12 Sciences, Engineering, and Medicine.

13 (3) The locations of burn pits used by the De-
14 partment of Defense and partnered armed forces,
15 and the possible health effects associated by their
16 use, may never be completely known, as—

17 (A) some location and air and soil quality
18 data is fragmentary; and

19 (B) the research involved with establishing
20 links between burn pit exposure and health con-
21 ditions by necessity is complex, years in length,
22 and in the end, in some cases, inconclusive.

23 (4) The September 2020 National Academies of
24 Sciences, Engineering and Medicine consensus study
25 report entitled “Respiratory Health Effects of Air-

1 borne Hazards Exposures in the Southwest Asia
2 Theater of Military Operations” concludes that the
3 available evidence does not allow a definitive deter-
4 mination to be made about any potential association
5 between airborne hazards in the theater and numer-
6 ous respiratory health outcomes. The report charac-
7 terizes existing research as inadequate, and advises
8 that additional research be done, including longitu-
9 dinal studies that by design take years.

10 (5) In the interim, though, some veterans have
11 already been adversely affected by their exposure to
12 burn pits, and their claims to certain benefits fur-
13 nished by the Department of Veterans Affairs can
14 be reviewed on a case-by-case basis.

15 (6) When filing a claim for certain benefits fur-
16 nished by the Department of Veterans Affairs, the
17 application requires that each veteran show evidence
18 of their exposure to burn pits, however if the evi-
19 dence of exposure to burn pits is not provided, the
20 claim is often denied.

21 (b) SENSE OF CONGRESS.—It is the sense of Con-
22 gress that—

23 (1) if it is determined that a veteran was de-
24 ployed to a covered location during a certain period,
25 the Secretary of Veterans Affairs should concede

1 that the member or veteran was exposed to certain
2 toxic substances, chemicals, and hazards;

3 (2) a concession of exposure as described in
4 paragraph (1) should not alone be sufficient to enti-
5 tle one to health care or disability compensation
6 under laws administered by the Secretary of Vet-
7 erans Affairs;

8 (3) the Department of Veterans Affairs, the
9 Department of Defense, and other relevant agencies
10 should make information regarding burn pit loca-
11 tions immediately available to the public, with appro-
12 priate caveats to its completeness and need for po-
13 tential future revision; and

14 (4) the earliest possible period for which the
15 Secretary of Veterans Affairs should make conces-
16 sions as described in paragraph (1) should begin on
17 August 2, 1990.

18 **SEC. 3. CONCESSION OF EXPOSURE TO AIRBORNE HAZ-**
19 **ARDS AND TOXIC SUBSTANCES FROM DE-**
20 **PARTMENT OF DEFENSE AND PARTNERED**
21 **ARMED FORCES BURN PITS.**

22 (a) CONCESSION REQUIRED.—

23 (1) IN GENERAL.—Subchapter II of chapter 11
24 of title 38, United States Code, is amended by add-
25 ing at the end the following new section:

1 **“§ 1119. Concession of exposure to airborne hazards**
2 **and toxic substances from burn pits**

3 “(a) IN GENERAL.—For purposes of section 1110
4 and chapter 17 of this title, any veteran who, during active
5 military, naval, or air service, was deployed in support of
6 a contingency operation while so serving and as part of
7 such deployment served in a covered location during a cor-
8 responding period set forth under subsection (b), shall be
9 considered to have been exposed to the toxic substances,
10 chemicals, and hazards listed in subsection (c), unless
11 there is affirmative evidence to establish that the veteran
12 was not exposed to any such substances, chemicals, or haz-
13 ards during that service.

14 “(b) COVERED LOCATIONS AND CORRESPONDING
15 PERIODS.—(1) The covered locations and corresponding
16 periods set forth under this subsection are as follows:

17 “(A) Iraq and the following periods:

18 “(i) The period beginning on August 2,
19 1990, and ending on February 28, 1991.

20 “(ii) The period beginning on March 19,
21 2003, and ending on such date as the Secretary
22 determines burn pits are no longer used in Iraq.

23 “(B) The Southwest Asia Theater of oper-
24 ations, other than Iraq, and the period beginning on
25 August 2, 1990, and ending on such date as the

1 Secretary determines burn pits are no longer used in
2 such location, including the following:

3 “(i) Kuwait.

4 “(ii) Saudi Arabia.

5 “(iii) Oman.

6 “(iv) Qatar.

7 “(C) Afghanistan and the period beginning on
8 September 11, 2001, and ending on such date as the
9 Secretary determines burn pits are no longer used in
10 Afghanistan.

11 “(D) Djibouti and the period beginning on Sep-
12 tember 11, 2001, and ending on such date as the
13 Secretary determines burn pits are no longer used in
14 Djibouti.

15 “(E) Syria and the period beginning on Sep-
16 tember 11, 2001, and ending on such date as the
17 Secretary determines burn pits are no longer used in
18 Syria.

19 “(F) Jordan and the period beginning on Sep-
20 tember 11, 2001, and ending on such date as the
21 Secretary determines burn pits are no longer used in
22 Jordan.

23 “(G) Egypt and the period beginning on Sep-
24 tember 11, 2001, and ending on such date as the

1 Secretary determines burn pits are no longer used in
2 Egypt.

3 “(H) Lebanon and the period beginning on
4 September 11, 2001, and ending on such date as the
5 Secretary determines burn pits are no longer used in
6 Lebanon.

7 “(I) Yemen and the period beginning on Sep-
8 tember 11, 2001, and ending on such date as the
9 Secretary determines burn pits are no longer used in
10 Yemen.

11 “(J) Such other locations as are set forth by
12 the Airborne Hazards and Open Burn Pit Registry
13 established under section 201 of the Dignified Bur-
14 ial and Other Veterans’ Benefits Improvement Act
15 of 2012 (Public Law 112–260; 38 U.S.C. 527 note)
16 and corresponding periods set forth in such registry.

17 “(K) Such other locations and corresponding
18 periods as the Secretary, in collaboration with the
19 Secretary of Defense, may determine appropriate in
20 a report the Secretary of Veterans Affairs shall sub-
21 mit to Congress not later than two years after the
22 date of the enactment of the Veterans Burn Pits Ex-
23 posure Recognition Act of 2021 and not less fre-
24 quently than once every two years thereafter.

1 “(2) A location set forth under this subsection shall
2 not include any body of water around or any airspace
3 above such location.

4 “(c) TOXIC SUBSTANCES, CHEMICALS, AIRBORNE
5 HAZARDS.—(1) Subject to paragraph (2), the toxic sub-
6 stances, chemicals, and airborne hazards listed in this sub-
7 section are as follows:

8 “(A) Particulate matter, including the fol-
9 lowing:

10 “(i) PM-10.

11 “(ii) PM-2.5.

12 “(B) Polycyclic aromatic hydrocarbons (PAHs),
13 including the following:

14 “(i) Acenaphthene.

15 “(ii) Acenaphthylene.

16 “(iii) Anthracene.

17 “(iv) Benzo(a)anthracene.

18 “(v) Benzo(a)pyrene.

19 “(vi) Benzo(b)fluoroanthene.

20 “(vii) Benzo(g,h,i)perylene.

21 “(viii) Benzo(k)fluoroanthene.

22 “(ix) Chrysene.

23 “(x) Dibenz(a,h)anthracene.

24 “(xi) Fluoranthene.

25 “(xii) Fluorene.

1 “(xiii) Indeno(1,2,3-cd)pyrene.

2 “(xiv) Naphthalene.

3 “(xv) Phenanthrene.

4 “(xvi) Pyrene.

5 “(C) Volatile organic compounds (VOCs), in-
6 including the following:

7 “(i) Acetone.

8 “(ii) Acrolein.

9 “(iii) Benzene.

10 “(iv) Carbon Disulfide.

11 “(v) Chlorodifluoromethane.

12 “(vi) Chloromethane.

13 “(vii) Ethylbenzene.

14 “(viii) Hexane.

15 “(ix) Hexachlorobutadiene.

16 “(x) m/p-Xylene.

17 “(xi) Methylene Chloride.

18 “(xii) Pentane.

19 “(xiii) Propylene.

20 “(xiv) Styrene.

21 “(xv) Toluene.

22 “(D) Toxic organic halogenated dioxins and
23 furans (dioxins), including the following:

24 “(i) 1,2,3,4,6,7,8 HPCDD.

25 “(ii) 1,2,3,4,6,7,8 HPCDF.

- 1 “(iii) 1,2,3,4,7,8,9 HPCDF.
- 2 “(iv) 1,2,3,4,7,8 HXCDD.
- 3 “(v) 1,2,3,4,7,8 HXCDF.
- 4 “(vi) 1,2,3,6,7,8 HXCDD.
- 5 “(vii) 1,2,3,6,7,8 HXCDF.
- 6 “(viii) 1,2,3,7,8,9 HXCDD.
- 7 “(ix) 1,2,3,7,8,9 HXCDF.
- 8 “(x) 1,2,3,7,8 PECDD.
- 9 “(xi) 1,2,3,7,8 PECDF.
- 10 “(xii) 2,3,4,6,7,8 HXCDF.
- 11 “(xiii) 2,3,4,7,8 PECDF.
- 12 “(xiv) 2,3,7,8 TCDD.
- 13 “(xv) 2,3,7,8 TCDF.
- 14 “(xvi) octachlorodibenzodioxin.
- 15 “(xvii) octachlorodibenzofuran.
- 16 “(E) Such other toxic substances, chemicals,
17 and airborne hazards as the Secretary, in collabora-
18 tion with the Secretary of Defense, may add under
19 paragraph (2).
- 20 “(2) The Secretary may add to or remove from the
21 list under paragraph (1) as the Secretary determines ap-
22 propriate in a report the Secretary shall submit to Con-
23 gress not later than two years after the date of the enact-
24 ment of the Veterans Burn Pits Exposure Recognition Act

1 of 2021, and not less frequently than once every two years
2 thereafter.

3 “(d) MEDICAL EXAMINATIONS AND MEDICAL OPIN-
4 IONS.—(1) If a veteran described in subsection (a) sub-
5 mits to the Secretary a claim for compensation for a serv-
6 ice-connected disability with evidence of a disability and
7 service in a covered location and corresponding period set
8 forth under subsection (b) and such evidence is not suffi-
9 cient to establish a service connection for the disability,
10 the Secretary shall provide the veteran with a medical ex-
11 amination and the Secretary shall request a medical opin-
12 ion as to any causal link between the disability and a toxic
13 substance, chemical, or hazard set listed in subsection (c).

14 “(2) When providing the Secretary with a medical
15 opinion requested under paragraph (1), the provider shall
16 consider the total potential exposure through all applicable
17 military deployments, and the synergistic effect of all com-
18 bined toxic substances through inhalation, dermal expo-
19 sure, and ingestion.

20 “(e) DEFINITION OF BURN PIT.—In this section, the
21 term ‘burn pit’ means an area of land that—

22 “(1) is designated by the Secretary of Defense
23 to be used for disposing solid waste by burning in
24 the outdoor air; and

1 is one year after the date of the enactment of
2 this Act.

3 (2) CONTENTS.—Each report submitted under
4 paragraph (1) shall include, for the period covered
5 by the report and disaggregated by each of the cat-
6 egories set forth under paragraph (3), the following:

7 (A) Total number of claims completed for
8 compensation under chapter 11 of title 38,
9 United States Code.

10 (B) Total number of such completed
11 claims for which the Secretary provided medical
12 examinations.

13 (C) The current status of such completed
14 claims, disaggregated by the following:

15 (i) Total claims granted.

16 (ii) Total claims denied for which the
17 claimant took no further action.

18 (iii) Total claims denied for which the
19 claimant filed a supplemental claim.

20 (iv) Total claims denied for which the
21 claimant requested a higher level review.

22 (v) Total claims denied for which the
23 claimant filed an appeal to the Board of
24 Veterans' Appeals.

1 (D) Total number of claims for compensa-
2 tion under chapter 11 of such title pending a
3 decision.

4 (3) CATEGORIES.—The categories set forth
5 under this paragraph are claims for compensation
6 under chapter 11 of title 38, United States Code, in-
7 volving exposure to a toxic substance, chemical, or
8 hazard listed in subsection (c) of section 1119 of
9 such title, as added by subsection (a)(1), during ac-
10 tive military, naval, or air service in support of a
11 contingency operation in a covered location during a
12 corresponding period set forth under subsection (b)
13 of such section.

14 (4) PUBLIC ACCESS TO REPORTS.—The Sec-
15 retary shall make each report required by paragraph
16 (1) available to the public, including by publishing
17 the reports on a publicly accessible page of the
18 website of the Department of Veterans Affairs, along
19 with such additional information or comments as the
20 Secretary considers appropriate to provide context
21 for the report.

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