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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Veterans Burn Pits Exposure Recognition Act of 2021”.

SEC. 2. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—Congress makes the following find-

ings:
(1) The health of some members of the Armed Forces and veterans who served in certain locations, often multiple times, may have been affected by their service near burn pits and other sources of airborne hazards.

(2) Determining the location of burn pits, and the scope of health effects associated to exposure, remains the subject of much investigation, research, and good faith efforts by the Department of Veterans Affairs, the Department of Defense, other government agencies, and the National Academies of Sciences, Engineering, and Medicine.

(3) The locations of burn pits used by the Department of Defense and partnered armed forces, and the possible health effects associated by their use, may never be completely known, as—

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

(B) the research involved with establishing links between burn pit exposure and health conditions by necessity is complex, years in length, and in the end, in some cases, inconclusive.

(4) The September 2020 National Academies of Sciences, Engineering and Medicine consensus study report entitled “Respiratory Health Effects of Air-
borne Hazards Exposures in the Southwest Asia
Theater of Military Operations’’ concludes that the
available evidence does not allow a definitive deter-
mination to be made about any potential association
between airborne hazards in the theater and numer-
ous respiratory health outcomes. The report charac-
terizes existing research as inadequate, and advises
that additional research be done, including longitu-
dinal studies that by design take years.

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

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

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

(1) if it is determined that a veteran was de-
ployed to a covered location during a certain period,
the Secretary of Veterans Affairs should concede
that the member or veteran was exposed to certain
toxic substances, chemicals, and hazards;

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

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

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

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

(a) CONCESSION REQUIRED.—

(1) IN GENERAL.—Subchapter II of chapter 11
of title 38, United States Code, is amended by add-
ing at the end the following new section:
§ 1119. Concession of exposure to airborne hazards and toxic substances from burn pits

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

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

“(A) Iraq and the following periods:


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

“(B) The Southwest Asia Theater of operations, other than Iraq, and the period beginning on August 2, 1990, and ending on such date as the
Secretary determines burn pits are no longer used in such location, including the following:

“(i) Kuwait.
“(ii) Saudi Arabia.
“(iii) Oman.
“(iv) Qatar.
“(C) Afghanistan and the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Afghanistan.
“(D) Djibouti and the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Djibouti.
“(E) Syria and the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Syria.
“(F) Jordan and the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Jordan.
“(G) Egypt and the period beginning on September 11, 2001, and ending on such date as the
Secretary determines burn pits are no longer used in Egypt.

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

“(I) Yemen and the period beginning on September 11, 2001, and ending on such date as the Secretary determines burn pits are no longer used in Yemen.

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

“(K) Such other locations and corresponding periods as the Secretary, in collaboration with the Secretary of Defense, may determine appropriate in a report the Secretary of Veterans Affairs shall submit to Congress not later than two years after the date of the enactment of the Veterans Burn Pits Exposure Recognition Act of 2021 and not less frequently than once every two years thereafter.
“(2) A location set forth under this subsection shall not include any body of water around or any airspace above such location.

“(c) TOXIC SUBSTANCES, CHEMICALS, AIRBORNE HAZARDS.—(1) Subject to paragraph (2), the toxic substances, chemicals, and airborne hazards listed in this subsection are as follows:

“(A) Particulate matter, including the following:

“(i) PM-10.

“(ii) PM-2.5.

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

“(i) Acenaphthene.

“(ii) Acenaphthylene.

“(iii) Anthracene.

“(iv) Benzo(a)anthracene.

“(v) Benzo(a)pyrene.

“(vi) Benzo(b)fluoranthene.

“(vii) Benzo(g,h,i)perylene.

“(viii) Benzo(k)fluoranthene.

“(ix) Chrysene.

“(x) Dibenz(a,h)anthracene.

“(xi) Fluoranthene.

“(xii) Fluorene.
“(xiii) Indeno(1,2,3-cd)pyrene.
“(xiv) Naphthalene.
“(xv) Phenanthrene.
“(xvi) Pyrene.
“(C) Volatile organic compounds (VOCs), including the following:
“(i) Acetone.
“(ii) Acrolein.
“(iii) Benzene.
“(iv) Carbon Disulfide.
“(v) Chlorodifluoromethane.
“(vi) Chloromethane.
“(vii) Ethylbenzene.
“(viii) Hexane.
“(ix) Hexachlorobutadiene.
“(x) m/p-Xylene.
“(xi) Methylene Chloride.
“(xii) Pentane.
“(xiii) Propylene.
“(xiv) Styrene.
“(xv) Toluene.
“(D) Toxic organic halogenated dioxins and furans (dioxins), including the following:
“(i) 1,2,3,4,6,7,8 HPCDD.
“(ii) 1,2,3,4,6,7,8 HPCDF.
“(iii) 1,2,3,4,7,8,9 HPCDF.

“(iv) 1,2,3,4,7,8 HXCD.

“(v) 1,2,3,4,7,8 HXC.

“(vi) 1,2,3,6,7,8 HXC.

“(vii) 1,2,3,6,7,8 HXC.

“(viii) 1,2,3,7,8,9 HXC.

“(ix) 1,2,3,7,8,9 HXC.

“(x) 1,2,3,7,8 PEC.

“(xi) 1,2,3,7,8 PEC.

“(xii) 2,3,4,6,7,8 HXC.

“(xiii) 2,3,4,7,8 PEC.

“(xiv) 2,3,7,8 TC.

“(xv) 2,3,7,8 TC.

“(xvi) octachlorodibenzodioxin.

“(xvii) octachlorodibenzofuran.

“(E) Such other toxic substances, chemicals, and airborne hazards as the Secretary, in collaboration with the Secretary of Defense, may add under paragraph (2).

“(2) The Secretary may add to or remove from the list under paragraph (1) as the Secretary determines appropriate in a report the Secretary shall submit to Congress not later than two years after the date of the enactment of the Veterans Burn Pits Exposure Recognition Act
of 2021, and not less frequently than once every two years thereafter.

“(d) MEDICAL EXAMINATIONS AND MEDICAL OPINIONS.—(1) If a veteran described in subsection (a) submits to the Secretary a claim for compensation for a service-connected disability with evidence of a disability and service in a covered location and corresponding period set forth under subsection (b) and such evidence is not sufficient to establish a service connection for the disability, the Secretary shall provide the veteran with a medical examination and the Secretary shall request a medical opinion as to any causal link between the disability and a toxic substance, chemical, or hazard set listed in subsection (c).

“(2) When providing the Secretary with a medical opinion requested under paragraph (1), the provider shall consider the total potential exposure through all applicable military deployments, and the synergistic effect of all combined toxic substances through inhalation, dermal exposure, and ingestion.

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

“(1) is designated by the Secretary of Defense to be used for disposing solid waste by burning in the outdoor air; and
“(2) does not contain a commercially manufactured incinerator or other equipment specifically designed and manufactured for the burning of solid waste.”.

(2) Clerical Amendment.—The table of sections at the beginning of chapter 11 of such title is amended by inserting after the item relating to section 1118 the following new item:

“1119. Concession of exposure to airborne hazards and toxic substances from burn pits.”.

(b) Reports.—

(1) Reports Required.—The Secretary shall submit to the Committee on Veterans’ Affairs of the Senate and Committee on Veterans’ Affairs of the House of Representatives reports as follows:

(A) Not later than 60 days after the date of the enactment of this Act, a report covering the one-year period preceding the date of the enactment of this Act.

(B) Not later than 425 days after the date of the enactment of this Act, a report covering the one-year period beginning on the date of the enactment of this Act.

(C) Not later than 790 days after the date of the enactment of this Act, a report covering the one-year period beginning on the date that
is one year after the date of the enactment of this Act.

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

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

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

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

   (i) Total claims granted.

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

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

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

   (v) Total claims denied for which the claimant filed an appeal to the Board of Veterans’ Appeals.
(D) Total number of claims for compensation under chapter 11 of such title pending a decision.

(3) Categories.—The categories set forth under this paragraph are claims for compensation under chapter 11 of title 38, United States Code, involving exposure to a toxic substance, chemical, or hazard listed in subsection (c) of section 1119 of such title, as added by subsection (a)(1), during active military, naval, or air service in support of a contingency operation in a covered location during a corresponding period set forth under subsection (b) of such section.

(4) Public Access to Reports.—The Secretary shall make each report required by paragraph (1) available to the public, including by publishing the reports on a publicly accessible page of the website of the Department of Veterans Affairs, along with such additional information or comments as the Secretary considers appropriate to provide context for the report.