

116TH CONGRESS  
1ST SESSION

# H. R. 4086

To direct the Secretary of Veterans Affairs to determine presumptions of service connection for illnesses associated with open burn pits, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2019

Mr. BILIRAKIS (for himself and Mr. RUIZ) introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To direct the Secretary of Veterans Affairs to determine presumptions of service connection for illnesses associated with open burn pits, 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 “Protection for Vet-  
5 erans’ Burn Pit Exposure Act of 2019”.

1 **SEC. 2. DETERMINATION OF PRESUMPTIONS OF SERVICE**  
2 **CONNECTION FOR ILLNESSES ASSOCIATED**  
3 **WITH OPEN BURN PITS.**

4 (a) IN GENERAL.—

5 (1) DETERMINATION REQUIRED.—Not later  
6 than 60 days after the date on which the Secretary  
7 of Veterans Affairs receives the results of a covered  
8 study, the Secretary shall make a determination  
9 whether a positive association exists between—

10 (A) the exposure of humans to toxic air-  
11 borne chemicals and fumes caused by open air  
12 burn pits and other airborne hazards; and

13 (B) the occurrence of a diagnosed illness in  
14 humans.

15 (2) BASES OF DETERMINATION.—In making a  
16 determination under paragraph (1), the Secretary  
17 shall consider—

18 (A) whether the evidence is statistically  
19 significant, capable of replication, and able to  
20 withstand peer review demonstrating that there  
21 is positive association between the exposure and  
22 the occurrence of a diagnosed illness;

23 (B) the results of a covered study; and

24 (C) all other sound medical and scientific  
25 evidence available to the Secretary.

1           (3) PRESUMPTION.—If the Secretary deter-  
2 mines that a positive association exists between ex-  
3 posure and a diagnosed illness pursuant to para-  
4 graph (1), the Secretary shall prescribe regulations  
5 providing that—

6           (A) a presumption of service connection is  
7 warranted for the illness covered by that deter-  
8 mination if the illness first becomes manifest  
9 within the period, if any, prescribed in such  
10 regulations in a covered veteran; and

11          (B) such covered veteran shall be pre-  
12 sumed to have been exposed to toxic airborne  
13 chemicals and fumes caused by open burn pits  
14 unless there is conclusive evidence to establish  
15 that—

16           (i) the covered veteran was not ex-  
17 posed to toxic airborne chemicals and  
18 fumes caused by open burn pits in the  
19 course of service in the Armed Forces de-  
20 scribed in subsection (c)(1); or

21           (ii) the illness first became manifest  
22 prior to the covered veteran's exposure.

23          (4) SUBMISSION.—Upon the date on which the  
24 Secretary makes the determination under paragraph  
25 (1), the Secretary shall submit to the Committees on

Veterans' Affairs of the House of Representatives  
and the Senate an explanation of such determination.

(b) REGULATIONS.—

(1) PROPOSED REGULATIONS.—

(A) TIMING.—If the Secretary determines  
under subsection (a)(1) that a presumption of  
service connection is warranted for an illness,  
the Secretary shall, not later than 180 days  
after making such determination—

(i) issue proposed regulations setting  
forth the determination; or

(ii) submit the initial report under  
subparagraph (B).

(B) REPORTS.—If the Secretary does not  
issue proposed regulations by the deadline es-  
tablished in subparagraph (A), the Secretary  
shall submit to the Committees on Veterans'  
Affairs of the House of Representatives and the  
Senate a report on the status of such proposed  
regulations. On a quarterly basis thereafter  
until the date on which the Secretary issues  
such proposed regulations, the Secretary shall  
submit to such committees an update on such  
status.

1           (2) FINAL REGULATIONS.—Not later than 180  
2       days after the date on which the Secretary issues  
3       any proposed regulations under this subsection, the  
4       Secretary shall prescribe final regulations. Such reg-  
5       ulations shall be effective on the date of issuance.

6           (3) PRESUMPTION NOT WARRANTED.—

7                 (A) PUBLICATION.—If the Secretary deter-  
8       mines under subsection (a) that a presumption  
9       of service connection is not warranted for an ill-  
10      ness, or proposes to remove a previously estab-  
11      lished presumption, the Secretary shall publish  
12      in the Federal Register a notice of that deter-  
13      mination not later than 180 days after making  
14      the determination. The notice shall include an  
15      explanation of the evidence and scientific basis  
16      for that determination.

17                (B) REMOVAL OF PREVIOUS PRESUMP-  
18      TION.—If an illness already presumed to be  
19      service connected under this section is subject  
20      to a notice published under subparagraph (A),  
21      the Secretary shall issue proposed regulations  
22      removing the presumption for the illness not  
23      later than 180 days after publication of such  
24      notice.

1           (4) EFFECT OF REMOVAL.—Whenever the pre-  
2           sumption of service connection for an illness under  
3           this section is removed under this subsection—

4                   (A) a veteran who was awarded compensa-  
5                   tion for the illness on the basis of the presump-  
6                   tion before the effective date of the removal of  
7                   the presumption shall continue to be entitled to  
8                   receive compensation on that basis; and

9                   (B) a survivor of a veteran who was  
10                  awarded dependency and indemnity compensa-  
11                  tion for the death of a veteran resulting from  
12                  the illness on the basis of the presumption be-  
13                  fore that date shall continue to be entitled to  
14                  receive dependency and indemnity compensation  
15                  on that basis.

16          (c) EFFECTIVE DATE OF BENEFIT AWARDS.—The  
17          effective date of any benefit awarded by reason of this sec-  
18          tion shall be determined in accordance with section 5110  
19          of title 38, United States Code, but shall in no case be  
20          earlier than the effective date of the final regulations pre-  
21          scribed pursuant to subsection (b)(2).

22          (d) DEFINITIONS.—In this section:

23                  (1) The term “covered study” includes—

24                          (A) the study conducted by the National  
25                          Academies of Sciences, Engineering, and Medi-

1 cine titled “Respiratory Health Effects of Air-  
2 borne Hazards Exposures in the Southwest  
3 Asia Theater of Military Operations”; and

4 (B) any subsequent study conducted by the  
5 National Academies of Sciences, Engineering,  
6 and Medicine regarding the effects of exposure  
7 of humans to toxic airborne chemicals and  
8 fumes caused by open air burn pits and other  
9 airborne hazards.

10 (2) The term “covered veteran” means a vet-  
11 eran who, on or after September 11, 2001—

12 (A) was deployed in support of a contin-  
13 gency operation while serving in the Armed  
14 Forces; and

15 (B) during such deployment, was based or  
16 stationed at a location where an open burn pit  
17 was used.

18 (3) The term “open burn pit” means an area  
19 of land that—

20 (A) is designated by the Secretary of De-  
21 fense to be used for disposing of solid waste by  
22 burning in the outdoor air; and

23 (B) does not contain a commercially manu-  
24 factured incinerator or other equipment specifi-

1 cally designed and manufactured for the burn-  
2 ing of solid waste.

3 **SEC. 3. ACCESS OF THE NATIONAL ACADEMIES OF**  
4 **SCIENCES, ENGINEERING, AND MEDICINE TO**  
5 **INFORMATION FROM THE DEPARTMENT OF**  
6 **DEFENSE.**

7 Upon request by the National Academies of Sciences,  
8 Engineering, and Medicine (in this section referred to as  
9 the “Academies”), the Secretary of Defense shall provide  
10 to the Academies information in the possession of the De-  
11 partment of Defense that the Academies determine useful  
12 in performing a covered study, as that term is defined in  
13 section 2(d). Such information includes, at a minimum,  
14 all environmental sampling data relative to any location  
15 included in the study.

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