

116TH CONGRESS
2D SESSION

H. R. 8261

To amend title 38, United States Code, to provide for a presumption of service connection for certain diseases associated with exposure to toxins, including emissions from open burn pits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2020

Mr. RUIZ introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committees on Armed Services, and Education and Labor, 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

A BILL

To amend title 38, United States Code, to provide for a presumption of service connection for certain diseases associated with exposure to toxins, including emissions from 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 “Presumptive Benefits
5 for War Fighters Exposed to Burn Pits and Other Toxins
6 Act of 2020”.

1 **SEC. 2. PRESUMPTION OF SERVICE CONNECTION FOR CER-**
2 **TAIN DISEASES ASSOCIATED WITH EXPO-**
3 **SURE TO OPEN BURN PITS AND OTHER TOX-**
4 **INS.**

5 (a) IN GENERAL.—Subchapter II of chapter 11 of
6 title 38, United States Code, is amended by adding at the
7 end the following new section:

8 **“§ 1119. Presumption of service connection for cer-**
9 **tain diseases associated with exposure to**
10 **open burn pits and other toxins**

11 “(a) PRESUMPTION OF SERVICE CONNECTION.—(1)
12 For the purposes of section 1110 of this title, and subject
13 to section 1113 of this title, a disease specified in para-
14 graph (2) becoming manifest in a veteran described in
15 paragraph (3) shall be considered to have been incurred
16 in or aggravated during active military, naval, or air serv-
17 ice, notwithstanding that there is no record of evidence
18 of such disease during the period of such service.

19 “(2) The diseases specified in this paragraph are the
20 following:

21 “(A) Asthma that was diagnosed after service
22 in a country or territory listed under paragraph
23 (4)(B).

24 “(B) Cancer of any type.

25 “(C) Chronic bronchitis.

26 “(D) Chronic obstructive pulmonary disease.

1 “(E) Constrictive bronchiolitis or obliterative
2 bronchiolitis.

3 “(F) Emphysema.

4 “(G) Granulomatous disease.

5 “(H) Interstitial lung disease.

6 “(I) Lymphoma.

7 “(J) Pleuritis.

8 “(K) Pulmonary fibrosis.

9 “(L) Sarcoidosis.

10 “(M) Any other disease with respect to which
11 final regulations have been prescribed under sub-
12 section (c)(3).

13 “(3) A veteran described in this paragraph is any vet-
14 eran who—

15 “(A) on or after January 1, 1990—

16 “(i) served as a member of the Armed
17 Forces in support of a military operation de-
18 scribed in paragraph (4); and

19 “(ii) was present for 15 or more cumu-
20 lative days in a country or territory listed under
21 subparagraph (B) of that paragraph; or

22 “(B) was awarded a campaign medal in rec-
23 ognition of service in any of the following—

24 “(i) Operation Enduring Freedom;

25 “(ii) Operation Iraqi Freedom;

- 1 “(iii) Operation Nomad Shadow;
- 2 “(iv) Operation New Dawn;
- 3 “(v) Operation Inherent Resolve;
- 4 “(vi) Operation Freedom’s Sentinel;
- 5 “(vii) Operation Odyssey Lightning; or
- 6 “(viii) Operation Pacific Eagle.

7 “(4) A military operation described in this paragraph
8 is any of the following:

9 “(A) A contingency operation (as defined in
10 section 101(a)(13) of title 10).

11 “(B) A military operation in any of the fol-
12 lowing countries or territories:

13 “(i) Afghanistan.

14 “(ii) Bahrain.

15 “(iii) Burkina Faso.

16 “(iv) Cameroon.

17 “(v) Chad.

18 “(vi) Diego Garcia.

19 “(vii) Djibouti.

20 “(viii) Egypt.

21 “(ix) Ethiopia.

22 “(x) Gabon.

23 “(xi) Ghana.

24 “(xii) Iraq.

25 “(xiii) Jordan.

1 “(xiv) Kenya.
2 “(xv) Kuwait.
3 “(xvi) Kyrgyzstan.
4 “(xvii) Libya.
5 “(xviii) Mali.
6 “(xix) Niger.
7 “(xx) Nigeria.
8 “(xxi) Oman.
9 “(xxii) Pakistan.
10 “(xxiii) Philippines.
11 “(xxiv) Saudi Arabia.
12 “(xxv) Somalia.
13 “(xxvi) South Sudan.
14 “(xxvii) Sudan.
15 “(xxviii) Syria.
16 “(xxix) Tajikistan.
17 “(xxx) Tunisia.
18 “(xxxi) United Arab Emirates.
19 “(xxxii) Uzbekistan.
20 “(xxxiii) Yemen.
21 “(b) PROCESS TO ADD DISEASES THROUGH WRIT-
22 TEN PETITION.—(1) In the case that the Secretary re-
23 ceives a written petition from an interested party to add
24 a disease to the list of diseases specified in subsection
25 (a)(2), not later than 90 days after the date of receipt

1 of such petition, the Secretary shall request a determina-
2 tion by the National Academies of Sciences, Engineering,
3 and Medicine (referred to in this section as the ‘National
4 Academies’) with respect to whether there is a positive as-
5 sociation between—

6 “(A) the exposure of humans to one or more
7 covered toxins, including emissions from open burn
8 pits; and

9 “(B) the occurrence of the disease in humans.

10 “(2) For purposes of this subsection, the term ‘inter-
11 ested party’ includes a representative of—

12 “(A) a congressionally chartered veterans serv-
13 ice organization;

14 “(B) an organization that—

15 “(i) is described in section 501(c)(3) of the
16 Internal Revenue Code of 1986 and exempt
17 from taxation under section 501(a) of such
18 Code;

19 “(ii) serves veterans or members of the
20 Armed Forces; and

21 “(iii) has continuously operated for a pe-
22 riod of five years or more preceding the date of
23 the submittal of the written petition under
24 paragraph (1);

1 “(C) a collective bargaining agent for civilian
2 employees of the United States Government;

3 “(D) a nationally recognized medical associa-
4 tion;

5 “(E) the National Academies; or

6 “(F) a State or political subdivision of a State.

7 “(c) DETERMINATIONS BY NATIONAL ACADEMIES.—

8 (1) If the Secretary receives a determination described in
9 paragraph (2), not later than 180 days after receipt of
10 such determination, the Secretary shall—

11 “(A) publish in the Federal Register proposed
12 regulations to add the disease covered by the deter-
13 mination to the list of diseases specified in sub-
14 section (a)(2);

15 “(B) publish in the Federal Register, and sub-
16 mit to the Committee on Veterans’ Affairs of the
17 Senate and the Committee on Veterans’ Affairs of
18 the House of Representatives—

19 “(i) the decision of the Secretary not to
20 publish such proposed regulations; and

21 “(ii) the basis for such decision, including
22 specific medical science refuting the determina-
23 tion; or

1 “(C) publish in the Federal Register a decision
2 that insufficient evidence exists to take action under
3 subparagraph (A) or (B).

4 “(2) A determination described in this paragraph—

5 “(A) is a determination by the National Acad-
6 emies that there is a positive association between—

7 “(i) the exposure humans to one or more
8 covered toxins, including emissions from open
9 burn pits; and

10 “(ii) the occurrence of the disease in hu-
11 mans; and

12 “(B) may be made pursuant to—

13 “(i) a request from the Secretary under
14 subsection (b); or

15 “(ii) an agreement between the Secretary
16 and the National Academies under section 3 of
17 the Presumptive Benefits for War Fighters Ex-
18 posed to Burn Pits and Other Toxins Act of
19 2020.

20 “(3)(A) Not later than 180 days after the date on
21 which the Secretary publishes any proposed regulations
22 under paragraph (1)(A) for a disease, the Secretary shall
23 prescribe final regulations for that disease.

24 “(B) Such regulations shall be effective on the date
25 of issuance.

1 “(d) REFERENCE TO NATIONAL ACADEMIES.—In the
2 case that the Secretary enters into an agreement with an-
3 other organization as described in section 3(h)(1) of the
4 Presumptive Benefits for War Fighters Exposed to Burn
5 Pits and Other Toxins Act of 2020, any reference in this
6 section to the National Academies shall be treated as a
7 reference to the other organization.

8 “(e) DEFINITIONS.—In this section:

9 “(1) The term ‘covered toxin’ means any toxic
10 chemical, including—

11 “(A) hazardous waste, mixed waste, solid
12 waste, or used oil (as those terms are defined
13 in section 1004 of the Solid Waste Disposal Act
14 (42 U.S.C. 6903));

15 “(B) radiological waste; and

16 “(C) any other carcinogen.

17 “(2) The term ‘veterans service organization’
18 means an organization recognized by the Secretary
19 for the representation of veterans under section
20 5902 of this title.

21 “(3) The term ‘open burn pit’ means an area
22 of land located that—

23 “(A) is designated by the Secretary of De-
24 fense to be used for disposing solid waste by
25 burning in the outdoor air; and

1 “(B) does not contain a commercially man-
2 ufactured incinerator or other equipment spe-
3 cifically designed and manufactured for the
4 burning of solid waste.”.

5 (b) EFFECTIVE DATE.—

6 (1) IN GENERAL.—The amendment made by
7 subsection (a) shall take effect on the date that is
8 180 days after the date of the enactment of this Act.

9 (2) WRITTEN PETITIONS.—With respect to a
10 written petition described in section 1119(b)(1) of
11 title 38, United States Code, as added by subsection
12 (a), that was received by the Secretary of Veterans
13 Affairs before the effective date described in para-
14 graph (1), the Secretary shall make a request of the
15 National Academies of Sciences, Engineering, and
16 Medicine under such section, as so added, not later
17 than 90 days after such effective date.

18 (c) CLERICAL AMENDMENT.—The table of sections
19 at the beginning of chapter 11 of title 38, United States
20 Code, is amended by inserting after the item relating to
21 section 1118 the following new item:

 “1119. Presumption of service connection for certain diseases associated with
 exposure to open burn pits and other toxins.”.

22 (d) CONFORMING AMENDMENT.—Section 1113 of
23 such title is amended by striking “or 1118” each place
24 it appears and inserting “1118, or 1119”.

1 **SEC. 3. AGREEMENT WITH THE NATIONAL ACADEMIES OF**
2 **SCIENCES, ENGINEERING, AND MEDICINE**
3 **CONCERNING THE EXPOSURE OF HUMANS TO**
4 **OPEN BURN PITS AND OTHER TOXINS.**

5 (a) AGREEMENT.—

6 (1) IN GENERAL.—The Secretary of Veterans
7 Affairs shall seek to enter into an agreement with
8 the National Academies of Sciences, Engineering,
9 and Medicine (referred to in this section as the “Na-
10 tional Academies”) to perform the services covered
11 by this section.

12 (2) TIMING.—The Secretary shall seek to enter
13 into the agreement described in paragraph (1) not
14 later than 60 days after the date of the enactment
15 of this Act.

16 (b) REVIEWS OF SCIENTIFIC EVIDENCE.—

17 (1) IN GENERAL.—Under an agreement be-
18 tween the Secretary and the National Academies,
19 the National Academies shall review and summarize
20 the scientific evidence, and assess the strength there-
21 of, concerning the association between the exposure
22 of humans to one or more covered toxins, including
23 emissions from open burn pits, and each disease sus-
24 pected to be associated with such exposure.

25 (2) REVIEWS UPON REQUEST.—Under an
26 agreement between the Secretary and the National

1 Academies under this section, the National Acad-
2 emies shall conduct a review described in paragraph
3 (1) in response to each request made by the Sec-
4 retary under section 1119(b)(1) of title 38, United
5 States Code, as added by section 2(a).

6 (c) SCIENTIFIC DETERMINATIONS CONCERNING DIS-
7 EASES.—

8 (1) IN GENERAL.—For each disease reviewed
9 under subsection (b), the National Academies shall
10 determine (to the extent that available scientific data
11 permit meaningful determinations) whether there is
12 a positive association between the exposure of hu-
13 mans to one or more covered toxins, including emis-
14 sions from open burn pits, and the occurrence of the
15 disease in humans, taking into account the strength
16 of the scientific evidence and the appropriateness of
17 the statistical and epidemiological methods used to
18 detect the association.

19 (2) SUBMISSIONS FOR REVIEWS UPON RE-
20 QUEST.—Under an agreement between the Secretary
21 and the National Academies under this section, not
22 later than 270 days after the date on which the Sec-
23 retary transmits a request to the National Acad-
24 emies with respect to a disease under section
25 1119(b)(1) of title 38, United States Code, as added

1 by section 2(a), the National Academies shall submit
2 to the Secretary the determination made with re-
3 spect to that disease under paragraph (1).

4 (d) RECOMMENDATIONS FOR ADDITIONAL SCI-
5 ENTIFIC STUDIES.—

6 (1) IN GENERAL.—Under an agreement be-
7 tween the Secretary and the National Academies
8 under this section, the National Academies shall
9 make any recommendations it has for additional sci-
10 entific studies to resolve areas of continuing sci-
11 entific uncertainty relating to the exposure of hu-
12 mans to one or more covered toxins, including emis-
13 sions from open burn pits.

14 (2) CONSIDERATIONS.—In making rec-
15 ommendations for additional scientific studies, the
16 National Academies shall consider—

17 (A) the scientific information that is avail-
18 able at the time of the recommendation;

19 (B) the value and relevance of the informa-
20 tion that could result from additional studies;
21 and

22 (C) the feasibility of carrying out such ad-
23 ditional studies.

1 (e) SUBSEQUENT REVIEWS.—Under an agreement
2 between the Secretary and the National Academies under
3 this section, the National Academies shall—

4 (1) conduct as comprehensive a review as is
5 practicable of the evidence referred to in subsection
6 (b)(1) that became available since the last review of
7 such evidence under this section; and

8 (2) make determinations and estimates on the
9 basis of the results of such review and all other re-
10 views conducted for the purposes of this section.

11 (f) REPORTS.—

12 (1) INITIAL REPORT.—

13 (A) IN GENERAL.—Under an agreement
14 between the Secretary and the National Acad-
15 emies under this section, not later than 540
16 days after the date of the enactment of this
17 Act, the National Academies shall submit to the
18 Secretary and the Committee on Veterans' Af-
19 fairs of the Senate and the Committee on Vet-
20 erans' Affairs of the House of Representatives
21 a report on the activities of the National Acad-
22 emies under the agreement.

23 (B) ELEMENTS.—The report submitted
24 under subparagraph (A) shall include the fol-
25 lowing:

1 (i) The determinations described in
2 subsection (c)(1).

3 (ii) An explanation of the scientific
4 evidence and reasoning that led to such de-
5 terminations.

6 (iii) Any recommendations of the Na-
7 tional Academies under subsection (d).

8 (2) PERIODIC UPDATES.—Under an agreement
9 between the Secretary and the National Academies
10 under this section, not less frequently than once
11 every two years, the National Academies shall sub-
12 mit to the Secretary and the Committee on Vet-
13 erans' Affairs of the Senate and the Committee on
14 Veterans' Affairs of the House of Representatives an
15 updated report on the activities of the National
16 Academies under the agreement.

17 (g) LIMITATION ON AUTHORITY.—The authority to
18 enter into agreements under this section shall be effective
19 for a fiscal year to the extent that appropriations are
20 available.

21 (h) ALTERNATIVE CONTRACT SCIENTIFIC ORGANIZA-
22 TION.—

23 (1) IN GENERAL.—If the Secretary is unable
24 within the period prescribed in subsection (a)(2) to
25 enter into an agreement with the National Acad-

1 emies on terms acceptable to the Secretary, the Sec-
2 retary shall seek to enter into such an agreement
3 with another appropriate scientific organization
4 that—

5 (A) is not part of the Government;

6 (B) operates as a not-for-profit entity; and

7 (C) has expertise and objectivity com-
8 parable to that of the National Academies.

9 (2) TREATMENT.—If the Secretary enters into
10 an agreement with another organization as described
11 in paragraph (1), any reference in this section, sec-
12 tion 4, and section 1119 of title 38, United States
13 Code, as added by section 2(a), to the National
14 Academies shall be treated as a reference to the
15 other organization.

16 (i) DEFINITIONS.—In this section, the terms “cov-
17 ered toxin” and “open burn pit” have the meanings given
18 such terms in section 1119(e) of title 38, United States
19 Code, as added by section 2(a).

20 (j) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Department of
22 Veterans Affairs such sums as may be necessary to carry
23 out this section.

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

5 (a) IN GENERAL.—Upon request by the National
6 Academies of Sciences, Engineering, and Medicine (re-
7 ferred to in this section as the “National Academies”),
8 the Secretary of Defense shall provide to the National
9 Academies information in the possession of the Depart-
10 ment of Defense that the National Academies determines
11 useful in conducting a review under section 3(b).

12 (b) INCLUSIONS.—The information described in sub-
13 section (a) shall include, at a minimum—

14 (1) all environmental sampling data relative to
15 any location included in the review; and

16 (2) a list of all forward deployed positions at
17 which members of the Armed Forces were deployed
18 or stationed.

19 **SEC. 5. PRESUMPTION RELATING TO PERSONAL INJURY OF**
20 **CERTAIN FEDERAL EMPLOYEES.**

21 (a) IN GENERAL.—Section 8102 of title 5, United
22 States Code, is amended by adding at the end the fol-
23 lowing:

24 “(c)(1) In this subsection, the term ‘covered em-
25 ployee’ means an employee who, on or after January 1,
26 1990, carried out the job responsibilities of the employee

1 for not fewer than 15 total days in a country or territory
2 listed under subparagraph (B) of paragraph (4) of section
3 1119(a) of title 38, in support of a military operation de-
4 scribed in that paragraph.

5 “(2) Disability or death from a disease described in
6 paragraph (2) of such section suffered by a covered em-
7 ployee is deemed to have resulted from personal injury
8 sustained while in the performance of the duty of the cov-
9 ered employee, whether or not the covered employee was
10 engaged in the course of employment when the disability
11 or disability resulting in death occurred.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall take effect on the date that is 180
14 days after the date of enactment of this Act.

○