

106TH CONGRESS
1ST SESSION

S. 880

AN ACT

To amend the Clean Air Act to remove flammable fuels from the list of substances with respect to which reporting and other activities are required under the risk management plan program.

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 “Fuels Regulatory Re-
5 lief Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that, because of their low toxicity and
3 because they are regulated sufficiently under other pro-
4 grams, flammable fuels, such as propane, should not be
5 included on the list of substances subject to the risk man-
6 agement plan program under section 112(r) of the Clean
7 Air Act (42 U.S.C. 7412(r)).

8 **SEC. 3. REMOVAL OF FLAMMABLE FUELS FROM RISK MAN-**
9 **AGEMENT LIST.**

10 Section 112(r)(4) of the Clean Air Act (42 U.S.C.
11 7412(r)(4)) is amended—

12 (1) by redesignating subparagraphs (A) through
13 (C) as clauses (i) through (iii), respectively, and in-
14 denting appropriately;

15 (2) by striking “Administrator shall consider
16 each of the following criteria—” and inserting the
17 following: “Administrator—

18 “(A) shall consider—”;

19 (3) in subparagraph (A)(iii) (as designated by
20 paragraphs (1) and (2)), by striking the period at
21 the end and inserting “; and”; and

22 (4) by adding at the end the following:

23 “(B) shall not list a flammable substance
24 when used as a fuel or held for sale as a fuel
25 under this subsection solely because of the ex-
26 plosive or flammable properties of the sub-

stance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion by-products, other than those caused by the heat of the fire or impact of the explosion.”.

SEC. 4. PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.

(a) IN GENERAL.—Section 112(r)(7) of the Clean Air Act (42 U.S.C. 7412(r)(7)) is amended by adding at the end the following:

“(H) PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—

“(i) DEFINITIONS.—In this subparagraph:

“(I) COVERED PERSON.—The term ‘covered person’ means—

“(aa) an officer or employee of the United States;

“(bb) an officer or employee of an agent or contractor of the Federal Government;

“(cc) an officer or employee of a State or local government;

1 “(dd) an officer or employee
2 of an agent or contractor of a
3 State or local government;

4 “(ee) an individual affiliated
5 with an entity that has been
6 given, by a State or local govern-
7 ment, responsibility for pre-
8 venting, planning for, or respond-
9 ing to accidental releases and
10 criminal releases;

11 “(ff) an officer or employee
12 or an agent or contractor of an
13 entity described in item (ee); and

14 “(gg) a qualified researcher
15 under clause (vii).

16 “(II) CRIMINAL RELEASE.—The
17 term ‘criminal release’ means an emis-
18 sion of a regulated substance into the
19 ambient air from a stationary source
20 that is caused, in whole or in part, by
21 a criminal act.

22 “(III) OFFICIAL USE.—The term
23 ‘official use’ means an action of a
24 Federal, State, or local government
25 agency or an entity referred to in sub-

1 clause (I)(ee) intended to carry out a
2 function relevant to preventing, plan-
3 ning for, or responding to accidental
4 releases or criminal releases.

5 “(IV) OFF-SITE CONSEQUENCE
6 ANALYSIS INFORMATION.—The term
7 ‘off-site consequence analysis informa-
8 tion’ means those portions of a risk
9 management plan, excluding the exec-
10 utive summary of the plan, consisting
11 of an evaluation of 1 or more worst-
12 case scenario or alternative scenario
13 accidental releases, and any electronic
14 data base created by the Adminis-
15 trator from those portions.

16 “(V) RISK MANAGEMENT
17 PLAN.—The term ‘risk management
18 plan’ means a risk management plan
19 submitted to the Administrator by an
20 owner or operator of a stationary
21 source under subparagraph (B).

22 “(ii) REGULATIONS.—Not later than
23 1 year after the date of enactment of this
24 subparagraph, the President shall—

25 “(I) assess—

1 “(aa) the increased risk of
2 terrorist and other criminal activ-
3 ity associated with the posting of
4 off-site consequence analysis in-
5 formation on the Internet; and

6 “(bb) the incentives created
7 by public disclosure of off-site
8 consequence analysis information
9 for reduction in the risk of acci-
10 dental releases and criminal re-
11 leases; and

12 “(II) based on the assessment
13 under subclause (I), promulgate regu-
14 lations governing the distribution of
15 off-site consequence analysis informa-
16 tion in a manner that, in the opinion
17 of the President, minimizes the likeli-
18 hood of accidental releases and crimi-
19 nal releases and the likelihood of
20 harm to public health and welfare,
21 and—

22 “(aa) allows access by any
23 member of the public to paper
24 copies of off-site consequence
25 analysis information for a limited

1 number of stationary sources lo-
2 cated anywhere in the United
3 States;

4 “(bb) allows other public ac-
5 cess to off-site consequence anal-
6 ysis information as appropriate;

7 “(cc) allows access for offi-
8 cial use by a covered person de-
9 scribed in any of items (cc)
10 through (ff) of clause (i)(I) (re-
11 ferred to in this subclause as a
12 ‘State or local covered person’) to
13 off-site consequence analysis in-
14 formation relating to stationary
15 sources located in the person’s
16 State;

17 “(dd) allows a State or local
18 covered person to provide, for of-
19 ficial use, off-site consequence
20 analysis information relating to
21 stationary sources located in the
22 person’s State to a State or local
23 covered person in a contiguous
24 State; and

“(ee) allows a State or local covered person to obtain for official use, by request to the Administrator, off-site consequence analysis information that is not available to the person under item (cc).

“(iii) AVAILABILITY UNDER FREEDOM OF INFORMATION ACT.—

“(I) FIRST YEAR.—Off-site consequence analysis information, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5, United States Code, during the 1-year period beginning on the date of enactment of this subparagraph.

“(II) AFTER FIRST YEAR.—If the regulations under clause (ii) are promulgated on or before the end of the period described in subclause (I), off-site consequence analysis information covered by the regulations, and any ranking of stationary sources derived

1 from the information, shall not be
2 made available under section 552 of
3 title 5, United States Code, after the
4 end of that period.

5 “(III) APPLICABILITY.—Sub-
6 clauses (I) and (II) apply to off-site
7 consequence analysis information sub-
8 mitted to the Administrator before,
9 on, or after the date of enactment of
10 this subparagraph.

11 “(iv) AVAILABILITY OF INFORMATION
12 DURING TRANSITION PERIOD.—The Ad-
13 ministrator shall make off-site consequence
14 analysis information available to covered
15 persons for official use in a manner that
16 meets the requirements of items (cc)
17 through (ee) of clause (ii)(II), and to the
18 public in a form that does not make avail-
19 able any information concerning the iden-
20 tity or location of stationary sources, dur-
21 ing the period—

22 “(I) beginning on the date of en-
23 actment of this subparagraph; and

24 “(II) ending on the earlier of the
25 date of promulgation of the regula-

1 tions under clause (ii) or the date that
2 is 1 year after the date of enactment
3 of this subparagraph.

4 “(v) PROHIBITION ON UNAUTHORIZED
5 DISCLOSURE OF INFORMATION BY COV-
6 ERED PERSONS.—

7 “(I) IN GENERAL.—Beginning on
8 the date of enactment of this subpara-
9 graph, a covered person shall not dis-
10 close to the public off-site consequence
11 analysis information in any form, or
12 any statewide or national ranking of
13 identified stationary sources derived
14 from such information, except as au-
15 thorized by this subparagraph (includ-
16 ing the regulations promulgated under
17 clause (ii)). After the end of the 1-
18 year period beginning on the date of
19 enactment of this subparagraph, if
20 regulations have not been promul-
21 gated under clause (ii), the preceding
22 sentence shall not apply.

23 “(II) CRIMINAL PENALTIES.—

24 “(aa) KNOWING VIOLA-
25 TIONS.—A covered person that

1 knowingly violates a restriction
2 or prohibition established by this
3 subparagraph (including the reg-
4 ulations promulgated under
5 clause (ii)) shall be fined not
6 more than \$5,000 for each unau-
7 thorized disclosure of off-site con-
8 sequence analysis information.
9 The disclosure of off-site con-
10 sequence analysis information for
11 each specific stationary source
12 shall be considered a separate of-
13 fense. Section 3571 of title 18,
14 United States Code, shall not
15 apply to an offense under this
16 item. The total of all penalties
17 that may be imposed on a single
18 person or organization under this
19 item shall not exceed \$100,000
20 for violations committed during
21 any 1 calendar year.

22 “(bb) WILLFUL VIOLA-
23 TIONS.—A covered person that
24 willfully violates a restriction or
25 prohibition established by this

1 subparagraph (including the reg-
2 ulations promulgated under
3 clause (ii)) shall be fined under
4 section 3571 of title 18, United
5 States Code, for each unauthor-
6 ized disclosure of off-site con-
7 sequence analysis information,
8 but shall not be subject to im-
9 prisonment. The total of all pen-
10 alties that may be imposed on a
11 single person or organization
12 under this item shall not exceed
13 \$1,000,000 for violations com-
14 mitted during any 1 calendar
15 year.

16 “(III) APPLICABILITY.—If the
17 owner or operator of a stationary
18 source makes off-site consequence
19 analysis information relating to that
20 stationary source available to the pub-
21 lic without restriction—

22 “(aa) subclauses (I) and (II)
23 shall not apply with respect to
24 the information; and

1 “(bb) the owner or operator
2 shall notify the Administrator of
3 the public availability of the in-
4 formation.

5 “(IV) LIST.—The Administrator
6 shall maintain and make publicly
7 available a list of all stationary
8 sources that have provided notification
9 under subclause (III)(bb).

10 “(vi) GUIDANCE.—

11 “(I) ISSUANCE.—Not later than
12 60 days after the date of enactment of
13 this subparagraph, the Administrator,
14 after consultation with the Attorney
15 General and the States, shall issue
16 guidance that describes official uses of
17 off-site consequence analysis informa-
18 tion in a manner consistent with the
19 restrictions in items (cc) through (ee)
20 of clause (ii)(II).

21 “(II) RELATIONSHIP TO REGULA-
22 TIONS.—The guidance describing offi-
23 cial uses shall be modified, as appro-
24 priate, consistent with the regulations
25 promulgated under clause (ii).

1 “(III) DISTRIBUTION.—The Ad-
2 ministrator shall transmit a copy of
3 the guidance describing official uses
4 to—

5 “(aa) each covered person to
6 which off-site consequence anal-
7 ysis information is made avail-
8 able under clause (iv); and

9 “(bb) each covered person to
10 which off-site consequence anal-
11 ysis information is made avail-
12 able for an official use under the
13 regulations promulgated under
14 clause (ii).

15 “(vii) QUALIFIED RESEARCHERS.—

16 “(I) IN GENERAL.—Not later
17 than 180 days after the date of enact-
18 ment of this subparagraph, the Ad-
19 ministrator, in consultation with the
20 Attorney General, shall develop and
21 implement a system for providing off-
22 site consequence analysis information,
23 including facility identification, to any
24 qualified researcher, including a quali-

1 fied researcher from industry or any
2 public interest group.

3 “(II) LIMITATION ON DISSEMINA-
4 TION.—The system shall not allow the
5 researcher to disseminate, or make
6 available on the Internet, the off-site
7 consequence analysis information, or
8 any portion of the off-site consequence
9 analysis information, received under
10 this clause.

11 “(viii) READ-ONLY INFORMATION
12 TECHNOLOGY SYSTEM.—In consultation
13 with the Attorney General and the heads
14 of other appropriate Federal agencies, the
15 Administrator shall establish an informa-
16 tion technology system that provides for
17 the availability to the public of off-site con-
18 sequence analysis information by means of
19 a central data base under the control of
20 the Federal Government that contains in-
21 formation that users may read, but that
22 provides no means by which an electronic
23 or mechanical copy of the information may
24 be made.

1 “(ix) VOLUNTARY INDUSTRY ACCI-
2 DENT PREVENTION STANDARDS.—The En-
3 vironmental Protection Agency, the De-
4 partment of Justice, and other appropriate
5 agencies may provide technical assistance
6 to owners and operators of stationary
7 sources and participate in the development
8 of voluntary industry standards that will
9 help achieve the objectives set forth in
10 paragraph (1).

11 “(x) EFFECT ON STATE OR LOCAL
12 LAW.—

13 “(I) IN GENERAL.—Subject to
14 subclause (II), this subparagraph (in-
15 cluding the regulations promulgated
16 under this subparagraph) shall super-
17 sede any provision of State or local
18 law that is inconsistent with this sub-
19 paragraph (including the regulations).

20 “(II) AVAILABILITY OF INFORMA-
21 TION UNDER STATE LAW.—Nothing in
22 this subparagraph precludes a State
23 from making available data on the off-
24 site consequences of chemical releases
25 collected in accordance with State law.

1 “(xi) REPORT ON ACHIEVEMENT OF
2 OBJECTIVES.—

3 “(I) IN GENERAL.—Not later
4 than 3 years after the date of enact-
5 ment of this subparagraph, the Comp-
6 troller General shall submit to Con-
7 gress a report that describes the ex-
8 tent to which the regulations promul-
9 gated under this paragraph have re-
10 sulted in actions, including the design
11 and maintenance of safe facilities,
12 that are effective in detecting, pre-
13 venting, and minimizing the con-
14 sequences of releases of regulated sub-
15 stances that may be caused by crimi-
16 nal activity.

17 “(II) INTERIM REPORT.—Not
18 later than 270 days after the date of
19 enactment of this subparagraph, the
20 Comptroller General shall submit to
21 Congress an interim report that in-
22 cludes, at a minimum—

23 “(aa) the preliminary find-
24 ings under subclause (I);

1 “(bb) the methods used to
2 develop those findings; and

3 “(cc) an explanation of the
4 activities expected to occur that
5 could cause the findings of the
6 report under subclause (I) to be
7 different from the preliminary
8 findings.

9 “(xii) SCOPE.—This subparagraph—

10 “(I) applies only to covered per-
11 sons; and

12 “(II) does not restrict the dis-
13 semination of off-site consequence
14 analysis information by any covered
15 person in any manner or form except
16 in the form of a risk management
17 plan or an electronic data base cre-
18 ated by the Administrator from off-
19 site consequence analysis information.

20 “(xiii) AUTHORIZATION OF APPRO-
21 PRIATIONS.—There are authorized to be
22 appropriated to the Administrator and the
23 Attorney General such sums as are nec-
24 essary to carry out this subparagraph (in-
25 cluding the regulations promulgated under

1 clause (ii)), to remain available until ex-
2 pended.”.

3 (b) REPORTS.—

4 (1) DEFINITION OF ACCIDENTAL RELEASE.—In
5 this subsection, the term “accidental release” has
6 the meaning given the term in section 112(r)(2) of
7 the Clean Air Act (42 U.S.C. 7412(r)(2)).

8 (2) REPORT ON STATUS OF CERTAIN AMEND-
9 MENTS.—Not later than 2 years after the date of
10 enactment of this Act, the Comptroller General of
11 the United States shall submit to Congress a report
12 on the status of the development of amendments to
13 the National Fire Protection Association Code for
14 Liquefied Petroleum Gas that will result in the pro-
15 vision of information to local emergency response
16 personnel concerning the off-site effects of accidental
17 releases of substances exempted from listing under
18 section 112(r)(4)(B) of the Clean Air Act (as added
19 by section 3).

20 (3) REPORT ON COMPLIANCE WITH CERTAIN
21 INFORMATION SUBMISSION REQUIREMENTS.—Not
22 later than 3 years after the date of enactment of
23 this Act, the Comptroller General of the United
24 States shall submit to Congress a report that—

1 (A) describes the level of compliance with
2 Federal and State requirements relating to the
3 submission to local emergency response per-
4 sonnel of information intended to help the local
5 emergency response personnel respond to chem-
6 ical accidents or related environmental or public
7 health threats; and

8 (B) contains an analysis of the adequacy of
9 the information required to be submitted and
10 the efficacy of the methods for delivering the in-
11 formation to local emergency response per-
12 sonnel.

13 (c) TERMINATION OF AUTHORITY.—The authority
14 provided by this section and the amendment made by this
15 section terminates 6 years after the date of enactment of
16 this Act.

Passed the Senate June 23, 1999.

Attest:

Secretary.

106TH CONGRESS
1ST Session

S. 880

AN ACT

To amend the Clean Air Act to remove flammable fuels from the list of substances with respect to which reporting and other activities are required under the risk management plan program.

S 880 ES—2

S 880 ES—3

S 880 ES—4

S 880 ES—5