

Calendar No. 141

106TH CONGRESS
1ST Session

S. 880

[Report No. 106-70]

A BILL

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.

JUNE 9, 1999

Reported with an amendment

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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.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 1999

Mr. INHOFE (for himself, Mr. BURNS, Mr. WARNER, Mr. HAGEL, Mr. SESSIONS, Mr. KERREY, Mr. CLELAND, Mr. SHELBY, Mr. BENNETT, Mr. COCHRAN, Mr. MURKOWSKI, Mr. ROBERTS, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JUNE 9, 1999

Reported by Mr. CHAFEE, with an amendment

[Omit the part struck through and insert the part printed in *italic*]

A BILL

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fuels Regulatory Re-
3 lief Act”.

4 **SEC. 2. FINDINGS.**

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

11 **SEC. 3. REMOVAL OF FLAMMABLE FUELS FROM RISK MAN-
12 AGEMENT LIST.**

13 Section 112(r)(4) of the Clean Air Act (42 U.S.C.
14 7412(r)(4)) is amended—

15 (1) by redesignating subparagraphs (A) through
16 (C) as clauses (i) through (iii), respectively, and in-
17 denting appropriately;

18 (2) by striking “Administrator shall consider
19 each of the following criteria—” and inserting the
20 following: “Administrator—

21 “(A) shall consider—”;

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

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

1 “(B) shall not regulate non-acute toxic
2 flammable fuels when used or stored for fuel
3 purposes or retail sale unless the fuels are haz-
4 ardous waste.”.

5 “(B) shall not list a flammable substance
6 when used as a fuel or held for sale as a fuel
7 under this subsection solely because of the explo-
8 sive or flammable properties of the substance,
9 unless a fire or explosion caused by the substance
10 will result in acute adverse health effects from
11 human exposure to the substance, including the
12 unburned fuel or its combustion byproducts,
13 other than those caused by the heat of the fire or
14 impact of the explosion.”.

15 **SEC. 4. PUBLIC AVAILABILITY OF OFF-SITE CONSEQUENCE**
16 **ANALYSIS INFORMATION IN RISK MANAGE-**
17 **MENT PLANS.**

18 (a) *DEFINITIONS.*—In this section:

19 (1) *ACCIDENTAL RELEASE.*—The term “acci-
20 dental release” has the meaning given the term in sec-
21 tion 112(r)(2) of the Clean Air Act (42 U.S.C.
22 7412(r)(2)).

23 (2) *ADMINISTRATOR.*—The term “Adminis-
24 trator” means the Administrator of the Environ-
25 mental Protection Agency.

1 (3) *OFF-SITE CONSEQUENCE ANALYSIS INFORMA-*
 2 *TION.*—*The term “off-site consequence analysis infor-*
 3 *mation” means those portions of a risk management*
 4 *plan, excluding the executive summary of the plan,*
 5 *consisting of an evaluation of 1 or more worst-case*
 6 *scenario or alternative scenario accidental releases.*

7 (4) *RISK MANAGEMENT PLAN.*—*The term “risk*
 8 *management plan” means a risk management plan*
 9 *submitted by an owner or operator of a stationary*
 10 *source under section 112(r)(7)(B) of the Clean Air*
 11 *Act (42 U.S.C. 7412(r)(7)(B)).*

12 (5) *STATE.*—*The term “State” means any of the*
 13 *50 States, the District of Columbia, the Common-*
 14 *wealth of Puerto Rico, the Virgin Islands, Guam,*
 15 *American Samoa, the Commonwealth of the Northern*
 16 *Mariana Islands, and Indian tribes (as defined in*
 17 *section 102 of the Federally Recognized Indian Tribe*
 18 *List Act of 1994 (25 U.S.C. 479a)).*

19 (6) *STATIONARY SOURCE.*—*The term “stationary*
 20 *source” has the meaning given the term in section*
 21 *112(r)(2) of the Clean Air Act (42 U.S.C. 7412(r)(2)).*

22 (b) *EXEMPTION FROM AVAILABILITY UNDER FREE-*
 23 *DOM OF INFORMATION ACT.*—

24 (1) *IN GENERAL.*—*Off-site consequence analysis*
 25 *information, or information derived from off-site con-*

sequence analysis information, shall not be made available under section 552 of title 5, United States Code.

(2) *EFFECT ON CERTAIN AVAILABILITY.*—Except as provided in subsection (c), nothing in this section affects the obligation of the Administrator under section 112(r)(7)(B)(iii) of the Clean Air Act (42 U.S.C. 7412(r)(7)(B)(iii)) to make available off-site consequence analysis information or information derived from that information.

(c) *AVAILABILITY OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.*—

(1) *GENERAL AVAILABILITY.*—

(A) *ELECTRONIC FORM.*—An officer or employee of the United States may make available in electronic form off-site consequence analysis information only in the manner provided in paragraphs (2), (5), and (6) and subsection (d).

(B) *PAPER FORM.*—An officer or employee of the United States may make available in paper form off-site consequence analysis information only in the manner provided in paragraphs (3), (4), and (5), and subsection (d).

(2) *AVAILABILITY IN ELECTRONIC FORM FOR OFFICIAL USE BY STATE OR LOCAL GOVERNMENTS.*—The

1 *Administrator may make available in electronic form*
2 *off-site consequence analysis information to a State*
3 *or local government officer or employee for official*
4 *use.*

5 (3) *AVAILABILITY TO PUBLIC IN PAPER FORM.—*

6 (A) *IN GENERAL.—In response to a request*
7 *for off-site consequence analysis information or*
8 *for a risk management plan, the Administrator*
9 *shall make available a copy of off-site con-*
10 *sequence analysis information, but only in paper*
11 *form.*

12 (B) *CONDITIONS.—The conditions under*
13 *which off-site consequence analysis information*
14 *shall be made available, including the maximum*
15 *number of requests that any single requester may*
16 *make, and the maximum number of stationary*
17 *sources for which off-site consequence analysis*
18 *information may be made available in response*
19 *to any single request, shall be determined by the*
20 *Administrator in guidance issued under sub-*
21 *section (e)(1).*

22 (C) *PROMPT RESPONSE.—Consistent with*
23 *this paragraph, the Administrator shall prompt-*
24 *ly respond to off-site consequence analysis infor-*
25 *mation requests.*

1 (D) *FEE.*—*The Administrator may levy a*
2 *fee applicable to the processing of off-site con-*
3 *sequence analysis information requests that cov-*
4 *ers the cost to the Administrator of processing*
5 *the requests and reproducing the information in*
6 *paper form.*

7 (4) *AVAILABILITY TO STATES AND LOCAL GOV-*
8 *ERNMENTS IN PAPER FORM.*—*At the request of a*
9 *State or local government officer acting in the officer's*
10 *official capacity, the Administrator may provide to*
11 *the officer in paper form, for official use only, the off-*
12 *site consequence analysis information submitted for*
13 *the stationary sources located in the State in which*
14 *the State or local government officer serves.*

15 (5) *AVAILABILITY FOR LIMITED PUBLIC INSPEC-*
16 *TION.*—

17 (A) *IN GENERAL.*—*The Administrator shall*
18 *ensure that every risk management plan sub-*
19 *mitted to the Environmental Protection Agency*
20 *is available in paper or electronic form for pub-*
21 *lic inspection, but not copying, during normal*
22 *business hours, including in depository libraries*
23 *designated under chapter 19 of title 44, United*
24 *States Code.*

1 (B) *LIMITATION ON AVAILABILITY OF RISK*
 2 *MANAGEMENT PLANS IN ELECTRONIC FORM.—*
 3 *For the purposes of this paragraph, the Adminis-*
 4 *trator may make risk management plans avail-*
 5 *able in electronic form only if the electronic form*
 6 *does not provide an electronic means of ranking*
 7 *stationary sources based on off-site consequence*
 8 *analysis information.*

9 (C) *FEDERAL ASSISTANCE.—The Public*
 10 *Printer and the Attorney General shall assist the*
 11 *Administrator in carrying out this paragraph in*
 12 *order to ensure that the information provided to*
 13 *the depository libraries is adequately protected.*

14 (D) *AUTHORIZATION OF APPROPRIA-*
 15 *TIONS.—There are authorized to be appropriated*
 16 *to the Administrator and to the Public Printer*
 17 *such sums as are necessary to carry out this*
 18 *paragraph, to remain available until expended.*

19 (6) *AVAILABILITY TO PUBLIC OF GENERAL IN-*
 20 *FORMATION IN ELECTRONIC FORM.—*

21 (A) *FROM THE ADMINISTRATOR.—After con-*
 22 *sultation with the Attorney General and the*
 23 *heads of other appropriate Federal agencies, the*
 24 *Administrator may make off-site consequence*
 25 *analysis information available to the public in*

1 *an electronic form that does not include informa-*
 2 *tion concerning the identity or the location of the*
 3 *stationary sources for which the information was*
 4 *submitted.*

5 *(B) FROM OTHER GOVERNMENT OFFICERS*
 6 *AND EMPLOYEES.—Except as provided in sub-*
 7 *paragraph (A), an officer or employee of the*
 8 *United States, or an officer or employee of a*
 9 *State or local government, shall not make off-site*
 10 *consequence analysis information available to the*
 11 *public in any form except as authorized by the*
 12 *Administrator.*

13 *(7) AUTHORITY OF STATES AND LOCAL GOVERN-*
 14 *MENTS TO MAKE INFORMATION AVAILABLE.—Notwith-*
 15 *standing any provision of State or local law, and ex-*
 16 *cept as provided in subsection (d)(2), an officer or*
 17 *employee of a State or local government may make*
 18 *off-site consequence analysis information available*
 19 *only to the extent that an officer or employee of the*
 20 *United States would be permitted to make the infor-*
 21 *mation available, consistent with the guidance and*
 22 *any regulations promulgated under subsection (e), ex-*
 23 *cept that a State or local government officer or em-*
 24 *ployee may make available only the information that*

1 *concerns stationary sources located in the State in*
 2 *which the officer or employee serves.*

3 (8) *COLLECTION AND MAINTENANCE OF RECORDS*
 4 *OF PERSONS SEEKING ACCESS TO INFORMATION.—*

5 (A) *LIMITATION ON AUTHORITY OF THE AD-*
 6 *MINISTRATOR.—*

7 (i) *IN GENERAL.—The Administrator*
 8 *may collect and maintain records that re-*
 9 *fect the identity of individuals and other*
 10 *persons seeking access to information under*
 11 *this section only to the extent that the col-*
 12 *lection and maintenance is relevant to, and*
 13 *necessary to accomplish, a purpose of the*
 14 *Environmental Protection Agency that is*
 15 *required to be accomplished by statute or by*
 16 *executive order of the President.*

17 (ii) *APPLICABILITY OF FREEDOM OF*
 18 *INFORMATION ACT.—Records collected under*
 19 *clause (i) shall be subject to section 552a of*
 20 *title 5, United States Code.*

21 (B) *LIMITATION ON AUTHORITY OF STATE*
 22 *OR LOCAL GOVERNMENTS.—An officer or em-*
 23 *ployee of a State or local government may collect*
 24 *and maintain records that reflect the identity of*
 25 *individuals and other persons seeking access to*

1 *information under this section only to the extent*
 2 *that the collection and maintenance is relevant*
 3 *to, and necessary to accomplish, a purpose of the*
 4 *employing agency that is required to be accom-*
 5 *plished by State statute.*

6 (9) *CRIMINAL PENALTIES.—An officer or em-*
 7 *ployee of the United States, or an officer or employee*
 8 *of a State or local government, who knowingly vio-*
 9 *lates a restriction or prohibition established by this*
 10 *subsection shall be fined under section 3571 of title*
 11 *18, United States Code, imprisoned not more than 1*
 12 *year, or both.*

13 (d) *AVAILABILITY OF INFORMATION TO AND FROM*
 14 *AGENTS AND CONTRACTORS.—*

15 (1) *AVAILABILITY FROM UNITED STATES.—*

16 (A) *IN GENERAL.—An officer or employee of*
 17 *the United States may make off-site consequence*
 18 *analysis information available in any form to*
 19 *officers and employees of agents and contractors*
 20 *of the Federal Government for official use only.*

21 (B) *RESTRICTIONS AND PENALTIES.—For*
 22 *the purposes of this section, with respect to infor-*
 23 *mation made available under subparagraph (A),*
 24 *officers and employees of agents and contractors*
 25 *shall be considered to be officers and employees*

1 *of the United States and shall be subject to the*
2 *same restrictions and penalties as apply to offi-*
3 *cers and employees of the United States under*
4 *this section.*

5 (2) *AVAILABILITY FROM STATE AND LOCAL GOV-*
6 *ERNMENTS.—*

7 (A) *IN GENERAL.—An officer or employee of*
8 *a State or local government may make off-site*
9 *consequence analysis information available in*
10 *any form to officers and employees of agents and*
11 *contractors of the State or local government for*
12 *official use only.*

13 (B) *RESTRICTIONS AND PENALTIES.—For*
14 *the purposes of this section, with respect to infor-*
15 *mation made available under subparagraph (A),*
16 *officers and employees of agents and contractors*
17 *shall be considered to be officers and employees*
18 *of the State or local government and shall be*
19 *subject to the same restrictions and penalties as*
20 *apply to officers and employees of the State or*
21 *local government under this section.*

22 (e) *GUIDANCE AND REGULATIONS.—*

23 (1) *ISSUANCE OF GUIDANCE.—*

24 (A) *IN GENERAL.—Not later than 60 days*
25 *after the date of enactment of this Act, the Ad-*

1 *ministrator shall issue guidance setting forth*
2 *procedures and methods for making off-site con-*
3 *sequence analysis information available to the*
4 *public in a manner consistent with this section.*

5 (B) *CONSULTATION.*—*The Administrator*
6 *shall consult with the heads of other appropriate*
7 *Federal agencies in developing the guidance.*

8 (C) *REVISION OF GUIDANCE.*—*The Admin-*
9 *istrator may revise the guidance, as appropriate,*
10 *in consultation with the heads of appropriate*
11 *Federal agencies.*

12 (D) *JUDICIAL REVIEW.*—*Guidance issued*
13 *under this paragraph, and any revision of the*
14 *guidance, shall not be subject to judicial review.*

15 (E) *REGULATIONS IN LIEU OF GUIDANCE.*—
16 *To the extent that the Administrator determines*
17 *to be appropriate, the Administrator may pro-*
18 *mulgate regulations instead of issue guidance*
19 *under this subsection.*

20 (2) *REGULATIONS.*—

21 (A) *IN GENERAL.*—*The Administrator may*
22 *promulgate such regulations as are necessary to*
23 *carry out the duties of the Administrator under*
24 *this section.*

1 (B) *JUDICIAL REVIEW.*—*Regulations pro-*
2 *mulgated under this paragraph shall be subject*
3 *to judicial review to the same extent and in the*
4 *same manner as regulations promulgated under*
5 *section 112(r)(7) of the Clean Air Act (42 U.S.C.*
6 *7412(r)(7)).*

7 (f) *AUTHORITY TO ISSUE ORDERS.*—*The Adminis-*
8 *trator may exercise the authority provided under section*
9 *112(r)(9) of the Clean Air Act (42 U.S.C. 7412(r)(9)) to*
10 *withhold, or prevent the release of, off-site consequence anal-*
11 *ysis information if the Administrator determines that re-*
12 *lease of the information may present an imminent and sub-*
13 *stantial endangerment to human health or welfare or the*
14 *environment.*

15 (g) *DELEGATION.*—*To the extent that the Adminis-*
16 *trator determines to be appropriate, the Administrator may*
17 *delegate the powers or duties of the Administrator under*
18 *this section to any officer or employee of the Environmental*
19 *Protection Agency.*

20 (h) *SITE SECURITY REVIEW AND PERIODIC REC-*
21 *OMMENDATIONS.*—

22 (1) *IN GENERAL.*—*Subject to the availability of*
23 *appropriations, the Attorney General may review in-*
24 *dustry practices regarding site security and the effec-*
25 *tiveness of this section.*

1 (2) *CONDITIONS OF REVIEW.*—*A review under*
2 *paragraph (1)—*

3 *(A) shall use, to the maximum extent prac-*
4 *ticable, data available as of the date of the re-*
5 *view; and*

6 *(B) shall be conducted in consultation with*
7 *appropriate governmental agencies, affected in-*
8 *dustries, and the public.*

9 (3) *RECOMMENDATIONS.*—*The Attorney General*
10 *may periodically submit to Congress recommenda-*
11 *tions relating to the enhancement of site security*
12 *practices and the need for continued implementation*
13 *or modification of this section.*