

105TH CONGRESS
1ST SESSION

S. 769

To amend the provisions of the Emergency Planning and Community Right-To-Know Act of 1986 to expand the public's right to know about toxic chemical use and release, to promote pollution prevention, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 20, 1997

Mr. LAUTENBERG (for himself, Mr. TORRICELLI, Mr. KERRY, Mrs. BOXER, Mr. GRAHAM, Mr. WELLSTONE, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the provisions of the Emergency Planning and Community Right-To-Know Act of 1986 to expand the public's right to know about toxic chemical use and release, to promote pollution prevention, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Right-To-Know-More and Pollution Prevention Act of
6 1997”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PUBLIC RIGHT TO KNOW ABOUT TOXIC CHEMICAL USE

Sec. 101. Reporting requirements.

Sec. 102. Disclosure of toxic chemical use.

Sec. 103. Environmental reporting and public access to information.

Sec. 104. Trade secret protection.

Sec. 105. Civil actions.

TITLE II—COMMUNITY RIGHT TO KNOW AND POLLUTION PREVENTION PLANNING

Sec. 201. Toxic chemical release forms.

Sec. 202. Pollution prevention planning.

Sec. 203. Information gathering and access.

Sec. 204. Public availability.

Sec. 205. Federal facilities.

Sec. 206. Enforcement.

3 **TITLE I—PUBLIC RIGHT TO** 4 **KNOW ABOUT TOXIC CHEMI-** 5 **CAL USE**

6 **SEC. 101. REPORTING REQUIREMENTS.**

7 (a) THRESHOLDS FOR TOXIC CHEMICALS WITH CER-
 8 TAIN SIGNIFICANT RISKS.—Section 313(f) of the Emer-
 9 gency Planning and Community Right-To-Know Act of
 10 1986 (42 U.S.C. 11023(f)) is amended—

11 (1) in paragraph (1), by adding at the end the
 12 following:

13 “(C) With respect to each of the toxic
 14 chemicals described in paragraph (3) that are
 15 released from a facility, the amount of the
 16 threshold for the toxic chemical under that
 17 paragraph.”; and

1 (2) by adding at the end the following:

2 “(3) THRESHOLDS FOR TOXIC CHEMICALS
3 WITH CERTAIN SIGNIFICANT RISKS.—

4 “(A) ESTABLISHMENT OF THRESHOLDS.—

5 Not later than 2 years after the date of enact-
6 ment of this paragraph, the Administrator shall
7 establish a threshold for each toxic chemical
8 that the Administrator determines may present
9 a significant risk to children’s health or the en-
10 vironment because of—

11 “(i) the tendency of the toxic chemical
12 to persist or to bioaccumulate or disrupt
13 endocrine systems; or

14 “(ii) other characteristics of the toxic
15 chemical.

16 “(B) CHEMICALS TO BE INCLUDED.—

17 Among the toxic chemicals for which the Ad-
18 ministrator shall establish thresholds under
19 subparagraph (A) shall be lead, mercury,
20 dioxin, cadmium, chromium, and the substances
21 listed as bioaccumulative chemicals of concern
22 in the notice published by the Administrator at
23 60 Fed. Reg. 15393.”.

1 (b) ADDITIONAL CHEMICALS.—Section 313(c) of the
2 Emergency Planning and Community Right-To-Know Act
3 of 1986 (42 U.S.C. 11023(c)) is amended—

4 (1) by striking “are those” and inserting the
5 following: “are—

6 “(1) the”;

7 (2) by striking the period at the end and insert-
8 ing “; or”; and

9 (3) by adding at the end the following:

10 “(2) dioxin and substances listed as bioaccumu-
11 lative chemicals of concern in the notice published by
12 the Administrator at 60 Federal Register 15393.”.

13 (c) RELEASES.—Subsections (a) and (b)(1) of section
14 313 of the Emergency Planning and Community Right-
15 To-Know Act of 1986 (42 U.S.C. 11023) are amended
16 by striking “or otherwise used” and inserting “otherwise
17 used, or released”.

18 (d) CIVIL ACTIONS.—Section 326(a)(1)(B) of the
19 Emergency Planning and Community Right-To-Know Act
20 of 1986 (42 U.S.C. 11046(a)(1)(B)) is amended—

21 (1) by redesignating clauses (iii) through (vi) as
22 clauses (iv) through (vii), respectively, and

23 (2) by inserting after clause (ii) the following:

1 “(iii) Establish a reporting threshold
 2 for a toxic chemical described in section
 3 313(f)(3).”.

4 (e) REVISED THRESHOLDS.—Section 313(f)(2) of
 5 the Emergency Planning and Community Right-To-Know
 6 Act of 1986 (42 U.S.C. 11023(f)(2)) is amended in the
 7 first sentence by striking “paragraph (1)” and inserting
 8 “subparagraph (A) or (B) of paragraph (1)”.

9 **SEC. 102. DISCLOSURE OF TOXIC CHEMICAL USE.**

10 (a) TOXIC CHEMICAL RELEASE FORM.—

11 (1) IN GENERAL.—Section 313(g) of the Emer-
 12 gency Planning and Community Right-To-Know Act
 13 of 1986 (42 U.S.C. 11023(g)) is amended—

14 (A) in paragraph (1)(C)—

15 (i) by inserting “for the preceding cal-
 16 endar year” after “items of information”;

17 (ii) in clause (i) by striking “is” and
 18 inserting “was”;

19 (iii) in clause (ii) by striking “preced-
 20 ing”;

21 (iv) in clause (iv) by striking “annual
 22 quantity of the toxic chemical entering”
 23 and inserting “quantity of the toxic chemi-
 24 cal that entered”; and

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

1 “(v) The number of employees (in-
2 cluding contractors) at the reporting facil-
3 ity, the number of employees (including
4 contractors) at the reporting facility who
5 were potentially exposed to the toxic chem-
6 ical;

7 “(vi) The following materials account-
8 ing information:

9 “(I) A description of the uses of
10 the toxic chemical at the facility.

11 “(II) The starting (as of January
12 1) inventory of the toxic chemical at
13 the facility.

14 “(III) The quantity of the toxic
15 chemical produced at the facility.

16 “(IV) The quantity of the toxic
17 chemical that was transported to the
18 facility and the mode of transpor-
19 tation used.

20 “(V) The quantity of the toxic
21 chemical consumed at the facility.

22 “(VI) The quantity of the toxic
23 chemical that was shipped out of the
24 facility as a product or in a product
25 and the quantities intended for indus-

1 trial use, commercial use, consumer
2 use, and any additional categories of
3 use that the Administrator may des-
4 ignate by regulation.

5 “(VII) The quantity of the toxic
6 chemical that entered any waste
7 stream (or that was otherwise released
8 into the environment) prior to recy-
9 cling, treatment, or disposal (as re-
10 quired to be reported under section
11 6607(b)(1) of the Pollution Preven-
12 tion Act of 1990 (42 U.S.C.
13 13107(b)(1))).

14 “(VIII) The amount of toxic
15 chemical at the facility as of Decem-
16 ber 31.

17 “(IX) The amount of the toxic
18 chemical recycled at the facility that
19 was used during the calendar year at
20 the facility.

21 “(X) The toxic chemical use of
22 the chemical that is calculated by add-
23 ing the quantities reported under sub-
24 clauses (II), (III), (IV), and (IX) and

1 subtracting the quantity reported
2 under subclause (VIII).

3 “(XI) If the sum of the quan-
4 tities reported under subclauses (II),
5 (III), (IV), and (IX) does not equal
6 the sum of the quantities reported
7 under subclauses (V), (VI), (VII), and
8 (VIII), a statement of the cause of the
9 discrepancy.

10 “(vii) The reduction (from the cal-
11 endar year preceding the calendar year for
12 which the form is submitted) in the quan-
13 tity of the toxic chemical that is reported
14 under clause (vi)(VII), as a result of the
15 following: equipment or technology modi-
16 fications; process or procedure modifica-
17 tions; reformulation or redesign of prod-
18 ucts; substitution of raw materials; and im-
19 provements in housekeeping, maintenance,
20 training, or inventory control.

21 “(viii) The reduction (from the cal-
22 endar year preceding the calendar year for
23 which the form is submitted) in the quan-
24 tity of toxic chemical use as defined in sub-
25 clause (X) as a result of the following:

equipment or technology modifications;
 process or procedure modifications; reformulation or redesign of products; substitution of raw materials; and improvements in housekeeping, maintenance, training, or inventory control.”; and

(B) by adding at the end the following:

“(3) COMPUTATIONS.—Quantities reported under this subsection shall be complete and verifiable by computations under generally accepted principles of materials accounting.”.

(2) DEFINITION OF MATERIALS ACCOUNTING INFORMATION.—

(A) IN GENERAL.—Section 329 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11049) is amended—

(i) by redesignating paragraphs (7), (8), (9), and (10) as paragraphs (8), (9), (10), and (11), respectively; and

(ii) by inserting after paragraph (6) the following:

“(7) MATERIALS ACCOUNTING INFORMATION.—The term ‘materials accounting information’ means the information described in section 313(g)(1)(vi).”.

1 (B) CONFORMING AMENDMENT.—Section
 2 6603(4) of the Pollution Prevention Act of
 3 1990 (42 U.S.C. 13102(4)) is amended by
 4 striking “329(8)” and inserting “329”.

5 (3) REGULATION.—Not later than 2 years after
 6 the date of enactment of this Act, the Administrator
 7 of the Environmental Protection Agency shall pro-
 8 mulgate a regulation regarding the information to be
 9 provided under clauses (v), (vi), (vii), and (viii) of
 10 section 313(g)(1)(C) of the Emergency Planning
 11 and Community Right-To-Know Act of 1986 (42
 12 U.S.C. 11023(g)(1)(C)), as added by paragraph (1).

13 (b) OTHER REQUIREMENTS.—The Administrator of
 14 the Environmental Protection Agency shall by regulation
 15 integrate the reporting requirements under the Emergency
 16 Planning and Community Right-To-Know Act of 1986 (42
 17 U.S.C. 11001 et seq.) and the Pollution Prevention Act
 18 of 1990 (42 U.S.C. 12101 et seq.).

19 **SEC. 103. ENVIRONMENTAL REPORTING AND PUBLIC AC-**
 20 **CESS TO INFORMATION.**

21 (a) STREAMLINED DATA COLLECTION AND DISSEMI-
 22 NATION.—Section 313 of the Emergency Planning and
 23 Community Right-To-Know Act of 1986 (42 U.S.C.
 24 11023) is amended by adding at the end the following:

1 “(m) STREAMLINED DATA COLLECTION AND DIS-
2 SEMINATION.—

3 “(1) IN GENERAL.—To enhance public access
4 and use of information resources, to facilitate com-
5 pliance with reporting requirements, and to promote
6 multimedia permitting, reporting, and pollution pre-
7 vention, not later than 3 years after the date of en-
8 actment of this subsection, the Administrator
9 shall—

10 “(A) create standard data formats for in-
11 formation management;

12 “(B) integrate information resources, using
13 common company, facility, industry, geographic,
14 and chemical identifiers and any other identifi-
15 ers that the Administrator considers appro-
16 priate;

17 “(C) establish a system for indexing, locat-
18 ing, and obtaining agency-held information
19 about parent companies, facilities, industries,
20 chemicals, geographic locations, ecological indi-
21 cators, and the regulatory status of toxic chemi-
22 cals and entities subject to agency regulation;

23 “(D) consolidate all annual reporting re-
24 quirements under this title and other Federal
25 environmental laws for small businesses, includ-

1 ing by permitting reporting to a single point of
2 contact using a single form or electronic report-
3 ing system; and

4 “(E) provide the public a single point of
5 contact for access to all the publicly available
6 information gathered by the Administrator for
7 any regulated entity.

8 “(2) CONSOLIDATION.—Not later than 5 years
9 after the date of enactment of this subsection, the
10 Administrator shall consolidate all annual reporting
11 under this title and other Federal environmental
12 laws administered by the Administrator for each en-
13 tity required to report, including by permitting re-
14 porting to a single point of contact using a single
15 form or electronic reporting system.

16 “(3) EASE OF COMPLIANCE.—In improving the
17 means by which the Administrator provides informa-
18 tion to the public and requires information be re-
19 ported by regulated entities, as required by para-
20 graphs (1) and (2), the Administrator, building on
21 the experiences of the States, shall use technology to
22 facilitate reporting by regulated entities and improve
23 access to the data by the public.”.

24 (b) DISCLOSURE OF USES OF TOXIC CHEMICALS.—

1 (1) BASIC REQUIREMENT.—Section 313(a) of
 2 the Emergency Planning and Community Right-To-
 3 Know Act of 1986 (42 U.S.C. 11023(a)) is amended
 4 in the second sentence by inserting “toxic chemical
 5 uses and” before “releases”.

6 (2) USE OF RELEASE FORM.—Section 313(h) of
 7 the Emergency Planning and Community Right-To-
 8 Know Act of 1986 (42 U.S.C. 11023(h)) is amended
 9 in the second sentence by inserting “the uses of
 10 toxic chemicals at covered facilities and” before “re-
 11 leases of toxic chemicals to the environment”.

12 **SEC. 104. TRADE SECRET PROTECTION.**

13 Section 322 of the Emergency Planning and Commu-
 14 nity Right-To-Know Act of 1986 (42 U.S.C. 11042) is
 15 amended—

16 (1) in subsection (a)(1) by adding the following
 17 at the end:

18 “(C) WITHHOLDING OF MATERIALS AC-
 19 COUNTING INFORMATION.—A person that is re-
 20 quired to submit materials accounting informa-
 21 tion under section 313(g)(1)(C)(vi) may with-
 22 hold an element or portion (as defined by a reg-
 23 ulation promulgated by the Administrator
 24 under subsection (c)) of the information if the

1 person complies with paragraph (2) with re-
2 spect to the information to be withheld.”;

3 (2) in subsection (b)(4) by inserting “or other
4 information withheld” after “The chemical identity”;
5 (3) in subsection (d)—

6 (A) in paragraph (1), in the first sentence,
7 by striking “toxic chemical which” and insert-
8 ing “toxic chemical or other information that”;

9 (B) in paragraph (2), by inserting “or
10 other information withheld” after “specific
11 chemical identity”;

12 (C) in paragraph (3)—

13 (i) in subparagraph (A), by inserting
14 “or other information withheld” after
15 “specific chemical identity”;

16 (ii) in subparagraph (B), by inserting
17 “or other information withheld” after
18 “chemical identity”; and

19 (iii) in subparagraph (C), in the first
20 sentence, by inserting “or other informa-
21 tion withheld” after “chemical identity”
22 each place it appears; and

23 (D) in paragraph (4)(A), by inserting “or
24 other information withheld” after “chemical
25 identity”;

1 (4) in subsection (f), by inserting “or other in-
 2 formation withheld under subsection (a)(1)” after
 3 “specific chemical identity”; and

4 (5) in subsection (h)—

5 (A) in paragraph (1), by inserting “or
 6 other information withheld” before “is claimed
 7 as a”; and

8 (B) in paragraph (2), by inserting “or
 9 other information withheld” after “identity of a
 10 toxic chemical”.

11 **SEC. 105. CIVIL ACTIONS.**

12 (a) PAST AND ONGOING VIOLATIONS.—Section
 13 326(a)(1)(A) of the Emergency Planning and Community
 14 Right-To-Know Act of 1986 (42 U.S.C. 11046(a)(1)(A))
 15 is amended by inserting “any past or ongoing” after “An
 16 owner or operator of a facility for”.

17 (b) VENUE.—Section 326 of the Emergency Planning
 18 and Community Right-To-Know Act of 1986 (42 U.S.C.
 19 11046(b)) is amended—

20 (1) in subsection (b), by striking paragraph (2)
 21 and inserting the following:

22 “(2) ACTIONS AGAINST THE ADMINISTRATOR.—

23 “(A) PETITIONS IN THE UNITED STATES
 24 COURT OF APPEALS FOR THE DISTRICT OF CO-
 25 LUMBIA CIRCUIT.—

1 “(i) IN GENERAL.—Review of an ac-
2 tion of the Administrator described in
3 clause (ii) shall be sought by filing a peti-
4 tion for review in the United States Court
5 of Appeals for the District of Columbia.

6 “(ii) ACTIONS OF THE ADMINIS-
7 TRATOR.—The actions of the Adminis-
8 trator described in this clause are—

9 “(I) a final agency action in re-
10 sponse to a petition filed under sec-
11 tion 313(e);

12 “(II) a final agency action to re-
13 vise a threshold under section
14 313(f)(2);

15 “(III) a final rule to modify na-
16 tionally the reporting frequency under
17 section 313(i);

18 “(IV) any other rulemaking of
19 general applicability under this title;
20 and

21 “(V) any other action that is
22 based on a determination of nation-
23 wide scope or effect if, in taking the
24 action, the Administrator publishes a

1 finding that the action is based on
2 such a determination.

3 “(B) PETITIONS FOR REVIEW IN OTHER
4 CIRCUITS.—

5 “(i) IN GENERAL.—Review of an ac-
6 tion of the Administrator described in
7 clause (ii) shall be sought by filing a peti-
8 tion for review in the United States Court
9 of Appeals for the circuit in which the geo-
10 graphic region to which the action relates
11 is situated.

12 “(ii) ACTIONS OF THE ADMINIS-
13 TRATOR.—The actions of the Adminis-
14 trator described in this clause are—

15 “(I) a final rule to modify the re-
16 porting frequency under section 313(i)
17 for a particular geographic region;
18 and

19 “(II) any other rulemaking spe-
20 cific to a particular geographic region.

21 “(C) CIVIL ACTIONS IN UNITED STATES
22 DISTRICT COURT.—An action of the Adminis-
23 trator under subsection (a) other than an action
24 described in subparagraph (A) or (B) shall be

1 brought in the United States District Court for
 2 the District of Columbia.”; and

3 (2) by adding at the end the following:

4 “(i) TIME FOR FILING PETITION FOR REVIEW OF
 5 ACTION BY THE ADMINISTRATOR; EXCLUSIVE MEANS OF
 6 REVIEW.—

7 “(1) TIME FOR FILING PETITION.—A petition
 8 for review of an action of the Administrator under
 9 subparagraph (A) or (B) of subsection (b)(2) shall
 10 be filed not later than 60 days after the date on
 11 which notice of the action is published in the Fed-
 12 eral Register.

13 “(2) EXCLUSIVE MEANS OF REVIEW.—An ac-
 14 tion of the Administrator with respect to which re-
 15 view can be or could have been obtained under sub-
 16 paragraph (A) or (B) of subsection (b)(2) shall not
 17 be subject to judicial review in a civil or criminal en-
 18 forcement proceeding.”.

19 **TITLE II—COMMUNITY RIGHT TO**
 20 **KNOW AND POLLUTION PRE-**
 21 **VENTION PLANNING**

22 **SEC. 201. TOXIC CHEMICAL RELEASE FORMS.**

23 Section 313(b) of the Emergency Planning and Com-
 24 munity Right-To-Know Act of 1986 (42 U.S.C. 11023(b))
 25 is amended—

1 (1) by striking paragraph (2); and

2 (2) in paragraph (1)—

3 (A) by striking “(A) The requirements”
4 and inserting “The requirements”;

5 (B) by striking “and that are in Standard
6 Industrial Classification Codes 20 through 39
7 (as in effect on July 1, 1985)”;

8 (C) by striking subparagraph (B) and in-
9 serting the following:

10 “(2) DELETION OF FACILITIES.—

11 “(A) IN GENERAL.—The Administrator, at
12 the instance of the Administrator or in response
13 to a petition, may delete by rule a particular fa-
14 cility or category of facilities from the require-
15 ments of this section based on a determination
16 that reporting by the owner or operator of the
17 facility or category of facilities is inconsistent
18 with the efficient operation of this title.

19 “(B) CONSIDERATIONS.—In making a de-
20 termination under subparagraph (A), the Ad-
21 ministrator may consider the toxicity of the
22 toxic chemical, proximity to other facilities that
23 release the toxic chemical or to population cen-
24 ters, the history of releases of toxic chemicals at
25 the facility or category of facilities, and such

1 other factors as the Administrator considers ap-
 2 propriate.”;

3 (D) in subparagraph (C) —

4 (i) by striking “(C) For purposes”
 5 and inserting “(3) DEFINITIONS.—For
 6 purposes”;

7 (ii) by redesignating clauses (i) and
 8 (ii) as subparagraphs (A) and (B); and

9 (iii) in subparagraph (B) (as redesign-
 10 nated by clause (ii)), by redesignating sub-
 11 clauses (I) and (II) as clauses (i) and (ii).

12 **SEC. 202. POLLUTION PREVENTION PLANNING.**

13 (a) IN GENERAL.—Title III of the Emergency Plan-
 14 ning and Community Right-To-Know Act of 1986 (42
 15 U.S.C. 11001 et seq.) is amended—

16 (1) by redesignating subtitle C as subtitle D;
 17 and

18 (2) by inserting after subtitle B the following:

19 **“Subtitle C—Pollution Prevention**
 20 **Planning**

21 **“SEC. 316. POLLUTION PREVENTION PLANS.**

22 “(a) DEFINITIONS.—In this section:

23 “(1) AUTHORIZED STATE.—The term ‘author-
 24 ized State’ means a State authorized under sub-

1 section (m) to carry out the Administrator’s authori-
2 ties and responsibilities under this section.

3 “(2) BYPRODUCT.—The term ‘byproduct’
4 means a toxic chemical that—

5 “(A) is generated prior to storage, recy-
6 cling (except in-process recycling), treatment,
7 control, disposal, or release;

8 “(B) is not intended for use as a product;
9 and

10 “(C) is required to be reported under sec-
11 tion 6607 of the Pollution Prevention Act of
12 1990 (42 U.S.C. 13107).

13 “(3) FACILITY.—The term ‘facility’ means a fa-
14 cility for which a toxic chemical release form is re-
15 quired to be submitted under section 313.

16 “(4) IN-PROCESS RECYCLING.—The term ‘in-
17 process recycling’ means the practice of returning a
18 recycled toxic chemical to a production process using
19 dedicated equipment that is directly connected to
20 and physically integrated with a production process.

21 “(5) PILOT FACILITY.—The term ‘pilot facility’
22 means a facility, or designated area of a facility,
23 used for pilot-scale development of a product or
24 process not primarily involved in the production of
25 a good for commercial sale.

1 “(6) POLLUTION PREVENTION.—The term ‘pol-
2 lution prevention’ means—

3 “(A) toxic use reduction; or

4 “(B) source reduction.

5 “(7) PRODUCTION PROCESS.—The term ‘pro-
6 duction process’ means a process, line, method, ac-
7 tivity, or technique used to produce a product or to
8 reach a planned result.

9 “(8) RECOVERY.—

10 “(A) IN GENERAL.—The term ‘recovery’
11 means the act of extracting or removing the
12 toxic chemical from a waste stream that in-
13 cludes—

14 “(i) the reclamation of the toxic chem-
15 ical from a stream that entered a waste
16 treatment or pollution control device or
17 process (including an air pollution control
18 device or process, wastewater treatment or
19 control device or process, Federal or State
20 permitted treatment or control device or
21 process, and any other type of treatment
22 or control device or process) where destruc-
23 tion of the stream or destruction or re-
24 moval of certain constituents of the steam
25 occurs; and

1 “(ii) the reclamation for reuse of an
2 otherwise used toxic chemical that is spent
3 or contaminated and that must be recov-
4 ered for further use in the original oper-
5 ation or any other operation.

6 “(9) RECYCLING.—The term ‘recycling’
7 means—

8 “(A) the recovery for reuse of a toxic
9 chemical from a gaseous, aerosol, aqueous, liq-
10 uid, or solid stream; or

11 “(B) the reuse or the recovery for reuse of
12 a toxic chemical that is a hazardous waste or is
13 a constituent of a hazardous waste under the
14 Solid Waste Disposal Act (42 U.S.C. 6901 et
15 seq.), as determined by the Administrator.

16 “(10) RESEARCH AND DEVELOPMENT LABORA-
17 TORY.—The term ‘research and development labora-
18 tory’ means a facility or a designated area of a facil-
19 ity used for research, development, and testing activ-
20 ity, and not primarily involved in the production of
21 a good for commercial sale, in which a toxic chemi-
22 cal is used by or under the direct supervision of a
23 technically qualified person.

24 “(11) SOURCE REDUCTION.—The term ‘source
25 reduction’ has the meaning given the term in section

1 6603 of the Pollution Prevention Act of 1990 (42
2 U.S.C. 13103).

3 “(12) TARGETED PRODUCTION PROCESS.—The
4 term ‘targeted production process’ means a produc-
5 tion process or a group of production processes
6 (identified by the owner or operator of a facility)
7 that accounts for 90 percent or more of—

8 “(A) the total toxic chemical use calculated
9 in accordance with section 313(g)(1)(C)(vi)(X);
10 or

11 “(B) the total quantity of byproducts gen-
12 erated at the facility.

13 “(13) TOXIC USE REDUCTION.—The term ‘toxic
14 use reduction’ means the reduction in the quantity
15 of toxic chemical use reported under section
16 313(g)(1)(C)(viii) that is reduced so as to reduce po-
17 tential exposure to the public, workers, consumers,
18 and the environment.

19 “(b) POLLUTION PREVENTION PLANNING.—

20 “(1) IN GENERAL.—To promote the assessment
21 and implementation of pollution prevention alter-
22 natives, the owner or operator of a facility shall peri-
23 odically complete a pollution prevention plan.

24 “(2) INITIAL PLAN AND UPDATES.—The owner
25 or operator of a facility shall—

1 “(A) complete a pollution prevention plan
2 on or before July 1 of the second calendar year
3 that begins after the date of enactment of this
4 section; and

5 “(B) review and update the pollution pre-
6 vention plan biennially thereafter.

7 “(3) CONTENTS OF POLLUTION PREVENTION
8 PLANS.—

9 “(A) ITEMS TO BE INCLUDED.—Except as
10 provided in section 317, a pollution prevention
11 plan shall include—

12 “(i) a statement of management pol-
13 icy regarding pollution prevention;

14 “(ii) a written certification by the
15 owner or operator of the facility regarding
16 the accuracy and completeness of the plan;

17 “(iii) 2- and 5-year pollution preven-
18 tion goals for targeted production proc-
19 esses, including a numerical statement re-
20 garding the intended reduction in the
21 quantity of each toxic chemical manufac-
22 tured, processed, or otherwise used;

23 “(iv) a statement of progress achieved
24 toward previously submitted pollution pre-
25 vention goals;

1 “(v) an analysis of each targeted pro-
2 duction process, including—

3 “(I) an assessment of materials
4 accounting information of toxic chemi-
5 cals with respect to the targeted pro-
6 duction process; and

7 “(II) a full cost accounting of the
8 direct and indirect costs (including li-
9 abilities) of toxic chemical purchase,
10 use, and waste management;

11 “(vi) an evaluation of the options for
12 reducing the use of toxic chemicals or the
13 generation of byproducts in the targeted
14 production unit process by means of the
15 substitution of raw materials, reformula-
16 tion or redesign of products, production
17 unit modifications, and improvement in op-
18 eration and maintenance, including—

19 “(I) identification of options that
20 minimize potential exposure to work-
21 ers, consumers, the public, and the
22 environment; and

23 “(II) an assessment of the tech-
24 nical and economic feasibility of the
25 options identified under subclause (I);

1 “(vii) an identification of options iden-
 2 tified under clause (vi)(I) that are tech-
 3 nically feasible and have a payback period
 4 of less than 2 years;

5 “(viii) a schedule for implementing
 6 the options identified under clause (vii)
 7 that the owner or operator of the facility
 8 intends to implement; and

9 “(ix) if there is an option identified
 10 under clause (vii) that is not included in
 11 the schedule developed under clause (viii),
 12 a statement of the reason why the option
 13 is not included.

14 “(B) ITEMS NOT TO BE INCLUDED.—A
 15 pollution prevention plan shall not include a
 16 waste management or control activity.

17 “(4) POLLUTION PREVENTION PLAN SUM-
 18 MARIES.—

19 “(A) IN GENERAL.—For each pollution
 20 prevention plan, the owner or operator of a fa-
 21 cility shall prepare a pollution plan summary.

22 “(B) CONTENTS.—A pollution plan sum-
 23 mary shall include the information reported
 24 under—

1 “(i) clauses (i), (ii), (iii), and (iv) of
2 paragraph (3)(A); or

3 “(ii) if applicable, subparagraphs (A),
4 (B), (C), and (D) of section 317(c)(2).

5 “(c) POLLUTION PREVENTION PLAN PROGRESS RE-
6 PORTS.—

7 “(1) IN GENERAL.—Beginning with the second
8 full calendar year after a pollution prevention plan
9 has been prepared under subsection (b), the owner
10 or operator of a facility shall prepare a pollution
11 prevention plan progress report annually for the fa-
12 cility in accordance with the schedule for the submis-
13 sion of toxic release forms under section 313.

14 “(2) CONTENTS.—A pollution prevention
15 progress report shall include—

16 “(A) a description of the facility and iden-
17 tification of each targeted production process;

18 “(B) a numerical statement demonstrating
19 the progress of the facility towards achieving
20 each of its 5-year goals for pollution prevention;
21 and

22 “(C) if the annual progress of the facility
23 does not achieve the level of progress antici-
24 pated in the pollution prevention plan schedule
25 for implementation, an explanation of the rea-

1 sons why that level of progress was not
2 achieved.

3 “(d) GUIDELINES FOR PREPARATION OF POLLUTION
4 PREVENTION PLANS.—Not later than 2 years after the
5 date of enactment of this section, the Administrator shall
6 by regulation establish guidelines for the preparation of
7 pollution prevention plans, pollution prevention plan sum-
8 maries, and pollution prevention plan progress reports.

9 “(e) AVAILABILITY OF POLLUTION PREVENTION
10 PLANS, SUMMARIES, AND REPORTS.—

11 “(1) POLLUTION PREVENTION PLANS.—

12 “(A) IN GENERAL.—The owner or operator
13 of a facility shall—

14 “(i) retain each pollution prevention
15 plan at the facility; and

16 “(ii) make each pollution prevention
17 plan available for inspection by the Admin-
18 istrator or authorized State.

19 “(B) NOT PUBLIC RECORDS.—A document
20 or other record obtained from or reviewed at a
21 facility owned or operated by a private person
22 shall not be considered to be a public record.

23 “(2) POLLUTION PREVENTION PLAN SUM-
24 MARIES AND PROGRESS REPORTS.—

1 “(A) SUBMISSION.—The owner or operator
2 of a facility shall submit a pollution prevention
3 plan summary for the facility and progress re-
4 ports, with the toxic release forms required
5 under section 313 for the year in which the
6 summary is required, to the Administrator and
7 to the State in which the facility is located, in
8 a format that is compatible with electronic in-
9 formation storage and retrieval and compatible
10 with the data submitted under section 313 (ex-
11 cept in a case in which the Administrator deter-
12 mines that preparation in electronic format
13 would create a significant hardship).

14 “(B) PUBLIC AVAILABILITY.—The Admin-
15 istrator shall, using electronic and other means,
16 make pollution plan summaries and progress re-
17 ports available to the public consistent with sec-
18 tion 313(j).

19 “(f) REQUIRED MODIFICATION.—

20 “(1) IN GENERAL.—The Administrator or an
21 authorized State may require the modification of a
22 pollution prevention plan or pollution prevention
23 plan summary if the Administrator or authorized
24 State determines that the pollution prevention plan
25 does not meet the requirements of subsection (b) or

1 the pollution prevention plan summary does not
2 meet the requirements of subsection (b)(4).

3 “(2) TIME FOR COMPLETION OF REQUIRED
4 MODIFICATION.—Any modification required by the
5 Administrator or authorized State shall be completed
6 by the owner or operator of the facility not later
7 than 90 days after the date on which the Adminis-
8 trator or the State provides written notice that the
9 modification is required.

10 “(g) PRODUCT FORMULAS.—Nothing in this subtitle
11 authorizes the Administrator or a State to require that
12 information concerning nontoxic chemicals, or product for-
13 mulas for mixtures that include only nontoxic chemicals,
14 be included in a pollution prevention plan, summary, or
15 progress report.

16 “(h) GROUPING OF PROCESSES.—The Administrator
17 may publish rules establishing criteria pursuant to which
18 the Administrator may permit an owner or operator of a
19 facility to consider production processes that use similar
20 ingredients to produce 1 or more similar products as a
21 single production process.

22 “(i) TRAINING.—The Administrator or an authorized
23 State may require that individuals that prepare pollution
24 prevention plans for facilities in particular industrial cat-
25 egories or subcategories receive training or attend semi-

1 nars and workshops on the proper preparation of toxic re-
 2 lease inventories and pollution prevention plans and on the
 3 use of available pollution prevention measures.

4 “(j) RESEARCH AND DEVELOPMENT LABORA-
 5 TORIES.—The owner or operator of a facility shall not be
 6 required to prepare a pollution prevention plan, pollution
 7 prevention plan summary, or pollution prevention progress
 8 report concerning a research and development laboratory
 9 located at the facility.

10 “(k) PILOT FACILITIES.—The owner or operator of
 11 a facility shall not be required to prepare a pollution pre-
 12 vention plan, pollution prevention plan summary, or pollu-
 13 tion prevention plan progress report for a pilot facility.

14 “(l) TECHNICAL ASSISTANCE.—

15 “(1) IN GENERAL.—At the request of the owner
 16 or operator of a facility, the Administrator or an au-
 17 thorized State may provide technical assistance in
 18 pollution prevention planning.

19 “(2) REIMBURSEMENT.—The Administrator
 20 may seek full (or in the case of a small business, full
 21 or partial) reimbursement for any technical assist-
 22 ance provided to a facility.

23 “(3) NO REQUIREMENT OF PARTICULAR MEAS-
 24 URES OR STANDARDS.—Nothing in this subsection
 25 authorizes the Administrator to require that a par-

1 ticular pollution prevention measure be implemented
 2 or that a pollution prevention performance standard
 3 be achieved at a facility or targeted production proc-
 4 ess.

5 “(m) STATE ADMINISTRATION.—

6 “(1) REQUEST FOR STATE AUTHORIZATION.—

7 “(A) GUIDELINES.—Not later than 1 year
 8 after the date of enactment of this section, the
 9 Administrator shall publish guidance that would
 10 be useful to the States in submitting a program
 11 for approval under this paragraph.

12 “(B) SUBMISSION OF PROGRAMS.—A State
 13 may submit to the Administrator a program for
 14 carrying out this section in the State.

15 “(C) IMPLEMENTATION OF STATE PRO-
 16 GRAMS.—On and after the date that is 180
 17 days after date on which the Administrator re-
 18 ceives a State program under subparagraph
 19 (B), the State may carry out the program in
 20 the State in place of the Federal program under
 21 this section, unless the Administrator notifies
 22 the State that the program is not approved.

23 “(2) CRITERIA FOR STATE AUTHORIZATION.—

24 “(A) IN GENERAL.—The Administrator
 25 shall approve a State program submitted under

paragraph (1) if the Administrator determines
that the State program requires that—

“(i) each facility develop a pollution
prevention plan that includes materials ac-
counting for full cost accounting; and

“(ii) each pollution prevention plan
address the reduction of the use and gen-
eration as byproduct of toxic chemicals
subject to this section so as to reduce over-
all risks to the public, workers, consumers,
and the environment without shifting risks
between them.

“(B) DISAPPROVAL.—If the Administrator
does not approve a State program, the Adminis-
trator shall notify the State in writing of any
revisions or modifications that are necessary to
obtain approval.

“(3) WITHDRAWAL OF STATE AUTHORIZA-
TION.—

“(A) IN GENERAL.—If the Administrator
determines after public hearing that a State
program approved under paragraph (1) no
longer meets the criteria of paragraph (2), the
Administrator shall so notify the State in writ-
ing. If appropriate corrective action is not taken

1 within a reasonable time (not to exceed 90 days
2 after notification), the Administrator shall with-
3 draw authorization of the program and estab-
4 lish a Federal program under this section.

5 “(B) NOTIFICATION.—The Administrator
6 shall not withdraw authorization of a State pro-
7 gram unless the Administrator first notifies the
8 State and makes public in writing the reasons
9 for the withdrawal.

10 “(4) NO PREEMPTION OF STATE PROGRAMS.—
11 Nothing in this subsection affects the authority of a
12 State or political subdivision of a State to establish
13 or continue in effect any regulation or any other
14 measure relating to pollution prevention.

15 “(n) REPORTS.—

16 “(1) IN GENERAL.—Not later than 4 years
17 after the date of enactment of this section and not
18 less frequently than every 3 years thereafter, the Ad-
19 ministrator shall submit a report to the President
20 and Congress that describes the pollution prevention
21 plans that have been prepared under this section.

22 “(2) MATTERS TO BE ADDRESSED.—A report
23 under paragraph (1) shall include—

24 “(A) a detailed analysis that indicates the
25 progress achieved toward any pollution preven-

tion goals established by the Administrator under section 6604 of the Pollution Prevention Act of 1990 (42 U.S.C. 13103); and

“(B) a detailed analysis of the steps that need to be taken to ensure that the goals are achieved, including an identification of the industrial categories or subcategories that should be the highest priority for pollution prevention measures and that need improvement with respect to pollution prevention.

“SEC. 317. SMALL BUSINESS POLLUTION PREVENTION COMPLIANCE AND TECHNICAL ASSISTANCE PROGRAM.

“(a) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a small business pollution prevention compliance and technical assistance program to assist owners and operators of facilities in identifying and applying methods of pollution prevention.

“(b) ELEMENTS OF PROGRAM.—The program under subsection (a) shall—

“(1) provide compliance assistance, technical assistance, and other assistance to small businesses;

“(2) use funds provided under this subsection for matching grants to State and local government

1 agencies for programs to promote the use of pollu-
 2 tion prevention techniques by small businesses; and

3 “(3) allow small businesses to comply with the
 4 pollution prevention planning requirements of this
 5 by title complying with subsection (c).

6 “(c) USE OF MANUAL AND CHECKLIST IN LIEU OF
 7 POLLUTION PREVENTION PLAN.—

8 “(1) IN GENERAL.—The Administrator may by
 9 regulation allow a small business in a commercial
 10 sector for which a pollution prevention opportunity
 11 assessment manual and checklist have been pub-
 12 lished under paragraph (2) to comply with the pollu-
 13 tion prevention planning requirements of subsections
 14 (a) and (b) of section 316 by completing the check-
 15 list and retaining on site the manual and checklist
 16 in lieu of preparing a pollution prevention plan.

17 “(2) CONTENTS OF MANUAL AND CHECK-
 18 LIST.—The Administrator may publish a manual
 19 and checklist for any commercial sector by the use
 20 of which a small business in the commercial sector
 21 would develop—

22 “(A) a statement of management policy re-
 23 garding pollution prevention;

1 “(B) a written certification by the owner
2 or operator of the facility regarding the accu-
3 racy and completeness of the plan;

4 “(C) 2- and 5-year pollution prevention
5 goals for targeted production processes, includ-
6 ing a numerical statement regarding the in-
7 tended reduction in the quantity of each toxic
8 chemical produced or used and each toxic chem-
9 ical generated as a byproduct;

10 “(D) a statement of progress achieved to-
11 ward previously submitted pollution prevention
12 goals;

13 “(E) an estimate of the costs associated
14 with toxic chemical purchase, use, and waste
15 management;

16 “(F) an evaluation of production processes
17 and material, storage, and treatment practices;

18 “(G) an evaluation of toxic use reduction
19 and source reduction opportunities; and

20 “(H) an economic impact analysis of op-
21 tions for achieving reductions in toxic chemical
22 use and byproduct generation.”.

23 (b) CIVIL ACTION.—Section 326(a)(1)(A) of the
24 Emergency Planning and Community Right-To-Know Act

1 of 1986 (42 U.S.C. 11046(a)(1)(A)) is amended by adding
 2 at the end the following:

3 “(v) Complete and submit a pollution
 4 plan summary or pollution plan progress
 5 report under section 316.”.

6 (c) TABLE OF CONTENTS.—The table of contents in
 7 section 300(b) of the Emergency Planning and Commu-
 8 nity Right-To-Know Act of 1986 (42 U.S.C. prec. 11001)
 9 is amended by striking the item relating to subtitle C and
 10 inserting the following:

“Subtitle C—Pollution Prevention Planning

“Sec. 316. Pollution prevention plans.

“Sec. 317. Small business pollution prevention compliance and technical assist-
 ance program.

“Subtitle D—General Provisions.”.

11 **SEC. 203. INFORMATION GATHERING AND ACCESS.**

12 Section 325 of the Emergency Planning and Commu-
 13 nity Right-To-Know Act of 1986 (42 U.S.C. 11045) is
 14 amended by adding at the end the following:

15 “(g) PROVISION OF INFORMATION AND RECORDS; IN-
 16 SPECTIONS.—

17 “(1) DEFINITIONS.—In this subsection:

18 “(A) AUTHORIZED OFFICER.—The term
 19 ‘authorized officer’ means—

20 “(i) an officer, employee, or represent-
 21 ative of the Administrator; or

1 “(ii) an officer, employee, or rep-
 2 resentative of an authorized State carrying
 3 out that section 316.

4 “(B) AUTHORIZED STATE.—The term ‘au-
 5 thorized state’ means a State that is authorized
 6 to carry out and enforce section 316 under sec-
 7 tion 317.

8 “(2) PROVISION OF INFORMATION AND
 9 RECORDS.—At the request of an authorized officer,
 10 a person who has or may have information relevant
 11 to the identification, nature, or quantity of mate-
 12 rials, including hazardous chemicals, extremely haz-
 13 ardous substances, toxic chemicals, or other mate-
 14 rials subject to this title that may have been manu-
 15 factured, processed, or otherwise used, stored, or
 16 otherwise managed (including recycling, treating,
 17 combusting, releasing, or transferring from a facility
 18 subject to the requirements of this title) shall—

19 “(A) furnish to the authorized officer in-
 20 formation pertaining to the identification, na-
 21 ture, and quantity of the materials; and

22 “(B) at the option and expense of the per-
 23 son—

24 “(i) afford the authorized officer ac-
 25 cess at all reasonable times to the facility

or location to inspect and copy all documents and records relating to the identification, nature, and quantity of the material; or

“(ii) copy and furnish to the authorized officer all such documents and records.

“(3) INSPECTIONS.—

“(A) IN GENERAL.—At the request of an authorized officer, the owner or operator of a facility subject to the requirements of this title shall permit the authorized officer to enter, at reasonable times—

“(i) the facility; or

“(ii) any other facility, establishment, or other place or property owned or operated by the owner or operator of the facility, if, in the opinion of the authorized officer, entry is needed to determine compliance with and enforce this title with respect to the facility.

“(B) SAMPLES.—An authorized officer may inspect and obtain—

“(i) samples from any facility subject to the requirements of this title or from a

1 facility, establishment, or other place or
2 property described in subparagraph (A)(ii);
3 or

4 “(ii) samples of any containers of
5 toxic chemicals or other materials main-
6 tained at the facility.

7 “(C) PROMPT COMPLETION.—An inspec-
8 tion under this paragraph shall be completed
9 with reasonable promptness.

10 “(D) RECEIPT FOR SAMPLES AND COPIES
11 OF ANALYSES.—If an authorized officer obtains
12 a sample under subparagraph (B), the author-
13 ized officer shall—

14 “(i) before leaving the premises, give
15 to the owner or operator of the facility a
16 receipt describing the sample obtained and,
17 if requested, a portion of the sample; and

18 “(ii) furnish promptly to the owner or
19 operator of the facility a copy of the re-
20 sults of any analysis made of the sample.

21 “(4) COMPLIANCE ORDERS.—

22 “(A) ISSUANCE.—If the owner or operator
23 of a facility failed to comply with a request of
24 an authorized officer under this subsection, the
25 Administrator or authorized State may, after

1 such notice and opportunity for consultation as
2 is reasonably appropriate under the cir-
3 cumstances, issue an order directing compliance
4 with the request.

5 “(B) CIVIL ACTION.—

6 “(i) IN GENERAL.—The Administrator
7 may request the Attorney General to com-
8 mence a civil action to compel compliance
9 with a request or order under this sub-
10 section.

11 “(ii) RELIEF.—If the court finds that
12 there is a reasonable basis on which to be-
13 lieve that there may be a violation of this
14 title, unless the court finds that, under the
15 circumstances of the case, the request or
16 order under this subsection was arbitrary
17 and capricious, an abuse of discretion, or
18 otherwise not in accordance with law, the
19 court—

20 “(I) shall enter an order direct-
21 ing compliance with the request or
22 order; and

23 “(II) may assess a civil penalty
24 of not more than \$10,000 for each
25 day of noncompliance.

1 “(5) OTHER AUTHORITY.—Nothing in this sub-
 2 section precludes the Administrator or an authorized
 3 State from securing access or obtaining information
 4 in any other lawful manner.”.

5 **SEC. 204. PUBLIC AVAILABILITY.**

6 Section 313(j) of the Emergency Planning and Com-
 7 munity Right-To-Know Act of 1986 (42 U.S.C. 11023(j))
 8 is amended in the second sentence by striking “on a cost
 9 reimbursable basis”.

10 **SEC. 205. FEDERAL FACILITIES.**

11 Section 329(7) of the Emergency Planning and Com-
 12 munity Right-To-Know Act of 1986 (42 U.S.C. 11049(7))
 13 is amended by inserting before the period at the end the
 14 following: “or the United States”.

15 **SEC. 206. ENFORCEMENT.**

16 Section 325(c)(1) of the Emergency Planning and
 17 Community Right-To-Know Act of 1986 (42 U.S.C.
 18 11045(b)(1)) is amended by striking “or 313” and insert-
 19 ing “, 313, or 316”.

○