Calendar No. 141

106TH CONGRESS *1st Session* | SENATE | REPORT 106–70

FUELS REGULATORY RELIEF ACT

JUNE 9, 1999.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 880]

together with

MINORITY VIEWS

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 880) 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, having considered the same reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

Subsection (r) of Section 112 of the Clean Air Act establishes programs and requirements to prevent catastrophic chemical accidents and to mitigate the consequences of such accidents when they do occur. Subsection (r) addresses substances which, when released into the air in significant quantities, may, even in periods of limited exposure, cause illness or death. The objective of the programs established under this subsection is to prevent the release of extremely hazardous substances and to ensure that mitigation and response measures are in place should an accidental release occur.

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Pursuant to this subsection, the Environmental Protection Agency (EPA) promulgated rules to establish a risk management program (RMP). The RMP requires the submission by covered facilities to EPA of an assessment of the risk of accidental release of any substance identified in the rulemaking completed under 112(r)(3). The RMP includes a process for assessing hazards associated with accidental releases of listed substances, a program for preventing accidental releases, and a response program providing for specific actions to be taken in response to an accidental release. Pursuant to section 112(r)(7)(B)(i), these requirements apply 3 years after final promulgation, or June 21, 1999.

Section 112(r)(3) requires a rule (40 CFR part 68) be promulgated to identify no less than 100 substances, and threshold quantities for each, to be subject to RMP requirements. Any facility at which is stored more than the threshold quantity of a substance identified in 40 CFR part 68 is subject to the RMP requirements as detailed in 112(r)(7) and in 40 CFR part 68. In 1994, the EPA listed 77 highly toxic substances and 63 highly flammable substances in its rulemaking in order to satisfy the CAA requirement that 100 substances be listed.

Flammable Fuels

Subsequent to the promulgation of 40 CFR part 68, a question has been raised regarding the appropriateness of including flammable fuels in this program. The section of law that authorized this regulation was developed in response to the proliferation of commercial uses of hazardous chemicals. The RMP portion of the law was a reaction to a series of accidental releases of extremely hazardous sustances that resulted in deaths and serious injuries to individuals beyond boundaries of the facilities where such releases had occurred. The most notable, but by no means the only, of these releases was the December 1984 release of 40 tons of methyl isocyanate from a Union Carbide facility in Bhopal, India, which killed an estimated 4,000 people. Implementation of the RMP was intended to improve awareness among State and local emergency personnel and the public regarding the substances being used in their communities and inform them as to appropriate response actions in the case of an accidental release. The law also requires specific steps be taken at each facility to reduce the potential for accidental releases.

The toxic effects of exposure to hazardous chemicals varies widely depending on the substance and the form of the exposure. It was this informational challenge that 112(r) was designed to overcome. EPA's decision to use this provision of the Clean Air Act to regulate flammable substances that do not cause adverse health effects as the result of exposure to the substance goes beyond congressional intent.

EPA's rule, 40 CFR part 68, bears this out in part by explicitly excluding gasoline from the rule. The Congress provided criteria for the Agency to consider in listing substances that would require reporting under the RMP. The EPA's application of the criteria resulted in the listing of propane and similar fuels, yet excluded gasoline. Gasoline use is far more widespread than propane use in this country. Data available from EPA's Emergency Response Notifica-

tion System indicates that accidental releases of gasoline outnumber accidental releases of propane by ten to one. Given the greater exposure of the general population to gasoline at refueling stations and other locations, had this program been aimed at accident prevention for all dangerous substances, surely gasoline would have been included.

EPA has defended its inclusion of flammable substances used as fuels based on the statutory requirement that vinyl chloride be included in this program. EPA argues that vinyl chloride is highly flammable and, therefore, Congress indicated its intent for the rule to apply to all highly flammable substances. This argument overlooks the important fact that vinyl chloride is extremely toxic when inhaled. The Occupational Safety and Health Administration has established a workplace exposure standard for vinyl chloride at a maximum of five parts per million for 15 minutes.

The handling and storage of flammable substances used as fuels currently are governed by OSHA regulations, the voluntary standards of the National Fire Protection Association for Liquified Petroleum Gas (NFPA 58) and other Federal regulations designed to limit the likelihood of accidental releases and reduce the magnitude of public and employee exposure. However, NFPA 58 does not currently require the development of hazard assessment or off-site consequence analysis information. NFPA 58 also does not make specific provision for communicating or sharing this information with local emergency response authorities or personnel.

Compliance with the NFPA 58 has been frequently cited by the propane industry as providing a measure of assurance of safety from catastrophic accidents and as a way of reducing the likelihood of accidents from propane facilities. A voluntary, non-regulatory approach, such as the NFPA Code, can supply the information needed by fire fighters to protect public health and welfare without creating an increased risk of propane accidents due to an inappropriate regulation. Such an approach is consistent with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) and should, if adequately adopted, encourage increased compliance in a lower cost and less burdensome fashion.

Therefore, the EPA, the Department of Transportation, and other appropriate Federal agencies should work with the National Fire Protection Association, the International Association of Fire Fighters, the International Association of Fire Chiefs, the National Propane Gas Association, local emergency response authorities, and other interested parties, to develop changes to the National Fire Protection Association 58 Code, Liquifiedd Petroleum Gas Code. These changes should provide local emergency response personnel and authorities with sufficient information to plan, prepare for and respond to emergencies involving propane and other flammable substances used as fuel.

Public Availability of OCA Information

Section 4 of S. 880 addresses the availability of off-site consequence analysis information in risk management plans submitted to the Environmental Protection Agency in an effort to comply with 40 CFR part 68. That regulation requires facilities that store more than threshold quantities of substances listed in the rule to partici-

pate in the risk management program established by 40 CFR part 68 and in accordance with Sec. 112(r)(7) of the CAA. The RMP requires by June 21, 1999, the submission of the results of off-site consequence analysis of potential accidental releases, including worst-case scenario releases.

Since the promulgation of the rule establishing the risk management program, the Federal Government has sought a means to address concerns regarding the potential terrorist threat posed by Internet access to off-site consequence analysis information collected under the RMP. Because section 112(r)(7) requires that risk management plans be available to the public, the EPA planned to post the information collected under this program on an Internet web site. Due to concerns about how terrorists might use this information if it were available on the Internet, the EPA revised that plan and has joined with the Department of Justice in seeking to limit Internet access to the off-site consequence analysis information.

Concern about the potential use of this information was restated at the March 16, 1999 hearing of the Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety by Timothy Fields, Acting Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, and by Robert M. Burnham, Chief, Domestic Terrorism Section, National Security Division, Federal Bureau of Investigation.

Mr. Fields noted that there was a need to "balance the benefits of community right-to-know with also legitimate concerns about protection against terrorist threat." He described the steps that the EPA hoped to take to deter the posting of off-site consequence analysis information on the Internet stating that this information database "should not be posted on the Internet and [EPA] will take efforts to make sure that does not occur." Mr. Burnham added that the FBI had identified portions of the risk management plans that "can be directly utilized as a targeting mechanism in a terrorist or criminal incident."

A Federal interagency workgroup has met to address these issues. The result of that activity was a legislative proposal that has been embodied in S. 880 to exempt off-site consequence analysis information from the requirements of the Freedom of Information Act. The bill also would establish an alternative means of making that information generally available based on guidance developed by the Administrator of the Environmental Protection Agency.

Objectives of the Legislation

S. 880 would affect the Clean Air Act in two ways. It would remove flammable substances used as fuels from inclusion in the risk management program established by 40 CFR part 68 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 byproducts, other than those caused by the heat of the fire or impact of the explosion.

The bill would also limit the general availability of the information collected in accordance with the RMP rule. S. 880 would prevent the application of the provisions of the Freedom of Information Act to off-site consequences analysis information submitted to

the Environmental Protection Agency for the purpose of compliance with 40 CFR part 68. The bill would establish an alternative means of making that information publicly available including making paper and electronic forms of the information available under conditions to be established by guidance issued by the Administrator of the Environmental Protection Agency.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section designates the short title of the Act as "Fuels Regulatory Relief Act."

SECTION 2. FINDINGS

The Congress finds that flammable fuels of low toxity, such as propane, should not be included on the list of substances subject to the risk management plan program under section 112(r) of the Clean Air Act (42 U.S.C. 7412(r)).

SECTION 3. REMOVAL OF FLAMMABLE FUELS FROM RISK MANAGEMENT LIST

This section would remove flammable substances when those substances are used as fuels from inclusion in the risk management program established by 40 CFR part 68, by exempting them from being listed under section 112(r)(3) solely because of their explosive or flammable properties, 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 byproducts, other than those caused by the heat of the fire or impact of the explosion.

SECTION 4. PUBLIC AVAILABILITY OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION IN RISK MANAGEMENT PLANS

Summary

This section exempts off-site consequence analysis (OCA) information, or information derived from OCA information, from availability under the Freedom of Information Act. Instead, it establishes an alternative means of making OCA information available, both in paper and electronic form. This section directs the Administrator to issue guidance concerning the availability of the OCA information, in order to ensure that the conditions and limitations established in this section for its security and accessibility are followed properly. The Administrator may promulgate regulations in lieu of guidance.

Discussion

This section provides that an officer or employee of the United States may make OCA information available in electronic form in only four cases: to State or local government officers or employees for official use, limited public inspection without electronic means of ranking stationary sources based on OCA information, to the public with the identity and location of the stationary sources omit-

ted, and to officers and employees of agents and contractors of the Federal Government.

This section provides that an officer or employee of the United States may make OCA information available in paper form in only four cases: to the public subject to any conditions established in the guidance and regulations promulgated under this Act, to State and local government officers, limited public inspection and to officers and employees of agents and contractors of the Federal Government.

The Administrator may provide OCA information in electronic form to State or local government officers or employees for official use. At the request of a State or local government officer acting in the officer's official capacity, the Administrator may provide to the officer in paper form, for official use only, the OCA information submitted for the stationary sources located in the State in which the State or local government officer serves.

This section preempts State and local law to the extent that it would require dissemination of OCA information in a manner not authorized by this Act. An officer or employee of a State or local government cannot make OCA information available to the public in any form, except as authorized by the Administrator. They may make available OCA information that concerns stationary sources located in the State in which the officer or employee serves, but only to persons eligible to receive it from Federal officers or employees and only in the same manner (paper or electronic) in which those individuals were eligible to receive it.

Emergency responders with mutual aid arrangements with adjacent jurisdictions in neighboring States are allowed to share OCA information on stationary sources within their respective jurisdictions. However, they could also get out-of-state OCA information electronically, since it is not subject to the same restrictions. Officers and employees of a State or local government may make OCA information available in any form to officers and employees of agents and contractors of the State or local government for official use only.

OCA information will be available to the public. In response to a request for OCA information or for a risk management plan, the Administrator must make available a copy of OCA information, but only in paper form and subject to the conditions in the guidance, including limits on the maximum number of requests that any single requester may make and the maximum number of stationary sources for which OCA information may be made available in response to any single request.

This section also requires the Administrator to make every risk management plan submitted to the EPA available in paper or electronic form for public inspection, but not copying, during normal business hours, including in depository libraries. Electronically available OCA information must not provide a means of ranking stationary sources based on OCA information. After consultation with the Attorney General, the Administrator may make OCA information available to the public in an electronic form that does not include information concerning the identity or the location of the stationary sources.

Officers and employees of the United States, State and local governments and their agents and contractors are prohibited from making OCA information available to the public in any form, except as authorized by the Administrator. They are subject to fines and/or imprisonment of up to 1 year for a knowing violation of a restriction established by this subsection.

The Administrator and State and local governments are authorized to collect and maintain records of the identities of individuals seeking access to OCA information if it is relevant and necessary to accomplish a purpose of the EPA (for the Administrator) and a purpose of the employing agency required by State statute (for State and local officials).

HEARINGS

The Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety held a hearing on March 16, 1999 on the matters addressed in S. 880. The bill had not been introduced at that time. Witnesses providing testimony at that hearing were Timothy Fields, Jr., Acting Assistant Administrator for Solid Waste and Emergency Response, Environmental Protection Agency; Robert M. Burnham, Chief, Domestic Terrorism Section, National Security Division, Federal Bureau of Investigation, Department of Justice; Robert M. Blitzer, former Section Chief, Domestic Terrorism/Counterterrorism Planning Section, Federal Bureau of Investigation, Department of Justice; Dean Kleckner, of Rudd, IA, on behalf of the American Farm Bureau Federation; James E. Bertelsmeyer, Heritage Propane, Tulsa, OK, on behalf of the National Propane Gas Association; Thomas M. Susman, Ropes & Gray, Washington, DC; Thomas E. Natan, Jr., National Environmental Trust, Washington, DC; Paula R. Littles, Paper, Allied-Industrial, Chemical and Energy Workers International Union, Fairfax, VA; and Ben Laganga, Union County Office of Emergency Management, Westfield, NJ.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 880 on May 11, 1999. The committee agreed to an amendment by Senator Inhofe by a rollcall vote of 12 ayes, 4 nays, and 2 not voting. Voting in favor were Senators Bennett, Baucus, Crapo, Graham, Hutchison, Inhofe, Reid, Smith, Thomas, Voinovich, Warner, and Chafee. Voting against the amendment were Senators Boxer, Lautenberg, Lieberman, and Wyden. Later that day the committee met again to complete action on the bill and voted to report S. 880, as amended, by a vote of 12 ayes and 6 nays. Voting in favor were Senators Bennett, Baucus, Bond, Crapo, Graham, Hutchison, Inhofe, Smith, Thomas, Voinovich, Warner, and Chafee. Voting against were Senators Boxer, Lautenberg, Lieberman, Moynihan, Reid, and Wyden.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill.

The bill does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 880 would impose some Federal intergovernmental unfunded mandates on State, local, or tribal governments.

S. 880 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs to comply with those mandates would fall below the threshold established by that act ($50 million in 1996, adjusted annually for inflation). The bill contains no new private-sector mandates as defined in UMRA.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 25, 1999.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 880, the Fuels Regulatory Relief Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley (for Federal costs), who can be reached at 226–2860, and Lisa Cash Driskill (for the State and local impact), who can be reached at 202–225–3220.

Sincerely,

DAN L. CRIPPEN,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 880, Fuels Regulatory Relief Act, as ordered reported by the Senate on Environment and Public Works on May 11, 1999

Summary

CBO estimates that enacting S. 880 would result in no significant additional costs or savings to the Federal Government. Because S. 880 could affect direct spending and receipts, pay-as-you-go procedures would apply to the bill, but CBO estimates that any impact on direct spending and receipts would not be significant.

S. 880 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs to comply with those mandates would fall below the threshold established by that act ($50 million in 1996, adjusted annually for inflation). The bill contains no new private-sector mandates as defined in UMRA.

S. 880 would exempt flammable fuels that are not acutely toxic from provisions of the Clean Air Act that require risk management planning. That Act requires operators of stationary sources that produce, process, handle, or store certain hazardous materials to prepare risk management plans every 5 years for review by the Environmental Protection Agency (EPA). S. 880 also would require EPA to restrict access to some information in risk management plans. Upon request, the Agency could provide such information to the public and could charge fees to cover the cost of this service. Under the bill, criminal penalties could be imposed on any Federal or local government employee who violates the bill's provisions regarding public release of information contained in a risk management plan.

EPA estimates that nearly 70,000 facilities will have to prepare risk management plans for the Agency's review under current law. S. 880 would exempt almost half of these facilities from this requirement. The exemption would apply to facilities that use flammable fuels, such as propane. By exempting those facilities from reporting requirement, the bill would lead to a savings of less than $1 million a year in EPA's administrative costs.

Some of the savings would likely be offset by additional costs imposed on EPA by the requirements in the bill to restrict access to risk management plans. EPA had planned to make risk management plans available via the Internet to State and local officials, emergency planning officials, and the interested public. S. 880 would direct EPA to provide access to paper or electronic copies of risk management plans only us a form that could not be copied. The bill would authorize EPA and the Government Printing Office (GPO) to use the Nation's depository libraries to make this information available. CBO expects that EPA and GPO would utilize an electronic (computer-based) means to ensure that plans could not be copied. If electronic means were not used, the cost of providing paper copies of all risk management plans (as much as 1 million pages of text) to each depository library could exceed $20 million. The bill also would direct EPA to provide paper copies of risk management plans to the public, when requested, but the agency could collect fees to offset the costs of processing and reproducing such information.

Under S. 880, government officials violating the restrictions on disseminating information would be subject to criminal fines. Collections of such fines are recorded in the budget as governmental receipts, or revenues, which are deposited in the Crime Victims Fund and spent in the following year. CBO estimates than any increase in revenues and direct spending would be negligible.

S. 880 contains intergovernmental mandates as defined in the UMRA because it would preempt State and local freedom-of-information laws by imposing Federal guidelines for the release of some of the information contained in risk management plans. Based on

information from EPA, these guidelines would likely require State and local governments to mail out information when requested, and to maintain records in order to comply with limits on the number of requests per individual.

While complying with these requirements could be expensive in some cases, CBO estimates that, for a number of reports, total costs would be below the threshold established in UMRA. First, State and local governments could choose not to release the information and instead direct inquiries to EPA. Second, even for those governments that chose to release information according to the guidelines, it is unlikely that the number of requests would be high enough to result in total costs that reach the threshold. Furthermore, those governments could charge fees to recoup some or all of their costs. Because the bill also would exempt certain flammable substances from risk management plans, State and local governments that use propane to fuel vehicles or for other purposes would realize a savings because they would no longer be required to prepare and file such plans.

The CB0 staff contacts are Kim Cawley (for Federal costs), who can be reached at 226–286O, and Lisa Cash Driskill (for the State and local impact), who can be reached at 202–225–3220. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS OF SENATORS LAUTENBERG, BOXER, MOYNIHAN AND LIEBERMAN

The Risk Management Program, established under the Clean Air Act Amendments of 1990, is intended to prevent public health and safety emergencies. Facilities covered by the Risk Management Program must develop and implement their own individual risk management programs, which include an analysis of the potential offsite consequences of an accidental chemical release, a five-year accident history, a release prevention program, and an emergency response program. Each facility must also develop and submit a risk management plan (RMP), which provides a summary of the facility's risk management program to the Environmental Protection Agency (EPA) no later than June 21, 1999. In addition, after that date, facilities' RMPs are to be made available to Federal, State, and local government agencies and the public.

The Fuels Regulatory Relief Act of 1999, S. 880, as reported by the committee, would essentially rewrite the Risk Management Program by (a) exempting propane and other flammable fuels from the program, and (b) constraining public access to information on the offsite consequences of worst case chemical accidents. We have significant concerns with the approach S. 880 takes on both issues.

Propane and Fire Safety

Fire fighters have told the committee that, under the Risk Management Program, propane distributors would be required to provide emergency responders with critical information they need to protect the public in case of an accident. This is our primary reason for opposing S. 880's exemption of propane from the Risk Management Program.

Clearly, accidental release of propane can result in acute adverse human effects. After Bhopal, the most significant chemical accident in history is the November 1984 Mexico City accident, in which a series of explosions and fires at an LP-Gas (i.e., propane) storage terminal resulted in 650 deaths, 6,400 injuries and over $20 million in damages. And in 1989, a vapor cloud explosion at a facility in Pasadena, Texas killed 23 workers, and injured up to 300 workers and others.

While a number of substances are combustible, the Environmental Protection Agency (EPA) has applied the Risk Management Program only to combustible substances which are highly flammable and highly volatile—like propane—because these kinds of substances can generate a vapor cloud explosion. Vapor cloud explosions travel greater distances than fireballs, pool fires, or jet fires, and can cause death and injury beyond facility boundaries. For these and other reasons cited by the EPA, we believe the Agency acted appropriately in including propane in the Risk Management Program.

The RMP is the only current source of important emergency response information. Through the program, propane distributors are required to develop hazard assessment and off-site consequence analysis information, and to share the information with emergency response personnel—information they provide under no other program.

It is possible, as the majority has argued, that the informational benefits of the Risk Management Program might be better provided through a revision of the National Fire Protection Association (NFPA) Code 58 for Liquid Propane Gas. Such a revision could be developed by representatives of the propane industry, emergency responders, Federal agencies, and other interested parties, and provide information of even higher value to emergency responders than the Risk Management Program. However, S. 880, as reported by the committee, provides no framework for such an NFPA code revision, and in its absence, we are compelled to oppose it.

Chemical Facilities as Terrorist Targets

We face, in the issue of public access to chemical accident scenarios, one of the fundamental tensions of an open Democratic society—how accessible to make information whose disclosure may prevent harm, but that in some cases may be used to cause harm. While we agree with the need to strike a balance on this issue, and recognize the good faith effort made in drafting S. 880, we are concerned that significant problems remain with the bill as reported by the committee.

Chemical accidents cause serious loss of life, health, and property. The Chemical Safety and Hazard Investigation Board reports an average of 60,000 chemical incidents each year, resulting in hundreds of evacuations and injuries, and an average annual death toll of 256. Our goal must be to make chemical manufacture and use safer and less harmful to the environment and the public, even as it contributes more to our economy and quality of life.

Congress has instituted a broad range of programs towards that end. Regulatory programs specify the minimum safety and environmental protection measures that should be in place at each facility.

The Chemical Safety and Hazard Investigation Board identifies the root causes of the most serious accidents and recommends measures that public and private stakeholders can take to reduce the accidents. And "Right to Know" programs—which include the public reporting aspect of the Risk Management Program—use the power of public scrutiny to promote voluntary hazard reduction, often achieving far more benefits than what regulatory programs could achieve on their own.

The "Right to Know Effect" reduces chemical hazards. The premier current example of the "Right to Know effect" is the Toxics Release Inventory (established by section 313 of the Superfund Amendments and Reauthorization Act of 1986), under which industry has decreased routine toxic chemical releases by 43% from 1988 to 1997. We believe the Right to Know aspect of the Risk Management Program will promote similarly-dramatic reductions in chemical accidents.

The power of public scrutiny manifests itself in several ways. Newspapers run articles naming a specific company or plant "the top chemical releaser" in a town, State, or in the country. Environmental agency heads publicly call upon the biggest firms to voluntarily reduce their releases. Vendors and consultants market pollution prevention technologies to facilities high on the list. All this is made possible by the Right to Know, and it all contributes to an atmosphere in which industry, through non-regulatory means, sees incentives to use safer products and processes.

While we take seriously the harm of chemical accidents, and look forward to the reduction of such accidents under the public scrutiny of the Right to Know program, we also take very seriously the Administration's concerns that disclosure of some of this information might increase the risk of terrorism. A balance must be struck between these two valid concerns in order to minimize chemical releases and protect public safety and the environment.

Deficiences with S. 880's constraints on Right to Know. S. 880 would prevent information on the offsite consequence analyses (OCA) of worst case chemical accidents—including, in particular, an estimate of the deaths and injuries that could result from a worst-case accident—from appearing on the Internet. This restriction of OCA information is intended to inhibit criminal access to data which would allow them to target attacks to achieve the most destruction. At the same time, S. 880 would allow State and local officials access to OCA information for plants within the State, would allow individuals access to OCA information in paper form for a limited number of plants, and would allow any individuals to read OCA information for any plant in the country, but without being able to make copies of it.

While we are concerned with the terrorist threat posed by chemical plants, and would support reasonable measures to address it, we have several concerns with the specific approach taken by S. 880.

First, we are concerned by the provisions of S. 880 that would criminalize inappropriate disclosure of the OCA information by Federal, State and local officials, making them liable for up to one year in jail. We are further troubled that the disclosures the bill would criminalize would be defined in guidance (as opposed to reg-

ulation), with no input from the public and without judicial review. Under this provision, it would be possible, for example, that a local safety official publishing a report that compares local chemical facilities with similar facilities across the country could be jailed. Sanctions against certain OCA data disclosure practices may be appropriate in some cases, but the language in S. 880 is too sweeping and ill-defined in this area, and the sanctions too severe for us to support them.

Second, it is not clear in the bill that all emergency responders would have access to the OCA information. We believe, for example, that the information should be available to fire fighters as well as fire chiefs, and to volunteer fire fighters as well as professionals. (The nation's 815,000 volunteer fire fighters make up 75% of the U.S. fire fighting force and are especially important to suburban and rural communities.)

Third, under certain conditions, independent bona fide researchers, such as union analysts, safety experts, and environmental advocates, should be able to analyze the data and publish their findings. This is not provided for in S. 880.

Fourth, S. 880 does little to address the real underlying problem of criminal attack on chemical facilities, which is the appeal and vulnerability of such facilities to criminals. On the contrary, by constraining the public's Right to Know, and thus constraining incentives for chemical facilities to use inherently safer practices, S. 880 deprives the public of an important means by which chemical facilities can be operated in a safer manner and thus less attractive to criminals.

We respect the good faith effort, reflected in S. 880, to balance the hazard reduction of the Right to Know effect against the hazard reduction of inhibiting criminal access to OCA information. We feel, however, that the balance has not been adequately struck, and, again, are compelled to oppose the bill.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

CLEAN AIR ACT

[As Amended Through P.L. 105–394, November 13, 1998]

* * * * * * *

SEC. 112. HAZARDOUS AIR POLLUTANTS.

(a) DEFINITIONS.—For purposes of this section, except subsection (r)—

* * * * * * *

(r) PREVENTION OF ACCIDENTAL RELEASES.—

(1) PURPOSE AND GENERAL DUTY.— * * *

* * * * * * *

(4) FACTORS TO BE CONSIDERED.—In listing substances under paragraph (3), the Administrator [shall consider each of the following criteria]—

(A) Shall consider—

[(A)] *i* the severity of any acute adverse health effects associated with accidental releases of the substance;

[(B)] *ii* the likelihood of accidental releases of the substance; [and] *;*

[(C)] *iii* the potential magnitude of human exposure to accidental releases of the substance[.] *and*

(B) shall not list a flammable substance when used as a fuel or held for sale as a fuel under this subsection solely because of the explosive or flammable properties of the substance, unless a fire or explosion caused by this substance will result in acute adverse health effects from human exposure to the substance, including unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or the impact of the explosion.

○