

REDLINE/STRIKEOUT OF
DRAFT FEDERAL HAZMAT LAW
SENT TO CONGRESS ON 10/10/01

§ 5101. Purpose

The purpose of this chapter is to ~~provide adequate protection~~ **protect** against the risks to life, and property, **and the environment that are** inherent in the transportation of hazardous material in **intrastate, interstate, and foreign** commerce. ~~by improving the regulatory and enforcement authority of the Secretary of Transportation.~~

§ 5102. Definitions

In this chapter --

- (1) "commerce" means trade or transportation in the jurisdiction of the United States --
 - (A) between a place in a State and a place outside of the State
 - (B) that affects trade or transportation between a place in a State and a place outside of the State; **or**
 - (C) on a United States-registered aircraft.**
 - (2) "hazardous material" means a substance or material the Secretary of Transportation designates under section 5103(a) of this title.
 - (3) "hazmat employee" --
 - (A) "hazmat employee" means an individual --**
who --
 - (iA) (i) is employed by a hazmat employer; and**
 - (ii) who during the course of employment directly affects hazardous material transportation safety as the Secretary decides by regulation;**
 - (B) includes or used by a hazmat employer; or**
 - (ii) is self-employed, including an owner-operator of a motor vehicle, vessel, or aircraft transporting hazardous material in commerce; and**
 - (CB) includes an individual, employed by a hazmat employer, who during the course of employment --**
 - (i) loads, unloads, or handles hazardous material;**
 - (ii) manufactures, reconditions, or tests containers, drums, and packagings represented as qualified for use in transporting hazardous material;**
 - (iii) prepares hazardous material for transportation;**
 - (iv) is responsible for the safety of transporting hazardous material; or**
 - (v) operates a vehicle used to transport hazardous material performs a function regulated by the Secretary under section 5103(b)(1) of this chapter.**
- (4) "hazmat employer" --(A) means a person using at least one employee of that person in connection with --
that --

- (A) (i) ~~transporting hazardous material in commerce;~~ **has a least one hazmat employee;**
or
(ii) ~~causing hazardous material to be transported in commerce; or (iii) manufacturing, reconditioning, or testing containers, drums, and packagings represented as qualified for use in transporting hazardous material;~~ **(B) includes is self-employed, including an owner-operator of a motor vehicle, vessel, or aircraft transporting hazardous material in commerce; and**
(EB) includes a department, agency performs, or instrumentality of employs or uses at least one hazmat employee to perform, a function regulated by the Secretary the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, carrying out an activity described in subclause (A)(i), (ii), or under section 5103(b)(iii) 1) of this clause (4) chapter.
- (5) "imminent hazard" means the existence of a condition **related to a hazardous material** that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.
- (6) "Indian tribe" has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
- (7) "motor carrier" means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102 of this title, **except that a freight forwarder is included only if performing a function related to highway transportation.**
- (8) "**N**national **R**esponse **T**eam" means the **National Response Team** established under the **N**national **C**ontingency **P**lan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605).
- (9) "person," in addition to its meaning under section 1 of title 1, --
(A) includes a government, Indian tribe, or authority of a government or tribe offering hazardous material for transportation in commerce, or transporting hazardous material to further a commercial enterprise, **or manufacturing, designing, inspecting, testing, reconditioning, marking, or repairing a packaging or packaging component ;represented as qualified for use in transporting hazardous material in commerce, but**
(B) does not include --
(i) the United States Postal Service; and
(ii) in sections 5123 and 5124 of this title, a department, agency, or instrumentality of the Government.
- (10) "public sector employee" means --
(A) means an individual employed by a State, political subdivision of a State, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material;
(B) includes an individual employed by a State, political subdivision of a State, or Indian tribe as a firefighter or law enforcement officer; and
(C) includes an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, or Indian tribe.

(11) "State" means --

(A) except in section 5119 of this title, a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States designated by the Secretary; and

(B) in section 5119 of this title, a State of the United States and the District of Columbia.

(12) "transports" or "transportation" means the movement of property and loading, unloading, or storage incidental to the movement.

(13) "United States" means all of the States.

§ 5103. General regulatory authority

(a) DESIGNATING MATERIAL AS HAZARDOUS.-- The Secretary of Transportation shall designate material (including an explosive; radioactive material; ~~etiologic agent~~, **infectious substance**; flammable or combustible liquid, solid, ~~poison~~ **or gas, toxic**; oxidizing or corrosive material; and compressed gas) or a group or class of material as hazardous when the Secretary **determines** decides that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property.

(b) REGULATIONS FOR SAFE TRANSPORTATION.--

(1) The Secretary shall prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce. The regulations--

(A) apply to a person **that --**

(i) ~~transporting hazardous material in commerce;~~

(ii) ~~causing hazardous material to be transported in commerce; or~~

(iii) ~~manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a packaging or a container that is represented, marked, certified, or sold by that person~~

(i) transports hazardous material in commerce;

(ii) causes a hazardous material to be transported in commerce;

(iii) manufactures, designs, inspects, tests, reconditions, marks, or repairs a packaging or packaging component represented as qualified for use in transporting hazardous material in commerce;

(iv) prepares, accepts, or rejects hazardous material for transportation in commerce;

(v) is responsible for the safety of transporting hazardous material in commerce;

(vi) certifies compliance with any requirement issued under this chapter; or

(vii) misrepresents whether it is engaged in any of the above activities; and

(B) shall govern safety aspects of the transportation of hazardous material the Secretary considers appropriate.

(2) A proceeding to prescribe the regulations must be conducted under section 553 of title 5, including an opportunity for informal oral presentation.

§ 5104. Representation and tampering

- (a) REPRESENTATION.-- A **No** person may represent, by marking or otherwise, that --
- (1) a container, package, or packaging (or **component of** a component of a container, package, or packaging) **package, or packaging** for transporting hazardous material is safe, certified, or complies with this chapter **only if the container, package, or packaging (or a component of a container, package, or packaging) meets the requirements of if it does not conform to** each applicable regulation prescribed under this chapter; or
 - (2) hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel **only if unless** the material is present.
- (b) TAMPERING.-- ~~A~~**No** person may ~~not~~ **,without authorization from the owner or custodian,** alter, remove, destroy, or otherwise tamper ~~unlawfully~~ with --
- (1) a marking, label, placard, or description on a document required under this chapter or a regulation prescribed under this chapter; or
 - (2) a package, container, motor vehicle, rail freight car, aircraft, or vessel used to transport hazardous material.

§ 5105. Transporting certain highly radioactive material

- (a) DEFINITIONS.-- In this section, “high-level radioactive waste” and “spent nuclear fuel” have the same meanings given those terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).
- (b) TRANSPORTATION SAFETY STUDY.-- In consultation with the Secretary of Energy, the Nuclear Regulatory Commission, potentially affected States and Indian tribes, representatives of the rail transportation industry, and shippers of high-level radioactive waste and spent nuclear fuel, the Secretary of Transportation shall conduct a study comparing the safety of using trains operated only to transport high-level radioactive waste and spent nuclear fuel with the safety of using other methods of rail transportation for transporting that waste and fuel. The Secretary of Transportation shall submit to Congress not later than November 16, 1991, a report on the results of the study.
- (c) SAFE RAIL TRANSPORTATION REGULATIONS.-- Not later than November 16, 1992, after considering the results of the study conducted under subsection (b) of this section, the Secretary of Transportation shall prescribe amendments to existing regulations that the Secretary considers appropriate to provide for the safe rail transportation of high-level radioactive waste and spent nuclear fuel, including trains operated only for transporting high-level radioactive waste and spent nuclear fuel.
- ~~(d) Routes and Modes Study. Not later than November 16, 1991, the Secretary of Transportation shall conduct a study to decide which factors, if any, shippers and carriers should consider when selecting routes and modes that would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel. The study shall include--~~
- ~~(1) notice and opportunity for public comment; and~~
 - ~~(2) an assessment of the degree to which at least the following affect the overall public safety of the transportation:~~

- (A) population densities.
- (B) types and conditions of modal infrastructures (including highways, railbeds, and waterways).
- (C) quantities of high-level radioactive waste and spent nuclear fuel.
- (D) emergency response capabilities.
- (E) exposure and other risk factors.
- (F) terrain considerations.
- (G) continuity of routes.
- (H) available alternative routes.
- (I) environmental impact factors.

(e) Inspections of Motor Vehicles Transporting Certain Material.

(1) Not later than November 16, 1991, the Secretary of Transportation shall require by regulation that before each use of a motor vehicle to transport a highway-route-controlled quantity of radioactive material in commerce, the vehicle shall be inspected and certified as complying with this chapter and applicable United States motor carrier safety laws and regulations. The Secretary may require that the inspection be carried out by an authorized United States Government inspector or according to appropriate State procedures.

(2) The Secretary of Transportation may allow a person, transporting or causing to be transported a highway-route-controlled quantity of radioactive material, to inspect the motor vehicle used to transport the material and to certify that the vehicle complies with this chapter. The inspector qualification requirements the Secretary prescribes for an individual inspecting a motor vehicle apply to an individual conducting an inspection under this paragraph.

§ 5106. Handling criteria [Reserved]

The Secretary of Transportation may prescribe criteria for handling hazardous material, including

--

- (1) a minimum number of personnel;
- (2) minimum levels of training and qualifications for personnel;
- (3) the kind and frequency of inspections;
- (4) equipment for detecting, warning of, and controlling risks posed by the hazardous material;
- (5) specifications for the use of equipment and facilities used in handling and transporting the hazardous material; and
- (6) a system of monitoring safety procedures for transporting the hazardous material.

§ 5107. Hazmat employee training requirements and grants

(a) TRAINING REQUIREMENTS.-- The Secretary of Transportation shall prescribe by regulation requirements for training that a hazmat employer must give hazmat employees of the employer on the safe loading, unloading, handling, storing, and transporting of hazardous material and emergency preparedness for responding to an accident or incident involving the transportation of hazardous material. The regulations --

- (1) shall establish the date, as provided by subsection (b) of this section, by which the training shall be completed; and
 - (2) may provide for different training for different classes or categories of hazardous material and hazmat employees.
- (b) BEGINNING AND COMPLETING TRAINING.-- A hazmat employer shall begin the training of hazmat employees of the employer not later than 6 months after the Secretary of Transportation prescribes the regulations under subsection (a) of this section. The training shall be completed within a reasonable period of time after --
- (1) 6 months after the regulations are prescribed; or
 - (2) the date on which an individual is to begin carrying out a duty or power of a hazmat employee if the individual is employed as a hazmat employee after the 6-month period.
- (c) CERTIFICATION OF TRAINING.-- After completing the training, each hazmat employer shall certify, with documentation the Secretary of Transportation may require by regulation, that the hazmat employees of the employer have received training and have been tested on appropriate transportation areas of responsibility, including at least one of the following:
- (1) recognizing and understanding the Department of Transportation hazardous material classification system.
 - (2) the use and limitations of the Department hazardous material placarding, labeling, and marking systems.
 - (3) general handling procedures, loading and unloading techniques, and strategies to reduce the probability of release or damage during or incidental to transporting hazardous material.
 - (4) health, safety, and risk factors associated with hazardous material and the transportation of hazardous material.
 - (5) appropriate emergency response and communication procedures for dealing with an accident or incident involving hazardous material transportation.
 - (6) the use of the Department Emergency Response Guidebook and recognition of its limitations or the use of equivalent documents and recognition of the limitations of those documents.
 - (7) applicable hazardous material transportation regulations.
 - (8) personal protection techniques.
 - (9) preparing a shipping document for transporting hazardous material.
- (d) COORDINATION OF TRAINING REQUIREMENTS.-- In consultation with the Administrator of the Environmental Protection Agency and the Secretary of Labor, the Secretary of Transportation shall ensure that the training requirements prescribed under this section do not conflict with or duplicate --
- (1) the requirements of regulations the Secretary of Labor prescribes related to hazard communication, and hazardous waste operations, and emergency response that are contained in part 1910 of title 29, Code of Federal Regulations; and
 - (2) the regulations the Agency prescribes related to worker protection standards for hazardous waste operations that are contained in part 311 of title 40, Code of Federal Regulations.
- (e) TRAINING GRANTS.-- The Secretary shall, subject to the availability of funds under

section 5127(e)(3)-~~5128~~, make grants for training instructors to train hazmat employees under this section. -A grant under this subsection shall be made to a nonprofit hazmat employee organization that demonstrates --

- (1) expertise in conducting a training program for hazmat employees; and
- (2) the ability to reach and involve in a training program a target population of hazmat employees.

(f) RELATIONSHIP TO OTHER LAWS.--

(1) Chapter 35 of title 44 does not apply to an activity of the Secretary of Transportation under subsections (a)-(d) of this section.

(2) An action of the Secretary of Transportation under subsections (a)-(d) of this section and sections 5106, 5108(c)-(g)(1) and (h), and 5109 of this title is not an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(g) EXISTING EFFORT.-- No grant under subsection (e) shall supplant or replace existing employer-provided hazardous materials training efforts or obligations.

[Proposed Stand-Alone Provision in Section 8 of Draft Hazmat Bill --

“Notwithstanding section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), an action of the Secretary of Transportation under Chapter 51 of title 49, United States Code, does not preclude the Secretary of Labor from prescribing or enforcing standards, regulations or requirements regarding --

- (1) hazardous materials employee training, or*
- (2) the occupational safety or health protection of employees responding to a release of hazardous materials.”]*

§ 5108. Registration

(a) PERSONS REQUIRED TO FILE.--

(1) A person shall file a registration statement with the Secretary of Transportation under this subsection if the person is transporting or causing to be transported in commerce any of the following:

- (A) a highway-route-controlled quantity of radioactive material.
- (B) more than 25 kilograms of a class **A Division 1.1, 1.2, or B1.3** explosive material in a motor vehicle, rail car, or transport container.
- (C) more than one liter in each package of a hazardous material the Secretary designates as extremely toxic by inhalation.
- (D) hazardous material in a bulk packaging, container, or tank, as defined by the Secretary, if the bulk packaging, container, or tank has a capacity of at least 3,500 gallons or more than 468 cubic feet.
- (E) a shipment of at least 5,000 pounds (except in a bulk packaging) of a class of hazardous material for which placarding of a vehicle, rail car, or freight container

is required under regulations prescribed under this chapter.

(2) The Secretary of Transportation may require any of the following persons to file a registration statement with the Secretary under this subsection:

(A) a person transporting or causing to be transported hazardous material in commerce and not required to file a registration statement under paragraph (1) of this subsection.

(B) a person manufacturing, fabricating ~~designing~~, marking ~~inspecting~~, maintaining testing, reconditioning, ~~repairing~~ ~~marking~~, or ~~repairing~~ a ~~package~~ a ~~packaging~~ or container the person represents, marks, certifies, or sells ~~packaging component represented as qualified~~ for use in transporting in commerce hazardous material the Secretary designates: ~~a hazardous material in commerce.~~

(3) A person required to file a registration statement under this subsection may transport or cause to be transported, or manufacture, fabricate, mark, maintain, recondition, repair, or test a package or container for use in transporting, hazardous material, only if the person has a statement on file as required by this subsection.

(4) The Secretary may waive the filing of a registration statement, or the payment of a fee, required under this subsection, or both, for any person not domiciled in the United States who solely offers hazardous materials for transportation to the United States from a place outside the United States if the country of which such person is a domiciliary does not require persons domiciled in the United States who solely offer hazardous materials for transportation to the foreign country from places in the United States to file registration statements, or to pay fees, for making such an offer.

(b) FORM, CONTENTS, AND LIMITATION ON FILINGS.--

(1) A registration statement under subsection (a) of this section shall be in the form and contain information the Secretary of Transportation requires by regulation. The Secretary may use existing forms of the Department of Transportation and the Environmental Protection Agency to carry out this subsection. The statement shall include --

(A) the name and principal place of business of the registrant;

(B) a description of each activity the registrant carries out for which filing a statement under subsection (a) of this section is required; and

(C) each State in which the person carries out ~~any of~~ the activity ~~activities~~.

(2) A person carrying out more than one activity, or an activity at more than one location, for which filing is required only has to file one registration statement to comply with subsection (a) of this section.

(c) ~~FILING DEADLINES AND AMENDMENTS~~ **SCHEDULE**.--

~~(1) Each person required to file a registration statement under subsection (a) of this section must shall file the first that statement not later than March 31, 1992 in accordance with regulations issued by the Secretary.~~

~~(2) The Secretary shall decide by regulation when and under what circumstances a registration statement must be amended and the procedures to follow in amending the statement.~~

(d) SIMPLIFYING THE REGISTRATION PROCESS.-- The Secretary of Transportation may take necessary action to simplify the registration process under subsections (a)-(c) of this section

and to minimize the number of applications, documents, and other information a person is required to file under this chapter and other laws of the United States.

(e) COOPERATION WITH ADMINISTRATOR.-- The Administrator of the Environmental Protection Agency shall assist the Secretary of Transportation in carrying out subsections (a)-(g)(1) and (h) of this section by providing the Secretary with information the Secretary requests to carry out the objectives of subsections (a)-(g)(1) and (h).

(f) AVAILABILITY OF STATEMENTS.-- The Secretary of Transportation shall make a registration statement filed under subsection (a) of this section available for inspection by any person for a fee the Secretary establishes. However, this subsection does not require the release of information described in section 552(b) of title 5 or otherwise protected by law from disclosure to the public.

(g) FEES.--

(1) The Secretary of Transportation may ~~may~~ shall establish, impose, and collect from a person required to file a registration statement under subsection (a) of this section a fee necessary to pay for the costs of the Secretary in processing the statement.

(2) (A) In addition to a fee established under paragraph (1) of this subsection, the Secretary of Transportation shall establish and impose by regulation and collect an annual fee. Subject to subparagraph (B) of this paragraph, the fee shall be at least \$250 but not more than \$5,000 from each person required to file a registration statement under this section. The Secretary shall determine the amount of the fee under this paragraph on at least one of the following:

(i) gross revenue from transporting hazardous material.

(ii) the type of hazardous material transported or caused to be transported.

(iii) the amount of hazardous material transported or caused to be transported.

(iv) the number of shipments of hazardous material.

(v) the number of activities that the person carries out for which filing a registration statement is required under this section.

(vi) the threat to property, individuals, and the environment from an accident or incident involving the hazardous material transported or caused to be transported.

(vii) the percentage of gross revenue derived from transporting hazardous material.

(viii) the amount to be made available to carry out sections 5108(g)(2), 5115, and 5116 of this title.

(ix) other factors the Secretary considers appropriate.

(B) The Secretary of Transportation shall adjust the amount being collected under this paragraph to reflect any unexpended balance in the account established under section 5116(i) of this title. However, the Secretary is not required to refund any fee collected under this paragraph.

(C) The Secretary of Transportation shall transfer to the Secretary of the Treasury amounts the Secretary of Transportation collects under this paragraph for deposit in the account the Secretary of the Treasury

establishes under section 5116(i) of this title.

(h) MAINTAINING PROOF OF FILING AND PAYMENT OF FEES.-- The Secretary of Transportation may prescribe regulations requiring a person required to file a registration statement under subsection (a) of this section to maintain proof of the filing and payment of fees imposed under subsection (g) of this section.

(i) RELATIONSHIP TO OTHER LAWS.--

(1) Chapter 35 of title 44 does not apply to an activity of the Secretary of Transportation under subsections (a)-(g)(1) and (h) of this section.

(2) (A) This section does not apply to an employee of a hazmat employer.

(B) Subsections (a)-(h) of this section do not apply to a department, agency, or instrumentality of the United States Government, an authority of a State, **Indian tribe**, or political subdivision of a State, or an employee of a department, agency, instrumentality, or authority carrying out official duties.

§ 5109. Motor carrier safety permits **[Reserved]**

~~(a) Requirement. -- A motor carrier may transport or cause to be transported by motor vehicle in commerce hazardous material only if the carrier holds a safety permit the Secretary of Transportation issues under this section authorizing the transportation and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary shall issue a permit if the Secretary finds the carrier is fit, willing, and able--~~

~~(1) to provide the transportation to be authorized by the permit;~~

~~(2) to comply with this chapter and regulations the Secretary prescribes to carry out this chapter; and~~

~~(3) to comply with applicable United States motor carrier safety laws and regulations and applicable minimum financial responsibility laws and regulations.~~

~~(b) Applicable Transportation.--The Secretary shall prescribe by regulation the hazardous material and amounts of hazardous material to which this section applies. However, this section shall apply at least to transportation by a motor carrier, in amounts the Secretary establishes, of--~~

~~(1) a class A or B explosive;~~

~~(2) liquefied natural gas;~~

~~(3) hazardous material the Secretary designates as extremely toxic by inhalation; and~~

~~(4) a highway-route-controlled quantity of radioactive material, as defined by the Secretary.~~

~~(c) Applications.--A motor carrier shall file an application with the Secretary for a safety permit to provide transportation under this section. The Secretary may approve any part of the application or deny the application. The application shall be under oath and contain information the Secretary requires by regulation.~~

~~(d) Amendments, Suspensions, and Revocations. -- (1) After notice and an opportunity for a hearing, the Secretary may amend, suspend, or revoke a safety permit, as provided by procedures prescribed under subsection (e) of this section, when the Secretary decides the motor carrier is not complying with a requirement of this chapter, a regulation prescribed under this chapter, or an applicable United States motor carrier safety law or regulation or minimum financial responsibility law or regulation.~~

- (2) If the Secretary decides an imminent hazard exists, the Secretary may amend, suspend, or revoke a permit before scheduling a hearing.
- (e) Procedures. -- The Secretary shall prescribe by regulation --(1) application procedures, including form, content, and fees necessary to recover the complete cost of carrying out this section;
- (2) standards for deciding the duration, terms, and limitations of a safety permit;
- (3) procedures to amend, suspend, or revoke a permit; and
- (4) other procedures the Secretary considers appropriate to carry out this section.
- (f) Shipper Responsibility. -- A person offering hazardous material for motor vehicle transportation in commerce may offer the material to a motor carrier only if the carrier has a safety permit issued under this section authorizing the transportation.
- (g) Conditions. -- A motor carrier may provide transportation under a safety permit issued under this section only if the carrier complies with conditions the Secretary finds are required to protect public safety.
- (h) Regulations. -- The Secretary shall prescribe regulations necessary to carry out this section not later than November 16, 1991.

§ 5110. Shipping papers and disclosure

- (a) PROVIDING SHIPPING PAPERS.-- Each person offering for transportation in commerce hazardous material to which the shipping paper requirements of the Secretary of Transportation apply shall provide to the carrier providing the transportation a shipping paper that makes the disclosures the Secretary prescribes under subsection (b) of this section **by regulation**.
- (b) Considerations and Requirements:
- In carrying out subsection (a) of this section, the Secretary shall consider and may require --
- (1) a description of the hazardous material, including the proper shipping name;
- (2) the hazard class of the hazardous material;
- (3) the identification number (UN/NA) of the hazardous material;
- (4) immediate first action emergency response information or a way for appropriate reference to the information (that must be available immediately); and
- (5) a telephone number for obtaining more specific handling and mitigation information about the hazardous material at any time during which the material is transported.
- (c) KEEPING SHIPPING PAPERS ON THE VEHICLE.--
- (1) A motor carrier, and the person offering the hazardous material for transportation if a private motor carrier, shall keep the shipping paper on the vehicle transporting the material.
- (2) Except as provided in paragraph (1) of this subsection, the shipping paper shall be kept in a location the Secretary specifies in a motor vehicle, train, vessel, aircraft, or facility until --
- (A) the hazardous material no longer is in transportation; or
- (B) the documents are made available to a representative of a department, agency, or instrumentality of the United States Government or a State or local authority

responding to an accident or incident involving the motor vehicle, train, vessel, aircraft, or facility.

(dc) DISCLOSURE TO EMERGENCY RESPONSE AUTHORITIES.-- When an incident involving hazardous material being transported in commerce occurs, the person transporting the material, immediately on request of appropriate emergency response authorities, shall disclose to the authorities information about the material.

(ed) RETENTION OF PAPERS.-- ~~After the hazardous material to which a shipping paper provided to a carrier under subsection (a) applies is no longer in transportation, the~~ **The** person **that** who provided the shipping paper and the carrier required to maintain **keep** it under subsection (a) **this section** shall retain the paper, or **an** electronic image thereof **of it**, for a period of **† 3 years after the shipping paper was provided to the carrier**, to be accessible through their respective principal places of business. Such person and carrier shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations.

§ 5111. Rail tank cars **[Reserved]**

~~A rail tank car built before January 1, 1971, may be used to transport hazardous material in commerce only if the air brake equipment support attachments of the car comply with the standards for attachments contained in sections 179.100-16 and 179.200-19 of title 49, Code of Federal Regulations, in effect on November 16, 1990.~~

§ 5112. Highway routing of hazardous material

(a) APPLICATION.--

(1) This section applies to a motor vehicle only if the vehicle is transporting hazardous material in commerce for which placarding of the vehicle is required under regulations prescribed under this chapter. However, the Secretary of Transportation by regulation may extend application of this section or a standard prescribed under subsection (b) of this section to --

(A) any use of a vehicle under this paragraph to transport any hazardous material in commerce; and

(B) any motor vehicle used to transport hazardous material in commerce.

(2) Except as provided by subsection (d) of this section and section 5125(c) of this chapter, each State and Indian tribe may establish, maintain, and enforce --

(A) designations of specific highway routes over which hazardous material may and may not be transported by motor vehicle; and

(B) limitations and requirements related to highway routing.

(b) STANDARDS FOR STATES AND INDIAN TRIBES.--

(1) The Secretary, in consultation with the States, shall prescribe by regulation standards for States and Indian tribes to use in carrying out subsection (a) of this section. The standards shall include --

(A) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall enhance public safety in the area subject to the

jurisdiction of the State or tribe and in areas of the United States not subject to the jurisdiction of the State or tribe and directly affected by the designation, limitation, or requirement;

(B) minimum procedural requirements to ensure public participation when the State or Indian tribe is establishing a highway routing designation, limitation, or requirement;

(C) a requirement that, in establishing a highway routing designation, limitation, or requirement, a State or Indian tribe consult with appropriate State, local, and tribal officials having jurisdiction over areas of the United States not subject to the jurisdiction of that State or tribe establishing the designation, limitation, or requirement and with affected industries;

(D) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall ensure through highway routing for the transportation of hazardous material between adjacent areas;

(E) a requirement that a highway routing designation, limitation, or requirement of one State or Indian tribe affecting the transportation of hazardous material in another State or tribe may be established, maintained, and enforced by the State or tribe establishing the designation, limitation, or requirement only if--

(i) the designation, limitation, or requirement is agreed to by the other State or tribe within a reasonable period or is approved by the Secretary under subsection (d) of this section; and

(ii) the designation, limitation, or requirement is not an unreasonable burden on commerce;

(F) a requirement that establishing a highway routing designation, limitation, or requirement of a State or Indian tribe be completed in a timely way;

(G) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe provide reasonable routes for motor vehicles transporting hazardous material to reach terminals, facilities for food, fuel, repairs, and rest, and places to load and unload hazardous material;

(H) a requirement that a State be responsible--

(i) for ensuring that political subdivisions of the State comply with standards prescribed under this subsection in establishing, maintaining, and enforcing a highway routing designation, limitation, or requirement; and

(ii) for resolving a dispute between political subdivisions; and

(I) a requirement that, in carrying out subsection (a) of this section, a State or Indian tribe shall consider --

(i) population densities;

(ii) the types of highways;

(iii) the types and amounts of hazardous material;

(iv) emergency response capabilities;

(v) the results of consulting with affected persons;

(vi) exposure and other risk factors;

(vii) terrain considerations;

- (viii) the continuity of routes;
- (ix) alternative routes;
- (x) the effects on commerce;
- (xi) delays in transportation; and
- (xii) other factors the Secretary considers appropriate.

(2) The Secretary may not assign a specific weight that a State or Indian tribe shall use when considering the factors under paragraph (1)(I) of this subsection.

(c) LIST OF ROUTE DESIGNATIONS.-- In coordination with the States, the Secretary shall update and publish periodically a list of currently effective hazardous material highway route designations.

(d) DISPUTE RESOLUTION.--

(1) The Secretary shall prescribe regulations for resolving a dispute related to through highway routing or to an agreement with a proposed highway route designation, limitation, or requirement between or among States, political subdivisions of different States, or Indian tribes.

(2) A State or Indian tribe involved in a dispute under this subsection may petition the Secretary to resolve the dispute. The Secretary shall resolve the dispute not later than one year after receiving the petition. The resolution shall provide the greatest level of highway safety without being an unreasonable burden on commerce and shall ensure compliance with standards prescribed under subsection (b) of this section.

(3) (A) After a petition is filed under this subsection, a civil action about the subject matter of the dispute may be brought in a court only after the earlier of--

- (i) the day the Secretary issues a final decision; or
- (ii) the last day of the one-year period beginning on the day the Secretary receives the petition.

(B) A State or Indian tribe adversely affected by a decision of the Secretary under this subsection may bring a civil action for judicial review of the decision in an appropriate district court of the United States not later than 89 days after the day the decision becomes final.

(e) RELATIONSHIP TO OTHER LAWS.-- This section and regulations prescribed under this section do not affect sections 31111 and 31113 of this title or section 127 of title 23.

(f) EXISTING RADIOACTIVE MATERIAL ROUTING REGULATIONS.-- The Secretary is not required to amend or again prescribe regulations related to highway routing designations over which radioactive material may and may not be transported by motor vehicles, and limitations and requirements related to the routing, that were in effect on November 16, 1990.

§ 5113. Unsatisfactory safety rating

See A violation of section 31144(c)(3) of this title shall be considered a violation of this chapter and shall be subject to the penalties in sections 5123 and 5124 of this chapter.

[Proposed Amendment to 49 U.S.C. § 31144(c) in Section 13 of Draft Hazmat Bill]

§ 31144. *Safety fitness of owners and operators*

* * * * *

(c) **PROHIBITED TRANSPORTATION.**--

(1) **IN GENERAL.** -- Except as provided in sections **section 521(b)(5)(A) and 5113** and this subsection, an owner or operator who the Secretary determines is not fit may not operate commercial motor vehicles in interstate commerce beginning on the 61st day after the date of such fitness determination and until the Secretary determines such owner or operator is fit.

(2) **Owners or operators transporting passengers.**-- With regard to owners or operators of commercial motor vehicles designed or used to transport passengers, an owner or operator who the Secretary determines is not fit may not operate in interstate commerce beginning on the 46th day after the date of such fitness determination and until the Secretary determines such owner or operator is fit.

(3) **Owners or operators transporting hazardous material.**-- With regard to owners or operators of commercial motor vehicles designed or used to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under chapter 51, an owner or operator who the Secretary determines is not fit may not operate in interstate commerce beginning on the 46th day after the date of such fitness determination and until the Secretary determines such owner or operator is fit. **A violation of this paragraph by an owner or operator transporting hazardous material shall be considered a violation of chapter 51 of this title, and shall be subject to the penalties in sections 5123 and 5124 of this chapter.**

(4) **Secretary's discretion.**-- Except for owners or operators described in paragraphs (2) and (3), the Secretary may allow an owner or operator who is not fit to continue operating for an additional 60 days after the 61st day after the date of the Secretary's fitness determination, if the Secretary determines that such owner or operator is making a good faith effort to become fit.

* * * * *

(e) **(f)** *Safety reviews of new operators.*]

§ 5114. Air transportation of ionizing radiation material

(a) **TRANSPORTING IN AIR COMMERCE.**-- Material that emits ionizing radiation spontaneously may be transported on a passenger-carrying aircraft in air commerce (as defined in section 40102(a) of this title) only if the material is intended for a use in, or incident to, research or medical diagnosis or treatment and does not present an unreasonable hazard to health and safety when being prepared for, and during, transportation.

(b) **PROCEDURES.**-- The Secretary of Transportation shall prescribe procedures for monitoring and enforcing regulations prescribed under this section.

(c) **NONAPPLICATION.**-- This section does not apply to material the Secretary decides does not pose a significant hazard to health or safety when transported because of its low order of radioactivity.

§ 5115. Training curriculum for the public sector

(a) Development and Updating: **GENERAL.**-- Not later than November 16, 1992, in **In** coordination with the Director of the Federal Emergency Management Agency, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, Secretaries of Labor, Energy, and Health and Human Services, and Director of the National Institute of Environmental Health Sciences, and using the existing coordinating mechanisms of the national response team **National Response Team** and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary of Transportation shall develop and update periodically a **maintain a current** curriculum consisting of a list of courses necessary to train public sector emergency response and preparedness teams. Only in developing the curriculum, the Secretary of Transportation shall consult with regional response teams established under the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), representatives of commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001), persons (including governmental entities) that provide training for responding to accidents and incidents involving the transportation of hazardous material, and representatives of persons that respond to those accidents and incidents.

(b) **REQUIREMENTS.**-- The curriculum developed **maintained** under subsection (a) of this section --

(1) shall include --

(A) a recommended course of study to train public sector employees to respond to an accident or incident involving the transportation of hazardous material and to plan for those responses;

(B) recommended basic courses and minimum number of hours of instruction necessary for public sector employees to be able to respond safely and efficiently to an accident or incident involving the transportation of hazardous material and to plan those responses; and

(C) appropriate emergency response training and planning programs for public sector employees developed under other United States Government grant programs, including those developed with grants made under section 126 (g) of the Superfund Amendments **with Federal financial assistance**; and Reauthorization Act of 1986 (42 US C 9660a); and

(2) may include recommendations on material appropriate for use in a recommended basic course described in clause (1)(B) of this subsection.

(c) **TRAINING ON COMPLYING WITH LEGAL REQUIREMENTS.**-- A recommended basic course described in subsection (b)(1)(B) of this section shall provide the training necessary for public sector employees to comply with--

(1) regulations related to hazardous waste operations and emergency response contained in part 1910 of title 29, Code of Federal Regulations, prescribed by the Secretary of Labor;

(2) regulations related to worker protection standards for hazardous waste operations

contained in part 311 of title 40, Code of Federal Regulations, prescribed by the Administrator; and

(3) standards related to emergency response training prescribed by the National Fire Protection Association and such other voluntary consensus standard-setting organizations as the Secretary deems appropriate.

(d) DISTRIBUTION AND PUBLICATION.-- With the national response team--

(1) the Director of the Federal Emergency Management Agency shall distribute the curriculum and any updates to the curriculum to the regional response teams and all committees and commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001); National Response Team, (2) the Secretary of Transportation may publish and distribute a list of courses programs that uses a course developed under this section and of programs using any of those courses. for training public sector employees to respond to an accident or incident involving the transportation of hazardous material.

§ 5116. Planning and training grants, monitoring, and review; emergency preparedness fund

(a) PLANNING GRANTS.--

(1) The Secretary of Transportation shall make grants to States and Indian tribes--

(A) to develop, improve, and carry out emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.), including ascertaining flow patterns of hazardous material on lands under the jurisdiction of a State or Indian tribe, and between lands under the jurisdiction of a State or Indian tribe and lands of another State or Indian tribe; and

(B) to decide on the need for a regional hazardous material emergency response team.

(2) The Secretary of Transportation may make a grant to a State or Indian tribe under paragraph (1) of this subsection in a fiscal year only if --

(A) the State or Indian tribe certifies that the total amount the State or Indian tribe expends (except amounts of the United States Government) to develop, improve, and carry out emergency plans under the Act will at least equal the average level of expenditure for the last 2 fiscal years; and

(B) the State agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year to local emergency planning committees established under section 301(c) of the Act (42 U.S.C. 11001(c)) to develop emergency plans under the Act.

(3) A State or Indian tribe receiving a grant under this subsection shall ensure that planning under the grant is coordinated with emergency planning conducted by adjacent States and Indian tribes.

(b) TRAINING GRANTS.--

(1) The Secretary of Transportation shall make grants to States and Indian tribes to train public sector employees to respond to accidents and incidents involving hazardous

(2) The Secretary of Transportation may make a grant under paragraph (1) of this subsection in a fiscal year --

(A) to a State or Indian tribe only if the State or tribe certifies that the total amount the State or tribe expends (except amounts of the Government) to train public sector employees to respond to an accident or incident involving hazardous material will at least equal the average level of expenditure for the last 2 fiscal years;

(B) to a State or Indian tribe only if the State or tribe makes an agreement with the Secretary that the State or tribe will use in that fiscal year, for training public sector employees to respond to an accident or incident involving hazardous material --

- (i) a course developed or identified under section 5115 of this title; or
- (ii) another course the Secretary decides is consistent with the objectives of this section; and

(C) to a State only if the State agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year for training public sector employees a political subdivision of the State employs or uses.

(3) A grant under this subsection may be used --

(A) to pay --

- (i) the tuition costs of public sector employees being trained;
- (ii) travel expenses of those employees to and from the training facility;
- (iii) room and board of those employees when at the training facility; and
- (iv) travel expenses of individuals providing the training;

(B) by the State, political subdivision, or Indian tribe to provide the training; and

(C) to make an agreement the Secretary of Transportation approves authorizing a person (including an authority of a State or political subdivision of a State or Indian tribe) to provide the training --

- (i) if the agreement allows the Secretary and the State or tribe to conduct random examinations, inspections, and audits of the training without prior notice; and
- (ii) if the State or tribe conducts at least one on-site observation of the training each year.

(4) The Secretary of Transportation shall allocate amounts made available for grants under this subsection for a fiscal year among eligible States and Indian tribes based on the needs of the States and tribes for emergency response training. In making a decision about those needs, the Secretary shall consider --

(A) the number of hazardous material facilities in the State or on land under the jurisdiction of the tribe;

(B) the types and amounts of hazardous material transported in the State or on that land;

(C) whether the State or tribe imposes and collects a fee on transporting hazardous material;

(D) whether the fee is used only to carry out a purpose related to transporting hazardous material; and

(E) other factors the Secretary decides are appropriate to carry out this subsection.

(c) COMPLIANCE WITH CERTAIN LAW.-- The Secretary of Transportation may make a grant to a State under this section in a fiscal year only if the State certifies that the State complies with sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001, 11003).

(d) APPLICATIONS.-- A State or Indian tribe interested in receiving a grant under this section shall submit an application to the Secretary of Transportation. The application must be submitted at the time, and contain information, the Secretary requires by regulation to carry out the objectives of this section.

(e) GOVERNMENT'S SHARE OF COSTS.-- A grant under this section is for 80 percent of the cost the State or Indian tribe incurs in the fiscal year to carry out the activity for which the grant is made. Amounts of **received by** the State or tribe under subsections (a)(2)(A1) and (b)(2)(A1) of this section are not part of the non-Government share under this subsection.

(f) MONITORING AND TECHNICAL ASSISTANCE.-- ~~In coordination with the Secretaries~~ **The Secretary** of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the National Institute of Environmental Health Sciences, the Director of the Federal Emergency Management Agency shall monitor public-sector emergency response planning and training for an accident or incident involving hazardous material. Considering the results of the monitoring, the Secretaries, Administrator, and Directors each **Secretary** shall provide technical assistance to a State, political subdivision of a State, or Indian tribe for carrying out emergency response training and planning for an accident or incident involving hazardous material and shall coordinate the assistance using the existing coordinating mechanisms of the national response team **National Response Team** and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee.

(g) DELEGATION OF AUTHORITY.-- To minimize administrative costs and to coordinate ~~Government grant~~ **Federal financial assistance** programs for emergency response training and planning, the Secretary of Transportation may delegate to the Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, and Secretaries of Labor and Energy any of the following:

- (1) authority to receive applications for grants under this section.
- (2) authority to review applications for technical compliance with this section.
- (3) authority to review applications to recommend approval or disapproval.
- (4) any other ministerial duty associated with grants under this section.

(h) MINIMIZING DUPLICATION OF EFFORT AND EXPENSES.-- The Secretaries of Transportation, Labor, and Energy, Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, and Administrator of the Environmental Protection Agency shall review periodically, with the head of each department, agency, or instrumentality of the Government, all emergency

response and preparedness training programs of that department, agency, or instrumentality to minimize duplication of effort and expense of the department, agency, or instrumentality in carrying out the programs and shall take necessary action to minimize duplication.

(i) ~~ANNUAL REGISTRATION FEE ACCOUNT AND ITS USES~~ **EMERGENCY PREPAREDNESS FUND**.-- The Secretary of the Treasury shall establish an **Emergency Preparedness Fund** account in the Treasury into which the Secretary of the Treasury shall deposit amounts the Secretary of Transportation collects under section 5108(g)(2)(A) of this title and transfers to the Secretary of the Treasury under section 5108(g)(2)(C) of this title. Without further appropriation, amounts in the account are available --

- (1) to make grants under this section;
 - (2) to monitor and provide technical assistance under subsection (f) of this section;
- and
- (3) to **publish and distribute the Emergency Response Guidebook; and**
 - (4) to pay administrative costs of carrying out this section and sections 5108(g)(2), and 5115 of this title, except that not more than 10 percent of the amounts made available from the account in a fiscal year may be used to pay **to carry out these sections may be used to pay those** costs.

(j) **SUPPLEMENTAL TRAINING GRANTS**.--

(1) In order to further the purposes of subsection (b), the Secretary shall, subject to the availability of funds, make grants to national nonprofit employee organizations engaged solely in fighting fires for the purpose of training instructors to conduct hazardous materials response training programs for individuals with statutory responsibility to respond to hazardous materials accidents and incidents.

(2) For the purposes of this subsection the Secretary, after consultation with interested organizations, shall --

- (A) identify regions or locations in which fire departments or other organizations which provide emergency response to hazardous materials transportation accidents and incidents are in need of hazardous materials training; and
- (B) prioritize such needs and develop a means for identifying additional specific training needs.

(3) Funds granted to an organization under this subsection shall only be used --

- (A) to train instructors to conduct hazardous materials response training programs;
- (B) to purchase training equipment used exclusively to train instructors to conduct such training programs; and
- (C) to disseminate such information and materials as are necessary for the conduct of such training programs.

(4) The Secretary may only make a grant to an organization under this subsection in a fiscal year if the organization enters into an agreement with the Secretary to train instructors to conduct hazardous materials response training programs in such fiscal year that will use --

- (A) a course or courses developed or identified under section 5115 of this chapter;
- or
- (B) other courses which the Secretary determines are consistent with the

objectives of this subsection; for training individuals with statutory responsibility to respond to accidents and incidents involving hazardous materials. Such agreement also shall provide that training courses shall be open to all such individuals on a nondiscriminatory basis.

(5) The Secretary may impose such additional terms and conditions on grants to be made under this subsection as the Secretary determines are necessary to protect the interests of the United States and to carry out the objectives of this subsection.

(k) Reports. -- Not later than September 30, 1997, the Secretary shall submit to Congress a report on the allocation and uses of training grants authorized under subsection (b) for fiscal year 1993 through fiscal year 1996 and grants authorized under subsection (j) and section 5107 for fiscal years 1995 and 1996. Such report shall identify the ultimate recipients of training grants and include a detailed accounting of all grant expenditures by grant recipients, the number of persons trained under the grant programs, and an evaluation of the efficacy of training programs carried out.

§ 5117. Exemptions **Special permits** and exclusions

(a) AUTHORITY TO EXEMPT.--

(1) As provided under procedures prescribed by regulation, the Secretary of Transportation may issue, **modify or terminate a special permit** an exemption **authorizing variances** from this chapter or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title to a person transporting, or causing to be transported, hazardous material **performing a function regulated by the Secretary under section 5103(b)(1) of this title** in a way that achieves a safety level--

(A) at least equal to the safety level required under this chapter; or

(B) consistent with the public interest and this chapter, if a required safety level does not exist.

(2) An exemption **A special permit** under this subsection is effective for not more than 24 years and may be renewed on application to the Secretary.

(b) APPLICATIONS.-- When applying for an exemption **a special permit** or renewal of an exemption **a special permit** under this section, the person must provide a safety analysis prescribed by the Secretary that justifies the exemption **special permit**. The Secretary shall publish in the Federal Register notice that an application for an exemption **a special permit** has been filed and shall give the public an opportunity to inspect the safety analysis and comment on the application. This subsection does not require the release of information protected by law from public disclosure.

(c) APPLICATIONS TO BE DEALT WITH PROMPTLY.-- The Secretary shall issue or renew the exemption **special permit** for which an application was filed or deny such issuance or renewal within 180 days after the first day of the month following the date of the filing of such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary's decision on the exemption **special permit** is delayed, along with an estimate of the additional time necessary before the decision is made.

(d) EXCLUSIONS.-- (1) The Secretary shall exclude, in any part, from this chapter and

regulations prescribed under this chapter --

- (A) a public vessel (as defined in section 2101 of title 46);
- (B) a vessel exempted under section 3702 of title 46 from chapter 37 of title 46;
- and
- (C) a vessel to the extent it is regulated under the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.).

(2) This chapter and regulations prescribed under this chapter do not prohibit --

- (A) or regulate transportation of a firearm (as defined in section 232 of title 18), or ammunition for a firearm, by an individual for personal use; or
- (B) transportation of a firearm or ammunition in commerce.

(e) LIMITATION ON AUTHORITY.-- Unless the Secretary decides that an emergency exists, an exemption a special permit or renewal granted under this section is the only way a person subject to this chapter may be exempt from this chapter.

§ 5118. Inspectors [Reserved]

~~(a) General Requirement. -- The Secretary of Transportation shall maintain the employment of 30 hazardous material safety inspectors more than the total number of safety inspectors authorized for the fiscal year that ended September 30, 1990, for the Federal Railroad Administration, the Federal Highway Administration, and the Research and Special Programs Administration.~~

~~(b) Allocation To Promote Safety in Transporting Radioactive Material. -- (1) The Secretary shall ensure that 10 of the 30 additional inspectors focus on promoting safety in transporting radioactive material, as defined by the Secretary, including inspecting--~~

~~(A) at the place of origin, shipments of high-level radioactive waste or nuclear spent material -- (as those terms are defined in section 5105(a) of this title); and~~

~~(B) to the maximum extent practicable shipments of radioactive material that are not high-level radioactive waste or nuclear spent material.~~

~~(2) In carrying out their duties, those 10 additional inspectors shall cooperate to the greatest extent possible with safety inspectors of the Nuclear Regulatory Commission and appropriate State and local government officials.~~

~~(3) Those 10 additional inspectors shall be allocated as follows:~~

~~(A) one to the Research and Special Programs Administration.~~

~~(B) 3 to the Federal Railroad Administration.~~

~~(C) 3 to the Federal Highway Administration.~~

~~(D) the other 3 among the administrations referred to in clauses (A)-(C) of this paragraph as the Secretary decides.~~

~~(c) Allocation of Other Inspectors. -- The Secretary shall allocate, as the Secretary decides, the 20 additional inspectors authorized under this section and not allocated under subsection (b) of this section among the administrations referred to in subsection (b)(3)(A)-(C) of this section.~~

§ 5119. Uniform forms and procedures

(a) ~~WORKING GROUP REGULATIONS.--~~

~~(1) The Secretary of Transportation shall **may prescribe regulations to establish uniform forms and** working group of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, and **procedures for a State --**~~

~~(i) National Conference of **to register and issue permits to persons that transport or cause to be transported hazardous material by motor vehicle in the** Legislatures State; and~~

~~(ii) **to allow the transportation of hazardous material in the State.**~~

~~The purposes of the working group are --~~

~~(1) to establish uniform forms and procedures for a State~~

~~(A) to register persons that transport or cause to be transported hazardous material by motor vehicle in the State; and~~

~~(B) to allow the transportation of hazardous material in the State; and~~

~~(2) to decide whether to **A regulation prescribed under this section may not define or** limit the filing **amount** of any State registration and permit forms and collection of filing fees to the State in which the person resides or has its principal place of business **a fee a State may impose or collect.**~~

(b) ~~CONSULTATION AND REPORTING EFFECTIVE DATE.--~~ **A regulation prescribed under this section takes effect one year after it is prescribed.** ~~The working group --~~

~~(1) shall consult with persons subject to registration and permit requirements described in subsection (a) of this section; and~~

~~(2) not later than November 16, 1993, shall submit to the Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Public Works and Transportation of the House of Representatives a final report that contains --~~

~~(A) a detailed statement of its findings and conclusions; and~~

~~(B) its joint recommendations on the matters referred to in subsection (a) of this section.~~

(c) ~~REGULATIONS ON RECOMMENDATIONS. --~~

~~(1) The Secretary shall prescribe regulations to carry out the recommendations contained in the report submitted under subsection (b) of this section with which the Secretary agrees. The regulations shall be prescribed by the later of the last day of the 3-year period beginning on the date the working group submitted its report or the last day of the 90-day period beginning on the date on which at least 26 States adopt all of the recommendations of the report. A regulation prescribed under this subsection may not define or limit the amount of a fee a State may impose or collect.~~

~~(2) A regulation prescribed under this subsection takes effect one year after it is prescribed. The Secretary may extend the one-year period for an additional year for good cause. After a regulation is effective, a State may establish, maintain, or enforce a requirement related to the same subject matter only if the requirement is the same as the regulation.~~

(3) In consultation with the working group, the Secretary shall develop a procedure to eliminate

differences in how States carry out a regulation prescribed under this subsection

(c) **UNIFORMITY.**-- The Secretary shall develop a procedure to eliminate differences in how States carry out a regulation prescribed under this section

(d) **RELATIONSHIP TO OTHER LAWS.** -- The Federal Advisory Committee Act (5. App. U.S.C.) does not apply to the working group.

(d) **INTERIM STATE PROGRAMS.**-- Pending promulgation of regulations under this section, States may participate in a program of uniform forms and procedures recommended by the Alliance for Uniform Hazmat Transportation Procedures.

§ 5120. International uniformity of standards and requirements

(a) **PARTICIPATION IN INTERNATIONAL FORUMS.**-- Subject to guidance and direction from the Secretary of State, the Secretary of Transportation shall participate in international forums that establish or recommend mandatory standards and requirements for transporting hazardous material in international commerce.

(b) **CONSULTATION.**-- The Secretary of Transportation may consult with interested authorities to ensure that, to the extent practicable, regulations the Secretary prescribes under sections 5103(b), 5104, 5110, and 5112 of this chapter are consistent with standards related to transporting hazardous material that international authorities adopt.

(c) **DIFFERENCES WITH INTERNATIONAL STANDARDS AND REQUIREMENTS.**-- This section --

(1) does not require the Secretary of Transportation to prescribe a standard identical to a standard adopted by an international authority if the Secretary decides the standard is unnecessary or unsafe; and

(2) does not prohibit the Secretary from prescribing a safety requirement more stringent than a requirement included in a standard adopted by an international authority if the Secretary decides the requirement is necessary in the public interest.

§ 5121. Administrative

(a) **GENERAL AUTHORITY.**-- To carry out this chapter, the Secretary of Transportation may investigate, **conduct tests**, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. ~~After notice and an opportunity for a hearing~~ **Except as provided in subsections (c) and (d) of this section**, the Secretary may issue **shall provide notice and an opportunity for a hearing prior to issuing** an order requiring **directing** compliance with this chapter or a regulation, **order, special permit, or approval** prescribed **issued** under this chapter.

(b) **RECORDS, REPORTS, PROPERTY, AND INFORMATION.**-- A person subject to this chapter shall --

(1) maintain records, make reports, and provide **property and information** that the Secretary by regulation or order requires; and

(2) make the records, reports, **property**, and information available **for inspection** when the Secretary requests **undertakes an investigation**.

(c) ~~INSPECTION~~ **INSPECTIONS AND INVESTIGATIONS.--**

(1) ~~The Secretary may authorize an A designated officer, or employee, or agent to of the Secretary may --~~

(A) inspect and investigate, at a reasonable time and in a reasonable way, records and property related to a function described in section 5103(b)(1) of this chapter; =

~~(A) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, testing, or distributing a packaging or a container for use by a person in transporting hazardous material in commerce;, or~~

~~(B) the transportation of hazardous material in commerce.~~

(B) except for the packaging immediately adjacent to its hazardous material contents, gain access to, open, and examine a package offered for, or in, transportation when the officer or employee has an objectively reasonable and articulable belief that the package may contain a hazardous material;

(C) remove from transportation a package or related packages in a shipment offered for or in transportation, and for which such officer or employee has an objectively reasonable and articulable belief that the package or packages may pose an imminent hazard, and for which the officer or employee contemporaneously documents that belief in accordance with procedures adopted under subsection (e) of this section;

(D) gather information from the offeror, carrier, packaging manufacturer or retester, or other person responsible for the package or packages, to ascertain the nature and hazards of the contents of the package or packages;

(E) as necessary, under terms and conditions specified by the Secretary, order the offeror, carrier, packaging manufacturer or retester, or other person responsible for the package or packages to have the package or packages transported to, opened and the contents examined and analyzed at a facility appropriate for the conduct of this activity; and

(F) when safety might otherwise be compromised, authorize properly qualified personnel to assist in the activities conducted under this subsection.

(2) ~~An officer, employee, or agent~~ **employee acting under this subsection shall display proper credentials when requested.**

(3) For instances when, as a result of the inspection or investigation, an imminent hazard is not found to exist, the Secretary shall develop procedures to assist in the safe resumption of transportation of the package or transport unit.

(d) **EMERGENCY ORDERS.--**

(1) If, upon inspection, investigation, testing, or research, the Secretary determines that either a violation of a provision of this chapter or a regulation issued under this chapter, or an unsafe condition or practice, constitutes or is causing an imminent hazard, the Secretary may issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or the opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

(2) The Secretary's action under paragraph (1) of this subsection shall be in a written

order describing the violation, condition or practice that is causing the imminent hazard, and stating the restrictions, prohibitions, recalls, or out-of-service orders issued or imposed. The order also shall describe the standards and procedures for obtaining relief from the emergency order.

(3) After taking action under paragraph (1) of this subsection, the Secretary shall provide an opportunity for review of that action under section 554 of title 5, if a petition for review is filed within 20 days after issuance of the order.

(4) If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the petition was filed, the action will cease to be effective at the end of that period unless the Secretary determines in writing that the emergency situation still exists.

(5) For purposes of this subsection, 'out-of-service order' means a mandate that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, portable tank, or other package not be moved until specified conditions have been met.

(e) REGULATIONS.-- The Secretary shall issue regulations in accordance with section 553 of title 5, including an opportunity for informal oral presentation, to implement the authority in subsections (c) and (d) of this section.

(e) REPORT. -- The Secretary shall, once every 2 years, prepare and submit to the President for transmittal to the Congress a comprehensive report on the transportation of hazardous materials during the preceding 2 calendar years. -- The report shall include --

- (1) a statistical compilation of accidents and casualties related to the transportation of hazardous material;
- (2) a list and summary of applicable Government regulations, criteria, orders, and exemptions;
- (3) a summary of the basis for each exemption;
- (4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with regulations;
- (5) a summary of outstanding problems in carrying out this chapter in order of priority; and
- (6) recommendations for appropriate legislation.

(df) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.--

(1) The Secretary shall --

- (A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk related to the transportation of hazardous material and material alleged to be hazardous;
- (B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, other interested individuals, and officers and employees of the Government and State and local governments on meeting an emergency related to the transportation of hazardous material; and
- (C) conduct a continuous review on all aspects of transporting hazardous material

to decide on and take appropriate actions to ensure safe transportation of hazardous material.

(2) Paragraph (1) of this subsection does not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

(g) AUTHORITY FOR GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.-- To carry out this chapter, the Secretary may enter into grants, cooperative agreements, and other transactions with a person, agency or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in coordination with the Department of State), an educational institution, or other entity to further the objectives of this chapter. The objectives of this chapter include the conduct of research, development, demonstration, risk assessment, and emergency response planning and training activities.

§ 5122. Enforcement

(a) **GENERAL.--** At the request of the Secretary, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter or a regulation prescribed or order issued under this chapter. ~~The court may award appropriate relief, including punitive damages.~~ **The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same penalty amounts and factors as prescribed for the Secretary in an administrative case under section 5123 of this chapter.**

(b) **IMMINENT HAZARDS.--**

(1) If the Secretary has reason to believe that an imminent hazard exists, the Secretary may bring a civil action in an appropriate district court of the United States--

(A) to suspend or restrict the transportation of the hazardous material responsible for the hazard; or

(B) to eliminate or ameliorate **mitigate** the hazard.

(2) On request of the Secretary, the Attorney General shall bring an action under paragraph (1) of this subsection.

(c) **WITHHOLDING OF CLEARANCE.--**

(1) If an owner, operator, or individual in charge of a vessel is liable for a civil penalty under section 5123 of this chapter or for a fine under section 5124 of this chapter, or if reasonable cause exists to believe that such owner, operator, or individual in charge may be subject to such a civil penalty or fine, the Secretary of the Treasury, upon the request of the Secretary, shall with respect to such vessel refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91).

(2) Clearance refused or revoked under this subsection may be granted upon the filing of a bond or other surety satisfactory to the Secretary of Transportation.

§ 5123. Civil penalty

(a) PENALTY.--

(1) A person that knowingly violates this chapter or a regulation prescribed or, order, **special permit, or approval** issued under this chapter, is liable to the United States Government for a civil penalty of at least \$250 but not more than ~~\$25,000~~**\$100,000** for each violation. A person acts knowingly when --

- (A) the person has actual knowledge of the facts giving rise to the violation; or
- (B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

(2) **Knowledge by a person of the existence of a statutory provision, or a regulation or requirement prescribed by the Secretary is not an element of an offense under this section.**

(23) A separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(b) **KNOWING VIOLATIONS.-- In this section, a person acts knowingly when --**

- (1) the person has actual knowledge of the facts giving rise to the violation; or
- (2) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

(bc) HEARING REQUIREMENT.-- The Secretary of Transportation may find that a person has violated this chapter, or a regulation prescribed under this chapter, **order, special permit or approval issued under this chapter**, only after notice and an opportunity for a hearing. The Secretary shall impose a penalty under this section by giving the person written notice of the amount of the penalty.

(ed) PENALTY CONSIDERATIONS.-- In determining the amount of a civil penalty under this section, the Secretary shall consider --

- (1) the nature, circumstances, extent, and gravity of the violation;
- (2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and
- (3) other matters that justice requires.

(de) CIVIL ACTIONS TO COLLECT.-- The Attorney General may bring a civil action in an appropriate district court of the United States to collect a civil penalty under this section **and any accrued interest on that penalty calculated in the manner described under section 2705 of title 33. In such action, the validity, amount, and appropriateness of the civil penalty shall not be subject to review.**

(ef) COMPROMISE.-- The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(fg) SETOFF.-- The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(gh) DEPOSITING AMOUNTS COLLECTED.-- Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

§ 5124. Criminal penalty

- (a) **GENERAL.**-- A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation, order, special permit, or approval prescribed or order issued under this chapter, shall be fined under title 18, imprisoned for not more than 5 years, or both.
- (b) **AGGRAVATED VIOLATIONS.**-- A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation, order, special permit, or approval issued under this chapter, and thereby causing the release of a hazardous material, shall be fined under title 18, imprisoned for not more than 20 years, or both.
- (c) **KNOWING VIOLATIONS.**-- In this section, a person acts knowingly when --
- (1) the person has actual knowledge of the facts giving rise to the violation; or
 - (2) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.
- (d) **WILLFUL VIOLATIONS.**-- In this section, a person acts willfully when the person acts with intent.
- (e) **KNOWLEDGE OF REQUIREMENTS.**-- Knowledge by the person of the existence of a statutory provision, or a regulation or requirement prescribed by the Secretary, is not an element of an offense under this section.

[AMENDMENT TO FAA ACT, 49 U.S.C. § 46312]

§ 46312. *Transporting hazardous material*

- (a) **IN GENERAL.** – A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, in violation of a regulation or requirement related to the transportation of hazardous material prescribed by the Secretary of Transportation under this part or *under Chapter 51 of this title* –
- (1) willfully delivers, or causes to be delivered, property containing hazardous material to an air carrier or to an operator of a civil aircraft for transportation in air commerce; or
 - (2) recklessly causes the transportation in air commerce of the property.
- (b) **KNOWLEDGE OF REGULATIONS.** – For purposes of subsection (a), knowledge by the person of the existence of a regulation or requirement related to the transportation of hazardous material prescribed by the Secretary *under this part or under Chapter 51 of this title* is not an element of an offense under this section but shall be considered in mitigation of the penalty.

§ 5125. Preemption

- (a) **PURPOSES.**-- The Secretary shall exercise the authority in this section to achieve uniform regulation of hazardous material transportation, eliminate inconsistent rules that apply differently than rules issued under this chapter, and promote the safe and efficient movement of hazardous material in commerce.
- (ab) **GENERAL. DUAL COMPLIANCE AND OBSTACLE TESTS.**-- Except as provided in subsections (bc), (cd), and (eg) of this section and unless authorized by another law of the United States, a requirement of a State, political subdivision of a State, or Indian tribe is preempted if--
- (1) complying with a requirement of the State, political subdivision, or tribe and a

requirement of this chapter or a regulation prescribed under this chapter is not possible; or
(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, **the purposes of this chapter**, or a regulation prescribed under this chapter.

(bc) SUBSTANTIVE DIFFERENCES.--

(1) Except as provided in subsection (ed) of this section and unless authorized by another law of the United States, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this chapter or a regulation prescribed under this chapter, is preempted:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of a hazardous material.

(E) the ~~design, manufacturing, fabricating~~ **designing**, ~~marking~~ **inspecting**, ~~maintenance testing, reconditioning, repairing~~ **marking**, or **repairing** of a packaging or **packaging** a container **component** represented, ~~marked, certified, or sold as~~ qualified for use in transporting hazardous material **in commerce**.

(2) If the Secretary of Transportation prescribes or has prescribed under section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provision of law a regulation or standard related to a subject referred to in paragraph (1) of this subsection, a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall decide on and publish in the Federal Register the effective date of section 5103(b) of this title for any regulation or standard about any of those subjects that the Secretary prescribes ~~after November 16, 1990~~. However, the effective date may not be earlier than 90 days after the Secretary prescribes the regulation or standard nor later than the last day of the 2-year period beginning on the date the Secretary prescribes the regulation or standard.

(3) If a State, political subdivision of a State, or Indian tribe imposes a fine or penalty the Secretary decides is appropriate for a violation related to a subject referred to in paragraph (1) of this subsection, an additional fine or penalty may not be imposed by any other authority.

(ed) COMPLIANCE WITH SECTION 5112(B) REGULATIONS.--

(1) Except as provided in paragraph (2) of this subsection, after the last day of the 2-year period beginning on the date a regulation is prescribed under section 5112(b) of this chapter, a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor

vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).

- (2) (A) A highway routing designation, limitation, or requirement established before the date a regulation is prescribed under section 5112(b) of this chapter does not have to comply with section 5112(b)(1)(B), (C), and (F).
(B) This subsection and section 5112 of this chapter do not require a State or Indian tribe to comply with section 5112(b)(1)(I) if the highway routing designation, limitation, or requirement was established before November 16, 1990.
(C) The Secretary may allow a highway routing designation, limitation, or requirement to continue in effect until a dispute related to the designation, limitation, or requirement is resolved under section 5112(d) of this chapter.

(ge) FEES.--

- (1) A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.
(2) A State or political subdivision thereof or Indian tribe that levies a fee in connection with the transportation of hazardous materials shall, upon the Secretary's request, report to the Secretary on--
(A) the basis on which the fee is levied upon persons involved in such transportation;
(B) the purposes for which the revenues from the fee are used;
(C) the annual total amount of the revenues collected from the fee; and
(D) such other matters as the Secretary requests.

(df) DECISIONS ON PREEMPTION.--

- (1) A person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision, or tribe may apply to the Secretary, as provided by regulations prescribed by the Secretary, for a decision on whether the requirement is preempted by subsection (a b), (bc)(1), or (c) (d), or (e) of this section or subsection 5119(b) of this chapter. The Secretary shall publish notice of the application in the Federal Register. The Secretary shall issue a decision on an application for a determination within 180 days after the date of the publication of the notice of having received such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary's decision on the application is delayed, along with an estimate of the additional time necessary before the decision is made. After notice is published, an applicant may not seek judicial relief on the same or substantially the same issue until the Secretary takes final action on the application or until 180 days after the application is filed, whichever occurs first.
(2) After consulting with States, political subdivisions of States, and Indian tribes, the Secretary shall prescribe regulations for carrying out paragraph (1) of this subsection.
(3) Subsection (a) of this section does not prevent a State, political subdivision of a State, or Indian tribe, or another person directly affected by a requirement, from seeking a decision on preemption from a court of competent jurisdiction instead of applying to the

Secretary under paragraph (1) of this subsection.

(eg) WAIVER OF PREEMPTION.-- A State, political subdivision of a State, or Indian tribe may apply to the Secretary for a waiver of preemption of a requirement the State, political subdivision, or tribe acknowledges is preempted by subsection (a b), (b-c)(1), (d), or (e) of this section or subsection 5119(b) of this chapter. Under a procedure the Secretary prescribes by regulation, the Secretary may waive preemption on deciding the requirement --

(1) provides the public at least as much protection as do requirements of this chapter and regulations prescribed under this chapter; and

(2) is not an unreasonable burden on commerce.

(f) Judicial Review.-- A party to a proceeding under subsection (d) or (e) of this section may bring a civil action in an appropriate district court of the United States for judicial review of the decision of the Secretary not later than 60 days after the decision becomes final.

(h) INDEPENDENT APPLICATION OF EACH STANDARD.-- Each preemption standard in subsections (b), (c)(1), (d), and (e) of this section and in section 5119(b) of this chapter is independent in its application to a requirement of any State, political subdivision of a State, or Indian tribe.

(i) NONFEDERAL ENFORCEMENT STANDARDS.-- This section does not apply to procedure, penalty, or required mental state or other standard used by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to transportation of a hazardous material.

§ 5126. Relationship to other laws

(a) CONTRACTS.-- A person under contract with a department, agency, or instrumentality of the United States Government that transports hazardous material or causes hazardous material to be transported or causes to be transported hazardous material, or manufactures, fabricates designs, marks inspects, maintains, reconditions, repairs, or tests, reconditions, marks, or repairs a packaging or packaging or a container that the person represents, marks, certifies, or sells component represented as qualified for use in transporting hazardous material must shall comply with this chapter, regulations prescribed and orders issued under this chapter, and all other requirements of the Government, State and local governments, and Indian tribes (except a requirement preempted by a law of the United States) in the same way and to the same extent that any person engaging in that transportation, manufacturing, fabricating designing, marking inspecting, maintenance testing, reconditioning, repairing marking, or repairing that is in or affects commerce must comply with the provision, regulation, order, or requirement.

(b) NONAPPLICATION.-- This chapter does not apply to --

(1) pipeline subject to regulation under chapter 601 of this title; or

(2) any matter that is subject to the postal laws and regulations of the United States under this chapter or title 18 or 39; or

(3) marine transportation of hazardous material subject to regulation under title 33 or 46.

§ 5127. Judicial Review

(a) FILING AND VENUE.-- Except as provided in section 20114(c) of this title, a person

suffering legal wrong or adversely affected or aggrieved by a final action of the Secretary of Transportation under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not more than 60 days after the Secretary's action becomes final.

(b) JUDICIAL PROCEDURES.-- When a petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary. The Secretary shall file with the court a record of any proceeding in which the final action was issued, as provided in section 2112 of title 28, United States Code.

(c) AUTHORITY OF COURT.-- The court has exclusive jurisdiction, as provided in the Administrative Procedure Act, 5 U.S.C. 551 et seq., to affirm, amend, modify, or set aside any part of the Secretary's final action and may order the Secretary to conduct further proceedings. Findings of fact by the Secretary, if supported by substantial evidence, are conclusive.

(d) REQUIREMENT FOR PRIOR OBJECTION.-- In reviewing a final action under this section, the court may consider an objection to a final action of the Secretary only if the objection was made in the course of a proceeding or review conducted by the Secretary or if there was a reasonable ground for not making the objection in the proceeding.

§5127 **§5128. Authorization of appropriations**

(a) GENERAL.-- Not more than \$18,000,000 may be appropriated to the Secretary of Transportation for fiscal year 1993, \$18,000,000 for fiscal year 1994, \$19,100,000 for fiscal year 1995, \$19,670,000 for fiscal year 1996, and \$19,670,000 for fiscal year 1997, \$18,540,000 for fiscal year 1997 to To carry out this chapter (except sections 5107(e), 5108(g)(2), 5112, 5113, 5115, 5116; and 5119), not more than \$21,217,000 is authorized to be appropriated to the Secretary of Transportation for fiscal year 2002, and such sums as may be necessary are authorized to be appropriated to the Secretary for fiscal years 2003 through 2007.

(b) TRAINING OF HAZMAT EMPLOYEE INSTRUCTORS.-- EMERGENCY PREPAREDNESS FUND.-- There shall be available from the Emergency Preparedness Fund account the following:

(1) To carry out section 5116(j) of this title, \$250,000 shall be available to the Secretary for fiscal year 2002 and such amounts as may be necessary for fiscal years 2003 through 2007.

(1) There is authorized to be appropriated to the Secretary \$3,000,000 for each of fiscal years 1995, 1996, 1997, and 1998 to carry out section 5107(e).

(2) (A) There shall be available to the Secretary for carrying out section 5116(j), from amounts in the account established pursuant to section 5116(i), \$250,000 for each of fiscal years 1995, 1996, 1997, and 1998.

(B) In addition to amounts made available under subparagraph (A), there is authorized to be appropriated to the Secretary for carrying out section 5116(j) \$1,000,000 for each of the fiscal years 1995, 1996, 1997, and 1998.

(c) TRAINING CURRICULUM.-- (2) To carry out section 5115 of this title, \$200,000 shall be available to the Secretary for fiscal year 2002, and such amounts as may be

necessary for fiscal years 2003 through 2007.

(1) Not more than \$1,000,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993-1998, to carry out section 5115 of this title.

(2) The Secretary of Transportation may transfer to the Director of the Federal Emergency Management Agency from amounts available under this subsection amounts necessary to carry out section 5115(d)(1) of this title.

~~(d) PLANNING AND TRAINING.--~~

~~(13) Not more than~~ **To carry out section 5116(a) of this title, \$5,000,000 is shall be** available to the Secretary of Transportation from the account established under section 5116(i) of this title **for fiscal year 2002, and such amounts as may be necessary** for each of the fiscal years ending September 30, 1993-1998 **2003 through 2007** to carry out section 5116(a) of this title.

~~(24) Not more than~~ **To carry out section 5116(b) of this title, \$7,800,000 is shall be** available to the Secretary of Transportation from the account established under section 5116(i) of this title **for fiscal year 2002, and such amounts as may be necessary** for each of the fiscal years ending September 30, 1993-1998 **2003 through 2007** to carry out section 5116(b) of this title.

~~(35) Not more than the following amounts are~~ **To carry out section 5116(f) of this title, \$150,000 shall be** available from ~~to~~ the account established under section 5116(i) of this title **Secretary for fiscal year 2002, and such amounts as may be necessary** for each of the fiscal years ending September 30, 1993-1998 **2003 through 2007** to carry out section 5116(f) of this title:

(A) ~~\$750,000 each to the Secretaries of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the Federal Emergency Management Agency.~~

(B) ~~\$200,000 to the Director of the National Institute of Environmental Health Sciences~~

~~(e) UNIFORM FORMS AND PROCEDURES.--~~ Not more than \$400,000 may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1993, to carry out section 5119 of this title.

~~(6) To publish and distribute the Emergency Response Guidebook, \$500,000 shall be~~ **available to the Secretary for fiscal year 2002, and such amounts as may be necessary for fiscal years 2003 through 2007.**

~~(7) To carry out section 5107(e) of this title, such amounts as may be necessary are~~ **authorized to be appropriated to the Secretary for each of fiscal years 2002 through 2007.**

~~(8) To carry out section 5116(i)(4) of this title, \$400,000 shall be available to the Secretary~~ **for fiscal year 2002, and such amounts as may be necessary for fiscal years 2003 through 2007.**

~~(fc) CREDITS TO APPROPRIATIONS.--~~ The Secretary of Transportation may credit to any appropriation to carry out this chapter an amount received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

~~(gd) AVAILABILITY OF AMOUNTS.--~~ Amounts available under subsections (c)-(e) of this

section remain available until expended.

Sec. 26. Postal Service Civil Penalty Authority

[Proposed Amendment to 39 U.S.C. § 3001 in Section 26 of Draft Hazmat Bill

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(o) HAZARDOUS MATERIAL. --

(1) Except as permitted by law and Postal Service regulation, hazardous material is nonmailable.

“(2) For purposes of this section, the term ‘hazardous material’ means a substance or material the Secretary of Transportation designates under section 5103(a) of title 49.]

[Proposed Amendment to 39 U.S.C. Chapter 30 in Section 26 of Draft Hazmat Bill

Sec. 3018. Hazardous material; civil penalty.

(a) REGULATIONS. -- The Postal Service shall prescribe regulations for the safe transportation of hazardous material in the mail.

(b) HAZARDOUS MATERIAL IN THE MAIL.-- No person may --

(1) mail or cause to be mailed a hazardous material that has been declared by statute or Postal Service regulation to be nonmailable;

(2) mail or cause to be mailed a hazardous material in violation of any statute or Postal Service regulation restricting the time, place, or manner in which a hazardous material may be mailed; or

(3) manufacture, distribute, or sell any container, packaging kit, or similar device that --
(i) is represented, marked, certified, or sold by such person for use in the mailing of a hazardous material; and
(ii) fails to conform with any statute or Postal Service regulation setting forth standards for a container, packaging kit, or similar device used for the mailing of a hazardous material.

(c) CIVIL PENALTY.--

(1) A person that knowingly violates this section or a regulation issued under this section is liable to the Postal Service for a civil penalty of at least \$250 but not more than \$100,000 for each violation, and for any clean-up costs or damages. A person acts knowingly when --

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

(2) Knowledge by the person of the existence of a statutory provision, or a regulation or requirement prescribed by the Postal Service is not an element of an offense under this section.

(3) A separate violation occurs for each day a hazardous material, mailed or caused to

be mailed in noncompliance with this section or a regulation issued under this section, is in the mail.

(4) A separate violation occurs for each item containing a hazardous material that is mailed or caused to be mailed in noncompliance with this section or a regulation issued under this section.

(d) HEARING REQUIREMENT.-- The Postal Service may find that a person has violated this section or a regulation issued under this section only after notice and an opportunity for a hearing. Under this section, the Postal Service shall impose a penalty or recover clean-up costs or damages by giving the person written notice of the amount of the penalty, clean-up costs, and damages.

(e) PENALTY CONSIDERATIONS.-- In determining the amount of a civil penalty under this section, the Postal Service shall consider --

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the person who committed the violation, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue in business.

(3) the impact on postal operations; and

(4) other matters that justice requires.

(f) CIVIL ACTIONS TO COLLECT.--

(1) In accordance with section 409(d) of this title, the Department of Justice or the Postal Service may commence a civil action in an appropriate district court of the United States to collect a civil penalty, clean-up costs, or damages assessed under this section. In such action, the validity, amount, and appropriateness of the civil penalty, clean-up costs, or damages shall not be subject to review.

(2) The Postal Service may compromise the amount of a civil penalty, clean-up costs, or damages assessed under this section before civil action is taken to collect the penalty.

(g) CIVIL JUDICIAL PENALTY.-- At the request of the Postal Service, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same penalty amounts and factors as prescribed for the Postal Service in an administrative case under section 5123 of this chapter.

(h) DEPOSITING AMOUNTS COLLECTED. -- Amounts collected under this section shall be paid into the Postal Service Fund established by section 2003 of this title.]

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