



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

February 16, 1999

The Honorable Al Gore
President of the Senate
Washington, DC 20510

Dear Mr. President:

I am pleased to transmit to you for introduction and referral to the appropriate committees a bill

"To authorize appropriations for hazardous material transportation safety, and for other purposes."

The proposed bill would reauthorize the Department of Transportation's (DOT's) hazardous materials transportation safety program, enhance the Department's enforcement authority, expand the uses of hazardous materials registration fees, and generally improve the effectiveness of this important safety program. In concert with the ongoing One-DOT evaluation of the effectiveness of our hazardous materials safety program, this bill would build upon the strengths of this program, address existing problem areas, and achieve maximum safety in the transportation of hazardous materials in the 21st century.

This bill would provide authority, through use of appropriated and other monies, for continuation of this program through 2005. It would provide for funding of the Research and Special Program Administration's hazardous materials safety activities, in addition to State and Indian tribe planning and training grants, through the hazardous materials registration program. To facilitate this funding, the proposed bill would raise the minimum annual registration fee to \$500 and eliminate the \$5,000 ceiling on annual fees. Use of these registration fees, instead of general revenues, to fund regulatory and compliance activities is appropriate because it places the responsibility for funding, not on the general public, but on the industry that benefits from a uniform, national, safety-promoting hazardous materials program.

The proposed bill also would specifically authorize the use of registration fees to fund the printing and distribution of the North American Emergency Response Guidebook, which has been distributed every three years to emergency responders across the Nation. It also would allow States to use up to 25 percent of their hazardous materials grant monies to provide hazardous materials training for small businesses.

In addition, the proposed bill would clarify the authority of DOT's inspectors to open and examine packages they have reason to believe contain hazardous materials and to issue emergency orders to stop unsafe practices that pose an immediate threat to life, property, or the environment. This enhanced compliance authority would enable DOT inspectors to more effectively detect violations and ensure that appropriate remedial action is taken when violations or potential violations are discovered. The criminal penalty provisions would be increased for anyone who violates the hazardous materials transportation law or a regulation, order, special permit, or approval issued under it and thereby causes a release of hazardous materials.

The proposed bill also would assert U.S. jurisdiction over hazardous materials activities conducted on U.S.-registered aircraft between two foreign points. This change would enable the United States to carry out its obligations under the Chicago Convention.

This proposal would increase receipts; therefore it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act. The Office of Management and Budget estimates that the net effect of this proposal on receipts during fiscal years 2000-2003 would be an increase of less than \$1 million.

The Office of Management and Budget has advised that there is no objection, from the standpoint of the Administration's program, to the submission of this proposed legislation to Congress, and that its enactment would be in accord with the program of the President.

Sincerely,



Rodney E. Slater

Enclosures
Draft Bill
Section-by-Section Analysis

A Bill

To authorize appropriations for hazardous material transportation safety, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE. This act may be cited as the “Hazardous Material Transportation Safety Reauthorization Act of 1999”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS AND PURPOSES.—Section 5101 of title 49, United States Code, is amended to read as follows:

“Sec. 5101. Findings and purposes

“(a) FINDINGS.—Congress finds with respect to hazardous material transportation that—

“(1) more than 3 billion tons of regulated hazardous material are transported each year and that over 800,000 shipments of hazardous material occur each day;

“(2) the movement of hazardous material in commerce is necessary and desirable to maintain economic vitality and meet consumer demands and must be conducted in a safe and efficient manner;

“(3) accidents involving the release of hazardous material are a serious threat to public health and safety;

“(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous material, consistency in laws and regulations governing the transportation of hazardous material, including loading, unloading, and incidental storage, is necessary and desirable;

“(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous material in intrastate, interstate, and foreign commerce are necessary and desirable;

“(6) many States and localities have enacted laws and regulations that vary from Federal laws and regulations pertaining to the transportation of hazardous material, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers that attempt to comply with multiple and conflicting registration, permitting, routing, notification, loading, unloading, incidental storage, and other regulatory requirements;

“(7) primary authority for the regulation of such transportation has been and should continue to reside in the Department of Transportation to ensure the safe and efficient movement of hazardous material in commerce;

“(8) in order to provide reasonable, adequate, and cost-effective protection from the risks posed by the transportation of hazardous material, a network of adequately trained State and local emergency response personnel is required;

“(9) emergency response personnel and hazmat employees have a continuing need for training on responses to releases of hazardous material, and small businesses have a particular need for training on compliance with hazardous material regulations; and

“(10) the regulated industry that benefits from uniform, safety-promoting national regulation, rather than the general public, should be required to pay for the governmental hazardous materials transportation regulatory program from which it benefits.

“(b) PURPOSES.—The purposes of this chapter are to—

“(1) ensure the safe and efficient transportation of hazardous material in intrastate, interstate, and foreign commerce, including the loading, unloading, and incidental storage of hazardous material;

“(2) provide the Secretary of Transportation with preemption authority to achieve uniform regulation of hazardous material transportation, to eliminate inconsistent rules that apply differently than rules issued by the Secretary, to ensure efficient movement of hazardous material in commerce, and to promote the national health, welfare, and safety; and

“(3) provide adequate training for public sector emergency response teams to ensure safe responses to hazardous material transportation accidents and incidents.”.

(b) CLERICAL AMENDMENT.—The chapter analysis of chapter 51, title 49, United States Code, is amended by striking the item relating to section 5101 and inserting the following:

“5101. Findings and purposes.”.

SEC. 3. DEFINITIONS.

Section 5102 of title 49, United States Code, is amended--

(1) by striking paragraph (1) and inserting the following:

"(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) by striking paragraphs (3) and (4) and inserting the following:

"(3) 'hazmat employee' means an individual who--

"(A) is--

"(i) employed by a hazmat employer,

"(ii) self-employed, or

"(iii) an owner-operator of a motor vehicle, vessel or aircraft; and

"(B) during the course of employment--

"(i) loads, unloads, or handles hazardous material;

"(ii) designs, manufactures, reconditions, inspects, or tests containers, drums, other packagings, or a component thereof, represented as qualified for use in transporting hazardous material;

"(iii) performs any function pertaining to the offering or rejecting of hazardous material for transportation;

"(iv) is responsible for the safety of transporting hazardous material;

or

"(v) operates a vehicle used to transport hazardous material.";

"(4) 'hazmat employer' means a person who--

"(A) either--

"(i) is self-employed,

"(ii) is an owner-operator of a motor vehicle, vessel, or aircraft, or

"(iii) has at least one employee; and

"(B) performs, or uses at least one employee to perform, a function in connection with--

"(i) transporting hazardous material in commerce;

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

"(iii) rejecting hazardous material for transportation in commerce, or

"(iv) designing, manufacturing, reconditioning, inspecting, or testing containers, drums, other packagings, or a component thereof, represented as qualified for use in transporting hazardous material.";

(3) in paragraph (7), by striking "title " and inserting "title, except that a freight forwarder is included only if performing a function related to highway transportation";

(4) by redesignating paragraphs (9) through (13) as paragraphs (12) through (16);

(5) by inserting after paragraph (8) the following:

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

“(10) 'package' or 'outside package' means a packaging and its contents.

“(11) 'packaging' means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packaging requirements established by the Secretary of Transportation.”; and

(6) in paragraph (12)(A), as redesignated by paragraph (4) of this section, by striking “commerce or transporting hazardous material to further a commercial enterprise”, and inserting “commerce, transporting hazardous material to further a commercial enterprise, or manufacturing, reconditioning, or testing containers, drums, or other packagings represented as qualified for use in transporting hazardous material”.

SEC. 4. HAZMAT EMPLOYEE TRAINING REQUIREMENTS.

Section 5107 of title 49, United States Code, is amended by--

(1) striking “or duplicate” in subsection (d); and

(2) striking “Agency” and inserting “Administrator of the Environmental Protection Agency” in subsection (d)(2); and

(3) striking section “5127(c)(3)” in subsection (e) and inserting “section 5129(b)(1)”.

SEC. 5. REGISTRATION.

Section 5108 of title 49, United States Code, is amended--

(1) by striking subsection (b)(1)(C) and inserting --

“(C) each State in which the person carries out any of the activities.”;

(2) by striking subsection (c) and inserting --

"(c) FILING SCHEDULE.--Each person required to file a registration statement under subsection (a) of this section shall file that statement in accordance with regulations issued by the Secretary.";

(3) in subsection (g)(1), by striking "may" and inserting "shall";

(4) in subsection (g)(2)(A), by striking "\$250 but not more than \$5,000" and inserting "\$500";

(5) in subsection (g)(2)(A)(viii), by striking "sections 5108(g)(2), 5115, and 5116" and inserting "chapter 51 (except sections 5109, 5112, and 5119)";

(6) by revising subparagraphs (2)(B) and (2)(C) to read as follows:

"(B) Funds received by the Secretary under this paragraph shall be credited, as offsetting receipts, to the Research and Special Programs Administration appropriation, except that the Secretary shall transfer to the Secretary of the Treasury such amounts as the Secretary deems appropriate for deposit in the account the Secretary of the Treasury establishes under section 5116(i) of this title.

"(C) The Secretary 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."; and

(7) in subsection (i)(2)(B), by striking "State," and inserting "State, Indian tribe,".

SEC. 6. MOTOR CARRIER SAFETY.

(a) Section 5109(h) of title 49, United States Code, is amended by striking “not later than November 16, 1991” and inserting “based upon the findings of the study required by section 5128(a) of this title”.

(b) The text of section 5113 of title 49, United States Code, is amended to read as follows:

“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.”

(c) Section 31144(c) of title 49, United States Code, is amended –

(1) in paragraph (1) by striking “sections 521(b)(5)(A) and 5113” and inserting “section 521(b)(5)(A)”; and

(2) in paragraph (3) by adding at the end the following: “A violation of this paragraph shall be considered a violation of chapter 51, and shall be subject to the penalties in sections 5123 and 5124 of this title.”.

SEC. 7. SHIPPING PAPER RETENTION.

Section 5110(e) of title 49, United States Code, is amended by striking the first sentence and inserting “The person who provided the shipping paper and the carrier required to maintain it under subsection (a) of this section shall retain the paper, or an electronic image of it, for a period of 1 year after the shipping paper was provided to the carrier, to be accessible through their respective principal places of business.”.

SEC. 8. PUBLIC SECTOR TRAINING CURRICULUM.

Section 5115 of title 49, United States Code, is amended --

(1) in subsection (a) by--

(A) striking “DEVELOPMENT AND UPDATING.-- Not later than November 16, 1992, in” and inserting “UPDATING.—In”;

(B) striking “national response team” and inserting “National Response Team for Oil and Hazardous Substances” in the first sentence;

(C) striking “develop and” in the first sentence; and

(D) striking the second sentence;

(2) in subsection (b) by--

(A) striking “developed” and inserting “maintained” in the first sentence;

(B) inserting “or involving an alternative fuel vehicle” after “material” in subparagraphs (A) and (B) of subsection (b)(1); and

(C) striking “under other United States Government grant programs, including those developed with grants made under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a)” and inserting “with Federal financial assistance” in subparagraph (C) of subsection (b)(1);

(3) in subsection (c)(3) by striking “the National Fire Protection Association” and inserting “such voluntary consensus standard-setting organizations as the Secretary deems appropriate”; and

(4) by striking subsection (d) and inserting the following:

“(d) DISTRIBUTION AND PUBLICATION.—With the National Response Team for Oil and Hazardous Substances, the Secretary of Transportation may publish a list of

programs that use a course developed under this section for training public-sector employees to respond to accidents or incidents involving hazardous material.”.

SEC. 9. PLANNING AND TRAINING GRANTS; EMERGENCY PREPAREDNESS FUND.

Section 5116 of title 49, United States Code, is amended by--

(1) in its caption, striking “, **monitoring, and review**” and inserting “; **emergency preparedness fund**”;

(2) striking “of” in the second sentence of subsection (e) and inserting “received by”;

(3) striking subsection (f) and inserting the following:

“(f) MONITORING AND TECHNICAL ASSISTANCE.--The Secretary of Transportation shall monitor public sector emergency response planning and training for an accident or incident involving hazardous material. Considering the results of the monitoring, the 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 for Oil and Hazardous Substances and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee.”;

(4) striking “Government grant” and inserting “Federal financial assistance” in subsection (g);

(5) striking subsection (i) and inserting the following:

“(i) 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 transfers to the Secretary of the Treasury under section 5108(g)(2)(B) 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;

“(3) to publish and distribute the North American Emergency Response Guidebook;

“(4) to maintain, publish, and distribute the training curriculum for the public sector under section 5115 of this title;

“(5) 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 to carry out these sections may be used to pay these costs.”; and

(6) by deleting subsection (k) and inserting the following:

“(k) SMALL BUSINESSES.—The Secretary may authorize a State or Indian tribe receiving a grant under this section to use up to 25 percent of the amount of the grant to assist small businesses in complying with regulations issued under this chapter.”.

SEC. 10. SPECIAL PERMITS AND EXCLUSIONS.

(a) Section 5117 of title 49, United States Code, is amended by—

- (1) striking the section heading and inserting the following:
"Sec. 5117. Special permits and exclusions";
 - (2) striking "exemption" and "an exemption" each place they appear and inserting, respectively, "special permit" or "a special permit";
 - (3) inserting "authorizing variances" after "special permit" the first place it is inserted by this section; and
 - (4) striking "2" and inserting "4" in subsection (a)(2).
- (b) The chapter analysis for chapter 51 of title 49, United States Code, is amended by striking the item related to section 5117 and inserting the following:
"5117. Special permits and exclusions."

SEC. 11. UNIFORM FORMS AND PROCEDURES.

Section 5119 of title 49, United States Code, is amended by—

- (1) inserting "and issue permits to" after "register" in subsection (a)(1)(A); and
- (2) adding at the end of subsection (c) the following:
"(4) Pending promulgation of regulations under this subsection, States may participate in a program of uniform forms and procedures recommended by the working group under subsection (b).".

SEC. 12. ADMINISTRATION.

Section 5121 of title 49, United States Code, is amended by --

(1) striking subsections (a), (b), and (c), redesignating subsections (d) and (e) as subsections (a) and (b), and adding at the end thereof:

“(c) 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, emergency response planning and training activities.”; and

(2) striking “The report shall include--” in the second sentence of subsection (b) and inserting “The report shall include or make appropriate reference to--”.

SEC. 13. ENFORCEMENT.

The text of Section 5122 of title 49, United States Code, is amended to read as follows:

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

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

“(1) maintain records, make reports, and provide 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.

“(c) INSPECTIONS AND INVESTIGATIONS.--

“(1) A designated officer or employee of the Secretary may--

“(A) inspect and investigate, at a reasonable time and in a reasonable way, records and property related to—

“(i) designing, manufacturing, fabricating, marking, maintaining, reconditioning, repairing, inspecting, testing, or distributing a packaging, or a component thereof, for use by a person in transporting hazardous materials in commerce, or

“(ii) the transportation of hazardous material in commerce;

“(B) except for the packaging immediately adjacent to its hazardous material contents, 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, packaging manufacturer or retester, or other person responsible for the package to ascertain the nature and hazards of the contents of the package;

“(E) as necessary, under terms and conditions specified by the Secretary, order the offeror, packaging manufacturer or retester, or other person responsible for the package to have the package 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 subsection (c)(1)(A) of this section.

“(2) An officer or 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 and transport unit.

“(d) EMERGENCY ORDERS.--(1) If, upon inspection or investigation, 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, 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 subsection (d)(1) must 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 subsection (d)(1), the Secretary shall provide an opportunity for review of that action under section 554 of title 5, and such review shall occur no later than 20 days after issuance of such order.

"(e) REGULATIONS.--The Secretary shall issue regulations with notice and comment, including an opportunity for informal hearing, to implement the authority in subsections (c) and (d) of this section.

"(f) ENFORCEMENT BY THE ATTORNEY 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.

"(g) IMMINENT HAZARD.--(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 mitigate the hazard.

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

“(h) 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 title or for a fine under section 5124 of this title, or if reasonable cause exists to believe that the owner, operator, or individual in charge may be subject to penalty or fine, the Secretary of the Treasury, upon request of the Secretary of Transportation, 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 the Treasury.”

SEC. 14. PENALTIES.

(a) Section 5123 of title 49, United States Code, is amended—

(1) in subsection (a)(1), by striking the first sentence and inserting the following: “A person that knowingly violates this chapter or a regulation, 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 \$27,500 for each violation.”; and

(2) by revising subsection (c)(2) to read as follows:

“(2) with respect to the violator, the degree of culpability, any good-faith efforts to comply with the applicable requirements, any history of prior

violations, any economic benefit resulting from the violation, the ability to pay, and any effect on the ability to continue to do business; and".

(b) Section 5124 of title 49, United States Code, is amended to read as follows:

"Sec. 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 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."

SEC. 15. PREEMPTION.

Section 5125 of title 49, United States Code, is amended—

(1) in subsection (a)(2), by striking "chapter" the first place it appears and inserting "chapter, the purposes of this chapter,"

(2) in subsection (b)(2), by striking "after November 16, 1990"; and

(3) by adding at the end the following:

"(h) INDEPENDENT APPLICATION OF EACH STANDARD.--Each preemption standard in subsections (a), (b)(1), (c), and (g) of this section and section 5119(c)(2) of this title is independent in its application to a requirement of any State, political subdivision of a State, or Indian tribe."

SEC. 16. JUDICIAL REVIEW.

(a) Chapter 51 of title 49, United States Code, is amended by redesignating section 5127 as section 5129, and by inserting after section 5126 the following new section:

"Sec. 5127. Judicial review

“(a) FILING AND VENUE.--Except as provided in section 20114(c) of this title, a person disclosing a substantial interest in a final order issued, under the authority of section 5122 or 5123 of this title, by the Secretary of Transportation, with respect to the duties and powers designated to be carried out by the Secretary under this chapter, may apply for review of the order 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 order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

“(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 order was issued, as provided in section 2112 of title 28, United States Code.

“(c) AUTHORITY OF COURT.--When the petition is sent to the Secretary, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order 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 order under this section, the court may consider an objection to a final order 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.

"(e) SUPREME COURT REVIEW.--A decision by a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28, United States Code."

(b) The chapter analysis for chapter 51 of title 49, United States Code, is amended by striking the item related to section 5127 and inserting the following:

"5127. Judicial review."

SEC. 17. SAFETY STUDY.

(a) Chapter 51 of title 49, United States Code, as amended by section 16 of this Act, is further amended by inserting after section 5127 the following:

"Sec. 5128. High-risk hazardous material; motor carrier safety study

"(a) STUDY.--The Secretary of Transportation shall conduct a study to--

"(1) determine the safety benefits and administrative efficiency of implementing a federal permit program for high-risk hazardous material carriers;

"(2) identify and evaluate alternative regulatory methods and procedures that may improve the safety of high-risk hazardous material carriers;

"(3) examine the safety benefits of increased monitoring of high-risk hazardous material carriers, and the costs, benefits, and procedures of existing State permit programs;

“(4) make such recommendations as may be appropriate for the improvement of uniformity among existing State permit programs; and

“(5) assess the potential of advanced technologies for improving the assessment of high-risk hazardous material carriers’ compliance with motor carrier safety regulations.

“(b) TIME FRAME.--The Secretary shall begin the study required by subsection (a) within 6 months after the date of enactment of this section and complete it within 30 months.

“(c) REPORT.--The Secretary shall report the findings of the study required by subsection (a), together with such recommendations as may be appropriate, within 36 months after the date of enactment of this section.”.

(b) CONFORMING AMENDMENT.--The chapter analysis for chapter 51 of title 49, United States Code, is amended by adding the following:

“5128. High-risk hazardous material; motor carrier safety study.

“5129. Authorization of appropriations.”.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

(a) Section 5129 of title 49, United States Code, as redesignated by section 16 of this Act, is amended to read as follows:

“Sec. 5129. Authorization of appropriations

“(a) GENERAL.--To carry out this chapter (except sections 5107(e), 5108(g), 5109, 5112, 5113, 5115, 5116, 5119, and 5128), not more than \$13,725,000 may be appropriated to the Secretary of Transportation for fiscal year 2000 and, for the last quarter of fiscal

year 2000, not more than \$4,575,000 is available to the Secretary from amounts collected under section 5108(g)(2)(A) of this title, and, for fiscal years 2001 through 2005, such sums as may be necessary are available to the Secretary, from amounts collected under section 5108(g)(2)(A) of this title.

“(b) TRAINING OF HAZMAT EMPLOYEE INSTRUCTORS.--(1) There is authorized to be appropriated to the Secretary, from amounts in the account established under section 5116(i) of this title, \$3,000,000 for each of fiscal years 2000 through 2005 to carry out section 5107(e).

“(2)(A) Not more than \$500,000 is available to the Secretary, from amounts in the account established under section 5116(i) of this title, for each of fiscal years 2000 through 2005, to carry out section 5116(j) of this title.

“(B) In addition to amounts made available under subparagraph (A), there is authorized to be appropriated to the Secretary, from amounts in the account established under section 5116(i) of this title, \$1,000,000 for each of fiscal years 2000 through 2005 to carry out section 5116(j) of this title.

“(c) TRAINING CURRICULUM.--Not more than \$200,000 is available to the Secretary, from amounts in the account established under section 5116(i) of this title, for each of fiscal years 2000 through 2005, to carry out section 5115 of this title.

“(d) PLANNING AND TRAINING.--(1) Not more than \$5,000,000 is available to the Secretary, from the amounts in the account established under section 5116(i) of this title, for each of the fiscal years 2000 through 2005, to carry out section 5116(a) of this title.

"(2) Not more than \$7,800,000 is available to the Secretary, from the amounts in the account established under section 5116(i) of this title, for each of the fiscal years 2000 through 2005, to carry out section 5116(b) of this title.

"(3) Not more than \$750,000 is available to the Secretary from the account established under section 5116(i) of this title, for each of fiscal years 2000 through 2005, to carry out section 5116(f) of this title.

"(e) EMERGENCY RESPONSE GUIDEBOOK.—Not more than \$2,000,000 is available to the Secretary, from the account established under section 5116(i) of this title, for each of fiscal years 2001 through 2005 , to publish and distribute the North American Emergency Response Guidebook.

"(f) 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.

"(g) AVAILABILITY OF AMOUNTS.—Amounts available under this section remain available until expended.”.

(b) CONFORMING AMENDMENT.—Section 5107(e) of title 49, United States Code, is amended by striking “section 5127(c)(3)” and inserting “section 5129”.

SEC. 19. INTERMODAL CONTAINER PILOT PROGRAM.

The Secretary of Transportation, through the Commandant of the Coast Guard, shall conduct a two-year pilot program to randomly inspect intermodal containers in coastal port areas in order to determine the extent to which undeclared hazardous material

is being offered for transportation in commerce. Under this program, Coast Guard inspection personnel may open and inspect any intermodal container on a vessel or marine terminal or elsewhere in a port area on the Atlantic, Pacific or Gulf of Mexico coasts if that container has been randomly selected for inspection by a supervisor who is not on site. The Secretary shall initiate such program within 1 year after the date of enactment of this Act. Within 6 months after completion of this program, the Secretary shall report to Congress on the results of this program. That report shall contain the number of containers inspected, the number of containers containing undeclared hazardous material, a description of the safety hazards posed by the undeclared hazardous material, and a recommendation for any legislation necessary to address those safety hazards.

SEC. 20. MODES AND ROUTES STUDY.

Section 5105 of title 49, United States Code, is amended by deleting subsection 5105(d) and redesignating subsection 5105(e) as subsection 5105(d).

SECTION-BY-SECTION ANALYSIS

SECTION 1. This section contains the short title.

SECTION 2. This section would add findings and update and expand the purposes of chapter 51 of title 49.

SECTION 3. This section would add and modify definitions in chapter 51 of title 49 as indicated below.

The definition of "commerce" would be amended to include all trade or transportation on a United States-registered aircraft. This amendment would provide jurisdiction over hazardous materials activities being conducted on a U.S.-registered aircraft between two foreign points. Such jurisdiction would parallel U.S. and Department of Transportation jurisdiction over other air safety aspects of those same flights. Assertion and exercise of that jurisdiction is necessary for the United States to carry out its obligations under the Chicago Convention.

The definitions of "hazmat employee" and "hazmat employer" would be amended to clarify the applicability of the training requirements in section 5107. To eliminate ambiguity in the current training requirements, the two definitions would be amended to clearly require hazmat training for self-employed persons. The two definitions also would be amended to clarify that containers and drums are types of packagings, by adding the words "or other" before the word "packagings" and to clarify that functions related to components of packagings may trigger training requirements. Also, they would be amended to include "design" of hazardous materials packagings or components. In addition, those definitions would be amended to apply to owner-operators of vessels and aircraft, as well as motor vehicles.

Finally, those two definitions would be amended to apply to situations where employees reject hazardous materials for transportation in commerce. This application is necessary to address training requirements for those carriers, especially air carriers, that do not carry hazardous material and should be required to train their employees on how to identify and reject hazardous materials for transportation in commerce.

The definition of "motor carrier" would be amended by clarifying that it includes a freight forwarder, as defined in section 10102 of title 49, only if the freight forwarder is performing a function related to highway transportation. Provisions applicable to motor carriers should not apply to freight forwarders performing functions not related to highway transportation.

A new definition would be added for "out-of-service order." This term, which would be used in a new subsection 5122(d), would be defined as a mandate that an aircraft, vessel, motor vehicle, train, railcar, other vehicle, transport unit, freight container, or package not be moved until specified conditions have been met.

To clarify the meaning of terms used frequently in chapter 51, definitions would be added for "package" or "outside package," and "packaging." "Package" or "outside package" would be defined as a packaging plus its contents. "Packaging" would be defined as a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packaging requirements established by the Secretary of Transportation.

Finally, the definition of "person" would be amended so that the requirements of chapter 51 apply to additional activities of government agencies and Indian tribes. They would be regulated not only when they offer hazardous materials in commerce or transport a hazardous material to further a commercial enterprise, but also when they manufacture, recondition, or test containers, drums, or other packagings represented as qualified for use in transporting hazardous materials. Because those package-related activities have the potential to affect the transportation of hazardous materials by other persons, regulation of those activities is appropriate to ensure that they are conducted in a safe manner.

SECTION 4. This section would amend section 5107(d) by deleting the words "or duplicate". This deletion would enable the Secretary to prescribe hazmat employee training requirements that are more consistent with, or incorporate by reference, certain Environmental Protection Agency and Department of Labor regulations specified in that section.

It also would amend subsection 5107(d)(2) to clearly identify the Environmental Protection Agency. Finally, it would amend subsection 5107(e) to correct a cross-reference to the authorization section.

SECTION 5. This section would make changes to the registration provisions in section 5108.

To reduce registrants' reporting requirements, section 5108(b)(1)(C) would be amended by changing the registration statement. Instead of requiring the registrant to separately identify each registration-requiring activity that it conducts in each State, the new paragraph would only require the registrant to list each State in which it transports or causes to be transported a hazardous material in a quantity and manner requiring registration.

Section 5108(c) would be amended by eliminating some outdated deadlines and simply requiring persons to file registration statements in accordance with regulations issued by the Secretary.

Section 5108(g)(1) would be amended by replacing "may" with "shall" in order to establish explicitly that the Secretary must impose a registration fee sufficient to cover administrative processing costs.

Section 5108(g)(2) would be amended by raising the minimum annual registration fee from \$250 to \$500 and deleting the \$5,000 ceiling on annual registration fees. These changes would facilitate funding of RSPA's entire hazardous materials program through the registration fees beginning July 1, 2000. They also would facilitate increases in State and Indian tribe hazardous material emergency planning and training grants and, thereby, their ability to involve organizations with recognized expertise in their planning and training activities. In summary, this change would authorize use of the registration fees currently paid by shippers and carriers of hazardous materials, to fund compliance, regulatory and other activities under chapter 51. This approach to funding those activities appropriately places the responsibility for funding, not on the general public, but on the industry which benefits from a uniform, national, safety-promoting hazardous materials program.

Finally, in section 5108(i)(2)(B), Indian tribes, in addition to States, would be excepted from the requirements to register and pay registration fees. It would be incongruous for beneficiaries of the grant program funded by the registration fees to be required to pay registration fees.

SECTION 6. This section would amend section 5109 by replacing a time-specific requirement for federal permitting regulations to be issued with a requirement to issue regulations based upon the findings of a new study that would be required by section 5128(a) of this title. That study would consider alternative means of enhancing safety in motor carrier transportation of hazardous materials. Section 5109 currently requires the Secretary to prescribe regulations establishing a safety permit program under which motor carriers of certain hazardous materials would be required to obtain a Federal permit. Because many States have different permit requirements for those carriers and in order to develop a coordinated Federal-State partnership in this area, the Federal Highway Administration (FHWA) conducted a study and a pilot project under section 5119 of title 49. The purpose of those activities was to determine the feasibility of developing a uniform permitting system that would enhance safety, meet the States' needs, and avoid unnecessary industry costs. These activities, however, revealed that a uniform permit system will not likely resolve different States' concerns that their needs will be met, and raises additional concerns related to unnecessary preemption and expenses of a parallel Federal permitting system.

To address these concerns, this section would authorize the Secretary of Transportation to conduct an additional study (see section 16 of the bill) to consider alternative means of enhancing safe hazardous material transportation by motor carriers before issuing Federal permitting regulations. The program would consider use of automated carrier assessments in lieu of safety permits. It would build upon the FHWA's Automated Safety Assessment Program, explore the use of advanced technology to monitor the safety performance of carriers, and examine the use of that technology to provide meaningful safety-related feedback to motor carriers.

This section also would amend sections 5113 and 31144(c) of title 49 to provide that an unfit owner or operator transporting hazardous material in commerce more than 45 days

after being found unfit is subject to the \$27,500 civil penalty in section 5123 and the criminal penalties in section 5124.

SECTION 7. This section would modify the requirement in section 5110(e) that shippers and carriers retain shipping papers for one year. Section 5110(e) presently requires retention for one year after the hazardous material to which a shipping paper applies is no longer in transportation. Because many shippers do not know whether or when the transportation ends, they do not know how long they are required to retain the shipping papers. Therefore, that section is being modified to provide for shipping paper retention for one year after the shipping paper is provided to the carrier.

SECTION 8. Several technical amendments would be made to section 5115 to reflect the fact that the public sector training curriculum already has been developed and to focus the statutory provisions on updates to, not development of, the curriculum.

This section also would expand the public sector training curriculum to include response to crashes or incidents involving alternative fuel vehicles. As the nation enhances protection of the environment in the transportation field, such as reducing motor vehicle-related air pollution, it is important that safety training keep abreast of those developments. Therefore, public-sector employees should receive emergency response training on any unique hazards that may be encountered in responding to situations involving alternative fuel vehicles, including those powered by electricity, liquefied petroleum gas, or compressed natural gas. As part of the curriculum, the training related to those vehicles would include the interplay between those vehicles and various types of hazardous materials that could be involved in incidents involving them.

References to the “national response team” would be changed to “National Response Team for Oil and Hazardous Substances” for clarification.

The training curriculum would be required to include appropriate emergency response training and planning programs for public-sector employees developed “with federal financial assistance,” not just those under other U.S. Government grant programs. In addition, the recommended basic training course would be required to include training necessary to comply with “such voluntary consensus standard-setting organizations as the Secretary deems appropriate,” not just those of the National Fire Protection Association.

Current subsection (k) would be deleted because the training grants report it mandates has been completed by the Secretary and submitted to Congress. A new subsection (k) would be added to authorize States and Indian tribes to use up to 25 percent of their planning and training grants to assist small businesses in complying with regulations issued under this chapter. This authorization is appropriate because the vast majority of registrants under section 5108 are small businesses and because the vast majority of the Department of Transportation’s hazardous material enforcement cases are brought against small businesses. Thus, small businesses are significantly funding the grants program and have a demonstrated need for additional training.

SECTION 9. This section would name the account established under subsection 5116(i) the "Emergency Preparedness Fund" and authorize its use, in addition to currently authorized uses, for publication and distribution of the North American Emergency Response Guidebook (NAERG); maintenance, publication and distribution of the section 5115 training curriculum for the public sector, and carrying out other sections of chapter 51 (except sections 5109, 5112, 5113, 5119, and 5128). Funding the NAERG from this account would alleviate budgetary problems that arise because an updated NAERG has been published every three years, not every year. This change also would improve emergency response to hazardous material incidents and ensure appropriate funding of the training curriculum.

This section would clarify section 5116(e) by changing a reference to "Amounts of the State or tribe" to "Amounts received by the State or tribe." Subsection 5116(f) would be amended to consolidate the authority to monitor public sector emergency response planning and training in the Secretary of Transportation because, historically, DOT has been the only agency funded to carry out this function. In that same subsection, the reference to "national response team" would be clarified to read "National Response Team for Oil and Hazardous Substances." In subsection (g), the phrase "Government grant" programs would be broadened to "Federal financial assistance" programs in order to provide for more complete coordination of programs.

SECTION 10. This section would change the term "exemption" to "special permit." The term "exemption" gives an erroneous impression that hazardous materials transportation under an exemption is being carried out without regulation, and the term "special permit" will appropriately convey that such transportation is required to be conducted in accordance with terms and conditions set by the Department of Transportation.

In addition, this section would amend section 5117(a)(2) by changing the maximum effective period of a special permit from two years to four years. This change would eliminate a great deal of unnecessary industry application time and Government processing time involved in the present two-year renewal process. This proposed change evolved from President Clinton's Regulatory Reinvention Initiative.

The increased maximum effective period of time will have a positive impact on safety. It will enable Research and Special Programs Administration (RSPA) staff to avoid time-consuming processing of routine renewals and instead focus attention on more significant exemption (special permit) issues. In addition, RSPA has at least two means of dealing with related safety issues. First, the time period for each special permit can be restricted to whatever period of time less than four years that is determined appropriate for safety purposes. Second, under its regulations (49 CFR 107.121), RSPA may modify an special permit (currently an exemption) if a related statute or regulation has been changed, and may modify, suspend, or terminate a special permit if the special permit no longer would provide the same level of safety as the regulations, the application was significantly or deliberately inaccurate or incomplete, or the special permit-holder has knowingly violated

a regulation or the special permit in a manner demonstrating unfitness to conduct the activity authorized in the special permit.

SECTION 11. Subsection 5119(a)(1)(A) would be amended by adding the words “and issue permits to” to indicate that this subsection, like all of section 5119, applies to both registration and permitting by States. In addition, a new subsection 5119(c)(4) would be added to specifically authorize States, pending issuance of regulations under section 5119, to participate in the uniform forms and procedures program that has been recommended to the Secretary by the working group under subsection 5119(b).

SECTION 12. This section would move three enforcement-related provisions from section 5121 (Administrative) to the more appropriate section 5122 (Enforcement) and would add a new subsection (c) to section 5121 authorizing the Secretary of Transportation to enter into grants, cooperative agreements, and other transactions to further the objectives of chapter 51 of title 49. Those objectives include the conduct of research, development, demonstration, risk assessment, emergency response planning, program support, and training activities. Under the new provision, the Secretary would have express authority to enter into grants, agreements and 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.

In addition, this amendment would streamline and modernize the biennial reporting requirements. To reflect the fact that much of the required information now exists on the Research and Special Programs Administration’s or other Internet web-sites, the Secretary would be required to either include in the report or provide appropriate reference to the required information. For example, the report could summarize and refer to hundreds of exemptions (special permits) that are on RSPA’s Internet web-site instead of describing each of them individually in the report.

SECTION 13. This section would improve safety by clarifying and enhancing the inspection and enforcement authority of DOT officials and inspection personnel. First, the new section 5122(a) (current section 5121(a)) would be amended by adding "inspect" to the enforcement authorities of the Secretary. This addition will expressly state the authority of DOT inspectors to conduct routine inspections to ensure compliance with chapter 51, an authority that is implied by the existing language in current section 5121(a).

Current subsection 5121(b) would become subsection 5122(b).

This section also would amend the new subsection 5122(c) (current subsection 5121(c)) to expand DOT inspection authority to records and property related to industry inspections of hazardous materials packaging and to authorize a designated DOT officer or employee to:

- o open and examine a package (except for the packaging immediately adjacent to the hazardous materials contents) 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;
- o remove from transportation a package or related packages in a shipment when the officer or employee has an objectively reasonable and articulable belief that the package or packages may pose an imminent hazard and contemporaneously documents that belief;
- o gather information from the shipper, packaging manufacturer or retester, or others responsible for the package to determine the nature and hazards of the contents of the package;
- o as necessary, order the shipper, packaging manufacturer or retester, or others responsible for the package to have the package transported to, opened, and the contents analyzed at an appropriate facility; and
- o authorize properly qualified personnel to assist in the package opening and examination of packages when safety might otherwise be compromised.

The existing authority also would be amended to require the Secretary to develop procedures to assist in the safe resumption of transportation of the package and transport unit when an inspection or investigation does not result in discovery of an imminent hazard.

This improved inspection authority comports with Fourth Amendment principles on permissible searches by the Government. The landmark decision, New York v. Burger, 482 U.S. 691 (1987), and its progeny adopted the administrative search doctrine permitting a regulatory agency with a substantial governmental interest to conduct warrantless inspections of "closely regulated" or "pervasively regulated" industries, provided that the agency's inspection program was reasonable. One case, United States v. V-1 Oil Co., 63 F.3d 909 (9th Cir. 1995), cert. denied, 517 U.S. 1208, 116 S.Ct. 1824 (1996), ruled that the transportation of hazardous materials is a "closely regulated" industry in upholding the Federal Railroad Administration's hazardous materials inspection program. The hazardous materials law circumscribes this industry, thus reducing the level of expectation of privacy of those businesses engaging in it. Therefore, persons offering or transporting packages identified as hazardous materials possess limited privacy interests, authorizing DOT inspection personnel to inspect these shipments.

Likewise, this legislation protects the constitutional rights of persons offering or transporting other types of shipments. The momentary "stop and search" of these packagings invoke minimally intrusive conduct necessary to carry out the purposes of the statute. See V-1 Oil Co. v. Means, 94 F.3d 1420 (10th Cir. 1996). Such a brief detention is valid provided that there is an objectively reasonable and articulable suspicion of a

violation of the hazardous material transportation law. *See United States v. McSwain*, 29 F.3d 558 (10th Cir. 1994). DOT officers or inspectors would have to have a particularized and objective basis for suspecting a violation, such as shipping or transporting undeclared or unreported hazardous materials, in order to open an unmarked package. *See United States v. Cortez*, 449 U.S. 411 (1981).

In addition, this section would add a new subsection 5122(d) authorizing the Secretary of Transportation to issue emergency orders when it is determined, by inspection or investigation, that a violation of this chapter or a regulation issued under it, or an unsafe condition or practice is causing an imminent hazard. In those situations, the Secretary would be authorized to issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or the opportunity for a hearing only to the extent necessary to abate the imminent hazard. The Secretary's action would have to be a written order describing the violation, condition or practice causing the imminent hazard; stating the restrictions, prohibitions, recalls, or out-of-service orders being issued or imposed; and prescribing standards and procedures for obtaining relief from the order. The Secretary would be required to provide for review of that action, with an opportunity for a hearing on the record under the Administrative Procedure Act, within 20 days after the order is issued.

Also, a new subsection 5122(e) would require the Secretary to issue regulations, with notice and comment and an opportunity for an informal hearing, implementing the new package inspection and opening and emergency orders provisions of section 5122.

The authority provided to DOT officials and inspection personnel under these new subsections is necessary to ensure the safe transportation of hazardous materials. The National Transportation Safety Board (NTSB) found that improperly packaged and undeclared hazardous materials caused the loss of 110 lives on ValuJet flight 592 in the Florida Everglades on May 11, 1996. The shipping and transportation of undeclared or hidden hazardous materials is the most dangerous practice involved in hazardous materials transportation. Without notice of the existence and nature of hazardous materials, carriers are unable to verify that the materials are being transported in accordance with the Hazardous Materials Regulations and to take appropriate emergency response actions when a problem develops.

The ValuJet incident does not stand alone. In other cases, airplanes could have been lost and people killed as a result of hidden hazardous materials in packagings. In 1998, a Federal Express employee was loading a box when the inner contents shifted, causing 200 rounds of cartridges to explode and char the box. Another serious incident involving a package shipped via Federal Express occurred in 1996, when ramp handlers encountered strong fumes while unloading an aircraft. Six ramp crew personnel were affected by the fumes and sent to a health clinic for observation. The package contained methyl acrylate, a flammable liquid, and was not marked, labeled, or documented as a hazardous material shipment.

In a 1997 incident aboard a Continental Airlines plane, drums inside a wooden crate leaked, four crew members were affected by the fumes, and two crew members sought medical attention. The leaking drums were discovered after passengers had disembarked. The shipment originated in Italy and was destined for Brazil. It had been offered to UPS in Germany, flown on a cargo aircraft to Newark, offered by UPS to Continental Airlines in Newark, and flown to Miami, where the leaking drums were discovered. The inner drums had been marked and labeled, but there were no hazardous material markings on the outer crate and no hazardous material shipping papers.

A recently regulated material was the cause of an undeclared hazardous material incident in 1996. UPS employees unloading an aircraft discovered a leaking package. Eight employees inhaled fumes and were sent to a hospital for observation. The leaking commodity was benzaldehyde, a class 9 material recently regulated as a hazardous material both domestically and internationally because of its anesthetic or noxious effects on flight crews.

The Federal Aviation Administration's (FAA) enforcement statistics demonstrate that undeclared hazardous materials shipments are a frequent and increasing problem. The following data show FAA's 1993-1998 hazardous materials enforcement cases and the percentage of them that involved undeclared hazardous materials:

<u>Year</u>	<u>Cases</u>	<u>Cases Involving Undeclared Hazmat</u>	<u>% Cases Involving Undeclared Hazmat</u>
1993	895	420	47%
1994	1,029	656	64%
1995	726	516	71%
1996	888	664	75%
1997	1,231	1,008	82%
1998*	1,596	941	59%

*As of December 8, 1998

These statistics reflect an increasing number of reports to FAA concerning discoveries of undeclared shipments and an increasing number of cases based on initiatives undertaken by FAA's increased hazardous material workforce.

Furthermore, the problem of undeclared hazardous materials shipments is not limited to air transportation; it has been experienced in virtually every mode of transportation. These major incidents are merely representative of a more widespread problem. The following data from the Research and Special Program Administration's Hazardous Materials Information System (HMIS) indicate that there were hundreds of carrier-reported incidents (usually releases of hazardous materials) involving undeclared or hidden hazardous materials. Specifically, from January 1990 through July 1998, there were approximately 1,887 carrier-reported incidents involving a release of undeclared hazardous materials, resulting in 110 deaths and 175 injuries. Because many incidents are

unreported, including those in intrastate highway transportation not required to be reported until recently, these statistics understate the severity of problems caused by shipments of undeclared hazardous materials. In addition, these statistics cover only those shipments in which an incident occurred -- most likely only a small percentage of the total number of undeclared or hidden hazardous materials shipments.

The authorities being proposed for DOT officials and inspection personnel would clarify their existing authority to deal with this problem by opening certain packagings, inspecting their contents, identifying likely hazardous materials, taking and analyzing samples of those materials, and taking or directing effective mitigating or prohibitory actions to reduce, eliminate or prevent hazards and their serious potential consequences. For example, a hazardous materials inspector who directly observes a hazardous materials shipment that does not comply with the law may act to prevent movement of that shipment until it is brought into compliance, but it is increasingly important that this general authority be spelled out.

Finally, current subsections 5122(a), (b), and (c), respectively, would become subsections 5122(f), (g), and (h). In subsection (g), "ameliorate" would be changed to "mitigate" for clarity. In subsection (h), "of the Treasury" would be added to clarify that the Secretary of the Treasury has the authority to grant, refuse, or revoke a vessel clearance and "of Transportation" would be added to indicate that the Secretary of Transportation may request the Secretary of Treasury to exercise that authority.

SECTION 14. This section would amend the civil and criminal penalty provisions in sections 5123 and 5124. It would extend those provisions to cover violations of special permits or approvals issued by the Department to ensure that appropriate enforcement action can be taken against persons violating those special authorities. The amendment to section 5123 would implement the Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), by increasing the maximum civil penalty from \$25,000 to \$27,500. In addition, section 5123 would be amended to add two criteria to the list of factors the Secretary must consider in determining the amount of a civil penalty: any good-faith efforts by the violator to comply with the applicable requirements before or at the time of the violation, and any economic benefit to the violator resulting from the violation. The first of these would be considered as part of the culpability of the violator, and the second factor would be used only to increase penalties where the violator has reaped economic benefits as the result of its violation.

Finally, the criminal penalty provision in section 5124 would be amended by adding a new subsection (b), to increase the criminal penalties for a person knowingly violating 49 U.S.C. 5104(b) or willfully violating chapter 51 or a regulation issued under that chapter, and thereby causing a release of hazardous material. Section 5104(b) concerns tampering with a package, vehicle, vessel, aircraft, or rail freight car used to transport hazardous materials. The penalty would be a fine under title 18, not more than twenty years imprisonment, or both. The need to deter intentional releases of hazardous materials is

self-evident. Hazardous materials can have disastrous consequences to the environment and to members of the public exposed to those materials.

SECTION 15. This section would amend subsection 5125 by adding a reference to “the purposes of this chapter” in order to clarify the scope of the “obstacle” test for preemption. It would delete an obsolete reference in section 5125(b)(2) to “November 16, 1990.” Finally, it would add a new section 5125(h) to indicate that each preemption standard is to be applied independently to each non-Federal requirement in order to determine whether it is preempted. The latter change would clarify that simply because a non-Federal requirement passes one preemption standard (e.g., the “dual compliance” test) does not mean that it need not pass other section 5125 preemption standards (e.g., the “obstacle” test).

SECTION 16. This section would add a new section 5127, providing for judicial review of final orders issued under chapter 51. This provision establishes the appropriate judicial forum for review of final agency compliance, enforcement, and civil penalty orders, an issue on which the present law is silent. It covers orders issued by the Secretary of Transportation, the Commandant of the Coast Guard, and the Administrators of the Research and Special Programs Administration, the Federal Aviation Administration, and the Federal Highway Administration. The Federal Railroad Administration is excluded because it already has a judicial review provision (49 U.S.C. 20114(c)) applicable to its hazardous materials cases. The United States Court of Appeals for the District of Columbia or for the circuit in which a person seeking review resides or has its principal place of business would review the order. The petition for review must be filed within 60 days after issuance of the order unless the court finds reasonable grounds for a late filing. The section describes judicial procedures, the authority of the court, a requirement for prior objection, and review by the United States Supreme Court -- all provisions modeled on the statute providing for judicial review of Department of Transportation and Federal Aviation Administration aviation safety orders (section 46110 of title 49). The national transportation issues under chapter 51 similarly require the type of uniform decisionmaking that the Courts of Appeals can provide.

SECTION 17. This section would add a new section 5128 to require the Secretary to conduct a study of alternative approaches to increase the safety of high-risk hazardous materials carriers. The study would be in lieu of initiating a Federal Safety Permitting Program for motor carriers of high-risk hazardous materials at this time and help determine the possible shape and nature of a national program of great efficiency, uniformity, and effectiveness. Existing State hazardous materials safety permitting programs in whole or in part would be examined and evaluated for national application. Safety benefits that may be derived by using technology-based programs also would be studied and appropriate technology recommended. Recommendations for uniformity of program application among existing State safety permitting programs would be sought. Overall costs, benefits and administrative efficiency would be examined.

SECTION 18. This section would amend the authorization language in the redesignated section 5129 (current section 5127). Consistent with the President’s budget and to carry

out chapter 51 (except sections 5107(e), 5108(g), 5109, 5112, 5113, 5115, 5116, 5119, and 5128), subsection (a) would authorize \$13,725,000 in appropriations for fiscal year 2000 and make available \$4,575,000 from the amounts collected under section 5108(g)(2)(B) for the last quarter of that fiscal year. It also would make available from the amounts collected under that section such sums as are necessary for fiscal years 2001 through 2005.

Subsection (b) (training of hazmat employee instructors) would authorize \$3,000,000 to be appropriated for each of fiscal years 2000 through 2005 to carry out section 5107(e), \$500,000 to be used in each of those fiscal years to carry out section 5116(j), and \$1,000,000 to be appropriated for each of those fiscal years to carry out section 5116(j). All of those monies would come from the section 5116(i) account.

Subsection (c) (training curriculum) would authorize use of \$200,000 in each of fiscal years 2000 through 2005 to carry out section 5115.

Subsection (d) (planning and training grants) would authorize, from the section 5116(i) account and for each of fiscal years 2000 through 2005, use of \$5,000,000 to carry out section 5116(a), \$7,800,000 to carry out section 5116(b), and \$750,000 to carry out section 5116(f).

In addition, this section would eliminate current subsection (e) and make ancillary editorial changes. Subsection (e) concerns an authorization to the Secretary for fiscal year 1993 to carry out section 5119, and is no longer needed. Subsection (d)(3) would be amended to delete, as unnecessary, the authorization of funds to the Director of the National Institute of Environmental Health Sciences, the Secretary of Energy, the Administrator of the Environmental Protection Agency, and the Director of the Federal Emergency Management Agency.

Furthermore, new subsection (e) would authorize the use of \$2,000,000, from the section 5116(i) account for each of fiscal years 2001 through 2005, for publication and distribution of the North American Emergency Response Guidebook.

SECTION 19. This section would authorize the Secretary, through the Commandant of the Coast Guard, to begin addressing the problem of undeclared hazardous material in transportation in commerce that is more fully discussed above under section 13. It would mandate a two-year pilot program to randomly inspect intermodal containers in coastal port areas in order to determine the extent to which undeclared hazardous material is being offered for transportation in commerce. Coast Guard personnel would be authorized to open and inspect any intermodal container on a vessel or marine terminal or elsewhere in a port area on the Atlantic, Pacific, or Gulf of Mexico coasts. Although these inspections would not be based on a reasonably articulable belief that a hazardous material is present, they would be carried out solely by Coast Guard personnel who traditionally carry out customs activities, they would be carried out in coastal port areas where they would be similar to border inspections, and they would be based upon random selections made by supervisory personnel not present at the site of the

inspections. Therefore, the proposed pilot program represents a careful balancing of parties' privacy interests and the need to protect emergency responders, transportation workers and the general public from the dangers inherent in the transportation of undeclared hazardous material.

The Secretary would be required to initiate the program within 1 year after enactment of this Act and to report to Congress on the program within 6 months of its completion. That report would be required to contain the number of containers inspected, the number of containers containing undeclared hazardous material, a description of the safety hazards posed by the undeclared hazardous material, and a recommendation for any legislation necessary to address those safety hazards. That recommendation might address a broader pilot program or a substantive change to this Act.

SECTION 20. This section would delete subsection 5105(d) because the modes and routes study it mandates has been completed by the Secretary and submitted to Congress. It would then redesignate subsection 5105(e) as subsection 5105(d).