

120293

INTERESTED PARTIES FOR HMTA REAUTHORIZATION

DEPT. OF TRANSPORTATION

01 JAN 10 201 8:49

RSPA-01-8587-2

October 26, 2000

The Honorable Kelley Coyner
Administrator
DRP-1
Research and Special Programs Administration
U.S. Department of Transportation
400 Seventh St., SW
Washington, DC 20590

RE: Reauthorization of the Hazardous Materials Transportation Act

Dear Ms. Coyner:

Earlier this year, RSPA's Office of Chief Counsel (OCC) invited the Interested Parties for HMTA Reauthorization (Interested Parties) to review and comment on the Department's legislative text to reauthorize the Hazardous Materials Transportation Act.

The Interested Parties share RSPA's concern that this legislation has expired and are anxious to work for reauthorization. We welcomed this invitation to reaffirm and clarify our views on various issues, and to make editorial recommendations as necessary.

The recommendations in the attached legislative text and section-by-section justification represent the views of the Interested Parties.

Sincerely,


Cynthia Hilton
Co-facilitator


Paul Rankin
Co-facilitator

Enclosures

cc: Ed Bonekemper, OCC

- Transport Association of America*
- American Chemical Council*
- American Petroleum Institute*
- American Trucking Associations, Inc.*
- Association of American Railroads*
- Chlorine Institute, Inc.*
- Committee on Radionuclides and Radiopharmaceuticals*
- Compressed Gas Association*
- Conference on Safe Transportation of Hazardous Articles*
- Fertilizer Institute*
- Hazardous Materials Advisory Council*
- Institute of Makers of Explosives*
- National Association of Chemical Distributors*
- National Industrial Transportation League*
- National Paint & Coatings Association*
- National Private Truck Council*
- National Tank Truck Carriers, Inc.*
- Nuclear Energy Institute*
- Radiopharmaceutical Shippers & Carriers Conference, Inc.*
- Railway Progress Institute*
- Reusable Industrial Packaging Association*
- Society of the Plastics Industry, Inc.*
- Steel Shipping Container Institute*
- Sulfur Dioxide Mutual Assistance Response Team*
- Utility Solid Waste Activities Group*
- Vessel Operators Hazardous Materials Association*

1 [October 26, 2000]

2 **DRAFT**
3 **SECTION-BY-SECTION JUSTIFICATION**
4 **of**
5 **IP Recommendations to DOT Hazmat Safety Bill**

6
7 *Explanation of recommended changes to DOT's February 24, 1999 proposal to*
8 *reauthorize chapter 51 of title 49 U.S.C. This explanation does not address editorial*
9 *corrections.*

10
11 **§5101 – Findings and purposes**

12
13 In 1990, Congress made a number of findings about hazardous materials transportation
14 and expressions of intent about what the HMTA was to accomplish. The Interested
15 Parties believe those findings and expressions of intent are still relevant and, with some
16 updating, should be incorporated into the U.S.C.

17
18 The Interested Parties do not believe that non-federal rules applicable to the
19 transportation of hazardous materials should differ from federal rules irrespective of the
20 source of the federal rule.

21
22 The Secretary does not provide training to hazmat employees. This is a responsibility of
23 hazmat employers.

24
25 **§5102 – Definitions**

26
27 The phrase “containers, drums or other” is rendered moot by the addition of the definition
28 of “packaging.”

29
30 The Interested Parties are concerned that the term “reject” could have an unintended
31 consequence of extending the HMR to employers and employees who do not want to
32 handle hazardous material and therefore “reject” it. While subtle, we believe the word
33 “accept” accomplishes the goal of DOT to call attention to those employers and
34 employees who are in the business of handling hazardous material.

35
36 The Interested Parties have clarified the use of the terms “components of packaging” and
37 “packagings” where they are used to define “hazmat employee”, “hazmat employer”, and
38 “person.”

39
40 There are many times that for reasons of safety vehicles declared “out-of-service” are
41 moved at the direction of authorities out of harm’s way. The definition of “out-of-
42 service” is clarified to mean that the vehicle may no longer continue in commerce while
43 the “out-of-service” designation applies.

44
45 The definition of “person” is modified to include the United States Postal Service. The
46 postal service is a quasi-government agency. In the transportation of hazardous material,

47 it competes with other private entities. It should meet the same safety requirements and
48 be subject to the same enforcement authority as all other persons who offer or transport
49 hazardous materials in commerce.

50
51 The term “Secretary” and “Secretary of Transportation” are used interchangeably
52 throughout the document. The Interested Parties add a definition of “Secretary” to mean
53 the Secretary of Transportation unless otherwise indicated and conform text as necessary.

54
55 **§5103 – General regulatory authority**

56
57 The findings section of current law makes clear that the transportation of hazardous
58 materials should be conducted in a “safe and efficient manner.” (P.L. 101-615, Section
59 2(8).) The importance of efficient as well as safe transportation is recognized in the
60 revisions to §5101(a) and (b). The concept of safe and efficient transportation must also
61 be restated in the section providing DOT’s regulatory authority.

62
63 The recommendations make consistent with the definition of “hazmat employer” the
64 activities preformed by a person over which the Secretary may issue regulations.

65
66 The recommendation clarifies the use of the terms “components of packaging” and
67 “packagings” as it relates to the Secretary’s authority.

68
69 While the Interested Parties believe that the United States Postal Service is not a
70 government agency for purposes of this statute, we recognize that the postal service has a
71 unique relationship to the federal government and consequently provide that DOT consult
72 with the USPS when the administration of federal hazardous materials law affects the
73 transportation of hazardous material in the United States mail.

74
75 **§5104 – Representation and tampering**

76
77 The recommendation restores original language that was stated in the imperative prior to
78 the 1994 recodification. We believe this strengthens the meaning and intent of the
79 section and is consistent with regulations at 49 CFR 171.2.

80
81 **§5105 – Transporting certain highly radioactive material**

82
83 In various sections, terms applicable to radioactive materials differ. The Interested
84 Parties standardize these terms and provide a consistent definition.

85
86 The requirement to provide rules regarding the inspection and motor vehicles used to
87 transport highway route controlled quantities of radioactive materials was delegated to
88 the FMCSA. FMCSA has informed us that, in the implementation of this requirement, it
89 defers to the enhanced hazmat inspection procedure developed by the Commercial
90 Vehicle Safety Alliance (CVSA) for certain shipments of radioactive material. The
91 Interested Parties are clarifying what, in fact, is the practice now. We are also clarifying
92 that to the extent FMCSA allows persons offering or transporting these materials to

93 inspect and certify that the motor vehicle complies with the applicable hazmat
94 requirements that the person must follow the procedure and criteria of the CVSA
95 protocol.

96

97 **§5107 – Hazmat employee training requirements and grants**

98

99 The Interested Parties restore the phrase “or duplicate” because we do not believe that the
100 same person should be subject to the same requirement by more than one federal agency.

101

102 In 1990, a clerical error extended OSHA authority to regulate areas affecting hazardous
103 materials transportation that were not contemplated by Congress when this provision was
104 enacted. These areas include hazmat handling criteria, hazardous materials registration
105 and motor carrier safety permits. This error should be corrected.

106

107 **§5108 – Registration**

108

109 The hazmat registration form does not and has never asked registrants to describe each
110 activity that the registrant engages in that requires registration. Rather, registrants are
111 asked to declare what their registration activity is. This recommendation more accurately
112 states what is involved in the registration process. Additionally, the text of (b)(2) is
113 rephrased for clarity.

114

115 The Interested Parties oppose the use of registration fees to fund the federal hazmat
116 transportation program. All DOT changes to current law to accomplish this purpose have
117 been stricken.

118

119 The Interested Parties recommend that a ceiling of no more than \$750 be set for the
120 maximum amount DOT can assess from entities required to file a hazmat registration to
121 fund the emergency response planning and training grants. Current law allows DOT to
122 set hazmat fees within a range of \$250 to \$5,000. Even when a small fraction of persons
123 subject to the hazmat fee pay the current \$2,000 per entity fee, DOT exceeds its budget
124 requests for the grants program. Additionally, there may be instances when DOT wants
125 to collect registration information but feels that certain entities should not have to pay at
126 least \$250. We believe DOT can achieve its statutory responsibilities to fund the grants
127 with a more conservative fee scale.

128

129 **§5109 – Motor carrier safety permit**

130

131 Federal hazardous materials law authorizes both a federal permit, 49 U.S.C. 5109, and a
132 state permit, 49 U.S.C. 5119, for the transportation of hazardous material. These changes
133 assure that motor carriers are not subject to more than one federally-recognized
134 hazardous materials safety permit. The amendment provides that a carrier possessing a §
135 5119 state permit is excepted from the requirement to obtain a federal permit.

136

137 **§5110 – Shipping papers and disclosure**

138

139 The amendment to subsection (a) eliminated the need for current law subsection (b).
140 Current law subsection (b) is permissive and unnecessary inasmuch as DOT's
141 comprehensive shipping paper requirements already address all of the items listed.

142

143 The amendment to current law subsection (c), now subsection (b), makes unnecessary
144 paragraph (1). The amendment to new paragraph (b)(1) clarifies that the need to retain a
145 shipping paper on a vehicle is an indication when a carrier's obligation of transportation
146 of hazardous materials ends, not an indication of when hazardous materials are no longer
147 in transportation. The amendment to new paragraph (2) provides that the shipping paper
148 may be kept in an electronic format. This is the common format used in the airline
149 industry. The amendment to new subsection (e) clarifies that the Secretary must
150 prescribe rules in order to effect the requirements of this section.

151

152 **§5111 – Rail tank cars**

153

154 This section is no longer necessary. The section should be reserved, or all subsection
155 sections renumbered.

156

157 **§5112 – Highway routing of hazardous materials**

158

159 The Secretary should not be precluded from working with states and Indian tribes to
160 ensure that a balance of factors is considered by these non-federal entities when
161 designating hazardous materials routes.

162

163 **§5115 – Training curriculum for the public sector**

164

165 This Administration proposal would divert funds for curriculum activities related to
166 HMTA-regulated materials to curriculum needs associated with vehicles powered by
167 alternative fuels. This proposal taps funds collected from industry-based fees that have
168 been dedicated since 1990 to planning, training, and related curriculum development
169 needs associated with the transportation of hazardous materials in commerce. It is
170 inappropriate to use these funds for purposes unrelated to hazardous materials in
171 commerce.

172

173 **§5116 – Planning and training grants; emergency preparedness fund**

174

175 The Administration proposal to use up to 25 percent of state grants for small business
176 compliance assistance would divert funds for hazardous materials planning and
177 emergency response training. This proposal taps funds collected from industry-based
178 fees that have been dedicated since 1990 to assist states and Indian tribes develop and
179 carry out emergency plans required by 42 U.S.C. 11001 and to train public sector
180 employees to respond to accidents and incidents involving hazardous materials. It is
181 inappropriate to use these funds for small business outreach considering the continuing
182 unmet need to train public sector emergency response personnel.

183

184 Federal law provides that states can impose fees on the transportation of hazardous
185 materials only if the fees are fair and used for purposes related to such transportation.
186 However, DOT says it cannot enforce the Congressional requirement to consider whether
187 states impose fees on the transportation of hazardous materials and whether the fees are
188 used for Congressionally-approved purposes when awarding emergency planning and
189 training grants because it does not know what Congress intended by the review.
190 Congress should clarify that states assessing fees in violation of federal hazmat law do
191 not qualify for a grant, and that DOT has the authority to reduce a state's grant if the
192 revenue from the state's fee(s) reduces its need for assistance relative to other states that
193 impose no fees.

194

195 **§5119 – Uniform forms and procedures**

196

197 In 1990, Congress provided authority for DOT to eliminate the administrative
198 redundancy of non-uniform, non-reciprocal, non-federal registration and/or permitting
199 programs imposed on hazmat motor carriers. However, DOT has not exercised this
200 authority. In the meantime, recommendations developed by state and local
201 representatives to replace the hodgepodge of such programs have been tested. The
202 resulting "Uniform Program" has been adopted by seven states, and endorsed by industry
203 and the CVSA. States benefit by ensuring that only safe carriers transport hazmat,
204 spreading the permitting workload among states, eliminating gaps that exist in some state
205 programs, preserving state enforcement authority and choice to participate in the Program
206 at several administrative levels, and providing a safe harbor from preemptive challenges.
207 Industry benefits by reduced paperwork, a program based on federal standards, a fee
208 formula that comports with federal law and the Constitution, and a level playing field as
209 all carriers are held to the same standard no matter what jurisdiction issues the credential.
210 DOT's reluctance to move forward with this initiative in defiance of Congressional
211 directive should not be tolerated. Congress should reaffirm its 1990 commitment to
212 streamline hazmat permitting and set a date certain by which DOT must implement the
213 Uniform Program. We recommend that DOT finish the rulemaking required by this
214 section using the same time frame DOT set for itself to accomplish the motor carrier
215 permitting study at § 5128.

216

217 The amendment to subsection (a) is technical. When the HMTA was amended in 1992
218 (P.L. 102-508), Congress clarified that the requirements of §5119 were to apply to state
219 "permit" forms and procedures as well as "registration" forms and requirements.
220 However, when the HMTA was recodified later that year (P.L. 103-429), the word
221 "allow" was substituted for the word "permit" in paragraph (B). As the term is used, the
222 word "permit" more accurately describes the intent of this provision. This can be
223 accomplished either as DOT has suggested by the addition of the words "issue permits"
224 which will eliminate the need for paragraph (1)(B), or by replacing the word "allow" in
225 paragraph (1)(B) with the word "permit."

226

227 **§ 5121 – Administrative**

228

229 The Interested Parties benefit from the biennial publication of the Secretary’s hazardous
230 materials report. However, we note that DOT does an exemplary job to publishing notice
231 of new exemptions (“special permits”) and modifications to exemptions (“special
232 permits”). We do not believe this information needs to be repeated in the biennial report.
233

234 **§ 5122 - Enforcement**

235
236 The Interested Parties do not believe that persons involved in the production of items that
237 may be “components” of packagings should be subject to DOT’s hazmat enforcement
238 authority. Only persons who certify that those packagings are authorized for the
239 transportation of hazardous materials should be subject to DOT hazmat enforcement
240 authority. In paragraph (c)(1)(C), DOT accepted the phrase “package or packages”. We
241 follow this phrasing through in paragraphs (c)(1)(D) and (E). The Interested Parties
242 believe DOT should not have authority to remove a package from transportation unless
243 the package, in fact, poses an imminent hazard. DOT should have authority to call on
244 qualified persons to assist in the all of the activities described in subsection (c)
245 paragraphs (1)(A) through (D), not just paragraph (1)(B).
246

247 The recommendation clarifies the terms “components of packaging” and “packaging”
248 when used to describe the Secretary’s enforcement authority.
249

250 While emergency orders may be appropriate for some discrete period of time, DOT
251 should not be able to administratively extend those orders indefinitely. The Interested
252 Parties recommend that, in instances where the Secretary fails to complete an
253 administrative review of an emergency order as provided in paragraph (d)(3), that the
254 order be automatically vacated within 30 days if the Secretary fails to subsequently
255 determine in writing that the emergency still exists.
256

257 **§5124 – Criminal penalty**

258
259 The Interested Parties opposed the change suggested by DOT because it will reduce the
260 burden of proof in criminal cases.
261

262 **§5125 – Preemption**

263
264 DOT is authorized to find administrative preemption only under its “obstacle,” “dual
265 compliance” and “substantively the same as” preemption authorities. We believe it was
266 an oversight that the 1990 amendments did not provide for administrative preemption
267 under § 5125(g) relating to non-federal hazardous materials transportation fees and §
268 5119(c)(2) relating to non-conforming state permitting/registration programs. This
269 oversight has subsequently become an issue before the courts. [DOT v. TNDEC]
270

271 The recommendation clarifies the terms “components of packaging” and “packaging”
272 when used to describe the preemption authority of federal hazardous materials
273 transportation law.
274

275 Subsection (f) concerns judicial review. The Interested Parties recommendations more
276 appropriately direct petitions for review to federal courts of appeals rather than district
277 courts to increase uniform interpretations of the law. Additionally, an amendment is
278 suggested to describe the relationship between this authority and the judicial review
279 authority contained in §5127.

280

281 **§5126 – Relationship to other laws**

282

283 As noted earlier, the Interested Parties believe the United States Postal Service should not
284 be exempt from the requirements of this chapter.

285

286 The recommendation clarifies the terms “components of packaging” and “packaging”
287 when used to describe the applicability of the hazardous materials regulations to persons
288 under contract with the Federal Government.

289

290 **§5127 – Judicial review**

291

292 The Interested Parties suggest a rewrite of this section. The aim of this section is not to
293 create a right of judicial review. Rather, when provided by the Administrative
294 Procedures Act, this assures that the court of appeals is the proper forum to petition. We
295 believe, as noted above, that access to federal courts at this level will increase uniform
296 interpretations of the law.

297

298 **§5128 – High-risk hazardous material; motor carrier safety study**

299

300 Since the 1990 reauthorization of the HMTA, a number of substantive responsibilities
301 relating to motor carrier permits have been delegated to the Federal Motor Carrier Safety
302 Administration (FMCSA). The FMCSA has accomplished none of these delegations.
303 Rather, DOT has proposed a study to revisit these Congressional directives which as
304 currently found at 49 U.S.C. 5109, 5119, and 5105(e) [§5105(e) is (d) in this proposal].
305 These matters have been studied enough. The Interested Parties see no merit in the DOT-
306 requested study and believe its purpose is to further delay implementing existing
307 provisions of federal law. This study should be deleted and the funds DOT would have
308 used to conduct the study reallocated toward the implementation of §5119.

309

310 **§5129 – Authorization of appropriations**

311

312 The Interested Parties strike all language authorizing hazmat fees to support the federal
313 hazardous materials program.

314

315 The Interested Parties recommend that funding caps be reinstated for all emergency
316 preparedness grants and related activities.

317

318 Until DOT finalizes the §5119 rulemaking to establish a uniform, reciprocal state-based
319 registration and permitting program for motor carriers of hazardous materials, financial
320 assistance should be provided to the participating states to provide technical assistance to

321 other states wishing to join the Program. The \$250,000 annual request is a decrease from
322 the previous \$400,000 annual authorization. The funding request is reasonable given that
323 Congress has provided up to \$1 million a year to enable states to transition into other
324 base-state agreements.

325

326 **§19 – Intermodal Container Pilot Program**

327

328 The Interested Parties recommend that the USCG be given the flexibility to use persons
329 other than USCG inspection personnel to open intermodal containers. There may be
330 circumstances where the USCG will want non-USCG experts to perform this task.

1 *[October 26, 2000]*

2
3 **WORD VERSION**

4 **DRAFT -- Underline/Strikeout Version of IP Recommendations to DOT**
5 **Hazmat Safety Bill *[February 24, 1999]***

6
7 § 5101. Findings and purposes

8
9 (a) Findings.--Congress finds with respect to hazardous materials transportation that--

- 10 (1) approximately 4,000,000,000 tons of regulated hazardous materials are
11 transported each year and that approximately 1,200,000 movements of
12 hazardous materials occur each day, according to Department of
13 Transportation estimates;
- 14 (2) accidents involving the release of hazardous materials are a serious threat
15 to public health and safety;
- 16 (3) many States and localities have enacted laws and regulations that vary
17 from Federal laws and regulations pertaining to the transportation of
18 hazardous materials, thereby creating the potential for unreasonable
19 hazards in other jurisdictions and confounding shippers and carriers that
20 attempt to comply with multiple and conflicting registration, permitting
21 routing, notification, loading, unloading, incidental storage, and other
22 regulatory requirements;
- 23 (4) because of the potential risks to life, property and the environment posed
24 by unintentional releases of hazardous materials, consistency in laws and
25 regulations governing the transportation of hazardous materials, including
26 loading, unloading, and incidental storage, is necessary and desirable;
- 27 (5) in order to achieve greater uniformity and to promote the public health,
28 welfare, and safety at all levels, Federal standards for regulating the
29 transportation of hazardous materials in intrastate, interstate, and foreign
30 commerce are necessary and desirable;
- 31 (6) in order to provide reasonable, adequate, and cost-effective protection
32 from the risks posed by the transportation of hazardous materials, a
33 network of adequately trained State and local emergency response
34 personnel is required;
- 35 (7) the movement of hazardous materials in commerce is necessary and
36 desirable to maintain economic vitality and meet consumer demands, and
37 shall be conducted in a safe and efficient manner;
- 38 (8) primary authority for the regulation of such transportation should be
39 consolidated in the Department of Transportation to ensure the safe and
40 efficient movement of hazardous materials in commerce; and
- 41 (9) emergency response personnel have a continuing need for training on
42 responses to releases of hazardous materials in transportation and small

43 businesses have a continuing need for training on compliance with
44 hazardous materials regulations.

45 (b) Purposes.--~~The purposes of this chapter are to--~~ § 5101. Purposes

46
47 ~~PURPOSES. The purposes of this chapter are to--~~

- 48 (1) ensure the safe and efficient transportation of hazardous materials in
49 intrastate, interstate, and foreign commerce, including the loading,
50 unloading, and incidental storage of hazardous material;
51 (2) provide the ~~Secretary of Transportation~~ Secretary with preemption
52 authority to achieve uniform regulation of hazardous material
53 transportation, eliminate inconsistent rules that apply differently than rules
54 issued by the ~~Secretary~~ Secretary from Federal rules, ensure efficient movement of
55 hazardous material in commerce, and promote the national health, welfare,
56 and safety; and
57 (3) provide adequate training for public sector emergency response teams and
58 ~~hazmat employees~~ to ensure safe responses to hazardous material
59 transportation accidents and incidents.

60
61 § 5102. Definitions

62
63 In this chapter --

- 64 (1) "commerce" means trade or transportation in the jurisdiction of the United States--
65 (A) between a place in a State and a place outside of the State;
66 (B) that affects trade or transportation between a place in a State and a place outside
67 of the State; or
68 (C) on a United States-registered aircraft.
69 (2) "hazardous material" means a substance or material the ~~Secretary of~~
70 ~~Transportation~~ Secretary designates under section 5103(a) of this title.
71 (3) "hazmat employee"--
72 (A) means an individual--
73 (i) employed by a hazmat employer or self-employed; and
74 (ii) who during the course of employment directly affects hazardous material
75 transportation safety as the Secretary decides by regulation;
76 (B) includes an owner-operator of a motor vehicle, vessel or aircraft transporting
77 hazardous material in commerce; and
78 (C) includes an individual, employed by a hazmat employer, who during the course of
79 employment--
80 (i) loads, unloads, or handles hazardous material;
81 (ii) manufactures, designs, maintains, inspects, marks, repairs, reconditions, or
82 tests components of packagings or containers, drums, or other packagings,
83 or a component thereof, represented as qualified for use in transporting
84 hazardous material;
85 (iii) ~~prepares or rejects hazardous material for transportation~~ performs any

- 86 function pertaining to the offering or accepting of hazardous material for
87 transportation;
- 88 (iv) is responsible for the safety of transporting hazardous material; or
89 (v) operates a vehicle used to transport hazardous material.
- 90 (4) "hazmat employer" means a person who--
91 (A) either--
92 (i) is self-employed
93 (ii) is an owner-operator of a motor vehicle, vessel, or aircraft, or
94 (iii) has at least one employee; and
95 (B) performs, or uses at least one employee to perform, a function in connection with--
96 (i) transporting hazardous material in commerce;
97 (ii) causing hazardous material to be transported in commerce; or
98 (iii) ~~rejecting~~ accepting hazardous material for transportation in commerce, or
99 (iv) designing, manufacturing, reconditioning, maintaining, marking, repairing,
100 inspecting, or testing components of packaging, or containers, drums,
101 other packagings, or a component thereof, represented by that person as
102 qualified for use in transporting hazardous material.
- 103 (5) "imminent hazard" means the existence of a condition that presents a substantial
104 likelihood that death, serious illness, severe personal injury, or a substantial endangerment to
105 health, property, or the environment may occur before the reasonably foreseeable completion
106 date of a formal proceeding begun to lessen the risk of that death, illness, injury, or
107 endangerment.
- 108 (6) "Indian tribe" has the same meaning given that term in section 4 of the Indian Self-
109 Determination and Education Assistance Act (25 U.S.C. 450b).
- 110 (7) "motor carrier" means a motor carrier, motor private carrier, and freight forwarder as
111 those terms are defined in section 13102 of this title, except that a freight forwarder is included
112 only if performing a function related to highway transportation.
- 113 (8) "National Response Team" means the national response team established under the
114 national contingency plan established under section 105 of the Comprehensive Environmental
115 Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605).
- 116 (9) "'out-of-service order'" means a mandate that an aircraft, vessel, motor vehicle, ~~train,~~
117 ~~railcar, other vehicle, transport unit, transport vehicle,~~ freight container, portable tank, or other
118 package not be moved in commerce until specified conditions have been met.
- 119 (10) "'package'" or "'outside package'" means a packaging and its contents.
- 120 (11) "'packaging'" means a receptacle and any other components or materials necessary for the
121 receptacle to perform its containment function in conformance with the minimum packaging
122 requirements established by the ~~Secretary of Transportation~~ Secretary.
- 123 (12) "person", in addition to its meaning under section 1 of title 1, United States Code--
124 (A) includes a government, Indian tribe, or authority of a government or tribe offering
125 hazardous material for transportation in commerce, transporting hazardous
126 material to further a commercial enterprise, or manufacturing, designing,
127 maintaining, inspecting, marking, repairing, reconditioning, or testing components
128 of packaging or containers, drums, or other packagings, or a component thereof;

- 129 represented by that person as qualified for use in transporting hazardous material;
 130 ~~but however~~
 131 (B) ~~does not include--~~
 132 (i) ~~the United States Postal Service; and~~
 133 (ii) ~~in sections for purposes of sections 5123 and 5124 of this title, does not~~
 134 ~~include a department, agency, or instrumentality of the Government.~~
 135 (13) "public sector employee"--
 136 (A) means an individual employed by a State, political subdivision of a State, or
 137 Indian tribe and who during the course of employment has responsibilities related
 138 to responding to an accident or incident involving the transportation of hazardous
 139 material;
 140 (B) includes an individual employed by a State, political subdivision of a State, or
 141 Indian tribe as a firefighter or law enforcement officer; and
 142 (C) includes an individual who volunteers to serve as a firefighter for a State, political
 143 subdivision of a State, or Indian tribe.
 144 (14) "State" means--
 145 (A) except in section 5119 of this title, a State of the United States, the District of
 146 Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands,
 147 American Samoa, Guam, and any other territory or possession of the United
 148 States designated by the Secretary; and
 149 (B) in section 5119 of this title, a State of the United States and the District of
 150 Columbia.
 151 (15) "transports" or "transportation" means the movement of property and loading, unloading,
 152 or storage incidental to the movement.
 153 (16) "Secretary" means the Secretary of Transportation unless otherwise indicated.
 154 (16)(17) "United States" means all of the States.

155
 156 § 5103. General regulatory authority

- 157
 158 (a) Designating material as hazardous. ~~The Secretary of Transportation~~ Secretary shall
 159 designate material (including an explosive, radioactive material, etiologic agent, flammable or
 160 combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas) or a
 161 group or class of material as hazardous when the Secretary decides that transporting the material
 162 in commerce in a particular amount and form may pose an unreasonable risk to health and safety
 163 or property.
 164 (b) Regulations for safe transportation.
 165 (1) The Secretary shall prescribe regulations for the safe and efficient transportation
 166 of hazardous material in intrastate, interstate, and foreign commerce. The
 167 regulations--
 168 (A) apply to a person--
 169 (i) transporting hazardous material in commerce;
 170 (ii) causing hazardous material to be transported in commerce; ~~or~~
 171 (iii) accepting hazardous material for transportation in commerce; or

172 (iii)(iv) manufacturing, fabricating, designing, marking, maintaining,
173 reconditioning, repairing, inspecting or testing components of
174 packaging or a packagings or a container that are is represented,
175 marked, certified, or sold by that person as qualified for use in
176 transporting hazardous material in commerce; and

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

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

181 (3) In carrying out the provisions of this chapter that affect the transportation of
182 hazardous materials in the United States mail, the Secretary shall consult with the
183 Postmaster General.

184
185 § 5104. Representation and tampering

186
187 (a) Representation. ~~No~~ A person may represent, by marking or otherwise, that--

188 (1) a container, package, component of packaging or packaging (~~or a component of a~~
189 ~~container, package, or packaging~~) for transporting hazardous material is safe,
190 certified, or complies with this chapter ~~{49 USC SU.S.C. §§ 5101 et seq.}~~ only if
191 ~~the container, package, or packaging (or a component of a container, package, or~~
192 ~~packaging) if it does not conform to meets the requirements of each applicable~~
193 ~~regulation prescribed under this chapter {49 USC SU.S.C. §§ 5101 et seq.}; or~~

194 (2) hazardous material is present in a package, container, motor vehicle, rail freight
195 car, aircraft, or vessel only if the material is present.

196 (b) Tampering. ~~No~~ A person may ~~not~~ alter, remove, destroy, or otherwise tamper unlawfully
197 with--

198 (1) a marking, label, placard, or description on a document required under this
199 chapter ~~{49 USC SU.S.C. §§ 5101 et seq.}~~ or a regulation prescribed under this
200 chapter ~~{49 USC SU.S.C. §§ 5101 et seq.}~~; or

201 (2) a package, container, motor vehicle, rail freight car, aircraft, or vessel used to
202 transport hazardous material.

203
204 § 5105. Transporting certain highly radioactive material

205
206 (a) Definitions. In this section, "high-level radioactive waste" and "spent nuclear fuel" have
207 the same meanings given those terms in section 2 of the Nuclear Waste Policy Act of 1982 (42
208 U.S.C. 10101) as those terms are defined by the Nuclear Regulatory Commission in title 10,
209 Code of Federal Regulations, and "highway-route controlled quantity" of radioactive material
210 has the same meaning as the term is defined in part 173 of title 49, Code of Federal Regulations.

211 (b) Transportation safety study. In consultation with the Secretary of Energy, the Nuclear
212 Regulatory Commission, potentially affected States and Indian tribes, representatives of the rail
213 transportation industry, and shippers of high-level radioactive waste and spent nuclear fuel, the
214 ~~Secretary of Transportation~~ Secretary shall conduct a study comparing the safety of using trains

215 operated only to transport high-level radioactive waste and spent nuclear fuel with the safety of
216 using other methods of rail transportation for transporting that waste and fuel. The Secretary of
217 Transportation ~~Secretary~~ shall submit to Congress not later than November 16, 1991, a report on
218 the results of the study.

219 (c) Safe rail transportation regulations. Not later than November 16, 1992, after considering
220 the results of the study conducted under subsection (b) of this section, the Secretary of
221 Transportation ~~Secretary~~ shall prescribe amendments to existing regulations that the Secretary
222 considers appropriate to provide for the safe rail transportation of high-level radioactive waste
223 and spent nuclear fuel, including trains operated only for transporting high-level radioactive
224 waste and spent nuclear fuel.

225 (d) Inspections of motor vehicles transporting certain material.

226 (1) Not later than November 16, 1991, the Secretary of Transportation ~~Secretary~~ shall
227 require by regulation that before each use of a motor vehicle to transport a
228 highway-route-controlled quantity of radioactive material in commerce, the
229 vehicle shall be inspected and certified as complying with this chapter [49
230 USC ~~U.S.C.~~ §§ 5101 et seq.] and applicable United States motor carrier safety
231 laws and regulations. The Secretary may require that the inspection be carried out
232 by an authorized United States Government inspector or according to appropriate
233 State procedures in accordance with the enhanced North American standard
234 inspection procedure and out-of-service criteria for commercial highway vehicles
235 transporting transuranic, spent nuclear fuel, or high-level nuclear waste issued by
236 the Commercial Vehicle Safety Alliance.

237 (2) The Secretary of Transportation ~~Secretary~~ may allow a person, transporting or
238 causing to be transported a highway-route-controlled quantity of radioactive
239 material, to inspect the motor vehicle used to transport the material and to certify
240 that the vehicle complies with this chapter [49 USC ~~U.S.C.~~ §§ 5101 et seq.] as
241 long as the person follows the procedure and criteria set forth in paragraph (1)
242 ~~The inspector qualification requirements the Secretary prescribes for an individual~~
243 ~~inspecting a motor vehicle apply to an individual conducting an inspection under~~
244 ~~this paragraph.~~

245
246 § 5106. Handling criteria

247
248 The Secretary of Transportation ~~Secretary~~ may prescribe criteria for handling hazardous material,
249 including--

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

258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300

§ 5107. Hazmat employee training requirements and grants

(a) Training requirements. The ~~Secretary of Transportation~~ Secretary 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~~ Secretary 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~~ Secretary 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~~

301 ~~Transportation~~Secretary shall ensure that the training requirements prescribed under this section
302 do not conflict with *or duplicate*

- 303 (1) the requirements of regulations the Secretary of Labor prescribes related to hazard
304 communication, and hazardous waste operations, and emergency response that are
305 contained in part 1910 of title 29, Code of Federal Regulations; and
306 (2) the regulations the Administrator of the Environmental Protection Agency
307 prescribes related to worker protection standards for hazardous waste operations
308 that are contained in part 311 of title 40, Code of Federal Regulations.

309 (e) Training grants. The Secretary shall, subject to the availability of funds under section
310 ~~5129(b)(1)~~ 5129(g), make grants for training instructors to train hazmat employees under this
311 section. A grant under this subsection shall be made to a nonprofit hazmat employee
312 organization that demonstrates--

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

316 (f) Relationship to other laws.

- 317 (1) Chapter 35 of title 44 [~~44 U.S.C. §§ 3501 et seq.~~] does not apply to an
318 activity of the ~~Secretary of Transportation~~Secretary under subsections (a)-(d) of
319 this section.
320 (2) An action of the ~~Secretary of Transportation~~Secretary under subsections (a)-(d) of
321 this section ~~and sections 5106, 5108(a)-(g)(1) and (h), and 5109 of this title is not~~
322 an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of
323 1970 (29 U.S.C. 653(b)(1)), of statutory authority to prescribe or enforce
324 standards or regulations affecting occupational safety or health.

325 (g) Existing effort. No grant under subsection (e) shall supplant or replace existing
326 employer-provided hazardous materials training efforts or obligations.

327

328 § 5108. Registration

329

330 (a) Persons required to file.

- 331 (1) A person shall file a registration statement with the ~~Secretary of~~
332 ~~Transportation~~Secretary under this subsection if the person is transporting or
333 causing to be transported in commerce any of the following:
334 (A) a highway-route-controlled quantity of radioactive material.
335 (B) more than 25 kilograms of a ~~class A or B explosive~~ division 1.1 or 1.2
336 explosive in a motor vehicle, rail car, or transport container.
337 (C) more than one liter in each package of a hazardous material the Secretary
338 designates as extremely toxic by inhalation.
339 (D) hazardous material in a bulk packaging, container, or tank, as defined by
340 the Secretary, if the bulk packaging, container, or tank has a capacity of at
341 least 3,500 gallons or more than 468 cubic feet.
342 (E) a shipment of at least 5,000 pounds (except in a bulk packaging) of a class
343 of hazardous material for which placarding of a vehicle, rail car, or freight

- 344 container is required under regulations prescribed under this chapter ~~49~~
345 ~~USCS~~U.S.C. §§ 5101 et seq.].
- 346 (2) The ~~Secretary of Transportation~~Secretary may require any of the following
347 persons to file a registration statement with the Secretary under this subsection:
348 (A) a person transporting or causing to be transported hazardous material in
349 commerce and not required to file a registration statement under paragraph
350 (1) of this subsection.
351 (B) a person manufacturing, fabricating, marking, maintaining, reconditioning,
352 repairing, or testing a package or container the person represents, marks,
353 certifies, or sells for use in transporting in commerce hazardous material
354 the Secretary designates.
- 355 (3) A person required to file a registration statement under this subsection may
356 transport or cause to be transported, or manufacture, fabricate, mark, maintain,
357 recondition, repair, or test a package or container for use in transporting,
358 hazardous material, only if the person has a statement on file as required by this
359 subsection.
- 360 (4) The Secretary may waive the filing of a registration statement, or the payment of a
361 fee, required under this subsection, or both, for any person not domiciled in the
362 United States who solely offers hazardous materials for transportation to the
363 United States from a place outside the United States if the country of which such
364 person is a domiciliary does not require persons domiciled in the United States
365 who solely offer hazardous materials for transportation to the foreign country
366 from places in the United States to file registration statements, or to pay fees, for
367 making such an offer.
- 368 (b) Form, contents, and limitation on filings.
- 369 (1) A registration statement under subsection (a) of this section shall be in the form
370 and contain information the ~~Secretary of Transportation~~Secretary requires by
371 regulation. The Secretary may use existing forms of the Department of
372 Transportation and the Environmental Protection Agency to carry out this
373 subsection. The statement shall include--
374 (A) the name and principal place of business of the registrant;
375 (B) ~~a description of each activity the registrant carries out~~ declaration that the
376 registrant transports, or causes to be transported, or both, hazardous
377 material in commerce for which filing a statement under subsection (a) of
378 this section is required; and
379 (C) each State in which the person carries out any of the activities.
- 380 (2) ~~A person carrying out more than one activity, or an activity at more than one~~
381 ~~location, for which filing is required~~ declaring more than one activity under
382 subparagraph (1)(B) of this subsection, or an activity at more than one loca ion
383 under subparagraph (1)(C) of this subsection only has to file one registration
384 statement to comply with subsection (a) of this section.
- 385 (c) Filing Schedule -- Each person required to file a registration statement under subsection (a)
386 of this section shall file that statement in accordance with regulations issued by the Secretary.

387 (d) Simplifying the registration process. The ~~Secretary of Transportation~~Secretary may take
388 necessary action to simplify the registration process under subsections (a)-(c) of this section and
389 to minimize the number of applications, documents, and other information a person is required to
390 file under this chapter [~~49 USC~~U.S.C. §§ 5101 et seq.] and other laws of the United States.

391 (e) Cooperation with Administrator. The Administrator of the Environmental Protection
392 Agency shall assist the ~~Secretary of Transportation~~Secretary in carrying out subsections
393 (a)-(g)(1) and (h) of this section by providing the Secretary with information the Secretary
394 requests to carry out the objectives of subsections (a)-(g)(1) and (h).

395 (f) Availability of statements. The ~~Secretary of Transportation~~Secretary shall make a
396 registration statement filed under subsection (a) of this section available for inspection by any
397 person for a fee the Secretary establishes. However, this subsection does not require the release
398 of information described in section 552(b) of title 5, United States Code, or otherwise protected
399 by law from disclosure to the public.

400 (g) Fees.

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

405 (2) (A) In addition to a fee established under paragraph (1) of this subsection, the
406 ~~Secretary of Transportation~~Secretary shall establish and impose by
407 regulation and collect an annual fee. Subject to subparagraph ~~(E)~~(B) of
408 this paragraph, the fee shall be at least \$500 not more than \$750 from each
409 person required to file a registration statement under this section. The
410 Secretary shall determine the amount of the fee under this paragraph on at
411 least one of the following:

- 412 (i) gross revenue from transporting hazardous material.
- 413 (ii) the type of hazardous material transported or caused to be
414 transported.
- 415 (iii) the amount of hazardous material transported or caused to be
416 transported.
- 417 (iv) the number of shipments of hazardous material.
- 418 (v) the number of activities that the person carries out for which filing
419 a registration statement is required under this section.
- 420 (vi) the threat to property, individuals, and the environment from an
421 accident or incident involving the hazardous material transported
422 or caused to be transported.
- 423 (vii) the percentage of gross revenue derived from transporting
424 hazardous material.
- 425 (viii) the amount to be made available to carry out ~~chapter 51 (except~~
426 sections 5109, 5112, and 5119) sections 5115 and 5116 of this title.
- 427 (ix) other factors the Secretary considers appropriate.

428 ~~(B) At the beginning of each fiscal year, the Secretary shall publish a fee~~
429 ~~schedule for the fee established under this paragraph. The fee schedule~~

430 shall be designed to collect the following amounts:

431 (i) ~~amounts authorized for that fiscal year under subsection 5129(b),~~

432 ~~5129(d), 5129(e), and 5129(f);~~

433 (ii) ~~amounts appropriated to the Research and Special Programs~~

434 ~~Administration (RSPA) for that fiscal year under subsection~~

435 ~~5129(a)(2); and~~

436 (iii) ~~amounts appropriated to RSPA for that fiscal year under~~

437 ~~subsections 5129(e) and 5129(g).~~

438 (B) ~~The Secretary shall adjust the amount being collected under this paragraph~~

439 ~~to reflect any unexpended balance in the account established under section~~

440 ~~5116(i) of this title. However, the Secretary is not required to refund any~~

441 ~~fee collected under this paragraph~~

442 (C) The Secretary shall transfer to the Secretary of the Treasury all funds

443 received by the Secretary under this paragraph, ~~except the amounts~~

444 ~~appropriated to RSPA pursuant to subsection 5129(a)(2), for deposit in the~~

445 ~~account the Secretary of the Treasury established under section 5116(i) of~~

446 ~~this title.~~

447 (D) ~~Fees authorized under subsection (g)(2)(B)(ii) shall be collected and~~

448 ~~available for obligation only to the extent and in the amount provided in~~

449 ~~advance in appropriations acts. Such fees are authorized to remain~~

450 ~~available until expended.~~

451 (E) ~~The Secretary shall adjust the amount being collected under subsection~~

452 ~~(g)(2)(B) to reflect any unexpended balance in the account established~~

453 ~~under section 5116(i) of this title. However, the Secretary is not required~~

454 ~~to refund any fee collected under this paragraph."~~

455 (h) Maintaining proof of filing and payment of fees. ~~The Secretary of Transportation~~Secretary

456 may prescribe regulations requiring a person required to file a registration statement under

457 subsection (a) of this section to maintain proof of the filing and payment of fees imposed under

458 subsection (g) of this section.

459 (i) Relationship to other laws.

460 (1) Chapter 35 of title 44, United States Code, [44 USC U.S.C. §§ 3501 et seq.] does

461 not apply to an activity of the ~~Secretary of Transportation~~Secretary under

462 subsections (a)-(g)(1) and (h) of this section.

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

464 (B) Subsections (a)-(h) of this section do not apply to a department, agency, or

465 instrumentality of the United States Government, an authority of a State,

466 Indian tribe, or political subdivision of a State, or an employee of a

467 department, agency, instrumentality, or authority carrying out official

468 duties.

469

470 § 5109. Motor carrier safety permits

471

472 (a) Requirement. Except as provided in subsection (b) of this section, aA motor carrier may

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

- 478 (1) to provide the transportation to be authorized by the permit;
- 479 (2) to comply with this chapter [49 USC U.S.C. §§ 5101 et seq.] and regulations the
480 Secretary prescribes to carry out this chapter [49 USC U.S.C. §§ 5101 et seq.];
481 and
- 482 (3) to comply with applicable United States motor carrier safety laws and regulations
483 and applicable minimum financial responsibility laws and regulations.

484 (b) Exception. A motor carrier is excepted from the requirement of subsection (a) of this
485 section if the carrier has been issued credentials pursuant to section 5119 of this title.

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

- 489 (1) a class A or B explosive division 1.1, 1.2 or 1.3 explosive;
- 490 (2) liquefied natural gas;
- 491 (3) hazardous material the Secretary designates as poison extremely toxic by
492 inhalation in hazard zone A or B; and
- 493 (4) a highway-route-controlled quantity of a Class 7 radioactive material, as defined
494 by the Secretary.

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

499 (d)(c) Amendments, suspensions, and revocations.

- 500 (1) After notice and an opportunity for a hearing, the Secretary may amend, suspend,
501 or revoke a safety permit, as provided by procedures prescribed under subsection
502 (e) of this section, when the Secretary decides the motor carrier is not complying
503 with a requirement of this chapter [49 USC U.S.C. §§ 5101 et seq.], a regulation
504 prescribed under this chapter [49 USC U.S.C. §§ 5101 et seq.], or an applicable
505 United States motor carrier safety law or regulation or minimum financial
506 responsibility law or regulation.
- 507 (2) If the Secretary decides an imminent hazard exists, the Secretary may amend,
508 suspend, or revoke a permit before scheduling a hearing.

509 (e)(f) Procedures. The Secretary shall prescribe by regulation--

- 510 (1) application procedures, including form, content, and fees necessary to recover the
511 complete cost of carrying out this section;
- 512 (2) standards for deciding the duration, terms, and limitations of a safety permit;
- 513 (3) procedures to amend, suspend, or revoke a permit; and
- 514 (4) other procedures the Secretary considers appropriate to carry out this section.

515 (f)(g) Shipper responsibility. A person offering hazardous material for ~~motor vehicle~~

516 ~~transportation in commerce~~ which a permit is required under subsection (c) may offer the
517 material to a motor carrier only if the carrier has a safety permit issued under this section or
518 ~~credentials under section 5119 of this title~~ authorizing the transportation.

519 (g)(h) Conditions. A motor carrier may provide transportation under a safety permit issued
520 under this section only if the carrier complies with conditions the Secretary finds are required to
521 protect public safety.

522 (h)(i) Regulations. The Secretary shall prescribe regulations necessary to carry out this section
523 based upon the findings of the study required by section 5128(a) of this title not later than
524 November 16, 1991.

525

526 § 5110. Shipping papers and disclosure

527

528 (a) Providing shipping papers. Each person offering for transportation in commerce
529 hazardous material to which the shipping paper requirements of the Secretary of
530 Transportation ~~Secretary~~ apply shall provide to the carrier providing the transportation a shipping
531 paper that makes the disclosures the Secretary prescribes ~~under subsection (b) of this section.~~

532 (b) ~~Considerations and requirements.~~ In carrying out subsection (a) of this section, the
533 Secretary shall consider and may require—

- 534 (1) ~~a description of the hazardous material, including the proper shipping name;~~
535 (2) ~~the hazard class of the hazardous material;~~
536 (3) ~~the identification number (UN/NA) of the hazardous material;~~
537 (4) ~~immediate first action emergency response information or a way for appropriate~~
538 ~~reference to the information (that must be available immediately); and~~
539 (5) ~~a telephone number for obtaining more specific handling and mitigation~~
540 ~~information about the hazardous material at any time during which the material is~~
541 ~~transported.~~

542 (c) (b) Location of Keeping shipping papers during transportation on the vehicle.

543 (1) ~~A motor carrier, and the person offering the hazardous material for transportation~~
544 ~~if a private motor carrier, shall keep the shipping paper on the vehicle transporting~~
545 ~~the material.~~

546 (2) ~~Except as provided in paragraph (1) of this subsection, the shipping paper~~
547 ~~provided to the carrier in subsection (a) shall be kept in a location the Secretary~~
548 ~~specifies in a motor vehicle, train, vessel, aircraft, or facility until--~~

549 (A)(1) ~~the hazardous material no longer is in transportation~~ the care, custody and
550 control of the carrier; or

551 (B)(2) ~~the documents are made available to a representative of a department,~~
552 ~~agency, or instrumentality of the United States Government or a State or~~
553 ~~local authority responding to an accident or incident involving the motor~~
554 ~~vehicle, train, vessel, aircraft, or facility.~~

555 (d) (c) Disclosure to emergency response authorities. When an incident involving hazardous
556 material being transported in commerce occurs, the person transporting the material, immediately
557 on request of appropriate emergency response authorities, shall disclose to the authorities
558 information about the material.

559 ~~(e)(d)~~ Retention of papers. The person who provided the shipping paper and the carrier required
560 to maintain it under subsection (a) of this section shall retain the paper, or an electronic image
561 thereof, for a period of 1 year after its preparation. ~~the shipping paper was provided to the~~
562 ~~carrier, to be accessible through their respective principal places of business. Such person and~~
563 ~~carrier shall, upon request, make the shipping paper available to a Federal, State, or local~~
564 ~~government agency at reasonable times and locations.~~

565 (c) Rulemaking. The Secretary shall prescribe regulations to carry out this section.

566

567 ~~§ 5111. Rail tank cars~~

568

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

573

574 § 5112. Highway routing of hazardous material

575

576 (a) Application.

577 (1) This section applies to a motor vehicle only if the vehicle is transporting
578 hazardous material in commerce for which placarding of the vehicle is required
579 under regulations prescribed under this chapter ~~[49 USC U.S.C. §§ 5101 et seq.].~~
580 However, the ~~Secretary of Transportation~~ Secretary by regulation may extend
581 application of this section or a standard prescribed under subsection (b) of this
582 section to--

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

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

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

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

590 (B) limitations and requirements related to highway routing.

591 (b) Standards for States and Indian tribes.

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

595 (A)(1) a requirement that a highway routing designation, limitation, or requirement of a
596 State or Indian tribe shall enhance public safety in the area subject to the
597 jurisdiction of the State or tribe and in areas of the United States not subject to the
598 jurisdiction of the State or tribe and directly affected by the designation,
599 limitation, or requirement;

600 (B)(2) minimum procedural requirements to ensure public participation when the State
601 or Indian tribe is establishing a highway routing designation, limitation, or

602 requirement;

603 ~~(C)~~(3) a requirement that, in establishing a highway routing designation, limitation, or
604 requirement, a State or Indian tribe consult with appropriate State, local, and tribal
605 officials having jurisdiction over areas of the United States not subject to the
606 jurisdiction of that State or tribe establishing the designation, limitation, or
607 requirement and with affected industries;

608 ~~(D)~~(4) a requirement that a highway routing designation, limitation, or requirement of a
609 State or Indian tribe shall ensure through highway routing for the transportation of
610 hazardous material between adjacent areas;

611 ~~(E)~~(5) a requirement that a highway routing designation, limitation, or requirement of
612 one State or Indian tribe affecting the transportation of hazardous material in
613 another State or tribe may be established, maintained, and enforced by the State or
614 tribe establishing the designation, limitation, or requirement only if--

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

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

620 ~~(F)~~(6) a requirement that establishing a highway routing designation, limitation, or
621 requirement of a State or Indian tribe be completed in a timely way;

622 ~~(G)~~(7) a requirement that a highway routing designation, limitation, or requirement of a
623 State or Indian tribe provide reasonable routes for motor vehicles transporting
624 hazardous material to reach terminals, facilities for food, fuel, repairs, and rest
625 and places to load and unload hazardous material;

626 ~~(H)~~(8) a requirement that a State be responsible--

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

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

631 ~~(I)~~(9) a requirement that, in carrying out subsection (a) of this section, a State or Indian
632 tribe shall consider--

633 ~~(i)~~(A) population densities;

634 ~~(ii)~~(B) the types of highways;

635 ~~(iii)~~(C) the types and amounts of hazardous material;

636 ~~(iv)~~(D) emergency response capabilities;

637 ~~(v)~~(E) the results of consulting with affected persons;

638 ~~(vi)~~(F) exposure and other risk factors;

639 ~~(vii)~~(G) terrain considerations;

640 ~~(viii)~~(H) the continuity of routes;

641 ~~(ix)~~(I) alternative routes;

642 ~~(x)~~(J) the effects on commerce;

643 ~~(xi)~~(K) delays in transportation; and

644 ~~(xii)~~(L) other factors the Secretary considers appropriate.

- 645 (2) — ~~The Secretary may not assign a specific weight that a State or Indian tribe shall~~
646 ~~use when considering the factors under paragraph (1)(1) of this subsection.~~
- 647 (c) List of route designations. In coordination with the States, the Secretary shall update and
648 publish periodically a list of currently effective hazardous material highway route designations.
- 649 (d) Dispute resolution.
- 650 (1) The Secretary shall prescribe regulations for resolving a dispute related to through
651 highway routing or to an agreement with a proposed highway route designation.
652 limitation, or requirement between or among States, political subdivisions of
653 different States, or Indian tribes.
- 654 (2) A State or Indian tribe involved in a dispute under this subsection may petition the
655 Secretary to resolve the dispute. The Secretary shall resolve the dispute not later
656 than one year after receiving the petition. The resolution shall provide the greatest
657 level of highway safety without being an unreasonable burden on commerce and
658 shall ensure compliance with standards prescribed under subsection (b) of this
659 section.
- 660 (3) (A) After a petition is filed under this subsection, a civil action about the
661 subject matter of the dispute may be brought in a court only after the
662 earlier of--
663 (i) the day the Secretary issues a final decision; or
664 (ii) the last day of the one-year period beginning on the day the
665 Secretary receives the petition.
- 666 (B) A State or Indian tribe adversely affected by a decision of the Secretary
667 under this subsection may bring a civil action for judicial review of the
668 decision in an appropriate district court of the United States not later than
669 89 days after the day the decision becomes final.
- 670 (e) Relationship to other laws. This section and regulations prescribed under this section do
671 not affect sections 31111 and 31113 of this title or section 127 of title 23, United States Code .
- 672 (f) Existing radioactive material routing regulations. The Secretary is not required to amend
673 or again prescribe regulations related to highway routing designations over which radioactive
674 material may and may not be transported by motor vehicles, and limitations and requirements
675 related to the routing, that were in effect on November 16, 1990.

676
677 § 5113. Unsatisfactory safety rating

678
679 A violation of section 31144(c)(3) of this title shall be considered a violation of this chapter and
680 shall be subject to the penalties in sections 5123 and 5124 of this ~~chapter~~ title.

681
682 [*49 U.S.C. § 31144(c), with indication of DOT changes **in bold**, follows:*

683
684 § 31144. *Safety fitness of owners and operators*

685
686 (c) *Prohibited transportation.*

687 (1) *In general. Except as provided in section 521(b)(5)(A) and this subsection, a*

688 owner or operator who the Secretary determines is not fit may not operate
689 commercial motor vehicles in interstate commerce beginning on the 61st day after
690 the date of such fitness determination and until the Secretary determines such
691 owner or operator is fit.

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

697 (3) Owners or operators transporting hazardous material. With regard to owners or
698 operators of commercial motor vehicles designed or used to transport hazardous
699 material for which placarding of a motor vehicle is required under regulations
700 prescribed under chapter 51 ~~49 U.S.C. §§ 5101 et seq.~~, an owner or
701 operator who the Secretary determines is not fit may not operate in interstate
702 commerce beginning on the 46th day after the date of such fitness determination
703 and until the Secretary determines such owner or operator is fit. **A violation of**
704 **this paragraph shall be considered a violation of chapter 51, and shall be**
705 **subject to the penalties in sections 5123 and 5124 of this title.**

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

711
712 § 5114. Air transportation of ionizing radiation material

713
714 (a) Transporting in air commerce. Material that emits ionizing radiation spontaneously may
715 be transported on a passenger-carrying aircraft in air commerce (as defined in section 40102(e) of
716 this title) only if the material is intended for a use in, or incident to, research or medical diagnosis
717 or treatment and does not present an unreasonable hazard to health and safety when being
718 prepared for, and during, transportation.

719 (b) Procedures. The Secretary of Transportation Secretary shall prescribe procedures for
720 monitoring and enforcing regulations prescribed under this section.

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

724
725 § 5115. Training curriculum for the public sector

726
727 (a) Updating. -- In coordination with the Director of the Federal Emergency Management
728 Agency, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental
729 Protection Agency, Secretaries of Labor, Energy, and Health and Human Services, and Director
730 of the National Institute of Environmental Health Sciences, and using the existing coordinating

731 mechanisms of the National Response Team for Oil and Hazardous Substances and, for
732 radioactive material, the Federal Radiological Preparedness Coordinating Committee, the
733 ~~Secretary of Transportation~~ Secretary shall update periodically a curriculum consisting of a list of
734 courses necessary to train public sector emergency response and preparedness teams.

735 (b) Requirements. The curriculum maintained under subsection (a) of this section--

736 (1) shall include--

737 (A) a recommended course of study to train public sector employees to
738 respond to an accident or incident involving the transportation of
739 hazardous material ~~or involving an alternative fuel vehicle~~ and to plan for
740 those responses;

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

746 (C) appropriate emergency response training and planning programs for public
747 sector employees developed with Federal financial assistance; and

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

750 (c) Training on complying with legal requirements. A recommended basic course described
751 in subsection (b)(1)(B) of this section shall provide the training necessary for public sector
752 employees to comply with--

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

756 (2) regulations related to worker protection standards for hazardous waste operations
757 contained in part 311 of title 40, Code of Federal Regulations, prescribed by the
758 Administrator; and

759 (3) standards related to emergency response training prescribed by the such voluntary
760 consensus standard-setting organizations as the Secretary deems appropriate.

761 (d) Distribution and publication. With the National Response Team for Oil and Hazardous
762 Substances, the ~~Secretary of Transportation~~ Secretary may publish a list of programs that uses a
763 course developed under this section for training public sector employees to respond to accidents
764 or incidents involving hazardous material.

765

766 § 5116. Planning and training grants; emergency preparedness fund

767

768 (a) Planning grants.

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

771 (A) to develop, improve, and carry out emergency plans under section 1103
772 of title 42, United States Code ~~the Emergency Planning and Community~~
773 ~~Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.)~~, including

774 ascertaining flow patterns of hazardous material on lands under the
775 jurisdiction of a State or Indian tribe, and between lands under the
776 jurisdiction of a State or Indian tribe and lands of another State or Indian
777 tribe; and

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

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

782 (A) the State or Indian tribe certifies that the total amount the State or Indian
783 tribe expends (except amounts of the United States Government) to
784 develop, improve, and carry out emergency plans under section 11003 of
785 title 42, United States Code the Act [42 USC U.S.C. §§ 11001 et seq.]
786 will at least equal the average level of expenditure for the last 2 fiscal
787 years; and

788 (B) the State agrees to make available at least 75 percent of the amount of the
789 grant under paragraph (1) of this subsection in the fiscal year to local
790 emergency planning committees established under section 11001 of title
791 42, United States Code 301(e) of the Act (42 U.S.C. 11001(e)) to develop
792 emergency plans under section 11003 of title 42, United States Code the
793 Act [42 USC U.S.C. §§ 11001 et seq.].

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

797 (b) Training grants.

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

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

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

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

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

815 (C) to a State only if the State agrees to make available at least 75 percent of
816 the amount of the grant under paragraph (1) of this subsection in the fiscal

- 817 year for training public sector employees employed or used by a political
818 subdivision of the State employs or uses.
- 819 (3) A grant under this subsection may be used--
- 820 (A) to pay--
- 821 (i) the tuition costs of public sector employees being trained;
- 822 (ii) travel expenses of those employees to and from the training
- 823 facility;
- 824 (iii) room and board of those employees when at the training facility;
- 825 and
- 826 (iv) travel expenses of individuals providing the training;
- 827 (B) by the State, political subdivision, or Indian tribe to provide the training;
- 828 and
- 829 (C) to make an agreement the ~~Secretary of Transportation~~Secretary approves
830 authorizing a person (including an authority of a State or political
831 subdivision of a State or Indian tribe) to provide the training--
- 832 (i) if the agreement allows the Secretary and the State or tribe to
- 833 conduct random examinations, inspections, and audits of the
- 834 training without prior notice; and
- 835 (ii) if the State or tribe conducts at least one on-site observation of the
- 836 training each year.
- 837 (4) ~~The Secretary of Transportation~~Secretary shall allocate amounts
838 made available for grants under this subsection for a fiscal year
839 among eligible States and Indian tribes based on the needs of the
840 States and tribes for emergency response training. In making a
841 decision about those needs, the Secretary shall consider--
- 842 (A) the number of hazardous material facilities in the State or on land under
843 the jurisdiction of the tribe;
- 844 (B) the types and amounts of hazardous material transported in the State or on
845 that land;
- 846 (C) whether the State or tribe imposes and collects a fee on transporting
847 hazardous material;
- 848 (D) whether the fee is used only to carry out a purpose related to transporting
849 hazardous material; and
- 850 (E) other factors the Secretary decides are appropriate to carry out this
851 subsection.
- 852 (c) Compliance with certain law. ~~The Secretary of Transportation~~Secretary may make a
853 grant to a State under this section in a fiscal year only if
- 854 (1) the State certifies that the State complies with sections 11001 and 11003 of title
855 42, United States Code 301 and 303 of the Emergency Planning and Community
856 Right-To-Know Act of 1986 (42 U.S.C. 11001, 11003); and
- 857 (2) the State or Indian tribe certifies that the State or tribe complies with subsection
858 (g) of section 5125 of this title.
- 859 (d) Applications. A State or Indian tribe interested in receiving a grant under this section

860 shall submit an application to the ~~Secretary of Transportation~~Secretary. The application must be
861 submitted at the time, and contain information, the Secretary requires by regulation to carry out
862 the objectives of this section.

863 (e) Government's share of costs. A grant under this section is for 80 percent of the cost the
864 State or Indian tribe incurs in the fiscal year to carry out the activity for which the grant is made.
865 Amounts received by the State or tribe under subsections (a)(1) and (b)(1) of this section are not
866 part of the non-Government share under this subsection.

867 (f) Monitoring and technical assistance. -- The ~~Secretary of Transportation~~Secretary shall
868 monitor public sector emergency response planning and training for an accident or incident
869 involving hazardous material. Considering the results of the monitoring, the Secretary shall
870 provide technical assistance to a State, political subdivision of a State, or Indian tribe for carrying
871 out emergency response training and planning for an accident or incident involving hazardous
872 material and shall coordinate the assistance using the existing coordinating mechanisms of the
873 National Response Team for Oil and Hazardous Substances and, for radioactive material, the
874 Federal Radiological Preparedness Coordinating Committee.

875 (g) Delegation of authority. To minimize administrative costs and to coordinate Federal
876 financial assistance programs for emergency response training and planning, the ~~Secretary of~~
877 ~~Transportation~~Secretary may delegate to the Directors of the Federal Emergency Management
878 Agency and National Institute of Environmental Health Sciences, Chairman of the Nuclear
879 Regulatory Commission, Administrator of the Environmental Protection Agency, and Secretaries
880 of Labor and Energy any of the following:

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

885 (h) Minimizing duplication of effort and expenses. The Secretaries of Transportation, Labor,
886 and Energy, Directors of the Federal Emergency Management Agency and National Institute of
887 Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, and
888 Administrator of the Environmental Protection Agency shall review periodically, with the head
889 of each department, agency, or instrumentality of the Government, all emergency response and
890 preparedness training programs of that department, agency, or instrumentality to minimize
891 duplication of effort and expense of the department, agency, or instrumentality in carrying out
892 the programs and shall take necessary action to minimize duplication.

893 (i) ~~EMERGENCY PREPAREDNESS FUND~~Emergency Preparedness Fund.-- The
894 Secretary of the Treasury shall establish an Emergency Preparedness Fund account in the
895 Treasury into which the Secretary of the Treasury shall deposit amounts the ~~Secretary of~~
896 ~~Transportation~~Secretary transfers to the Secretary of the Treasury under section 5108(g)(2)(C) of
897 this title. Without further appropriation, amounts in the account are available--

- 898 (1) to make grants under this section;
- 899 (2) to monitor and provide technical assistance under subsection (f) of this section;
- 900 (3) to publish and distribute the North American Emergency Response Guidebook;
- 901 and
- 902 (4) to pay administrative costs of carrying out this section and sections 5108(g)(2)

903 and 5115 of this title, except that not more than 10 percent of the amounts made
904 available from the account in a fiscal year to carry out these sections may be used
905 to pay those costs.

906 (j) Supplemental training grants.

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

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

915 (A) identify regions or locations in which fire departments or other
916 organizations which provide emergency response to hazardous materials
917 transportation accidents and incidents are in need of hazardous materials
918 training; and

919 (B) prioritize such needs and develop a means for identifying additional
920 specific training needs.

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

922 (A) to train instructors to conduct hazardous materials response training
923 programs;

924 (B) to purchase training equipment used exclusively to train instructors to
925 conduct such training programs; and

926 (C) to disseminate such information and materials as are necessary for the
927 conduct of such training programs.

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

932 (A) a course or courses developed or identified under section 5115 of this title;
933 or

934 (B) other courses which the Secretary determines are consistent with the
935 objectives of this subsection; for training individuals with statutory
936 responsibility to respond to accidents and incidents involving hazardous
937 materials. Such agreement also shall provide that training courses shall be
938 open to all such individuals on a nondiscriminatory basis.

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

942 (k) ~~SMALL BUSINESSES.--The Secretary may authorize a State or Indian tribe receiving a~~
943 ~~grant under this section to use up to 25 percent of the amount of the grant to assist small~~
944 ~~businesses in complying with regulations issued under this chapter. Adjustment for other fees.--~~
945 ~~The Secretary shall discount the amount of the grant by a formula to account for any fees~~

946 imposed by the State or tribe on the transportation of hazardous material.

947

948 § 5117. Special permits and exclusions

949

950 (a) Authority to ~~exempt~~ issue special permits.

951 (1) As provided under procedures prescribed by regulation, the Secretary of
952 ~~Transportation~~ Secretary may issue a special permit authorizing variances from
953 this chapter ~~{49 USC~~ U.S.C. §§ 5101 et seq.} or a regulation prescribed under
954 section 5103(b), 5104, 5110, or 5112 of this title to a person transporting, or
955 causing to be transported, hazardous material in a way that achieves a safety
956 level--

957 (A) at least equal to the safety level required under this chapter ~~{49~~
958 ~~USC~~ U.S.C. §§ 5101 et seq.}; or

959 (B) consistent with the public interest and this chapter ~~{49 USC~~ U.S.C. §§
960 ~~5101 et seq.}~~, if a required safety level does not exist.

961 (2) A special permit under this subsection is effective for not more than 4 years and
962 may be renewed on application to the Secretary.

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

969 (c) Applications to be dealt with promptly. The Secretary shall issue or renew the special
970 permit for which an application was filed or deny such issuance or renewal within 180 days after
971 the first day of the month following the date of the filing of such application, or the Secretary
972 shall publish a statement in the Federal Register of the reason why the Secretary's decision on the
973 special permit is delayed, along with an estimate of the additional time necessary before the
974 decision is made.

975 (d) Exclusions.

976 (1) The Secretary shall exclude, in any part, from this chapter ~~{49 USC~~ U.S.C. §§
977 ~~5101 et seq.}~~ and regulations prescribed under this chapter ~~{49 USC~~ U.S.C. §§
978 ~~5101 et seq.}~~--

979 (A) a public vessel (as defined in section 2101 of title 46, United States Code);

980 (B) a vessel exempted under section 3702 of title 46, United States Code, from
981 chapter 37 of title 46, United States Code ~~{46 USC~~ U.S.C. §§ 3701 et
982 ~~seq.}~~; and

983 (C) a vessel to the extent it is regulated under chapter 25 of title 33, United
984 States Code ~~the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1721~~
985 ~~et seq.)~~.

986 (2) This chapter ~~{49 USC~~ U.S.C. §§ 5101 et seq.} and regulations prescribed under
987 this chapter ~~{49 USC~~ U.S.C. §§ 5101 et seq.} do not prohibit--

988 (A) or regulate transportation of a firearm (as defined in section 232 of title 18,

989 United States Code), or ammunition for a firearm, by an individual for
990 personal use; or

991 (B) transportation of a firearm or ammunition in commerce.

992 (e) Limitation on authority. Unless the Secretary decides that an emergency exists, a special
993 permit or renewal granted under this section is the only way a person subject to this chapter {49
994 ~~U.S.C. §§ 5101 et seq.~~} may be exempt from this chapter {49 ~~U.S.C. §§ 5101 et~~
995 ~~seq.~~].

996

997 § 5118. Inspectors

998

999 (a) General requirement. The ~~Secretary of Transportation~~ Secretary shall maintain the
1000 employment of 30 hazardous material safety inspectors more than the total number of safety
1001 inspectors authorized for the fiscal year that ended September 30, 1990, for the Federal Railroad
1002 Administration, the Federal Highway Administration, and the Research and Special Programs
1003 Administration.

1004 (b) Allocation to promote safety in transporting radioactive material.

1005 (1) The Secretary shall ensure that 10 of the 30 additional inspectors focus on
1006 promoting safety in transporting radioactive material, as defined by the Secretary,
1007 including inspecting--

1008 (A) at the place of origin, shipments of high-level radioactive waste or spent
1009 nuclear fuel spent material (as those terms are defined in section 5105(a)
1010 of this title); and

1011 (B) to the maximum extent practicable, shipments of radioactive material that
1012 are not high-level radioactive waste or spent nuclear fuel spent material.

1013 (2) In carrying out their duties, those 10 additional inspectors shall cooperate to the
1014 greatest extent possible with safety inspectors of the Nuclear Regulatory
1015 Commission and appropriate State and local government officials.

1016 (3) Those 10 additional inspectors shall be allocated as follows:

1017 (A) one to the Research and Special Programs Administration.

1018 (B) 3 to the Federal Railroad Administration.

1019 (C) 3 to the Federal ~~Highway~~ Motor Carrier Safety Administration.

1020 (D) the other 3 among the administrations referred to in clauses (A)-(C) of this
1021 paragraph as the Secretary decides.

1022 (c) Allocation of other inspectors. The Secretary shall allocate, as the Secretary decides, the
1023 20 additional inspectors authorized under this section and not allocated under subsection (b) of
1024 this section among the administrations referred to in subsection (b)(3)(A)-(C) of this section.

1025

1026 § 5119. Uniform forms and procedures

1027

1028 (a) Working group. The ~~Secretary of Transportation~~ Secretary shall establish a working
1029 group of State and local government officials, including representatives of the National
1030 Governors' Association, the National Association of Counties, the National League of Cities, the
1031 United States Conference of Mayors, and the National Conference of State Legislatures. The

1032 purposes of the working group are--

1033 (1) to establish uniform forms and procedures for a State--

1034 (A) ~~to register and issue permits to persons that transport or cause to be~~
1035 ~~transported hazardous material by motor vehicle in the State; and~~

1036 (B) ~~to allow the transportation of hazardous material in the State; and~~

1037 (2) to decide whether to limit the filing of any State registration and permit forms and
1038 collection of filing fees to the State in which the person resides or has its principal
1039 place of business.

1040 (b) Consultation and reporting. The working group--

1041 (1) shall consult with persons subject to registration and permit requirements
1042 described in subsection (a) of this section; and

1043 (2) not later than November 16, 1993, shall submit to the Secretary, the Committee
1044 on Commerce, Science, and Transportation of the Senate, and the Committee on
1045 Transportation and Infrastructure of the House of Representatives a final report
1046 that contains--

1047 (A) a detailed statement of its findings and conclusions; and

1048 (B) its joint recommendations on the matters referred to in subsection (a) of
1049 this section.

1050 (c) Regulations on recommendations.

1051 (1) The Secretary shall prescribe regulations to carry out the recommendations
1052 contained in the report submitted under subsection (b) of this section ~~with which~~
1053 ~~the Secretary agrees. The regulations shall be prescribed by the later of the last~~
1054 ~~day of the 3-year period beginning on the date the working group submitted its~~
1055 ~~report or the last day of the 90-day period beginning on the date on which at least~~
1056 ~~26 States adopt all of the recommendations of the report, as implemented and~~
1057 ~~interpreted by the states which have adopted the recommendations of the report.~~

1058 The regulations shall be proposed within 6 months after the date of enactment of
1059 this Act and complete within 30 months after the date of enactment of the Act. A
1060 regulation prescribed under this subsection may not define or limit the amount of
1061 a fee a State may impose or collect.

1062 (2) A regulation prescribed under this subsection takes effect one year after it is
1063 prescribed. The Secretary may extend the one-year period for an additional year
1064 for good cause. After a regulation is effective, a State may establish, maintain, or
1065 enforce a requirement related to the same subject matter only if the requirement is
1066 the same as the regulation.

1067 (3) In consultation with the working group, the Secretary shall develop a procedure to
1068 eliminate differences in how States carry out a regulation prescribed under this
1069 subsection.

1070 (4) Pending promulgation of regulations under this subsection, States may participate
1071 in a program of uniform forms and procedures recommended by the working
1072 group under subsection (b).

1073 (d) Relationship to other laws. Appendix 2 of title 5, United States Code, The Federal
1074 Advisory Committee Act (5 App. U.S.C.) does not apply to the working group.

1075

1076 § 5120. International uniformity of standards and requirements

1077

1078 (a) Participation in international forums. Subject to guidance and direction from the
1079 Secretary of State, the ~~Secretary of Transportation~~Secretary shall participate in international
1080 forums that establish or recommend mandatory standards and requirements for transporting
1081 hazardous material in international commerce.

1082 (b) Consultation. The ~~Secretary of Transportation~~Secretary may consult with interested
1083 authorities to ensure that, to the extent practicable, regulations the Secretary prescribes under
1084 sections 5103(b), 5104, 5110, and 5112 of this title are consistent with standards related to
1085 transporting hazardous material that international authorities adopt.

1086 (c) Differences with international standards and requirements. This section--

1087 (1) does not require the ~~Secretary of Transportation~~Secretary to prescribe a standard
1088 identical to a standard adopted by an international authority if the Secretary
1089 decides the standard is unnecessary or unsafe; and

1090 (2) does not prohibit the Secretary from prescribing a safety requirement more
1091 stringent than a requirement included in a standard adopted by an internationa
1092 authority if the Secretary decides the requirement is necessary in the public
1093 interest.

1094

1095 § 5121. Administrative

1096

1097 (a) Facility, staff, and reporting system on risks, emergencies, and actions.

1098 (1) The Secretary shall--

1099 (A) maintain a facility and technical staff sufficient to provide, within the
1100 United States Government, the capability of evaluating a risk related to the
1101 transportation of hazardous material and material alleged to be hazardous;

1102 (B) maintain a central reporting system and information center capable of
1103 providing information and advice to law enforcement and firefighting
1104 personnel, other interested individuals, and officers and employees of the
1105 Government and State and local governments on meeting an emergency
1106 related to the transportation of hazardous material; and

1107 (C) conduct a continuous review on all aspects of transporting hazardous
1108 material to decide on and take appropriate actions to ensure safe
1109 transportation of hazardous material.

1110 (2) Paragraph (1) of this subsection does not prevent the Secretary from making a
1111 contract with a private entity for use of a supplemental reporting system and
1112 information center operated and maintained by the contractor.

1113 (b) Report. The Secretary shall, once every 2 years, prepare and submit to the President for
1114 transmittal to the Congress a comprehensive report on the transportation of hazardous mater als
1115 during the preceding 2 calendar years. The report shall include ~~or make appropriate referenc~~
1116 ~~to--~~

1117 (1) a statistical compilation of accidents and casualties related to the transportation of

- 1118 hazardous material;
- 1119 (2) a list and summary of applicable Government regulations, criteria, ~~and~~
- 1120 ~~exemptions;~~
- 1121 (3) ~~a summary of the basis for each exemption;~~
- 1122 (4)(3) an evaluation of the effectiveness of enforcement activities and the degree of
- 1123 voluntary compliance with regulations;
- 1124 (5)(4) a summary of outstanding problems in carrying out this chapter [49 USC 5101 et seq.]
- 1125 in order of priority; and
- 1126 (6)(5) recommendations for appropriate legislation.

1127 (c) ~~AUTHORITY FOR GRANTS, COOPERATIVE AGREEMENTS, AND OTHER~~
 1128 ~~TRANSACTIONS~~ Authority for cooperative agreements.--To carry out this chapter, the
 1129 Secretary may enter into grants, cooperative agreements, and other transactions with a person,
 1130 agency or instrumentality of the United States, a unit of State or local government, an Indian
 1131 tribe, a foreign government (in coordination with the Department of State), an educational
 1132 institution, or other entity to further the objectives of this chapter. The objectives of this chapter
 1133 include the conduct of research, development, demonstration, risk assessment, emergency
 1134 response planning and training activities.

1135 § 5122. Enforcement

1137
 1138 (a) ~~GENERAL AUTHORITY~~ General authority.-- To carry out this chapter, the Secretary ~~of~~
 1139 ~~Transportation~~ Secretary may investigate, make reports, issue subpoenas, conduct hearings,
 1140 require the production of records and property, take depositions, and conduct research,
 1141 development, demonstration, and training activities. Except as provided in subsection (d) of this
 1142 section, the Secretary shall provide notice and an opportunity for a hearing prior to issuing an
 1143 order directing compliance with this chapter or a regulation, order, special permit, or approval
 1144 issued under this chapter.

1145 (b) ~~RECORDS, REPORTS, PROPERTY, AND INFORMATION~~ Records, reports, property
 1146 and information.--A person subject to this chapter shall--

- 1147 (1) maintain records, make reports, and provide information that the Secretary by
- 1148 regulation or order requires, and
- 1149 (2) make the records, reports, property, and information available for inspection when
- 1150 the Secretary requests.

1151 (c) ~~INSPECTIONS AND INVESTIGATIONS~~ Inspections and investigations.--

- 1152 (1) A designated officer or employee of the Secretary may--
- 1153 (A) to inspect and investigate, at a reasonable time and in a reasonable way,
- 1154 records and property related to--
- 1155 (i) designing, manufacturing, fabricating, marking, maintaining,
- 1156 reconditioning, repairing, inspecting, or testing, ~~or distributing~~ a
- 1157 component of packaging or a packaging, ~~or a component thereof,~~
- 1158 represented by the person as being qualified for use by a person in
- 1159 transporting hazardous materials in commerce, or
- 1160 (ii) the transportation of hazardous material in commerce.

- 1161 (B) except for the packaging immediately adjacent to its hazardous material
 1162 contents, open and examine a package offered for, or in, transportation
 1163 when the officer or employee has an objectively reasonable and articulable
 1164 belief that the package may contain a hazardous material;
- 1165 (C) remove from transportation a package or related packages in a shipment
 1166 offered for or in transportation, and for which such officer or employee has
 1167 an objectively reasonable and articulable belief that the package or
 1168 packages may pose an imminent hazard, and for which the officer or
 1169 employee contemporaneously documents that belief in accordance with
 1170 procedures adopted under subsection (e) of this section;
- 1171 (D) gather information from the offeror, packaging manufacturer or retester, or
 1172 other person responsible for the package or packages to ascertain the
 1173 nature and hazards of the contents of the package or packages;
- 1174 (E) as necessary, under terms and conditions specified by the Secretary, order
 1175 the offeror, packaging manufacturer or retester, or other person responsible
 1176 for the package or packages to have the package or packages transported
 1177 to, opened and the contents examined and analyzed at a facility
 1178 appropriate for the conduct of this activity; and
- 1179 (F) when safety might otherwise be compromised, authorize properly
 1180 qualified personnel to assist in the activities conducted under subsection
 1181 (c)(1)(~~B~~)(A) through (D) of this section.
- 1182 (2) An officer or employee acting under this subsection shall display proper
 1183 credentials when requested.
- 1184 (3) For instances when, as a result of the inspection or investigation, an imminent
 1185 hazard is not found to exist, the Secretary shall develop procedures to assist in the
 1186 safe resumption of transportation of the package and transport unit.
- 1187 (d) ~~EMERGENCY ORDERS~~ Emergency orders.--
- 1188 (1) If, upon inspection or investigation, the Secretary determines that either a
 1189 violation of a provision of this chapter or a regulation issued under this chapter, or
 1190 an unsafe condition or practice, is causing an imminent hazard, the Secretary may
 1191 issue or impose emergency restrictions, prohibitions, recalls, or out-of-service
 1192 orders, without notice or the opportunity for a hearing, but only to the extent
 1193 necessary to abate the imminent hazard.
- 1194 (2) The Secretary's action under subsection (d)(1) must be in a written order
 1195 describing the violation, condition or practice that is causing the imminent hazard,
 1196 and stating the restrictions, prohibitions, recalls, or out-of-service orders issued or
 1197 imposed. The order also shall describe the standards and procedures for obtaining
 1198 relief from the emergency order.
- 1199 (3) After taking action under subsection (d)(1), the Secretary shall provide an
 1200 opportunity for review of that action under section 554 of title 5, United States
 1201 Code, and such review shall occur no later than 20 days after issuance of such
 1202 order.
- 1203 (4) If a petition for review is filed and the review is not completed by the end of the

1204 30-day period beginning on the date the petition was filed, the action will cease to
1205 be effective at the end of that period unless the Secretary determines in writing
1206 that the emergency situation still exists.

1207 (e) ~~REGULATIONS~~Regulations.—The Secretary shall issue regulations with notice and
1208 comment, including an opportunity for informal hearing, to implement the authority in
1209 subsections (c) and (d) of this section.

1210 (f) ~~ENFORCEMENT BY THE ATTORNEY GENERAL~~Enforcement by the Attorney
1211 General.—At the request of the Secretary, the Attorney General may bring a civil action in an
1212 appropriate district court of the United States to enforce this chapter or a regulation prescribed or
1213 order issued under this chapter. The court may award appropriate relief, including punitive
1214 damages.

1215 (g) Imminent hazard. If the Secretary has reason to believe that an imminent hazard exists,
1216 the Secretary may request the Attorney General to bring a civil action in an appropriate district
1217 court of the United States—

1218 (1) to suspend or restrict the transportation of the hazardous material responsible for
1219 the hazard; or

1220 (2) to eliminate or mitigate the hazard.

1221 (h) Withholding of clearance.

1222 (1) If an owner, operator, or individual in charge of a vessel is liable for a civil
1223 penalty under section 5123 of this title or for a fine under section 5124 of this
1224 title, or if reasonable cause exists to believe that the owner, operator, or individual
1225 in charge may be subject to penalty or fine, the Secretary of the Treasury, upon
1226 the request of the Secretary of TransportationSecretary, shall with respect to such
1227 vessel refuse or revoke any clearance required by section 4197 of title 46, United
1228 States Code ~~the revised Statutes of the United States (46 App. U.S.C. 94).~~

1229 (2) Clearance refused or revoked under this subsection may be granted upon the filing
1230 of a bond or other surety satisfactory to the Secretary of the Treasury.

1231
1232 § 5123. Civil penalty

1233
1234 (a) Penalty.

1235 (1) A person that knowingly violates this chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~ or
1236 a regulation, order, special permit, or approval issued under this chapter ~~[49~~
1237 ~~USC U.S.C. §§ 5101 et seq.]~~ is liable to the United States Government for a civil
1238 penalty of at least \$250 but not more than \$27,500 for each violation. A person
1239 acts knowingly when--

1240 (A) the person has actual knowledge of the facts giving rise to the violation; or

1241 (B) a reasonable person acting in the circumstances and exercising reasonable
1242 care would have that knowledge.

1243 (2) A separate violation occurs for each day the violation, committed by a person that
1244 transports or causes to be transported hazardous material, continues.

1245 (b) Hearing requirement. The Secretary of TransportationSecretary may find that a person
1246 has violated this chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~ or a regulation prescribed under this

1247 chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~ only after notice and an opportunity for a hearing. The
1248 Secretary shall impose a penalty under this section by giving the person written notice of the
1249 amount of the penalty.

1250 (c) Penalty considerations. In determining the amount of a civil penalty under this section,
1251 the Secretary shall consider--

- 1252 (1) the nature, circumstances, extent, and gravity of the violation;
1253 (2) with respect to the violator, the degree of culpability, any good-faith efforts to
1254 comply with the applicable requirements, any history of prior violations, any
1255 economic benefit resulting from the violation, the ability to pay, and any effect on
1256 the ability to continue to do business; and
1257 (3) other matters that justice requires.

1258 (d) Civil actions to collect. The Attorney General may bring a civil action in an appropriate
1259 district court of the United States to collect a civil penalty under this section.

1260 (e) Compromise. The Secretary may compromise the amount of a civil penalty imposed
1261 under this section before referral to the Attorney General.

1262 (f) Setoff. The Government may deduct the amount of a civil penalty imposed or
1263 compromised under this section from amounts it owes the person liable for the penalty.

1264 (g) Depositing amounts collected. Amounts collected under this section shall be deposited in
1265 the Treasury as miscellaneous receipts.

1266

1267 § 5124. Criminal penalty

1268

1269 (a) ~~GENERAL. In general.--~~ A person knowingly violating section 5104(b) of this title or
1270 willfully violating this chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~ or a regulation, order, special
1271 permit, or approval issued under this chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~ shall be fined
1272 under title 18, United States Code, imprisoned for not more than 5 years, or both. ~~Knowledge by~~
1273 ~~the person of the existence of a regulation or requirement prescribed by the Secretary is not an~~
1274 ~~element of an offense under this section.~~

1275 (b) ~~AGGRAVATED VIOLATIONS. Aggravated violations.--~~ A person knowingly violating
1276 section 5104(b) of this title or willfully violating this chapter or a regulation, order, special
1277 permit, or approval issued under this chapter, and thereby causing the release of a hazardous
1278 material, shall be fined under title 18, imprisoned for not more than 20 years, or both.

1279

1280 § 5125. Preemption

1281

1282 (a) General. Except as provided in subsections (b), (c), and (e) of this section and unless
1283 authorized by another law of the United States, a requirement of a State, political subdivision of a
1284 State, or Indian tribe is preempted if--

- 1285 (1) complying with a requirement of the State, political subdivision, or tribe and a
1286 requirement of this chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~ or a regulation
1287 prescribed under this chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~ is not possible; or
1288 (2) the requirement of the State, political subdivision, or tribe, as applied or enforced,
1289 is an obstacle to accomplishing and carrying out this chapter, the purposes of this

1290 chapter, ~~{49 USC~~U.S.C. §§ 5101 et seq.} or a regulation prescribed under this
1291 chapter ~~{49 USC~~U.S.C. §§ 5101 et seq.}.

1292 (b) Substantive differences.

1293 (1) Except as provided in subsection (c) of this section and unless authorized by
1294 another law of the United States, a law, regulation, order, or other requirement of
1295 a State, political subdivision of a State, or Indian tribe about any of the following
1296 subjects, that is not substantively the same as a provision of this chapter ~~{49~~
1297 ~~USC~~U.S.C. §§ 5101 et seq.} or a regulation prescribed under this chapter ~~{49~~
1298 ~~USC~~U.S.C. §§ 5101 et seq.}, is preempted:

- 1299 (A) the designation, description, and classification of hazardous material.
- 1300 (B) the packing, repacking, handling, labeling, marking, and placarding of
1301 hazardous material.
- 1302 (C) the preparation, execution, and use of shipping documents related to
1303 hazardous material and requirements related to the number, contents, and
1304 placement of those documents.
- 1305 (D) the written notification, recording, and reporting of the unintentional
1306 release in transportation of hazardous material.
- 1307 (E) the design, manufacturing, ~~fabricating,~~ marking, maintenance,
1308 reconditioning, repairing, inspecting or testing of a component of
1309 packaging or a packaging or a container represented, marked, certified, or
1310 sold by a person as qualified for use in transporting hazardous material.

1311 (2) If the Secretary of ~~Transportation~~Secretary prescribes or has prescribed under
1312 section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provision of
1313 law a regulation or standard related to a subject referred to in paragraph (1) of this
1314 subsection, a State, political subdivision of a State, or Indian tribe may prescribe,
1315 issue, maintain, and enforce only a law, regulation, standard, or order about the
1316 subject that is substantively the same as a provision of this chapter ~~{49~~
1317 ~~USC~~U.S.C. §§ 5101 et seq.} or a regulation prescribed or order issued under this
1318 chapter ~~{49 USC~~U.S.C. §§ 5101 et seq.}. The Secretary shall decide on and
1319 publish in the Federal Register the effective date of section 5103(b) of this title for
1320 any regulation or standard about any of those subjects that the Secretary
1321 prescribes. However, the effective date may not be earlier than 90 days after the
1322 Secretary prescribes the regulation or standard nor later than the last day of the
1323 2-year period beginning on the date the Secretary prescribes the regulation or
1324 standard.

1325 (3) If a State, political subdivision of a State, or Indian tribe imposes a fine or penalty
1326 the Secretary decides is appropriate for a violation related to a subject referred to
1327 in paragraph (1) of this subsection, an additional fine or penalty may not be
1328 imposed by any other authority.

1329 (c) Compliance with section 5112(b) regulations.

1330 (1) Except as provided in paragraph (2) of this subsection, after the last day of the 2-
1331 year period beginning on the date a regulation is prescribed under section 5112(b)
1332 of this title, a State or Indian tribe may establish, maintain, or enforce a highway

1333 routing designation over which hazardous material may or may not be transported
1334 by motor vehicles, or a limitation or requirement related to highway routing, only
1335 if the designation, limitation, or requirement complies with section 5112(b).

1336 (2) (A) A highway routing designation, limitation, or requirement established
1337 before the date a regulation is prescribed under section 5112(b) of this title
1338 does not have to comply with section 5112(b)(1)(B), (C), and (F).

1339 (B) This subsection and section 5112 of this title do not require a State or
1340 Indian tribe to comply with section 5112(b)(1)(I) if the highway routing
1341 designation, limitation, or requirement was established before November
1342 16, 1990.

1343 (C) The Secretary may allow a highway routing designation, limitation, or
1344 requirement to continue in effect until a dispute related to the designation,
1345 limitation, or requirement is resolved under section 5112(d) of this title.

1346 (d) Decisions on preemption.

1347 (1) A person (including a State, political subdivision of a State, or Indian tribe)
1348 directly affected by a requirement of a State, political subdivision, or tribe may
1349 apply to the Secretary, as provided by regulations prescribed by the Secretary, for
1350 a decision on whether the requirement is preempted by subsection (a), (b)(1), or
1351 (c), or (g) of this section or section 5119(c)(2) of this title. The Secretary shall
1352 publish notice of the application in the Federal Register. The Secretary shall issue
1353 a decision on an application for a determination within 180 days after the date of
1354 the publication of the notice of having received such application, or the Secretary
1355 shall publish a statement in the Federal Register of the reason why the Secretary's
1356 decision on the application is delayed, along with an estimate of the additional
1357 time necessary before the decision is made. After notice is published, an
1358 applicant may not seek judicial relief on the same or substantially the same issue
1359 until the Secretary takes final action on the application or until 180 days after the
1360 application is filed, whichever occurs first.

1361 (2) After consulting with States, political subdivisions of States, and Indian tribes, the
1362 Secretary shall prescribe regulations for carrying out paragraph (1) of this
1363 subsection.

1364 (3) Subsection (a) of this section does not prevent a State, political subdivision of a
1365 State, or Indian tribe, or another person directly affected by a requirement, from
1366 seeking a decision on preemption from a court of competent jurisdiction instead
1367 of applying to the Secretary under paragraph (1) of this subsection.

1368 (e) Waiver of preemption. A State, political subdivision of a State, or Indian tribe may apply
1369 to the Secretary for a waiver of preemption of a requirement the State, political subdivision, or
1370 tribe acknowledges is preempted by subsection (a), (b)(1), or (c), or (g) of this section, or section
1371 5119(c)(2) of this title. Under a procedure the Secretary prescribes by regulation, the Secretary
1372 may waive preemption on deciding the requirement--

1373 (1) provides the public at least as much protection as do requirements of this chapter
1374 [49 USC U.S.C. §§ 5101 et seq.] and regulations prescribed under this chapter
1375 [49 USC U.S.C. §§ 5101 et seq.]; and

1376 (2) is not an unreasonable burden on commerce.
1377 (f) Judicial review of preemption determinations. A party to a proceeding under subsection
1378 (d) or (e) of this section may bring a civil action in an appropriate district court of appeals of the
1379 United States for judicial review of the decision of the Secretary not later than 60 days after the
1380 decision becomes final.

1381 (g) Fees.

1382 (1) A State, political subdivision of a State, or Indian tribe may impose a fee related
1383 to transporting hazardous material only if the fee is fair and used for a purpose
1384 related to transporting hazardous material, including enforcement and planning,
1385 developing, and maintaining a capability for emergency response.

1386 (2) A State or political subdivision thereof or Indian tribe that levies a fee in
1387 connection with the transportation of hazardous materials shall, upon the
1388 Secretary's request, report to the Secretary on--

1389 (A) the basis on which the fee is levied upon persons involved in such
1390 transportation;

1391 (B) the purposes for which the revenues from the fee are used;

1392 (C) the annual total amount of the revenues collected from the fee; and

1393 (D) such other matters as the Secretary requests.

1394 (h) ~~INDEPENDENT APPLICATION OF EACH STANDARD~~ Independent application of
1395 each standard.--Each preemption standard in subsections (a), (b)(1), (c), and (g) of this section
1396 and section 5119(c)(2) of this title is independent in its application to a requirement of any State,
1397 political subdivision of a State, or Indian tribe.

1398
1399 § 5126. Relationship to other laws
1400

1401 (a) Contracts. A person under contract with a department, agency, or instrumentality of the
1402 United States Government that transports or causes to be transported hazardous material, or
1403 manufactures, designs, fabricates, marks, maintains, reconditions, repairs, inspects, or tests a
1404 component of packaging or a packaging or a container that the person represents, marks,
1405 certifies, or sells as qualified for use in transporting hazardous material must comply with this
1406 chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~, regulations prescribed and orders issued under this
1407 chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~, and all other requirements of the Government, State
1408 and local governments, and Indian tribes (except a requirement preempted by a law of the United
1409 States) in the same way and to the same extent that any person engaging in that transportation,
1410 manufacturing, designing, fabricating, marking, maintenance, reconditioning, repairing,
1411 inspecting or testing of components of packaging or packagings represented by that person as
1412 being qualified for use in transporting hazardous material that is in or affects commerce must
1413 comply with the provision, regulation, order, or requirement.

1414 (b) Nonapplication. This chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~ does not apply to--

1415 ~~(1) a pipeline subject to regulation under chapter 601 of this title [49 USC U.S.C. §§~~
1416 ~~60101 et seq.]; or~~

1417 ~~(2) any matter that is subject to the postal laws and regulations of the United States~~
1418 ~~under this chapter [49 USC U.S.C. §§ 5101 et seq.] or title 18 or 39.~~

1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461

§5127. Judicial Review

~~Except as provided for in section 5125 of this title, any petition for review of an action of the Secretary or the Secretary's delegates under this chapter shall be filed 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.~~

~~(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 Secretary, 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.~~

§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~~

1462 (5) ~~assess the potential of advanced technologies for improving the assessment of~~
1463 ~~high-risk hazardous material carriers' compliance with motor carrier safety~~
1464 ~~regulations.~~

1465 (b) ~~TIME FRAME.~~ The Secretary shall begin the study required by subsection (a) within 6
1466 months after the date of enactment of this section and complete it within 30 months.

1467 (c) ~~REPORT.~~ The Secretary shall report the findings of the study required by subsection (a),
1468 together with such recommendations as may be appropriate, within 36 months after the date of
1469 enactment of this section.

1470

1471 §5129. Authorization of appropriations

1472

1473 (a) General. To carry out this chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~ (except sections
1474 5107(c), 5108(g)(2), 5109, 5112, 5113, 5115, and 5116, 5119, and 5128), (1) not more than
1475 \$13,638,000 is authorized to be appropriated to the Secretary of Transportation ~~Secretary~~ for
1476 fiscal year 2000, and (2) from amounts collected under section 5108(g)(2)(B)(ii) of this title, not
1477 more than \$18,213,000 is authorized to be appropriated to the Secretary for fiscal year 2000, and
1478 such sums as may be necessary are authorized to be appropriated to the Secretary for fiscal years
1479 2001 through 2005.

1480 (b) Supplemental Training Grants --Not more than \$250,000 is available to the Secretary
1481 for fiscal year 2000 and such amounts as are necessary for each of fiscal years 2001 through
1482 2005, from amounts in the account established under section 5116(i) of this title, to carry out
1483 section 5116(j) of this title.

1484 (c) Training curriculum. --Not more than \$200,000 is available to the Secretary for fiscal
1485 year 2000 and such amounts as are necessary for each of fiscal years 2001 through 2005, from
1486 amounts in the account established under section 5116(i) of this title, to carry out section 5115 of
1487 this title.

1488 (d) Planning and training. --

1489 (1) Not more than \$5,000,000 is available to the Secretary for fiscal year 2000 and
1490 such amounts as are necessary for each of fiscal years 2001 through 2005, from
1491 amounts in the account established under section 5116(i) of this title, to carry out
1492 section 5116(a) of this title.

1493 (2) Not more than \$7,800,000 is available to the Secretary for fiscal year 2000 and
1494 such amounts as are necessary for each of fiscal years 2001 through 2005, from
1495 amounts in the account established under section 5116(i) of this title, to carry out
1496 section 5116(b) of this title.

1497 (3) Not more than \$150,000 is available to the Secretary for fiscal year 2000 and such
1498 amounts as are necessary for each of fiscal years 2001 through 2005, from
1499 amounts in the account established under section 5116(i) of this title, to carry out
1500 section 5116(f) of this title.

1501 (e) ~~EMERGENCY RESPONSE GUIDEBOOK~~ Emergency Response Guidebook. --Not more
1502 than \$600,000 is available to the Secretary for fiscal year 2000 and such amounts as are
1503 necessary for each of fiscal years 2001 through 2005, from amounts in the account established
1504 under section 5116(i) of this title, to publish and distribute the North American Emergency

1505 Response Guidebook.

1506 (f) ~~ADMINISTRATIVE COSTS~~ Administrative costs.—Not more than \$300,000 is available
1507 to the Secretary for ~~fiscal year 2000 and such amounts as are necessary for each of fiscal years~~
1508 2001 through 2005, from amounts in the account established under section 5116(i) of this title, to
1509 carry out section 5116(i)(4) of this title.

1510 (g) ~~TRAINING OF HAZMAT EMPLOYEE INSTRUCTORS~~ Training of hazmat employee
1511 instructors.—Such amounts as are necessary are authorized to be appropriated to the Secretary,
1512 from amounts in the account established under section 5116(i) of this title, for each of fiscal
1513 years 2001 through 2005, to carry out section 5107(e) of this title.

1514 (h) Uniform forms and procedures.—Not more than \$250,000 may be appropriated to the
1515 Secretary for each of fiscal years 2001 through 2005 for making grants to states participating in
1516 the program of uniform forms and procedures authorized under section 5119 of this title, or until
1517 the rulemaking authorized by section 5119 of this title is complete.

1518 (h)(i) Credits to appropriations. The ~~Secretary of Transportation~~ Secretary may credit to any
1519 appropriation to carry out this chapter ~~[49 USC U.S.C. §§ 5101 et seq.]~~ an amount received
1520 from a State, Indian tribe, or other public authority or private entity for expenses the Secretary
1521 incurs in providing training to the State, authority, or entity.

1522 (i)(j) Availability of amounts. Amounts available under this section remain available until
1523 expended.

1524
1525 ~~SEC. 19. INTERMODAL CONTAINER PILOT PROGRAM~~ Sec. 19. Intermodal Container
1526 Pilot Program.

1527
1528 The Secretary of Transportation, through the Commandant of the Coast Guard, shall conduct a
1529 two-year pilot program to randomly inspect intermodal containers in coastal port areas in order to
1530 determine the extent to which undeclared hazardous material is being offered for transportation
1531 in commerce. Under this program, Coast Guard inspection personnel may open or may cause to
1532 be opened and inspect any intermodal container on a vessel or marine terminal or elsewhere in a
1533 port area on the Atlantic, Pacific or Gulf of Mexico coasts if that container has been randomly
1534 selected for inspection by a supervisor who is not on site. The Secretary shall initiate such
1535 program within 1 year after the date of enactment of this Act. Within 6 months after completion
1536 of this program, the Secretary shall report to Congress on the results of this program. That report
1537 shall contain the number of containers inspected, the number of containers containing undeclared
1538 hazardous material, a description of the safety hazards posed by the undeclared hazardous
1539 material, and a recommendation for any legislation necessary to address those safety hazards.