

49 US Code Chapter 51

Hazardous Materials Transportation and Security Reauthorization Act of 2005¹

Subject	Sec.	Page	Subject	Sec.	Page
Purpose	5101	1	Training curriculum for the public sector	5115	7
Definitions	5102	1	Planning and training grants, monitoring, and review	5116	7
General regulatory authority	5103	2	Special permits and exclusions	5117	8
Limitation on issuance of hazmat licenses	5103a	2	Uniform forms and procedures	5119	9
Representation and tampering	5104	3	International uniformity of standards and requirements	5120	9
Transporting certain highly radioactive material	5105	3	Administrative	5121	9
Handling criteria	5106	4	Enforcement	5122	10
Hazmat employee training requirements and grants	5107	4	Civil penalty	5123	10
Registration	5108	4	Criminal penalty	5124	10
Motor carrier safety permits	5109	5	Preemption	5125	11
Shipping papers and disclosure	5110	5	Relationship to other laws	5126	11
Highway routing of hazardous materials	5112	6	Judicial review	5127	12
Unsatisfactory safety rating	5113	6	Authorization of appropriations	5128	12
Air transportation of ionizing radiation material	5114	6			

PUBLISHER'S NOTE

In 1994, Congress completed codifying all the transportation laws in Title 49 of the United States Code. The hazardous materials transportation laws were codified at chapter 51, 49 U.S.C. §§5101 et seq., set forth below. In codifying the hazardous materials transportation laws, editorial changes were made to previous versions of those laws, including the Hazardous Materials Transportation Act.

Titles of the United States Code are unofficial versions of the laws of the United States, unless enacted into law. In the case of unofficial titles, citations to actual laws must be made to the laws as enacted by Congress, not to the U.S. Code titles. Thus, prior to codification of Title 49, citations to provisions of the Hazardous Materials Transportation Act were made to sections of the Act itself. With Title 49 now "positive law," citations to hazardous materials law should be to sections of Title 49. Future hazardous materials amendments will be to sections of Title 49.

§5101 Purpose. The purpose of this chapter is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce.

§5102 Definitions. In this chapter—

(1) Commerce means trade or transportation in the jurisdiction of the United States

(A) between a place in a State and a place outside of the State;

(B) that affects trade or transportation between a place in a State and a place outside of the State; or

(C) on a United States-registered aircraft.

(2) Hazardous material means a substance or material the Secretary designates under section 5103(a) of this title

(3) Hazmat employee

(A) means an individual—

(i) who—

(I) is employed on a full time, part time, or temporary basis by a hazmat employer; or

(II) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

(ii) who during the course of such full time, part time, or temporary employment, or such self employment, directly affects hazardous material transportation safety as the Secretary decides by regulation; and

(B) includes an individual, employed on a full time, part time, or temporary basis by a hazmat employer, or self employed, who during the course of employment

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

(ii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce;

(iii) prepares hazardous material for transportation;

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

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

(4) Hazmat employer

(A) means a person—

(i) who—

(I) employs or uses at least 1 hazmat employee on a full time, part time, or temporary basis; or

(II) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

(ii) who—

(I) transports hazardous material in commerce;

(II) causes hazardous material to be transported in commerce; or

(III) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked,

¹ As amended by P.L. 109-59 A (August 10, 2005)

certified, or sold as qualified for use in transporting hazardous material in commerce; and

(B) includes a department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, carrying out an activity described in clause (ii).

(5) **Imminent hazard** means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

(6) **Indian tribe** has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(7) **Motor carrier**—

(A) means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102; but

(B) does not include a freight forwarder, as so defined, if the freight forwarder is not performing a function relating to highway transportation.

(8) **National Response Team** means the National Response Team established under the National Contingency Plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605).

(9) **Person**, in addition to its meaning under section 1 of title 1

(A) includes a government, Indian tribe, or authority of a government or tribe that—

(i) offer hazardous material for transportation in commerce;

(ii) transports hazardous material to further a commercial enterprise; or

(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; but

(B) does not include

(i) the United States Postal Service; and

(ii) in sections 5123 and 5124 of this title, a department, agency, instrumentality of the Government.

(10) **Public sector employee**—

(A) means an individual employed by a State, political subdivision of a State, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material;

(B) includes an individual employed by a State, political subdivision of a State, or Indian tribe as a firefighter or law enforcement officer; and

(C) includes an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, or Indian tribe.

(11) **Secretary** means the Secretary of Transportation except as otherwise provided.

(12) **State** means—

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

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

(13) **Transports or transportation** means the movement of property and loading, unloading, or storage incidental to the movement.

(14) **United States** means all of the States.

§5103 General regulatory authority. (a) Designating Material as Hazardous. The Secretary shall designate material (including an explosive, radioactive material infectious substance, flammable or combustible liquid, solid, or gas, toxic, oxidizing, or corrosive material, and compressed gas) or a group or class of material as hazardous when the Secretary determines that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property.

(b) Regulations for Safe Transportation.

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

(A) apply to a person who—

(i) transports hazardous material in commerce;

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

(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce;

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

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

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

(vii) misrepresents whether such person is engaged in any activity under clause (i) through (vi); and

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

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

(c) **Consultation.** When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary of Transportation.

§5103a Limitation on issuance of hazmat licenses. (a) Limitation.

(1) **Issuance of licenses.** A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Homeland Security has first determined, upon receipt of a notification under subsection (d)(1)(B), that the individual does not pose a security risk warranting denial of the license.

(2) **Renewals included.** For the purposes of this section, the term 'issue', with respect to a license, includes renewal of the license.

(b) **Hazardous Materials Described.** The limitation in subsection (a) shall apply with respect to any material defined as a hazardous material by the Secretary for which the Secretary requires placarding of a commercial motor vehicle transporting that material in commerce.

(c) **Recommendations on Chemical and Biological Materials.** The Secretary of Health and Human Services shall recommend to the Secretary of Transportation any chemical or biological material or agent for regulation as a hazardous material under section 5103(a) if the Secretary of Health and Human Services determines that such material or agent poses a significant risk to the health of individuals.

(d) **Background Records Check. (1) In general.** Upon the request of a State regarding issuance of a license described in subsection (a)(1) to an individual, the Attorney General—

(A) shall carry out a background records check regarding the individual; and

(B) upon completing the background records check, shall notify the Secretary of Homeland Security of the completion and results of the background records check.

(2) **Scope.** A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history data bases.

(B) In the case of an alien, a check of the relevant data bases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international data bases through Interpol-U.S. National Central Bureau or other appropriate means.

(e) **Reporting Requirement.** Each State shall submit to the Secretary of Homeland Security, at such time and in such manner as the Secretary may prescribe, the name, address, and such other information as the Secretary may require, concerning

(1) each alien to whom the State issues a license described in subsection (a); and

(2) each other individual to whom such a license is issued, as the Secretary may require.

(f) **Alien Defined.** In this section, the term "alien" has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act.

(g) **Background Checks for Drivers Hauling Hazardous Materials.**

(1) **In General.**

(A) **Employer Notification.** Not later than 90 days after the date of enactment of this subsection, the Director of the Transportation

Security Administration, after receiving comments from interested parties, shall develop and implement a process for notifying hazmat employers designated by an applicant of the results of the applicant's background record check, if—

- (i) such notification is appropriate considering the potential security implications; and
- (ii) the Director, in a final notification of threat assessment, served on the applicant determines that the applicant does not meet the standards set forth in regulations issued to carry out this section.

(B) Relationship to Other Background Records Checks.

(i) **Elimination of Redundant Checks.** An individual with respect to whom the Transportation Security Administration—

(I) has performed a security threat assessment under this section; and

(II) has issued a final notification of no security threat, is deemed to have met the requirements of any other background check that is required for purposes of any Federal law applicable to transportation workers if that background check is equivalent to, or less stringent than, the background check required under this section.

(ii) **Determination by Director.** Not later than 60 days after the date of issuance of the report under paragraph (5), but no later than 120 days after the date of enactment of this Act, the Director shall initiate a rulemaking proceeding, including notice and opportunity for comment, to determine which background checks required for purposes of Federal laws applicable to transportation workers are equivalent to, or less stringent than, those required under this section.

(iii) **Future Rulemakings.** The Director shall make a determination under the criteria established under clause (ii) with respect to any rulemaking proceeding to establish or modify required background checks for transportation workers initiated after the date of enactment of this subsection.

(2) **Appeals Process for More Stringent State Procedures.** If a State establishes its own standards for applicants for a hazardous materials endorsement to a commercial driver's license, the State shall also provide—

(A) an appeals process similar to and to the same extent as the process provided under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may appeal that denial; and

(B) a waiver process similar to and to the same extent as the process provided under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may apply for a waiver.

(3) **Clarification of Term Defined in Regulations.** The term "transportation security incident", as defined in part 1572 of title 49, Code of Federal Regulations, does not include a work stoppage or other nonviolent employee-related action resulting from an employer-employee dispute. Not later than 30 days after the date of enactment of this subsection, the Director shall modify the definition of that term to reflect the preceding sentence.

(4) **Background Check Capacity.** Not later than October 1, 2005, the Director shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Homeland Security of the House of Representatives a report on the implementation of fingerprint-based security threat assessments and the adequacy of fingerprinting locations, personnel, and resources to accomplish the timely processing of fingerprint-based security threat assessments for individuals holding commercial driver's licenses who are applying to renew hazardous materials endorsements.

(5) **Report. (A) In General.** Not later than 60 days after the date of enactment of this subsection, the Director shall transmit to the committees referred to in paragraph (4) a report on the Director's plans to reduce or eliminate redundant background checks for holders of hazardous materials endorsements performed under this section.

(B) **Contents.** The report shall—

- (i) include a list of background checks and other security or threat assessment requirements applicable to transportation workers under Federal laws for which the Department of Homeland Security is responsible and the process by which the Secretary of Homeland Security will determine whether such checks or

assessments are equivalent to, or less stringent than, the background check performed under this section; and

- (ii) provide an analysis of how the Director plans to reduce or eliminate redundant background checks in a manner that will continue to ensure the highest level of safety and security.

(h) **Commercial Motor Vehicle Operators Registered to Operate in Mexico or Canada. (1) In General.** Beginning on the date that is 6 months after the date of enactment of this subsection, a commercial motor vehicle operator registered to operate in Mexico or Canada shall not operate a commercial motor vehicle transporting a hazardous materials in commerce in the United States until the operator has undergone a background records check similar to the background records check required for commercial motor vehicle operators licensed in the United States to transport hazardous materials in commerce.

(2) **Extension.** The Director of the Transportation Security Administration may extend the deadline established by paragraph (1) for a period not to exceed 6 months if the Director determines that such an extension is necessary.

(3) **Commercial Motor Vehicle Defined.** In this subsection, the term "commercial motor vehicle" has the meaning given that term by section 31101.

§5104 Representation and tampering (a) Representation. A person may represent, by marking or otherwise, that—

(1) a package, component of a package, or packaging for transporting hazardous material is safe, certified, or complies with this chapter only if the package, component of a package, or packaging meets the requirements of each applicable regulation prescribed under this chapter; or

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

(b) **Tampering.** No person may alter, remove, destroy, or otherwise tamper unlawfully with—

(1) a marking, label, placard, or description on a document required under this chapter or a regulation prescribed under this chapter; or

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

§5105 Transporting certain highly radioactive material. (a) Definitions. In this section, "high-level radioactive waste" and "spent nuclear fuel" have the same meanings given those terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(b) **Transportation Safety Study.** In consultation with the Secretary of Energy, the Nuclear Regulatory Commission, potentially affected States and Indian tribes, representatives of the rail transportation industry, and shippers of high-level radioactive waste and spent nuclear fuel, the Secretary of Transportation shall conduct a study comparing the safety of using trains operated only to transport high-level radioactive waste and spent nuclear fuel with the safety of using other methods of rail transportation for transporting that waste and fuel. The Secretary of Transportation shall submit to Congress not later than November 16, 1991, a report on the results of the study.

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

(d) **Inspections of Motor Vehicles Transporting Certain Material.**

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

(2) The Secretary of Transportation may allow a person, transporting or causing to be transported a highway-route-controlled quantity of radioactive material, to inspect the motor vehicle used to transport the material and to certify that the vehicle complies with this

chapter. The inspector qualification requirements the Secretary prescribes for an individual inspecting a motor vehicle apply to an individual conducting an inspection under this paragraph.

§5106 Handling criteria. The Secretary may prescribe criteria for handling hazardous material, including—

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

§5107 Hazmat employee training requirements and grants.

(a) Training Requirements. The Secretary 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 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 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 shall ensure that the training requirements prescribed under this section do not conflict with or duplicate—

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

(e) Training Grants. (1) In General. Subject to the availability of funds under section 5128(c), the Secretary shall make grants under this subsection—

- (A) for training instructors to train hazmat employees; and
- (B) to the extent determined appropriate by the Secretary, for such

instructors to train hazmat employees.

(2) Eligibility. A grant under this subsection shall be made to a nonprofit hazmat employee organization that demonstrates—

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

(f) Training of Certain Employees. The Secretary shall ensure that maintenance-of-way employees and railroad signalmen receive general awareness and familiarization training and safety training pursuant to section 172.704 of title 49, Code of Federal Regulations.

(g) Relationship to Other Laws. (1) Chapter 35 of title 44 does not apply to an activity of the Secretary under subsections (a)–(d) of this section.

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

(h) Existing Effort. No grant under subsection (e) shall supplant or replace existing employer-provided hazardous materials training efforts or obligations.

§5108 Registration. (a) Persons Required to File.—

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

- (A) a highway-route-controlled quantity of radioactive material.
- (B) more than 25 kilograms of a Division 1.1, 1.2, or 1.3 explosive material in a motor vehicle, rail car, or transport container.
- (C) more than one liter in each package of a hazardous material the Secretary designates as extremely toxic by inhalation.
- (D) hazardous material in a bulk packaging, container, or tank, as defined by the Secretary, if the bulk packaging, container, or tank has a capacity of at least 3,500 gallons or more than 468 cubic feet.
- (E) a shipment of at least 5,000 pounds (except in a bulk packaging) of a class of hazardous material for which placarding of a vehicle, rail car, or freight container is required under regulations prescribed under this chapter.

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

- (A) a person transporting or causing to be transported hazardous material in commerce and not required to file a registration statement under paragraph (1) of this subsection.
- (B) a person designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

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

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

(b) Form, Contents, and Limitation on Filings.

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

- (A) the name and principal place of business of the registrant;
 - (B) a description of each activity the registrant carries out for which filing a statement under subsection (a) of this section is required; and
 - (C) each State in which the person carries out any of the activities.
- (2)** A person carrying out more than one activity, or an activity at more than one location, for which filing is required only has to file one

registration statement to comply with subsection (a) of this section.

(c) **Filing.** Each person required to file a registration statement under subsection (a) shall file the statement in accordance with regulations prescribed by the Secretary.

(d) **Simplifying the Registration Process.** The Secretary may take necessary action to simplify the registration process under subsections (a)–(c) of this section and to minimize the number of applications, documents, and other information a person is required to file under this chapter and other laws of the United States.

(e) **Cooperation With Administrator.** The Administrator of the Environmental Protection Agency shall assist the Secretary in carrying out subsections (a)–(g)(1) and (h) of this section by providing the Secretary with information the Secretary requests to carry out the objectives of subsections (a)–(g)(1) and (h).

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

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

(2) (A) In addition to a fee established under paragraph (1) of this subsection, the Secretary shall establish and impose by regulation and collect an annual fee. Subject to subparagraph (B) of this paragraph, the fee shall be at least \$250 but not more than \$3,000 from each person required to file a registration statement under this section. The Secretary shall determine the amount of the fee under this paragraph on at least one of the following:

- (i) gross revenue from transporting hazardous material.
- (ii) the type of hazardous material transported or caused to be transported.
- (iii) the amount of hazardous material transported or caused to be transported.
- (iv) the number of shipments of hazardous material.
- (v) the number of activities that the person carries out for which filing a registration statement is required under this section.
- (vi) the threat to property, individuals, and the environment from an accident or incident involving the hazardous material transported or caused to be transported.
- (vii) the percentage of gross revenue derived from transporting hazardous material.
- (viii) the amount to be made available to carry out sections 5108(g)(2), 5115, and 5116 of this title.
- (ix) other factors the Secretary considers appropriate.

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

(C) The Secretary shall transfer to the Secretary of the Treasury amounts the Secretary collects under this paragraph for deposit in the Hazardous Materials Emergency Preparedness Fund established under section 5116(i) of this title.

(3) **Fees on Exempt Persons.** Notwithstanding subsection (a)(4), the Secretary shall impose and collect a fee of \$25 from a person who is required to register under this section but who is otherwise exempted by the Secretary from paying any fee under this section. The fee shall be used to pay the costs incurred by the Secretary in processing registration statements filed by such persons.

(h) **Maintaining Proof of Filing and Payment of Fees.** The Secretary may prescribe regulations requiring a person required to file a registration statement under subsection (a) of this section to maintain proof of the filing and payment of fees imposed under subsection (g) of this section.

(i) **Relationship to Other Laws.** (1) Chapter 35 of title 44 does not apply to an activity of the Secretary under subsections (a)–(g)(1) and (h) of this section.

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

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

§5109 Motor carrier safety permits. (a) **Requirement.** A motor carrier may transport or cause to be transported by motor vehicle in commerce hazardous material only if the carrier holds a safety permit the Secretary issues under this section authorizing the transportation and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary shall issue a permit if the Secretary finds the carrier is fit, willing, and able—

- (1) to provide the transportation to be authorized by the permit;
- (2) to comply with this chapter and regulations the Secretary prescribes to carry out this chapter; and
- (3) to comply with applicable United States motor carrier safety laws and regulations and applicable minimum financial responsibility laws and regulations.

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

- (1) a class A or B explosive;
- (2) liquefied natural gas;
- (3) hazardous material the Secretary designates as extremely toxic by inhalation; and
- (4) a highway-route-controlled quantity of radioactive material, as defined by the Secretary.

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

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

(2) If the Secretary decides an imminent hazard exists, the Secretary may amend, suspend, or revoke a permit before scheduling a hearing.

(e) **Procedures.** The Secretary shall prescribe by regulation—

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

(f) **Shipper responsibility.** A person offering hazardous material for motor vehicle transportation in commerce may offer the material to a motor carrier only if the carrier has a safety permit issued under this section authorizing the transportation.

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

(h) **Regulations.** The Secretary shall prescribe regulations necessary to carry out this section not later than November 16, 1991.

§5110 Shipping papers and disclosure. (a) **Providing Shipping Papers.** Each person offering for transportation in commerce hazardous material to which the shipping paper requirements of the Secretary apply shall provide to the carrier providing the transportation a shipping paper that makes the disclosures the Secretary prescribes in regulations.

(b) **Keeping Shipping Papers on the Vehicle.** (1) A motor carrier, and the person offering the hazardous material for transportation if a private motor carrier, shall keep the shipping paper on the vehicle transporting the material.

(2) Except as provided in paragraph (1) of this subsection, the shipping paper shall be kept in a location the Secretary specifies in a motor vehicle, train, vessel, aircraft, or facility until—

- (A) the hazardous material no longer is in transportation; or
- (B) the documents are made available to a representative of a department, agency, or instrumentality of the United States Government or a State or local authority responding to an accident or incident

involving the motor vehicle, train, vessel, aircraft, or facility.

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

(d) Retention of Papers. (1) Shippers. The person who provides the shipping paper, under this section shall retain the paper, or an electronic format of it, for a period of 2 years after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the shipper's principal place of business.

(2) Carriers. The carrier required to keep the shipping paper under this section shall retain the paper, or an electronic format of it, for a period of 1 year after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the carrier's principal place of business.

(3) Availability to Government Agencies. Any person required to keep a shipping paper under this subsection shall, upon request, make it available to a Federal, State, or local government agency at reasonable times and locations.

§5112 Highway routing of hazardous material. (a) Application.

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

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

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

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

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

(B) limitations and requirements related to highway routing.

(1) Standards for States and Indian Tribes.

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

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

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

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

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

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

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

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

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

(G) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe provide reasonable routes for

motor vehicles transporting hazardous material to reach terminals, facilities for food, fuel, repairs, and rest, and places to load and unload hazardous material;

(H) a requirement that a State be responsible—

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

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

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

(i) population densities;

(ii) the types of highways;

(iii) the types and amounts of hazardous material;

(iv) emergency response capabilities;

(v) the results of consulting with affected persons;

(vi) exposure and other risk factors;

(vii) terrain considerations;

(viii) the continuity of routes;

(ix) alternative routes;

(x) the effects on commerce;

(xi) delays in transportation; and

(xii) other factors the Secretary considers appropriate.

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

(c) List of Route Designations. In coordination with the States, the Secretary shall update and publish periodically a list of currently effective hazardous material highway route designations.

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

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

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

(i) the day the Secretary issues a final decision; or

(ii) the last day of the one-year period beginning on the day the Secretary receives the petition.

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

(e) Relationship to Other Laws. This section and regulations prescribed under this section do not affect sections 31111 and 31113 of this title or section 127 of title 23.

(f) Existing Radioactive Material Routing Regulations. The Secretary is not required to amend or again prescribe regulations related to highway routing designations over which radioactive material may and may not be transported by motor vehicles, and limitations and requirements related to the routing, that were in effect on November 16, 1990.

§5113 Unsatisfactory safety rating. A violation of section 31144(c)(3) shall be considered a violation of this chapter, and shall be subject to the penalties in sections 5123 and 5124.

§5114 Air transportation of ionizing radiation material.

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

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

(c) Nonapplication. This section does not apply to material the Secretary decides does not pose a significant hazard to health or

safety when transported because of its low order of radioactivity.

§5115. Training curriculum for the public sector. (a) **In General.** In coordination with the Director of the Federal Emergency Management Agency, the Chairman of the Nuclear Regulatory Commission, the Administrator of the Environmental Protection Agency, the Secretaries of Labor, Energy, and Health and Human Services, and the Director of the National Institute of Environmental Health Sciences, and using existing coordinating mechanisms of the National Response Team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary of Transportation shall maintain, and update periodically, a current curriculum of courses necessary to train public sector emergency response and preparedness teams in matters relating to the transportation of hazardous material.

(b) **Requirements.** The curriculum maintained and updated under subsection (a) of this section—

(1) shall include—

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

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

(C) appropriate emergency response training and planning programs for public sector employees developed with Federal financial assistance, including programs developed with grants made under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a); and

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

(c) **Training on Complying With Legal Requirements.** A recommended basic course described in subsection (b)(1)(B) of this section shall provide the training necessary for public sector employees to comply with—

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

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

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

(d) **Distribution and Publication.** With the National Response Team—

(1) the Secretary shall distribute the curriculum and any updates to the curriculum to the regional response teams and all committees and commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001); and

(2) the Secretary of Transportation may publish and distribute a list of programs and courses maintained and updated under this section and of any programs utilizing such courses.

§5116 Planning and training grants, monitoring, and review.

(a) **Planning grants.** (1) The Secretary shall make grants to States and Indian tribes—

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

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

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

(A) the State or Indian tribe certifies that the total amount the State or Indian tribe expends (except amounts of the United States Government) to develop, improve, and carry out emergency plans under the Act will at least equal the average level of expenditure for the last 5 fiscal years; and

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

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

(b) **Training Grants.** (1) The Secretary shall make grants to States and Indian tribes to train public sector employees to respond to accidents and incidents involving hazardous material.

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

(A) to a State or Indian tribe only if the State or tribe certifies that the total amount the State or tribe expends (except amounts of the Government) to train public sector employees to respond to an accident or incident involving hazardous material will at least equal the average level of expenditure for the last 5 fiscal years;

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

(i) a course developed or identified under section 5115 of this title; or

(ii) another course the Secretary decides is consistent with the objectives of this section; and

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

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

(A) to pay—

(i) the tuition costs of public sector employees being trained;

(ii) travel expenses of those employees to and from the training facility;

(iii) room and board of those employees when at the training facility; and

(iv) travel expenses of individuals providing the training;

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

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

(i) if the agreement allows the Secretary and the State or tribe to conduct random examinations, inspections, and audits of the training without prior notice; and

(ii) if the State or tribe conducts at least one on-site observation of the training each year.

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

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

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

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

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

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

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

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

(e) **Government's Share of Costs.** A grant under this section is for 80 percent of the cost the State or Indian tribe incurs in the fiscal year to carry out the activity for which the grant is made. Amounts of

the State or tribe under [subsections \(a\)\(2\)\(A\) and \(b\)\(2\)\(A\)](#) of this section are not part of the non-Government share under this subsection.

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

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

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

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

(i) Annual Registration Fee Account and Its Uses. The Secretary of the Treasury shall establish an account in the Treasury (to be known as the 'Hazardous Materials Emergency Preparedness Fund') into which the Secretary of the Treasury shall deposit amounts the Secretary of Transportation transfers to the Secretary of the Treasury under section [5108\(g\)\(2\)\(C\)](#) of this title. Without further appropriation, amounts in the account are available—

- (1) to make grants under this section;
- (2) to monitor and provide technical assistance under subsection (f) of this section; and
- (3) to publish and distribute an emergency response guide; and
- (4) to pay administrative costs of carrying out this section and sections [5108\(g\)\(2\)](#) and [5115](#) of this title, except that not more than 2 percent of the amounts made available from the account in a fiscal year may be used to pay those costs.

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

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

- (A) identify regions or locations in which fire departments or other organizations which provide emergency response to hazardous materials transportation accidents and incidents are in need of hazardous materials training; and
- (B) prioritize such needs and develop a means for identifying additional specific training needs.
- (3) Funds granted to an organization under this subsection shall only be used—
 - (A) to train instructors to conduct hazardous materials response

training programs;

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

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

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

(A) a course or courses developed or identified under section [5115](#) of this title; or

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

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

(k) Reports. The Secretary shall submit annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and make available to the public information on the allocation and uses of the planning grants allocated under [subsection \(a\)](#), training grants under [subsection \(b\)](#), and grants under [subsection \(j\)](#) of this section and under section [5107](#). The report shall identify the ultimate recipients of training grants and include a detailed accounting of all grant expenditures by grant recipients, the number of persons trained under the grant programs, and an evaluation of the efficacy of training programs carried out.

§5117 Special permits and exclusions (a) Authority To Issue Special Permits.

(1) As provided under procedures prescribed by regulation, the Secretary may issue, modify, or terminate a special permit authorizing a variance from this chapter or a regulation prescribed under section [5103\(b\)](#), [5104](#), [5110](#), or [5112](#) of this title to a person performing a function regulated by the Secretary under section [5103\(b\)\(1\)](#) in a way that achieves a safety level—

- (A) at least equal to the safety level required under this chapter; or
- (B) consistent with the public interest and this chapter, if a required safety level does not exist.

(2) A special permit issued under this section shall be effective for an initial period of not more than 2 years and may be renewed by the Secretary upon application for successive periods of not more than 4 years each or, in the case of a special permit relating to section [5112](#), for an additional period of not more than 2 years.

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

(c) Applications To Be Dealt With Promptly. The Secretary shall issue or renew the special permit for which an application was filed or deny such issuance or renewal within 180 days after the first day of the month following the date of the filing of such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary's decision on the special permit is delayed, along with an estimate of the additional time necessary before the decision is made.

(d) Exclusions. (1) The Secretary shall exclude, in any part, from this chapter and regulations prescribed under this chapter—

- (A) a public vessel (as defined in section [2101](#) of title [46](#));
- (B) a vessel exempted under section [3702](#) of title [46](#) from chapter [37](#) of title [46](#); and
- (C) a vessel to the extent it is regulated under the Ports and Waterways Safety Act of 1972 (33 U.S.C. [1221](#) et seq.).
- (2) This chapter and regulations prescribed under this chapter do not prohibit—
 - (A) or regulate transportation of a firearm (as defined in section [232](#) of title [18](#)), or ammunition for a firearm, by an individual for personal

use; or

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

(e) **Limitation on Authority.** Unless the Secretary decides that an emergency exists, a special permit or renewal granted under this section is the only way a person subject to this chapter may be granted a variance from this chapter.

§5119 Uniform forms and procedures. (a) **Establishment of Working Group.** The Secretary shall establish a working group of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, the National Conference of State Legislatures, and the Alliance for Uniform Hazmat Transportation Procedures.

(b) **Purpose of Working Group.** The purposes of the working group shall be to develop uniform forms and procedures for a State to register, and to issue permits to, persons that transport, or cause to be transported, hazardous material by motor vehicle in the State.

(c) **Limitation on Working Group.** The working group may not propose to define or limit the amount of a fee a State may impose or collect.

(d) **Procedure.** The Secretary shall develop a procedure for the working group to employ in developing recommendations for the Secretary to harmonize existing State registration and permit laws and regulations relating to the transportation of hazardous materials, with special attention paid to each State's unique safety concerns and interest in maintaining strong hazmat safety standards.

(e) **Report of Working Group.** Not later than 18 months after the date of enactment of this subsection, the working group shall transmit to the Secretary a report containing recommendations for establishing uniform forms and procedures described in subsection (b).

(f) **Regulations.** Not later than 18 months after the date the working group's report is delivered to the Secretary, the Secretary shall issue regulations to carry out such recommendations of the working group as the Secretary considers appropriate. In developing such regulations, the Secretary shall consider the State needs associated with the transition to and implementation of a uniform forms and procedures program.

(g) **Limitation on Statutory Construction.** Nothing in this section shall be construed as prohibiting a State from voluntarily participating in a program of uniform forms and procedures until such time as the Secretary issues regulations under subsection (f).

§5120 International uniformity of standards and requirements

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

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

(c) **Differences With International Standards and Requirements.** This section—

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

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

§5121 Administrative. (a) **General Authority.** To carry out this chapter, the Secretary may investigate, conduct tests, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. Except as provided in subsections (c) and (d), after notice and an opportunity for a hearing, the Secretary may issue an order requiring compliance with this chapter or a regulation prescribed, or an order, special permit, or approval issued, under this chapter.

(b) **Records, Reports, and Information.** A person subject to this chapter shall—

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

(2) make the records, property, reports, and information available for inspection when the Secretary undertakes an investigation or makes a request.

(c) **Inspections and Investigations.** (1) **In General.** A designated officer, employee, or agent of the Secretary—

(A) may inspect and investigate, at a reasonable time and in a reasonable manner, records and property relating to a function described in section 5103(b)(1);

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

(C) may remove from transportation a package or related packages in a shipment offered for or in transportation for which—

(i) such officer, employee, or agent has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

(ii) such officer, employee, or agent contemporaneously documents such belief in accordance with procedures set forth in guidance or regulations prescribed under subsection (e);

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

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

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

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

(3) **Safe Resumption of Transportation.** In instances when, as a result of an inspection or investigation under this subsection, an imminent hazard is not found to exist, the Secretary, in accordance with procedures set forth in regulations prescribed under subsection (e), shall assist—

(A) in the safe and prompt resumption of transportation of the package concerned; or

(B) in any case in which the hazardous material being transported is perishable, in the safe and expeditious resumption of transportation of the perishable hazardous material.

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

(2) **Written Orders.** The action of the Secretary under paragraph (1) shall be in a written emergency order that—

(A) describes the violation, condition, or practice that constitutes or is causing the imminent hazard;

(B) states the restrictions, prohibitions, recalls, or out-of-service orders issued or imposed; and

(C) describes the standards and procedures for obtaining relief from the order.

(3) **Opportunity for Review.** After taking action under paragraph (1), the Secretary shall provide for review of the action under section 554 of title 5 if a petition for review is filed within 20 calendar days of the date of issuance of the order for the action.

(4) **Expiration of Effectiveness of Order.** If a petition for review of an action is filed under paragraph (3) and the review under that paragraph is not completed by the end of the 30-day period beginning on the date the petition is filed, the action shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the imminent hazard providing a basis for the action continues to exist.

(5) Out of Service Order Defined. In this subsection, the term 'out-of-service order' means a requirement that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, potable tank, or other package not be moved until specified conditions have been met.

(e) Regulations. (1) Temporary Regulations. Not later than 60 days after the date of enactment of the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, the Secretary shall issue temporary regulations to carry out subsections (c) and (d). The temporary regulations shall expire on the date of issuance of the regulations under paragraph (2).

(2) Final Regulations. Not later than 1 year after such date of enactment, the Secretary shall issue regulations to carry out subsections (c) and (d) in accordance with subchapter II of chapter 5 of title 5.

(f) Facility, Staff, and Reporting System on Risks, Emergencies, and Actions.

(1) The Secretary shall—

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

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

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

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

(g) Grants and Cooperative Agreements. The Secretary may enter into grants and cooperative agreements with a person, agency, or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in coordination with the Department of State), an educational institution, or other appropriate entity—

(1) to expand the risk assessment and emergency response capabilities with respect to the security of transportation of hazardous material;

(2) to enhance emergency communications capacity as determined necessary by the Secretary, including the use of integrated, interoperable emergency communications technologies where appropriate;

(3) to conduct research, development, demonstration, risk assessment, and emergency response planning and training activities; or

(4) to otherwise carry out this chapter.

(h) Report. The Secretary shall, once every 2 years, prepare and transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a comprehensive report on the transportation of hazardous materials during the preceding 2 calendar years. The report shall include—

(1) a statistical compilation of accidents and casualties related to the transportation of hazardous material;

(2) a list and summary of applicable Government regulations, criteria, orders, and exemptions;

(3) a summary of the basis for each exemption;

(4) an evaluation of the effectiveness of enforcement activities relating to a function regulated by the Secretary under section 5103(b)(1) and the degree of voluntary compliance with regulations;

(5) a summary of outstanding problems in carrying out this chapter in order of priority; and

(6) recommendations for appropriate legislation.

§5122 Enforcement (a) General. At the request of the Secretary, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter or a regulation prescribed or order, special permit, or approval issued under this chapter. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same penalty amounts and factors as prescribed for the Secretary in an administrative case under section 5123.

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

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

(B) to eliminate or mitigate the hazard.

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

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

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

§5123 Civil penalty. (a) Penalty. (1) A person that knowingly violates this chapter, or a regulation, order, special permit, or approval issued under this chapter, is liable to the United States Government for a civil penalty of at least \$250 but not more than \$50,000 for each violation. A person acts knowingly when—

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

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

(2) If the Secretary finds that a violation under paragraph (1) results in death, serious illness, or severe injury to any person or substantial destruction of property, the Secretary may increase the amount of the civil penalty for such violation to not more than \$100,000.

(3) If the violation is related to training, paragraph (1) shall be applied by substituting '\$450' for '\$250'.

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

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

(c) Penalty Considerations. In determining the amount of a civil penalty under this section, the Secretary shall consider—

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

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) other matters that justice requires.

(d) Civil Actions To Collect. The Attorney General may bring a civil action in an appropriate district court of the United States to collect a civil penalty under this section and any accrued interest on the civil penalty as calculated in accordance with section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705). In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.

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

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

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

§5124 Criminal penalty. (a) In General. A person knowingly violating section 5104(b) or willfully or recklessly violating this chapter or a regulation, order, special permit, or approval issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to any person.

(b) Knowing Violations. For purposes of this section—

(1) a person acts knowingly when—

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

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

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

(c) **Willful Violations.** For purposes of this section, a person acts willfully when—

(1) the person has knowledge of the facts giving rise to the violation; and

(2) the person has knowledge that the conduct was unlawful.

(d) **Reckless Violations.** For purposes of this section, a person acts recklessly when the person displays a deliberate indifference or conscious disregard to the consequences of that person's conduct.

§5125 Preemption. (a) **General.** Except as provided in subsections (b), (c), and (e) of this section and unless authorized by another law of the United States, a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or

(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.

(b) **Substantive Differences.** (1) Except as provided in subsection (c) of this section and unless authorized by another law of the United States, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security, is preempted:

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

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

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

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

(E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce;

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

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

(c) **Compliance With Section 5112(b) Regulations.**

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

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

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

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

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

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

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

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

(e) **Waiver of Preemption.** A State, political subdivision of a State, or Indian tribe may apply to the Secretary for a waiver of preemption of a requirement the State, political subdivision, or tribe acknowledges is preempted by subsection (a), (b)(1), or (c) of this section or section 5119(b). Under a procedure the Secretary prescribes by regulation, the Secretary may waive preemption on deciding the requirement—

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

(2) is not an unreasonable burden on commerce.

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

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

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

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

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

(D) such other matters as the Secretary requests.

(g) **Application of Each Preemption Standard.** Each standard for preemption in subsection (b), (c)(1), or (d), and in section 5119(b), is independent in its application to a requirement of a State, political subdivision of a State, or Indian tribe.

(h) **Non-Federal Enforcement Standards.** This section does not apply to any procedure, penalty, required mental state, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.

§5126 Relationship to other laws (a) **Contracts.** A person under contract with a department, agency, or instrumentality of the United

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

(b) Nonapplication. This chapter does not apply to—

- (1) a pipeline subject to regulation under chapter 601 of this title; or
- (2) any matter that is subject to the postal laws and regulations of the United States under this chapter or title 18 or 39.

§5127 Judicial review. (a) Filing and Venue. Except as provided in section 20114(c), a person adversely affected or aggrieved by a final action of the Secretary under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not more than 60 days after the Secretary's action becomes final.

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

(c) Authority of Court. The court has exclusive jurisdiction, as provided in subchapter II of chapter 5 of title 5, to affirm or set aside any part of the Secretary's final action and may order the Secretary to conduct further proceedings.

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

§5128 Authorization of appropriations. (a) In General. In order to carry out this chapter (except sections 5107(e), 5108(g)(2), 5113,

5115, 5116, and 5119), the following amounts are authorized to be appropriated to the Secretary:

- (1) For fiscal year 2005, \$24,940,000.
- (2) For fiscal year 2006, \$29,000,000.
- (3) For fiscal year 2007, \$30,000,000.
- (4) For fiscal year 2008, \$30,000,000.

(b) Hazardous Materials Emergency Preparedness Fund. There shall be available to the Secretary, from the account established pursuant to section 5116(i), for each of fiscal years 2005 through 2008 the following:

- (1) To carry out section 5115, \$200,000.
- (2) To carry out sections 5116(a) and (b), \$21,800,000 to be allocated as follows:

(A) \$5,000,000 to carry out section 5116(a).

(B) \$7,800,000 to carry out section 5116(b).

(C) Of the amount provided for by this paragraph for a fiscal year in excess of the suballocations in subparagraphs (A) and (B)—

- (i) 35 percent shall be used to carry out section 5116(a); and
- (ii) 65 percent shall be used to carry out section 5116(b), except that the Secretary may increase the proportion to carry out section 5116(b) and decrease the proportion to carry out section 5116(a) if the Secretary determines that such reallocation is appropriate to carry out the intended uses of these funds as described in the applications submitted by States and Indian tribes.

(3) To carry out section 5116(f), \$150,000.

(4) To publish and distribute the Emergency Response Guidebook under section 5116(i)(3), \$625,000.

(5) To carry out section 5116(j), \$1,000,000.

(c) Hazmat Training Grants. There shall be available to the Secretary, from the account established pursuant to section 5116(i), to carry out section 5107(e) \$4,000,000 for each of fiscal years 2005 through 2008.

(d) Issuance of Hazmat Licenses. There are authorized to be appropriated for the Department of Transportation such amounts as may be necessary to carry out section 5103a.

(e) Credits to Appropriations. The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

(f) Availability of Amounts. Amounts made available by or under this section remain available until expended.