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HAZARDOUS MATERIALS TRANSPORTATION SAFETY IMPROVEMENT ACT OF 2011

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1952

APRIL 25, 2012.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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HAZARDOUS MATERIALS TRANSPORTATION SAFETY IMPROVEMENT ACT OF 2011

APRIL 25, 2012.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1952]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1952) to improve hazardous materials transportation safety and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The Hazardous Materials Transportation Safety Improvement Act of 2011 (S. 1952) would reauthorize Federal hazardous materials transportation safety programs under management of the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the U.S. Department of Transportation (DOT) for fiscal years 2012 through 2013. These programs provide safety oversight of the transportation of hazardous materials throughout the Nation's transportation networks.

BACKGROUND AND NEEDS

The transportation of hazardous materials is a critical aspect of the U.S. economy, providing essential products to manufacturing industries and the agricultural sector, and delivering fuel for homes and automobiles throughout the country. More than two billion tons of hazardous materials, worth approximately $1.5 trillion, move annually through the country. Hazardous materials include explosive, poisonous, corrosive, flammable, and radioactive sub-

stances. Examples include chlorine, kerosene, potassium cyanide, sodium nitrate, asbestos, and gunpowder.

Safe transportation of hazardous materials is imperative, given that many of these items are capable of causing substantial human and environmental harm. Hazardous materials safety means taking precautions to deter accidents or minimizing damage when accidents occur. DOT's PHMSA is responsible for regulating the transportation of these items to ensure that transportation activities are conducted in the safest possible manner, free of risk to the American public, to property, and to the environment, regardless of the transportation mode. PHMSA's Office of Hazardous Materials Safety is responsible for the safe transport of hazardous materials by air, rail, highway, and water, with the exception of bulk transportation of hazardous materials by vessel which is overseen by the U.S. Coast Guard (USCG). PHMSA's Office of Pipeline Safety has safety oversight for the transportation of natural gas, petroleum, and other hazardous materials by pipeline.

The Office of Hazardous Materials Safety works to maintain compliance with safety standards through inspections, safety incident and accident investigations, and outreach to shippers and carriers. PHMSA's regulatory authority over the transportation of hazardous materials covers a wide swath of the supply chain. Transportation of hazardous materials includes not only the actual transport of such items, but also activities that take place both before and after transport takes place. Key areas of hazardous materials regulation are:

- ***Packaging:*** Safety regulations apply to any person who manufactures, marks, maintains, reconditions, repairs, or tests packaging or a component of packaging that is represented or sold as qualified for use in the transportation of a hazardous material.

- ***Pre-Transportation:*** Safety regulations apply to any person or entity that takes part in such functions as determining the hazard class of a material; selecting packaging for a hazardous material; packaging a hazardous material; marking a package to indicate that it is a hazardous material; preparing shipping papers for hazardous materials; loading a hazardous material into a freight container; and selecting, providing, and applying placards for a freight container that is transporting hazardous materials.

- ***Transportation:*** For purposes of commerce, transportation of a hazardous material begins when a carrier takes possession of the hazardous material for the purpose of transporting it and continues until the package containing the hazardous material is delivered to the destination identified on a shipping document or, in the case of a rail car, delivered to private track. For a private motor carrier, transportation begins when a motor vehicle driver takes possession of the hazardous material and continues until the driver relinquishes possession of the package at its destination. Transportation of a hazardous material includes the movement, loading, unloading, and temporary storage of a hazardous material package being

transported by a transport vehicle, aircraft, or vessel. Temporary storage includes storage at a transloading facility or storage of a rail car on track that does not meet the definition of private, even if the car has been delivered to its final destination.

Many hazardous materials are transported under the terms and conditions of special permits and approvals issued by PHMSA. Special permits and approvals allow a company or individual to transport, package, or ship hazardous materials in a manner that varies from regulations, provided PHMSA determines that they meet two key criteria: (1) the company or individual is fit to conduct the activity authorized by the special permit or approval; and (2) the level of safety the company or individual is proposing is as safe as or safer than requirements from which the company is seeking relief. Obtaining a special permit or approval allows a company to use technological innovations that have emerged since the regulations were first promulgated. Currently, there are about 5,500 special permit holders and 118,000 approvals. In 2009, the DOT Office of the Inspector General found flaws in PHMSA's special permit program, such as PHMSA granting special permits and approvals without reviewing applicants' safety histories and without coordinating with partner safety agencies. PHMSA has been engaged in efforts to improve the program since the findings were made.

PHMSA was created under the Norman Y. Mineta Research and Special Programs Improvement Act (118 Stat. 2423), which was enacted on November 30, 2004. The hazardous materials transportation safety programs under its jurisdiction were last fully authorized in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users in 2005 (119 Stat. 1144), which includes the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (119 Stat. 1891). These programs are funded primarily through the General Fund. The Passenger Rail Investment and Improvement Act of 2008 (122 Stat. 4907) also includes provisions relating to hazardous materials transport through freight rail.

Between 2002 and 2011, hazardous materials incidents totaled 161,617 and resulted in 129 fatalities. Since reaching a peak of 20, 336 incidents in 2006, numbers have declined every subsequent year. Approximately 87 percent of the incidents and 85 percent of the fatalities from hazardous materials occurred on highways—the most common mode of hazardous materials transportation. In 2011 alone, nearly 12,300 of the 14,400 total hazardous materials incidents occurred on highways, with 10 fatalities. Gasoline and sulfuric acid were by far the most common materials involved in hazardous materials incidents, accounting for 67 percent of total incidents. The most common source of casualties is derailment or rollover of vehicles, followed by human error. Due to high product demand and frequency of use, rail and truck transport of hazardous materials are expected to increase over the next decade, raising the number of opportunities for incidents.

SUMMARY OF PROVISIONS

The Hazardous Materials Transportation Safety Improvement Act of the 2011 (HMTSIA) would reauthorize PHMSA's Office of

Hazardous Materials Safety, within DOT, for fiscal years 2012 and 2013. This legislation would take a number of steps to increase the level of safety for hazardous materials being transported throughout our Nation's transportation networks. In addition, HMTSIA includes provisions to enhance enforcement of hazardous materials transportation regulations, and steps to streamline the operations of the Office of Hazardous Materials Safety and establish more efficient processes and procedures. Specifically, the legislation includes provisions that:

- Require heightened levels of training for emergency responders to more effectively protect persons, property, and the environment in the event accidents or incidents occur during hazardous materials transportation;

- Allow the Secretary of Transportation (Secretary) to develop a program that enables shippers of hazardous materials to exchange shipping information electronically with carriers, emergency responders, and enforcement personnel;

- Direct the Secretary to establish uniform regulations for the safe loading and unloading of hazardous materials on and off tank cars and cargo tank trucks;

- Grant the Secretary the authority to establish a hazardous materials enforcement training program;

- Increase the maximum allowable civil penalties for hazardous materials transportation violations and impose new penalties on individuals who obstruct investigations or refuse to pay penalties;

- Require, through process of rulemaking, development of clear and consistent procedures and criteria for evaluating applications for hazardous materials transportation special permits and approvals;

- Require States to supply up-to-date hazardous material highway routing designations to the Secretary at least every 2 years and within 60 days of any modification to such routing designations; and condition States' abilities to enforce regulations related to hazardous material highway routing designations to those highways included in the designations provided to the Secretary; and

- Authorize appropriations for PHMSA's Office of Hazardous Materials Safety for fiscal years 2012 and 2013.

LEGISLATIVE HISTORY

S. 1952 was introduced by Senator Lautenberg on December 7, 2011, and referred to the Committee on Commerce, Science, and Transportation. The bill was considered at the Committee's December 14, 2011, Executive Session, where it was approved without amendment by unanimous consent.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

FEBRUARY 3, 2012.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1952, the Hazardous Materials Transportation Safety Improvement Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1952—Hazardous Materials Transportation Safety Improvement Act of 2011

Summary: S. 1952 would amend various laws that govern the activities of the Pipelines and Hazardous Materials Safety Administration (PHMSA). The bill also would authorize the appropriation of $85 million over the 2012–2013 period for safety activities related to the transportation of hazardous materials. However, because the amount authorized for 2012 has already been appropriated, CBO estimates that enacting the bill would cost $41 million over the 2013–2017 period, assuming the appropriation of that specified authorization for 2013.

Enacting the bill could result in the collection of additional civil penalties because it would increase the amount that PHMSA could impose for violations of hazardous materials safety regulations. Penalties are recorded as revenues and deposited in the U.S. Treasury. As a result, pay-as-you go procedures apply. However, CBO estimates that such collections would probably be small, and the effect on revenues would be insignificant. Enacting the bill would not affect direct spending.

S. 1952 would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) on state, local, and tribal governments. CBO estimates that the cost of complying with those mandates would fall well below the annual threshold established in UMRA for intergovernmental mandates ($73 million in 2012, adjusted annually for inflation).

S. 1952 would impose private-sector mandates by requiring owners and operators of facilities where loading and unloading of hazardous materials take place to comply with safety procedures to be established by PHMSA. Based on information from PHMSA and industry sources, CBO estimates that the cost of those mandates would fall below the annual threshold established in UMRA for private-sector mandates ($146 million in 2012, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1952 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—						
	2012	2013	2014	2015	2016	2017	2012–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Authorization Level	0	43	0	0	0	0	43
Estimated Outlays	0	30	9	2	0	0	41

Basis of estimate: S. 1952 would authorize the appropriation of $85 million over the 2012–2013 period for safety activities related to the transportation of hazardous materials. For 2012, $42 million has already been appropriated for this activity. The bill also would amend several laws that govern the activities of PHMSA, including requiring the agency to establish a training program for hazardous materials inspectors across different modes of transportation, update certain reports, and establish new regulations and rulemakings related to the transportation of hazardous materials. Based on historical spending for this program and because the amount authorized for 2012 has already been appropriated, CBO estimates that enacting the bill would cost $41 million over the 2012–2017 period, assuming the appropriation of that amount.

Estimated impact on state, local, and tribal governments: S. 1952 would impose intergovernmental mandates as defined in UMRA on state, local, and tribal governments. CBO estimates that the cost of complying with those mandates would fall well below the annual threshold established in UMRA for intergovernmental mandates ($73 million in 2012, adjusted annually for inflation). The bill would:

- Require states to provide a report to the Secretary of Transportation about fees charged to motor carriers that transport hazardous materials. The bill also would require states to report information about highways designated for transporting hazardous materials. CBO estimates that the cost to states resulting from this mandate would be small.
- Preempt state, local, and tribal laws relating to the transportation of hazardous materials. While that preemption would limit the application of state law, CBO estimates that it would impose no duty on state, local, or tribal governments that would result in additional spending.

The bill would authorize grants to states and Indian tribes for emergency planning and training related to the transportation of hazardous materials. Any costs to those governments would be incurred voluntarily as conditions of federal assistance.

Estimated impact on the private sector: S. 1952 contains private-sector mandates, as defined in UMRA. The bill would require owners and operators of facilities to comply with uniform procedures for safely loading and unloading hazardous materials on and off motor vehicles and rail cars with tanks. Currently, owners and operators must comply with several state, local, and federal regulations related to handling, loading, and unloading hazardous materials. According to some industry sources, having to comply with one national standard as compared to standards that vary by state could decrease compliance costs in some cases. In addition, PHMSA has already initiated a rulemaking to establish a standard for loading and unloading hazardous materials on and off motor vehicles with cargo tanks that would be similar to the standards required

in the bill. Because much of the industry already complies with requirements that are similar to the bill's requirements, CBO estimates that the incremental cost for facilities to comply with the mandates in the bill would fall below the annual threshold established in UMRA for private-sector mandates ($146 million in 2012, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Sarah Puro; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Vi Nguyen.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 1952 would reauthorize PHMSA's Office of Hazardous Materials Safety. The Office of Hazardous Materials Safety currently has the authority to provide direct oversight of the transportation of hazardous materials by air, rail, highway, and water. The bill would provide the Office of Hazardous Materials Safety with additional authority to oversee the hazardous materials transportation industry. The number of persons covered by the Office's authority is not expected to change with this bill.

ECONOMIC IMPACT

S. 1952 would not have an adverse economic impact on the Nation. This bill would promote a safer regulatory environment for the transportation of hazardous materials, which could ultimately reduce the monetary consequences of incidents and accidents.

PRIVACY

S. 1952 would not have any effect on the privacy of individuals' information.

PAPERWORK

S. 1952 would require hazardous materials shippers and carriers to provide additional information in digital form that they are not currently required to provide. Any additional paperwork burdens would be minimal.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title of this bill is the "Hazardous Materials Transportation Safety Improvement Act of 2011".

Section 2. Table of contents

This section includes the table of contents for the bill.

Section 3. Definition

This section includes definitions for the bill.

Section 4. References to Title 49, United States Code

This section clarifies that any reference to a section or other provision in the bill is in reference to a section or other provision of title 49, United States Code, unless otherwise expressly provided.

Section 5. Training for emergency responders

This section would require certification from training organizations that the emergency responders who receive training through grants provided under section 5116 have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving the transportation of hazardous materials in accordance with existing regulations or National Fire Protection Association standards for competence of responders to hazardous materials. This section would deny funding to organizations that cannot provide that training. This section would also require a report from the Secretary on all training grant expenditures.

Section 6. Paperless hazard communications pilot program

This section would grant the Secretary the authority to assess the current technological capability of DOT and, after the assessment, institute a paperless hazard communication program. The program would consider technologies that allow shippers to exchange hazardous materials shipping information electronically with carriers, emergency responders, and enforcement personnel among fixed facilities, mobile platforms, and wireless devices.

Section 7. Improving data collection, analysis, and reporting

This section would require the Secretary, in coordination with the Secretary of Homeland Security, to perform an assessment of PHMSA's current policies on reporting of accidents or incidents involving hazardous materials. The Secretary would be required to develop an action plan and timeline for making improvements, after the results of the assessment are known.

Section 8. Loading and unloading of hazardous materials

This section would require the Secretary, after consultation and public notice, to prescribe uniform regulations for the safe loading and unloading of hazardous materials on and off tank cars and cargo tank trucks.

Section 9. Hazardous material technical assessment, research and development, and analysis program

This section would authorize the Secretary to develop and implement a technical assessment, research and development, and analysis program aimed at reducing the risks associated with the transportation of hazardous materials, and identify new technologies and methods for facilitating the safe, secure, and efficient transportation of hazardous materials. This section would focus this program's research activities on high-risk hazardous materials trans-

portation concerns identified by the National Transportation Safety Board or through DOT initiatives.

Section 10. Hazardous material enforcement training program

This section would grant the Secretary authority to establish a hazardous materials enforcement training program to develop qualification guidelines, best practices, and standards for government hazardous materials investigator training building upon current training programs already developed by the modes; collect, analyze, and publish findings from incident investigations; and develop standard protocols for coordinating joint enforcement efforts among Federal, State, and local jurisdictions. The program would establish investigator qualification and training guidelines to ensure that regulated entities are complying with hazardous materials packaging regulations.

Section 11. Inspections

This section would require inspections administered by the Secretary to address the immediate resumption of transportation of perishable material after inspection, along with training for inspectors and the proper closing of packaging after inspections. This section would also require the Secretary to provide reasonable notice to affected parties after a finding of non-compliance. The section would also require the Secretary to formulate the means by which non-compliant packages that are both imminent hazards and non-imminent hazards are handled.

Section 12. Civil penalties

This section would increase the statutory maximum for a civil penalty from $50,000 to $75,000 for each hazardous materials violation. For violations that result in death, serious illness, or severe injury, the penalty would be increased from a $100,000 maximum to a $175,000 maximum. This section would also clarify the Secretary's authority to impose a penalty on a person who obstructs an inspection or investigation. This section would prohibit hazardous materials operations for companies that do not pay assessed penalties.

Section 13. Reporting of fees

This section would require biennial reporting from States, political subdivisions, and Indian tribes that levy fees on hazardous materials.

Section 14. Special permits, approvals, and exclusions

This section would amend section 5116 to better define the process and procedures used to manage the special permits, approvals, and exclusions program. It would authorize the Secretary to issue, modify, or terminate a special permit that implements new technologies or varies safety levels. It would direct the Secretary to establish criteria to make an assessment of an equivalent level of safety and the process for evaluating the fitness of applicants and their safety performance. This section would increase the amount of compliance audits and oversight of special permit and approval holders. This section would grant the Secretary authority to mod-

ify, suspend, or terminate a special permit or approval for noncompliance, or if the special permit is unsafe.

Section 15. Highway routing disclosures

This section would require each State to submit the name of the State agency responsible for hazardous material highway route designations and a list of the State's currently effective hazardous material highway route designations every 2 years, or when a designation is modified. This section would also require that States only enforce regulations that pertain to those highways included in the highway route designations provided to the Secretary.

Section 16. Authorization of appropriations

This section would authorize appropriations for most hazardous materials programs through 2013, including Hazardous Materials Training Grants. This section would authorize appropriations for the Hazardous Materials Emergency Preparedness Fund through 2013. This section would allow the Secretary to credit amounts received from a State, Indian tribe, or public authority for expenses occurred in providing them training.

CHANGES IN EXISTING LAW

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

TITLE 49. TRANSPORTATION

SUBTITLE III. GENERAL AND INTERMODAL PROGRAMS

CHAPTER 51. TRANSPORTATION OF HAZARDOUS MATERIAL

§ 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.

(b) STANDARDS FOR STATES AND INDIAN TRIBES.—

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

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

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

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

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

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

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

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

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

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

(H) a requirement that a State be responsible—

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

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

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

(i) population densities;
(ii) the types of highways;
(iii) the types and amounts of hazardous material;
(iv) emergency response capabilities;
(v) the results of consulting with affected persons;
(vi) exposure and other risk factors;
(vii) terrain considerations;
(viii) the continuity of routes;
(ix) alternative routes;
(x) the effects on commerce;
(xi) delays in transportation; and
(xii) other factors the Secretary considers appropriate.

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

(c) LIST OF ROUTE DESIGNATIONS.—[In coordination]

(1) IN GENERAL.—In coordination with the States, the Secretary shall update and publish periodically a list of currently effective hazardous material highway route designations.

(2) STATE RESPONSIBILITIES.—

(A) IN GENERAL.—Each State shall submit to the Secretary, in a form and manner to be determined by the Secretary and in accordance with subparagraph (B)—

(i) the name of the State agency responsible for hazardous material highway route designations; and

(ii) a list of the State's currently effective hazardous material highway route designations.

(B) FREQUENCY.—Each State shall submit the information described in subparagraph (A)(ii)—

(i) at least once every 2 years; and

(ii) not later than 60 days after a hazardous material highway route designation is established, amended, or discontinued.

(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.

§ 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. Only in developing the curriculum, the Secretary of Transportation shall consult with regional response teams established under the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), representatives of commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001), persons (including governmental entities) that provide training for responding to accidents and incidents involving the transportation of hazardous material, and representatives of persons that respond to those accidents and incidents.

(b) REQUIREMENTS.—The curriculum 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 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. *To the extent that a grant is used to train emergency responders, the State or Indian tribe shall provide written certification to the Secretary that the emergency responders who receive training under the grant will have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations or National Fire Protection Association standards for competence of responders to hazardous materials.*

(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 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.—State or Indian tribe interested in receiving a grant under this section shall submit an application to the Secretary. 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 ra-

dioactive 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 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;

(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 not award a grant to an organization under this subsection unless the organization ensures that emergency responders who receive training under the grant will have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations or National Fire Protection Association standards for competence of responders to hazardous materials.

(6) Notwithstanding paragraphs (1) and (3), to the extent determined appropriate by the Secretary, a grant awarded by the Secretary to an organization under this subsection to conduct hazardous material response training programs may be used to train individuals with responsibility to respond to accidents and incidents involving hazardous material.

[(5)**]** *(7)* 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**]** *an annual report* 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 *the report* to the public **[**information**]**. *The report submitted under this subsection shall include 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.] *The report submitted under this subsection shall identify the ultimate recipients of such grants and include—*

(A) a detailed accounting and description of each grant expenditure by each grant recipient, including the amount of, and purpose for, each expenditure;

(B) the number of persons trained under the grant program, by training level;

(C) an evaluation of the efficacy of such planning and training programs; and

(D) any recommendations the Secretary may have for improving such grant programs.

[§ 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.]

§ 5117. Special permits, approvals, and exclusions

(a) AUTHORITY TO ISSUE SPECIAL PERMITS.—

(1) CONDITIONS.—The Secretary of Transportation may issue, modify, or terminate a special permit implementing new technologies or authorizing a variance from a provision under this chapter or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 to a person performing a function regulated by the Secretary under section 5103(b)(1) to achieve—

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

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

(2) FINDINGS REQUIRED.—

(A) IN GENERAL.—Before issuing, renewing, or modifying a special permit or granting party status to a special permit, the Secretary shall determine that the person is fit to conduct the activity authorized by such permit in a manner that achieves the level of safety required under paragraph (1).

(B) CONSIDERATIONS.—In making the determination under subparagraph (A), the Secretary shall consider—

(i) the person's safety history (including prior compliance history);

(ii) the person's accident and incident history; and

(iii) any other information the Secretary considers appropriate to make such a determination.

(3) EFFECTIVE PERIOD.—A special permit issued under this section—

(A) shall be for an initial period of not more than 2 years;

(B) may be renewed by the Secretary upon application—

(i) for successive periods of not more than 4 years each; or

(ii) in the case of a special permit relating to section 5112, for an additional period of not more than 2 years.

(b) APPLICATIONS.—

(1) REQUIRED DOCUMENTATION.—When applying for a special permit or the renewal or modification of a special permit or requesting party status to a special permit under this section, the Secretary shall require the person to submit an application that contains—

(A) a detailed description of the person's request;

(B) a listing of the person's current facilities and addresses where the special permit will be utilized;

(C) a safety analysis prescribed by the Secretary that justifies the special permit;

(D) documentation to support the safety analysis;

(E) a certification of safety fitness; and

(F) proof of registration, as required under section 5108.

(2) PUBLIC NOTICE.—The Secretary shall—

(A) publish notice in the Federal Register that an application for a special permit has been filed; and

(B) provide the public an opportunity to inspect and comment on the application.

(3) SAVINGS CLAUSE.—This subsection does not require the release of information protected by law from public disclosure.

(c) COORDINATE AND COMMUNICATE WITH MODAL CONTACT OFFICIALS.—

(1) IN GENERAL.—In evaluating applications under subsection (b), and making the findings and determinations under subsections (a), (e), and (h), the Administrator of the Pipeline and Hazardous Materials Safety Administration shall consult, coordinate, or notify the modal contact official responsible for the specified mode of transportation that will be utilized under a special permit or approval before—

(A) issuing, modifying, or renewing the special permit;

(B) granting party status to the special permit; or

(C) issuing or renewing the special permit or approval.

(2) MODAL CONTACT OFFICIAL DEFINED.—In this section, the term 'modal contact official' means—

(A) the Administrator of the Federal Aviation Administration;

(B) the Administrator of the Federal Motor Carrier Safety;

(C) the Administrator of the Federal Railroad Administration; and

(D) the Commandant of the Coast Guard.

(d) APPLICATIONS TO BE DEALT WITH PROMPTLY.—The Secretary shall—

(1) issue, modify, renew, or grant party status to a special permit or approval for which a request was filed under this section, or deny the issuance, modification, renewal, or grant, on or before the last day of the 180-day period beginning on the first day of the month following the date of the filing of the request; or

(2) publish a statement in the Federal Register that—

(A) describes the reason for the delay of the Secretary's decision on the special permit or approval; and

(B) includes an estimate of the additional time necessary before the decision is made.

(e) EMERGENCY PROCESSING OF SPECIAL PERMITS.—

(1) FINDINGS REQUIRED.—The Secretary may not grant a request for emergency processing of a special permit unless the Secretary determines that—

(A) a special permit is necessary for national security purposes;

(B) processing on a routine basis under this section would result in significant injury to persons or property; or

(C) a special permit is necessary to prevent significant economic loss or damage to the environment that could not be prevented if the application were processed on a routine basis.

(2) WAIVER OF FITNESS TEST.—The Secretary may waive the requirement under subsection (a)(2) for a request for which the Secretary makes a determination under subparagraph (A) or (B) of paragraph (1).

(3) NOTIFICATION.—Not later than 90 days after the date of issuance of a special permit under this subsection, the Secretary shall publish a notice in the Federal Register of the issuance that includes—

(A) a statement of the basis for the finding of emergency; and

(B) the scope and duration of the special permit.

(4) EFFECTIVE PERIOD.—A special permit issued under this subsection shall be effective for a period not to exceed 180 days.

(f) EXCLUSIONS.—

(1) IN GENERAL.—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 or 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) FIREARMS.—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.

(g) LIMITATION ON AUTHORITY.—Unless the Secretary decides that an emergency exists, a person subject to this chapter may only be granted a variance from this chapter through a special permit or renewal granted under this section.

(h) APPROVALS.—

(1) FINDINGS REQUIRED.—

(A) IN GENERAL.—The Secretary may not issue an approval or grant the renewal of an approval pursuant to part 107 of title 49, Code of Federal Regulations until the Secretary has determined that the person is fit, willing,

and able to conduct the activity authorized by the approval in a manner that achieves the level of safety required under subsection (a)(1).

(B) CONSIDERATIONS.—In making a determination under subparagraph (A), the Secretary shall consider—

(i) the person's safety history (including prior compliance history);

(ii) the person's accident and incident history; and

(iii) any other information the Secretary considers appropriate to make such a determination.

(2) REQUIRED DOCUMENTATION.—When applying for an approval or renewal or modification of an approval under this section, the Secretary shall require the person to submit an application that contains—

(A) a detailed description of the person's request;

(B) a listing of the persons current facilities and addresses where the approval will be utilized;

(C) a safety analysis prescribed by the Secretary that justifies the approval;

(D) documentation to support the safety analysis;

(E) a certification of safety fitness; and

(F) the verification of registration required under section 5108.

(3) SAVINGS PROVISION.—Nothing in this subsection may be construed to require the release of information protected by law from public disclosure.

(i) NONCOMPLIANCE.—The Secretary may modify, suspend, or terminate a special permit or approval if the Secretary determines that—

(1) the person who was granted the special permit or approval has violated the special permit or approval or the regulations issued under this chapter in a manner that demonstrates that the person is not fit to conduct the activity authorized by the special permit or approval; or

(2) the special permit or approval is unsafe.

(j) RULEMAKING.—Not later than 2 years after the date of the enactment of this Act, the Secretary, after providing notice and an opportunity for public comment, shall issue regulations that establish—

(1) standard operating procedures to support administration of the special permit and approval programs; and

(2) objective criteria to support the evaluation of special permit and approval applications.

(k) ANNUAL REVIEW OF CERTAIN SPECIAL PERMITS.—

(1) REVIEW.—The Secretary shall conduct an annual review and analysis of special permits—

(A) to identify consistently used and longstanding special permits with an established safety record; and

(B) to determine whether such permits may be converted into the hazardous materials regulations.

(2) FACTORS.—In conducting the review and analysis under paragraph (1), the Secretary may consider—

(A) the safety record for hazardous materials transported under the special permit;

(B) the application of a special permit;

(C) the suitability of provisions in the special permit for incorporation into the hazardous materials regulations; and

(D) rulemaking activity in related areas.

(3) RULEMAKING.—After completing the review and analysis under paragraph (1) and providing notice and opportunity for public comment, the Secretary shall issue regulations, as needed.

§ 5118. Hazardous material technical assessment, research and development, and analysis program

(a) RISK REDUCTION.—

(1) PROGRAM AUTHORIZED.—The Secretary of Transportation may develop and implement a hazardous material technical assessment, research and development, and analysis program for the purpose of—

(A) reducing the risks associated with the transportation of hazardous material; and

(B) identifying and evaluating new technologies to facilitate the safe, secure, and efficient transportation of hazardous material.

(2) COORDINATION.—In developing the program under paragraph (1), the Secretary shall—

(A) utilize information gathered from other modal administrations with similar programs; and

(B) coordinate with other modal administrations, as appropriate.

(b) COOPERATION.—In carrying out subsection (a), the Secretary may work cooperatively with regulated and other entities, including shippers, carriers, emergency responders, State and local officials, and academic institutions.

§ 5121. Administrative

(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary may investigate, conduct tests, make reports, issue subpenas, 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**[**.**]***; and*

(G) shall provide to the affected offeror, carrier, packaging manufacturer or tester, or other person responsible for the package reasonable notice of—

(i) his or her decision to exercise his or her authority under paragraph (1);

(ii) any findings made; and

(iii) any actions being taken as a result of a finding of noncompliance.

(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 pro-

vision 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.

(3) MATTERS TO BE ADDRESSED.—The regulations issued under this subsection shall address—

(A) the safe and expeditious resumption of transportation of perishable hazardous material, including radiopharmaceuticals and other medical products, that may require timely delivery due to life-threatening situations;

(B) the means by which—

(i) noncompliant packages that present an imminent hazard are placed out-of-service until the condition is corrected; and

(ii) noncompliant packages that do not present a hazard are moved to their final destination;

(C) appropriate training and equipment for inspectors; and

(D) the proper closure of packaging in accordance with the hazardous material regulations.

(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 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 risk assessment and emergency response capabilities with respect to the *safety and* 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 special permits;

(3) a summary of the basis for each special permit;

(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.

§ 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**]** *$75,000* 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**]** *$175,000*.

(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.

(h) PENALTY FOR OBSTRUCTION OF INSPECTIONS AND INVESTIGATIONS.—The Secretary may impose a penalty on a person who obstructs or prevents the Secretary from carrying out inspections or investigations under subsection (c) or (i) of section 5121.

(i) PROHIBITION ON HAZARDOUS MATERIAL OPERATIONS AFTER NONPAYMENT OF PENALTIES.—

(1) IN GENERAL.—Except as provided under paragraph (2), a person subject to the jurisdiction of the Secretary under this chapter who fails to pay a civil penalty assessed under this chapter, or fails to arrange and abide by an acceptable payment plan for such civil penalty, may not conduct any activity regulated under this chapter beginning on the 91st day after the date specified by order of the Secretary for payment of such penalty unless the person has filed a formal administrative or judicial appeal of the penalty.

(2) EXCEPTION.—Paragraph (1) shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11.

(3) RULEMAKING.—Not later than 2 years after the date of the enactment of this subsection, the Secretary, after providing notice and an opportunity for public comment, shall issue regulations that—

(A) set forth procedures to require a person who is delinquent in paying civil penalties to cease any activity regulated under this chapter until payment has been made or an acceptable payment plan has been arranged; and

(B) ensures that the person described in subparagraph (A)—

(i) is notified in writing; and

(ii) is given an opportunity to respond before the person is required to cease the activity.

§ 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 sub-

division 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 *and other hazardous materials transportation incident reporting to the 9-1-1 emergency system or involving State or local emergency responders in the initial response to the incident*.

(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)*, and is published in the Department's hazardous materials route registry under section 5112(c)*.

(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(f). 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(f). 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,] *biennially* 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 (a), (b)(1), or (c), and in section 5119(f), 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.

[§ 5128. Authorizations 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.]

§ 5128. Authorization of appropriations

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out this chapter (except sections 5107(e), 5108(g)(2), 5113, 5115, 5116, and 5119)—

(1) $42,338,000 for fiscal year 2012; and

(2) $42,762,000 for fiscal year 2013.

(b) HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS FUND.—From the Hazardous Materials Emergency Preparedness Fund established under section 5116(i), the Secretary may expend, during each of fiscal years 2012 and 2013—

(1) $188,000 to carry out section 5115;

(2) $21,800,000 to carry out subsections (a) and (b) of section 5116, of which not less than $13,650,000 shall be available to carry out section 5116(b);

(3) $150,000 to carry out section 5116(f);

(4) $625,000 to publish and distribute the Emergency Response Guidebook under section 5116(i)(3); and

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

(c) HAZARDOUS MATERIALS TRAINING GRANTS.—From the Hazardous Materials Emergency Preparedness Fund established pursuant to section 5116(i), the Secretary may expend $4,000,000 for each of the fiscal years 2012 and 2013 to carry out section 5107(e).

(d) CREDITS TO APPROPRIATIONS.—

(1) EXPENSES.—In addition to amounts otherwise made available to carry out this chapter, the Secretary may credit amounts 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.

(2) AVAILABILITY OF AMOUNTS.—Amounts made available under this section shall remain available until expended.

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