

Par. (3)(B)(ii). Pub. L. 109-59, §7102(2)(D)(ii), as amended by Pub. L. 110-244, §302(a)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: “manufactures, reconditions, or tests containers, drums, and packagings represented as qualified for use in transporting hazardous material;”.

Par. (3)(C). Pub. L. 109-59, §7102(2)(C), as amended by Pub. L. 110-244, §302(a)(1), redesignated subpar. (C) as (B).

Par. (4). Pub. L. 109-59, §7102(3), amended par. (4) generally. Prior to amendment, par. (4) consisted of subpars. (A) to (C), which included within definition of “hazmat employer” a person using at least one employee in connection with transporting or containers for transporting hazardous material, an owner-operator of a motor vehicle transporting hazardous material in commerce, and 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 certain described activities.

Par. (5). Pub. L. 109-59, §7102(4), inserted “relating to hazardous material” after “of a condition”.

Par. (7). Pub. L. 109-59, §7102(5), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “motor carrier” means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102 of this title.”

Par. (8). Pub. L. 109-59, §7102(6), substituted “National Response Team” for “national response team” in two places and “National Contingency Plan” for “national contingency plan”.

Par. (9)(A). Pub. L. 109-59, §7102(7), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “includes a government, Indian tribe, or authority of a government or tribe offering hazardous material for transportation in commerce or transporting hazardous material to further a commercial enterprise; but”.

Pars. (11) to (14). Pub. L. 109-59, §7102(8), added par. (11) and redesignated former pars. (11) to (13) as (12) to (14), respectively.

1995—Par. (7). Pub. L. 104-88 substituted “motor carrier, motor private” for “motor common carrier, motor contract carrier, motor private” and “section 13102” for “section 10102”.

1994—Pars. (3)(C)(ii), (4)(A)(iii). Pub. L. 103-311 substituted “packagings” for “packages”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-244 effective as of the date of enactment of Pub. L. 109-59 (Aug. 10, 2005) and to be treated as included in Pub. L. 109-59 as of that date, and provisions of Pub. L. 109-59, as in effect on the day before June 6, 2008, that are amended by Pub. L. 110-244 to be treated as not enacted, see section 121(b) of Pub. L. 110-244, set out as a note under section 101 of Title 23, Highways.

§ 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.

(d) BIENNIAL REPORT.—The Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Senate Committee on Commerce, Science, and Transportation a biennial report providing information on whether the Secretary has designated as hazardous materials for purposes of chapter 51 of such title all by-products of the methamphetamine-production process that are known by the Secretary to pose an unreasonable risk to health and safety or property when transported in commerce in a particular amount and form.

(Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 761; Pub. L. 103-311, title I, §117(a)(2), Aug. 26, 1994, 108 Stat. 1678; Pub. L. 103-429, §6(3), Oct. 31, 1994, 108 Stat. 4378; Pub. L. 107-296, title XVII, §1711(a), Nov. 25, 2002, 116 Stat. 2319; Pub. L. 109-59, title VII, §§7103, 7126, Aug. 10, 2005, 119 Stat. 1893, 1909; Pub. L. 109-177, title VII, §741, Mar. 9, 2006, 120 Stat. 272.)

HISTORICAL AND REVISION NOTES

PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5103(a)	49 App.:1803.	Jan. 3, 1975, Pub. L. 93-633, §104, 88 Stat. 2156.
5103(b)	49 App.:1804(a) (1)-(3).	Jan. 3, 1975, Pub. L. 93-633, §105(a)(1)-(3), 88 Stat. 2157; restated Nov. 16, 1990, Pub. L. 101-615, §4, 104 Stat. 3247.

In subsection (a), the words “such quantity and form of material” and “in his discretion” are omitted as surplus.

In subsection (b)(1), before clause (A), the words “in accordance with section 553 of title 5” are omitted because 5:553 applies unless otherwise stated. In clause (A)(i), the words “hazardous material in commerce”,

and in clause (A)(ii), the words “hazardous material . . . in commerce”, are added for consistency in this chapter.

PUB. L. 103-429

This amends 49:5103(b)(2) to clarify the restatement of 49 App.1804(a)(2) by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 761).

AMENDMENTS

2006—Subsec. (d). Pub. L. 109-177 added subsec. (d).

2005—Subsec. (a). Pub. L. 109-59, § 7126, substituted “Secretary shall designate” for “Secretary of Transportation shall designate”.

Pub. L. 109-59, § 7103(a), substituted “infectious substance, flammable or combustible liquid, solid, or gas, toxic, oxidizing, or corrosive material,” for “etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material,” and “determines” for “decides”.

Subsec. (b)(1)(A). Pub. L. 109-59, § 7103(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “apply to a person—

“(i) transporting hazardous material in commerce;

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

“(iii) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a packaging or a container that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce; and”.

Subsec. (b)(1)(C). Pub. L. 109-59, § 7103(c)(1), struck out heading and text of subpar. (C). Text read as follows: “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.”

Subsec. (c). Pub. L. 109-59, § 7103(c)(2), added subsec. (c).

2002—Subsec. (b)(1). Pub. L. 107-296, § 1711(a)(1), substituted “transportation, including security,” for “transportation” in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 107-296, § 1711(a)(2), substituted “aspects, including security,” for “aspects”.

Subsec. (b)(1)(C). Pub. L. 107-296, § 1711(a)(3), added subpar. (C).

1994—Subsec. (b)(1)(A)(iii). Pub. L. 103-311 substituted “a packaging or a” for “a package or”.

Subsec. (b)(2). Pub. L. 103-429 substituted “be conducted under section 553 of title 5, including” for “include” and “presentation” for “presentations”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

RAILROAD CARRIER EMPLOYEE EXPOSURE TO RADIATION STUDY

Pub. L. 110-432, div. A, title IV, § 411, Oct. 16, 2008, 122 Stat. 4888, provided that:

“(a) STUDY.—The Secretary of Transportation shall, in consultation with the Secretary of Energy, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and the Chairman of the Nuclear Regulatory Commission, as appropriate, conduct a study of the potential hazards to which employees of railroad carriers and railroad contractors or subcontractors are exposed during the transportation of high-level radioactive waste and spent nuclear fuel (as defined in section 5101(a) [probably means section 5105(a)] of title 49, United States Code), supplementing the report submitted under section 5101(b) [probably

means section 5105(b)] of that title, which may include—

“(1) an analysis of the potential application of ‘as low as reasonably achievable’ principles for exposure to radiation to such employees with an emphasis on the need for special protection from radiation exposure for such employees during the first trimester of pregnancy or who are undergoing or have recently undergone radiation therapy;

“(2) the feasibility of requiring real-time dosimetry monitoring for such employees;

“(3) the feasibility of requiring routine radiation exposure monitoring in fixed railroad locations, such as yards and repair facilities; and

“(4) a review of the effectiveness of the Department’s packaging requirements for radioactive materials.

“(b) REPORT.—Not later than 18 months after the date of enactment of this Act [Oct. 16, 2008], the Secretary of Transportation shall transmit a report on the results of the study required by subsection (a) and any recommendations to further protect employees of a railroad carrier or of a contractor or subcontractor to a railroad carrier from unsafe exposure to radiation during the transportation of high-level radioactive waste and spent nuclear fuel to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

“(c) REGULATORY AUTHORITY.—The Secretary of Transportation may issue regulations that the Secretary determines appropriate, pursuant to the report required by subsection (b), to protect railroad employees from unsafe exposure to radiation during the transportation of radioactive materials.”

[For definitions of “railroad carrier”, “Department”, “railroad”, and “Secretary”, as used in section 411 of Pub. L. 110-432, set out above, see section 2(a) of Pub. L. 110-432, set out as a note under section 20102 of this title.]

SAFE PLACEMENT OF TRAIN CARS

Section 111 of Pub. L. 103-311 provided that: “The Secretary of Transportation shall conduct a study of existing practices regarding the placement of cars on trains, with particular attention to the placement of cars that carry hazardous materials. In conducting the study, the Secretary shall consider whether such placement practices increase the risk of derailment, hazardous materials spills, or tank ruptures or have any other adverse effect on safety. The results of the study shall be submitted to Congress within 1 year after the date of enactment of this Act [Aug. 26, 1994].”

FIBER DRUM PACKAGING

Pub. L. 104-88, title IV, § 406, Dec. 29, 1995, 109 Stat. 957, provided that:

“(a) IN GENERAL.—In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall issue a final rule within 60 days after the date of the enactment of this Act [Dec. 29, 1995] authorizing the continued use of fiber drum packaging with a removable head for the transportation of liquid hazardous materials with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991, if—

“(1) the packaging is in compliance with regulations of the Secretary under the Hazardous Materials Transportation Act [former 49 U.S.C. 1801 et seq.] as in effect on September 30, 1991; and

“(2) the packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation or materials in Packing Groups I and II.

“(b) EXPIRATION.—The regulation referred to in subsection (a) shall expire on the later of September 30, 1997, or the date on which funds are authorized to be appropriated to carry out chapter 51 of title 49, United States Code (relating to transportation of hazardous

materials), for fiscal years beginning after September 30, 1997.

“(C) STUDY.—

“(1) IN GENERAL.—Within 90 days after the date of the enactment of this Act [Dec. 29, 1995], the Secretary shall contract with the National Academy of Sciences to conduct a study—

“(A) to determine whether the requirements of section 5103(b) of title 49, United States Code (relating to regulations for safe transportation), as they pertain to fiber drum packaging with a removable head can be met for the transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards (including fiber drum industry standards set forth in a June 8, 1992, exemption application submitted to the Department of Transportation), other than the performance-oriented packaging standards adopted under docket number HM-181 contained in part 178 of title 49, Code of Federal Regulations; and

“(B) to determine whether a packaging standard (including such fiber drum industry standards), other than such performance-oriented packaging standards, will provide an equal or greater level of safety for the transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect.

“(2) COMPLETION.—The study shall be completed before March 1, 1997 and shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Transportation and Infrastructure Committee of the House of Representatives.

“(d) SECRETARIAL ACTION.—By September 30, 1997, the Secretary shall issue final regulations to determine what standards should apply to fiber drum packaging with a removable head for transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) after September 30, 1997. In issuing such regulations, the Secretary shall give full and substantial consideration to the results of the study conducted in subsection (c).”

Section 122 of Pub. L. 103-311 provided that:

“(a) INITIATION OF RULEMAKING PROCEEDING.—Not later than the 60th day following the date of enactment of this Act [Aug. 26, 1994], the Secretary of Transportation shall initiate a rulemaking proceeding to determine whether the requirements of section 5103(b) of title 49, United States Code (relating to regulations for safe transportation), as they pertain to open head fiber drum packaging can be met for the domestic transportation of liquid hazardous materials (with respect to those classifications of liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards other than the performance-oriented packaging standards adopted under docket number HM-181 contained in part 178 of title 49, Code of Federal Regulations.

“(b) ISSUANCE OF STANDARDS.—If the Secretary of Transportation determines, as a result of the rulemaking proceeding initiated under subsection (a), that a packaging standard other than the performance-oriented packaging standards referred to in subsection (a) will provide an equal or greater level of safety for the domestic transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect, the Secretary shall issue regulations which implement such other standard and which take effect before October 1, 1996.

“(c) COMPLETION OF RULEMAKING PROCEEDING.—The rulemaking proceeding initiated under subsection (a) shall be completed before October 1, 1995.

“(d) LIMITATIONS.—

“(1) The provisions of subsections (a), (b), and (c) shall not apply to packaging for those hazardous materials regulated by the Department of Transportation as poisonous by inhalation under chapter 51 of title 49, United States Code.

“(2) Nothing in this section shall be construed to prohibit the Secretary of Transportation from issuing or enforcing regulations for the international transportation of hazardous materials.”

§ 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 hazardous material by the Secretary of Transportation for which the Secretary of Transportation 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 of Homeland Security may prescribe, the name, address, and such other information as the Secretary of Homeland Security 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 of Homeland Security may require.