H. R. 1414

To direct the Secretary of Homeland Security to issue regulations concerning the shipping of extremely hazardous materials, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mr. Markey (for himself, Ms. Norton, Mr. Kucinich, Mr. Pallone, Ms. Lee, Mrs. Maloney, Mr. Thompson of Mississippi, Mr. Holt, Mrs. Jones of Ohio, Ms. Berkley, Mr. Grijalva, and Mr. Doggett) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Secretary of Homeland Security to issue regulations concerning the shipping of extremely hazardous materials, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Extremely Hazardous
5 Materials Transportation Security Act of 2005”.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,
SEC. 2. RULEMAKING.

(a) In General.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal, State, and local government entities, security experts, representatives of the hazardous materials shipping industry and labor unions representing persons who work in the hazardous materials shipping industry, and other interested persons, shall issue, after notice and opportunity for public comment, regulations concerning the shipping of extremely hazardous materials.

(b) Purposes of Regulations.—The regulations shall be consistent, to the extent the Secretary determines appropriate, with and not duplicative of other Federal regulations and international agreements relating to the shipping of extremely hazardous materials and shall require—

(1) physical security measures for such shipments, such as the use of passive secondary containment of tanker valves and other technologies to ensure the physical integrity of pressurized tank cars used to transport extremely hazardous materials, additional security force personnel, and surveillance technologies and barriers;

(2) concerned Federal, State, and local law enforcement authorities (including, if applicable, transit, railroad, or port authority police agencies) to be
informed before an extremely hazardous material is transported within, through, or near an area of concern;

(3) the creation of terrorism response plans for shipments of extremely hazardous materials;

(4) the use of currently available technologies and systems to ensure effective and immediate communication between transporters of extremely hazardous materials and all entities charged with responding to acts of terrorism involving shipments of extremely hazardous materials;

(5) comprehensive and appropriate training in the area of extremely hazardous materials transportation security for all individuals who transport, load, unload, or are otherwise involved in the shipping of extremely hazardous materials or who would respond to an accident or incident involving a shipment of extremely hazardous material or would have to repair transportation equipment and facilities in the event of such an accident or incident; and

(6) for the transportation of extremely hazardous materials through or near an area of concern, the Secretary to determine whether or not the transportation could be made by one or more alternate routes at lower security risk and, if the Sec-
retary determines the transportation could be made
by an alternate route, the use of such alternate
route, except when the origination or destination of
the shipment is located within the area of concern.

(c) JUDICIAL RELIEF.—A person (other than an indi-
vidual) who transports, loads, unloads, or is otherwise in-
volved in the shipping of hazardous materials and violates
or fails to comply with a regulation issued by the Secretary
under this section may be subject, in a civil action brought
in United States district court, for each shipment with re-
spect to which the violation occurs—

(1) to an order for injunctive relief; or

(2) to a civil penalty of not more than

$100,000.

(d) ADMINISTRATIVE PENALTIES.—

(1) PENALTY ORDERS.—The Secretary may
issue an order imposing an administrative penalty of
not more than $1,000,000 for failure by a person
(other than an individual) who transports, loads, un-
loads, or is otherwise involved in the shipping of haz-
ardous materials to comply with a regulation issued
by the Secretary under this section.

(2) NOTICE AND HEARING.—Before issuing an
order described in paragraph (1), the Secretary shall
provide to the person against whom the penalty is to
be assessed—

(A) written notice of the proposed order;

and

(B) the opportunity to request, not later
than 30 days after the date on which the per-
son receives the notice, a hearing on the pro-
posed order.

(3) PROCEDURES.—The Secretary may issue
regulations establishing procedures for administra-
tive hearings and appropriate review of penalties
issued under this subsection, including necessary
deadlines.

SEC. 3. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—No person involved in the ship-
ing of extremely hazardous materials may be discharged,
demoted, suspended, threatened, harassed, or in any other
manner discriminated against because of any lawful act
done by the person—

(1) to provide information, cause information to
be provided, or otherwise assist in an investigation
regarding any conduct which the person reasonably
believes constitutes a violation of any law, rule or
regulation related to the security of shipments of ex-
tremely hazardous materials, or any other threat to
the security of shipments of extremely hazardous materials, when the information or assistance is pro-
vided to or the investigation is conducted by—

(A) a Federal regulatory or law enforce-
ment agency;

(B) any Member of Congress or any com-
mittee of Congress; or

(C) a person with supervisory authority
over the person (or such other person who has
the authority to investigate, discover, or termi-
nate misconduct);

(2) to file, cause to be filed, testify, participate
in, or otherwise assist in a proceeding or action filed
or about to be filed relating to a violation of any
law, rule or regulation related to the security of
shipments of extremely hazardous materials or any
other threat to the security of shipments of ex-
tremely hazardous materials; or

(3) to refuse to violate or assist in the violation
of any law, rule, or regulation related to the security
of shipments of extremely hazardous materials.

(b) ENFORCEMENT ACTION.—

(1) IN GENERAL.—A person who alleges dis-
charge or other discrimination by any person in vio-
lation of subsection (a) may seek relief under subsection (c), by—

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(2) PROCEDURE.—

(A) IN GENERAL.— An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the person’s employer.

(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in
section 42121(b) of title 49, United States Code.

(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

(e) REMEDIES.—

(1) IN GENERAL.—A person prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the person whole.

(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

(A) reinstatement with the same seniority status that the person would have had, but for the discrimination;

(B) the amount of any back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(d) RIGHTS RETAINED BY PERSON.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any person under any Federal or State law, or under any collective bargaining agreement.
SEC. 4. REPORT ON EXTREMELY HAZARDOUS MATERIALS 

TRANSPORTATION SECURITY.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies, shall transmit to Congress a report on the security of, and risk of a terrorist attack on, shipments of extremely hazardous materials.

(b) CONTENT.—The report under subsection (a) shall include—

(1) information specifying—

(A) the Federal and State agencies that are responsible for the regulation of the transportation of extremely hazardous materials; and

(B) the particular authorities and responsibilities of the heads of each such agency; and

(2) an assessment of the vulnerability of the infrastructure associated with the transportation of extremely hazardous materials.

(c) FORM.—The report under subsection (a) shall be in unclassified form but may contain a classified annex.

SEC. 5. DEFINITIONS.

In this Act, the following definitions apply:

(1) EXTREMELY HAZARDOUS MATERIAL.—The term “extremely hazardous material” means—

(A) a material that is toxic by inhalation;
(B) a material that is extremely flammable;

(C) a material that is highly explosive; and

(D) any other material designated by the Secretary to be extremely hazardous.

(2) AREA OF CONCERN.—The term ‘‘area of concern’’ means an area that the Secretary determines could pose a particular interest to terrorists.