To require the Secretary of Homeland Security to develop regulations regarding the transportation of extremely hazardous materials, and for other purposes.

IN THE SENATE OF THE UNITED STATES
JUNE 16, 2005

Mr. BIDEN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL
To require the Secretary of Homeland Security to develop regulations regarding the transportation 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,
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4 SECTION 1. SHORT TITLE; FINDINGS.
5 (a) SHORT TITLE.—This Act may be cited as the
6 “Hazardous Materials Vulnerability Reduction Act of
7 2005”.
8 (b) FINDINGS.—Congress makes the following find-
(1) Congress has specifically given the Department of Homeland Security, working in conjunction with the Department of Transportation and other Federal agencies, the primary authority for the security of the United States transportation sector, including passenger and freight rail.

(2) This authority includes the responsibility to protect American citizens from terrorist incidents related to the transport by rail of extremely hazardous materials.

(3) Federal agencies have determined that hazardous materials can be used as tools of destruction and terror and that extremely hazardous materials are particularly vulnerable to sabotage or misuse during transport.

(4) The Federal Bureau of Investigation and the Central Intelligence Agency have found evidence suggesting that chemical tankers used to transport and store extremely hazardous chemicals have been targeted by terrorist groups.

(5) Rail shipments of extremely hazardous materials are often routed through highly attractive targets and densely populated areas, including within a few miles of the White House and United States Capitol.
(6) According to security experts, certain extremely hazardous materials present a mass casualty terrorist potential rivaled only by improvised nuclear devices, certain acts of bioterrorism, and the collapse of large occupied buildings.

(7) A report by the Chlorine Institute found that a 90-ton rail tanker, if successfully targeted by an explosive device, could cause a catastrophic release of an extremely hazardous material, creating a toxic cloud 40 miles long and 10 miles wide.

(8) The Environmental Protection Agency estimates that in an urban area a toxic cloud could extend for 14 miles.

(9) The United States Naval Research Laboratories concluded that a toxic plume of this type, created while there was a public event on the National Mall, could kill or injure up to 100,000 people in less than 30 minutes.

(10) According to security experts, rail shipments of extremely hazardous materials are particularly vulnerable and dangerous, however the Federal Government has made no material reduction in the inherent vulnerability of hazardous chemical targets inside the United States.
(11) While the safety record related to rail shipments of hazardous materials is very good, recent accidental releases of extremely hazardous materials in rural South Carolina and San Antonio, Texas, demonstrate the fatal danger posed by extremely hazardous materials.

(12) Security experts have determined that rerouting these rail shipments is the only way to immediately eliminate this danger in high threat areas, which currently puts hundreds of thousands of people at risk.

(13) Security experts have determined that the primary benefit of re-routing the shipment of extremely hazardous materials is a reduction in the number of people that would be exposed to the deadly impact of the release due to an attack, and the principal cost would be the additional operating expense associated with possible increase inhaul for the shipment of extremely hazardous materials.

(14) Less than 5 percent of all hazardous materials shipped by rail will meet the definition of extremely hazardous materials under this Act.

**SEC. 2. DEFINITIONS.**

In this Act, the following definitions apply:
(1) Extremely hazardous material.—The term “extremely hazardous material” means any chemical, toxin, or other material being shipped or stored in sufficient quantities to represent an acute health threat or have a high likelihood of causing injuries, casualties, or economic damage if successfully targeted by a terrorist attack, including materials that—

(A) are—

(i) toxic by inhalation;

(ii) extremely flammable; or

(iii) highly explosive;

(B) contain high level nuclear waste; or

(C) are otherwise designated by the Secretary as extremely hazardous.

(2) High threat corridor.—

(A) In general.—The term “high threat corridor” means a geographic area that has been designated by the Secretary as particularly vulnerable to damage from the release of extremely hazardous materials, including—

(i) large populations centers;

(ii) areas important to national security;
(iii) areas that terrorists may be particularly likely to attack; or

(iv) any other area designated by the Secretary as vulnerable to damage from the rail shipment or storage of extremely hazardous materials.

(B) OTHER AREAS.—

(i) IN GENERAL.—Any city that is not designated as a high threat corridor under subparagraph (A) may file a petition with the Secretary to be so designated.

(ii) PROCEDURE.—The Secretary shall establish, by rule, regulation, or order, procedures for petitions under clause (i), including—

(I) designating the local official eligible to file a petition;

(II) establishing the criteria a city shall include in a petition;

(III) allowing a city to submit evidence supporting its petition; and

(IV) requiring the Secretary to rule on the petition not later than 60 days after the date of submission of the petition.
(iii) NOTICE.—The Secretary’s decision regarding any petition under clause (i) shall be communicated to the requesting city, the Governor of the State in which the city is located, and the Senators and Members of the House of Representatives that represent the State in which the city is located.

(3) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security or the Secretary’s designee.

(4) STORAGE.—The term “storage” means any temporary or long-term storage of extremely hazardous materials in rail tankers or any other medium utilized to transport extremely hazardous materials by rail.

SEC. 3. REGULATIONS FOR TRANSPORT OF EXTREMELY HAZARDOUS MATERIALS.

(a) PURPOSES OF REGULATIONS.—The regulations issued under this section shall establish a national, risk-based policy for extremely hazardous materials transported by rail or being stored. To the extent the Secretary determines appropriate, the regulations issued under this section shall be consistent with other Federal, State, and
local regulations and international agreements relating to
shipping or storing extremely hazardous materials.

(b) ISSUANCE OF REGULATIONS.—Not later than 90
days after the date of enactment of this Act, the Secretary
shall issue, after notice and opportunity for public com-
ment, regulations concerning the rail shipment and stor-
age of extremely hazardous materials by owners and oper-
ators of railroads. In developing such regulations, the Sec-
retary shall consult with other Federal, State, and local
government entities, security experts, representatives of
the hazardous materials rail shipping industry, labor
unions representing persons who work with hazardous ma-
terials in the rail shipping industry, and other interested
persons, including private sector interest groups.

(c) REQUIREMENTS.—The regulations issued under
this section shall—

(1) include a list of the high threat corridors
designated by the Secretary;

(2) contain the criteria used by the Secretary to
determine whether an area qualifies as a high threat
corridor;

(3) include a list of extremely hazardous mate-
rials;

(4) establish protocols for owners and operators
of railroads that ship extremely hazardous materials
regarding notifying all governors, mayors, and other
designated officials and local emergency responders
in a high threat corridor of the quantity and type of
extremely hazardous materials that are transported
by rail through the high threat corridor;

(5) require reports regarding the transport by
railroad of extremely hazardous materials by the
Secretary to local governmental officials designated
by the Secretary, and Local Emergency Planning
Committees, established under the Emergency Plan-
ning and Community Right to Know Act of 1986
(42 U.S.C. 11001 et seq.);

(6) establish protocols for the coordination of
Federal, State, and local law enforcement authorities
in creating a plan to respond to a terrorist attack,
sabotage, or accident involving a rail shipment of ex-
tremely hazardous materials that causes the release
of such materials;

(7) require that any rail shipment containing
extremely hazardous materials be re-routed around
any high threat corridor; and

(8) establish standards for the Secretary to
grant exceptions to the re-routing requirement under
paragraph (7).

(d) HIGH THREAT CORRIDORS.—
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(1) IN GENERAL.—The criteria under subsection (e)(2) for determining whether an area qualifies as a high threat corridor may be the same criteria used for the distribution of funds under the Urban Area Security Initiative program.

(2) INITIAL LIST.—If the Secretary is unable to complete the review necessary to determine which areas should be designated as high threat corridors within 90 days after the date of enactment of this Act, the initial list shall be the cities that receive funding under the Urban Areas Security Initiative Program in fiscal year 2004.

(e) EXTREMELY HAZARDOUS MATERIALS LIST.—If the Secretary is unable to complete the review necessary to determine which materials should be designated extremely hazardous materials under subsection (e)(3) within 90 days of the date of enactment of this Act, the initial list shall include—

(1) explosives classified as Class 1, Division 1.1, or Class 1, Division 1.2, under section 173.2 of title 49, Code of Federal Regulations, in a quantity greater than 500 kilograms;

(2) flammable gasses classified as Class 2, Division 2.1, under section 173.2 of title 49, Code of
Federal Regulations, in a quantity greater than 10,000 liters;

(3) poisonous gasses classified as Class 2, Division 2.3, under section 173.2 of title 49, Code of Federal Regulations, that are also assigned to Hazard Zones A or B under section 173.116 of title 49, Code of Federal Regulations, in a quantity greater than 500 liters;

(4) poisonous materials, other than gasses, classified as Class 6, Division 6.1, under section 173.2 of title 49, Code of Federal Regulations, that are also assigned to Hazard Zones A or B under section 173.116 of title 49, Code of Federal Regulations, in a quantity greater than 1,000 kilograms; and

(5) anhydrous ammonia classified as Class 2, Division 2.2, under section 173.2 of title 49, Code of Federal Regulations, in a quantity greater than 1,000 kilograms.

(f) Notification.—

(1) In general.—The protocols under subsection (c)(4) shall establish the required frequency of reporting by an owner and operator of a railroad to the Governors, Mayors, and other designated officials and local emergency responders in a high threat corridor.
(2) Reports to Secretary.—The protocols under subsection (c)(4) shall require owners and operators of railroad to make annual reports to the Secretary regarding the transportation of extremely hazardous materials, and to make quarterly updates if there has been any significant change in the type, quantity, or frequency of shipments.

(3) Considerations.—In developing protocols under subsection (c)(4), the Secretary shall consider both the security needs of the United States and the interests of State and local governmental officials.

(g) Reports.—

(1) Frequency.—

(A) In General.—The Secretary shall make an annual report to local governmental officials and Local Emergency Planning Committees under subsection (c)(5).

(B) Updates.—If there has been any significant change in the type, quantity, or frequency of rail shipments in a geographic area, the Secretary shall make a quarterly update report to local governmental officials and Local Emergency Planning Committees in that geographic area.
(2) CONTENTS.—Each report made under subsection (c)(5) shall incorporate information from the reports under subsection (c)(4) and shall include—

(A) a good-faith estimate of the total number of rail cars containing extremely hazardous materials shipped through or stored in each metropolitan statistical area; and

(B) if a release from a railcar carrying or storing extremely hazardous materials is likely to harm persons or property beyond the property of the owner or operator of the railroad, a risk management plan that provides—

(i) a hazard assessment of the potential effects of a release of the extremely hazardous materials, including—

(I) an estimate of the potential release quantities; and

(II) a determination of the downwind effects, including the potential exposures to affected populations;

(ii) a program to prevent a release of extremely hazardous materials, including—

(I) security precautions;

(II) monitoring programs; and
(III) employee training measures utilized; and

(iii) an emergency response program that provides for specific actions to be taken in response to the release of an extremely hazardous material, including procedures for informing the public and Federal, State, and local agencies responsible for responding to the release of an extremely hazardous material.

(h) TRANSPORTATION AND STORAGE OF EXTREMELY HAZARDOUS MATERIALS THROUGH HIGH THREAT CORRIDORS.—

(1) IN GENERAL.—The standards for the Secretary to grant exceptions under subsection (c)(8) shall require a finding of special circumstances by the Secretary, including that—

(A) the shipment originates in or is destined to the high threat corridor;

(B) there is no practical alternate route;

(C) there is an unanticipated, temporary emergency that threatens the lives of people in the high threat corridor; or

(D) there would be no harm to persons or property beyond the property of the owner or
operator of the railroad in the event of a successful terrorist attack on the shipment.

(2) PRACTICAL ALTERNATE ROUTES.—Whether a shipper must utilize an interchange agreement or otherwise utilize a system of tracks or facilities owned by another operator shall not be considered by the Secretary in determining whether there is a practical alternate route under paragraph (1)(B).

(3) GRANT OF EXCEPTION.—If the Secretary grants an exception under subsection (c)(8)—

(A) the extremely hazardous material may not be stored in the high threat corridor, including under a leased track or rail siding agreement; and

(B) the Secretary shall notify Federal, State, and local law enforcement and first responder agencies (including, if applicable, transit, railroad, or port authority agencies) within the high threat corridor.

SEC. 4. SAFETY TRAINING.

(a) HOMELAND SECURITY GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary may award grants to local governments and owners and operators of railroads to conduct training regarding safety
procedures for handling and responding to emergencies involving extremely hazardous materials.

(2) USE OF FUNDS.—Grants under this subsection may be used to provide training and purchase safety equipment for individuals who—

(A) transport, load, unload, or are otherwise involved in the shipment of extremely hazardous materials;

(B) would respond to an accident or incident involving a shipment of extremely hazardous materials; and

(C) would repair transportation equipment and facilities in the event of such an accident or incident.

(3) APPLICATION.—A local government or owner or operator of a railroad desiring a grant under this subsection shall submit an application at such time, in such manner, and accompanied by such information as the Secretary may reasonably establish.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $100,000,000 to carry out this subsection.

(b) RAILWAY HAZMAT TRAINING PROGRAM.—
(1) PROGRAM.—Section 5116(j) of title 49, United States Code, is amended by adding at the end the following:

“(6) RAILWAY HAZMAT TRAINING PROGRAM.—

“(A) In order to further the purposes of subsection (b), the Secretary of Transportation shall, subject to the availability of funds, make grants to national nonprofit employee organizations with experience in conducting training regarding the transportation of hazardous materials on railways for the purpose of training railway workers who are likely to discover, witness, or otherwise identify a release of extremely hazardous materials and to prevent or respond appropriately to the incident.

“(B) The Secretary of Transportation shall delegate authority for the administration of the Railway Hazmat Training Program to the Director of the National Institute of Environmental Health Sciences under subsection (g). In administering the program under this paragraph, the Director of the National Institute of Environmental Health Sciences shall consult closely with the Secretary of Transportation and the Secretary of Homeland Security.”.
(2) Authorization of Appropriations.—

Section 5127 of title 49, United States Code, is amended by adding at the end the following:

“(h) Railway Hazmat Training Program.—There are authorized to be appropriated $10,000,000 for each of fiscal years 2006, 2007, and 2008 to carry out section 5116(j)(6).”.

SEC. 5. RESEARCH AND DEVELOPMENT.

(a) Transport.—

(1) In general.—Not later than 90 days after the date of enactment of this Act, the Secretary shall conduct a study of the benefits and availability of technology and procedures that may be utilized to—

(A) reduce the likelihood of a terrorist attack on a rail shipment of extremely hazardous materials;

(B) reduce the likelihood of a catastrophic release of extremely hazardous materials in the event of a terrorist attack; and

(C) enhance the ability of first responders to respond to a terrorist attack on a rail shipment of extremely hazardous materials and other required activities in the event of such an attack.
(2) MATTERS STUDIED.—The study conducted under this subsection shall include the evaluation of—

(A) whether safer alternatives to 90-ton rail tankers exist;

(B) the feasibility of requiring chemical shippers to electronically track the movements of all shipments of extremely hazardous materials and report this information to the Department of Homeland Security on an ongoing basis as such shipments are transported; and

(C) the feasibility of utilizing finger-print based access controls for all chemical conveyances.

(3) REPORTING.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report to Congress describing the findings of the study conducted under this subsection, which shall include recommendations and cost estimates for securing shipments of extremely hazardous materials.

(b) PHYSICAL SECURITY.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall conduct a study of the physical security meas-
ures available for rail shipments of extremely haz-
ardous materials that will reduce the risk of leakage
or release in the event of a terrorist attack or sabo-
tage.

(2) MATTERS STUDIED.—The study conducted
under this subsection shall consider the use of pas-
sive secondary containment of tanker valves, addi-
tional security force personnel, surveillance tech-
nologies, barriers, decoy rail cars, and methods to
minimize delays during shipping.

(3) REPORTING.—Not later than 180 days after
the date of enactment of this Act, the Secretary
shall submit a report to Congress describing the
findings of the study conducted under this sub-
section, which shall contain recommendations and
cost estimates for securing shipments of extremely
hazardous materials.

(c) LEASED TRACK STORAGE ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 90 days after
enactment of this Act, the Secretary shall conduct a
study of available alternatives to storing extremely
hazardous materials in or on leased track facilities.

(2) MATTERS STUDIED.—The study conducted
under this subsection shall—
(A) evaluate the extent of the use of leased track facilities and the security measures that should be taken to secure leased track facilities; and

(B) assess means to limit the consequences of an attack on extremely hazardous materials stored on leased track facilities to nearby communities.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report to Congress describing the findings of the study conducted under this subsection, which shall contain recommendations and cost estimates for securing shipments of extremely hazardous materials.

SEC. 6. WHISTLEBLOWER PROTECTION.

(a) Prohibition Against Discrimination.—No owner or operator of a railroad may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Secretary, the Attorney General, or any Federal supervisory agency regarding a possible violation of any provision of this Act by the owner or operator of a railroad
or any director, officer, or employee of an owner or operator of a railroad.

(b) ENFORCEMENT.—Any employee or former employee who believes that such employee has been discharged or discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge or discrimination.

(e) REMEDIES.—If the district court determines that a violation has occurred, the court may order the owner or operator of a railroad that committed the violation to—

(1) reinstate the employee to the employee’s former position;

(2) pay compensatory damages; or

(3) take other appropriate actions to remedy any past discrimination.

(d) LIMITATION.—The protections of this section shall not apply to any employee who—

(1) deliberately causes or participates in the alleged violation of law or regulation; or

(2) knowingly or recklessly provides substantially false information to the Secretary, the Attorney General, or any Federal supervisory agency.

SEC. 7. PENALTIES.

(a) RIGHT OF ACTION.—
(1) IN GENERAL.—Any State or local government may bring a civil action in a United States district court for redress of injuries caused by a violation of this Act against any person (other than an individual) who transports, loads, unloads, or is otherwise involved in the shipping of extremely hazardous materials by rail and who violated this Act.

(2) RELIEF.—In an action under paragraph (1), a State or local government may seek, for each violation of this Act—

(A) an order for injunctive relief; and

(B) a civil penalty of not more than $1,000,000.

(b) ADMINISTRATIVE PENALTIES.—

(1) IN GENERAL.—The Secretary may issue an order imposing an administrative penalty of not more than $1,000,000 for each failure by a person (other than an individual) who transports, loads, unloads, or is otherwise involved in the shipping of extremely hazardous materials to comply with this Act.

(2) NOTICE AND HEARING.—Before issuing an order under paragraph (1), the Secretary shall provide the person who allegedly violated this Act—

(A) written notice of the proposed order; and
(B) the opportunity to request, not later than 30 days after the date on which the person received the notice, a hearing on the proposed order.

(3) Procedures.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue regulations establishing procedures for administrative hearings and the appropriate review of penalties issued under this subsection, including establishing deadlines.