A BILL

To ensure the safe and secure transportation by rail of extremely hazardous materials.

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

SECTION 1. SHORT TITLE.

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

SEC. 2. COORDINATION OF PRECAUTIONS AND RESPONSE

EFFORTS RELATED TO THE TRANSPOR-
TATION BY RAIL OF EXTREMELY HAZARDOUS
MATERIALS.

(a) Regulations.—
(1) **Requirement for regulations.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall, in consultation with the Secretary of Transportation and the heads of other Federal, State, and local agencies, prescribe regulations for the coordination of efforts of Federal, State, and local agencies aimed at preventing terrorist acts and responding to emergencies that may occur in connection with the transportation by rail of extremely hazardous materials.

(2) **Content.**—

(A) **In general.**—The regulations required under paragraph (1) shall—

(i) require, and establish standards for, the training of individuals described in subparagraph (B) on safety precautions and best practices for responding to emergencies occurring in connection with the transportation by rail of extremely hazardous materials, including incidents involving acts of terrorism; and

(ii) establish a coordinated system for notifying appropriate Federal, State, and local law enforcement authorities (includ-
ing, if applicable, transit, railroad, or port
authority police agencies) and first re-
responders of the transportation by rail of
extremely hazardous materials through
communities designated as area of concern
communities by the Secretary of Homeland
Security under subsection (b)(1).

(B) INDIVIDUALS COVERED BY TRAIN-
ing.—The individuals described in subpara-
graph (A)(i) are first responders, law enforce-
ment personnel, and individuals who transport,
load, unload, or are otherwise involved in the
transportation by rail of extremely hazardous
materials or who are responsible for the repair
of related equipment and facilities in the event
of an emergency, including an incident involving
terrorism.

(b) AREA OF CONCERN COMMUNITIES.—

(1) DESIGNATION OF AREA OF CONCERN COM-
munities.—

(A) IN GENERAL.—In prescribing regula-
tions under subsection (a), the Secretary of
Homeland Security shall compile a list of area
of concern communities.
(B) CRITERIA.—The Secretary of Homeland Security shall include on such list communities through or near which the transportation by rail of extremely hazardous materials poses a serious risk to the public health and safety.

In making such determination, the Secretary shall consider—

(i) the severity of harm that could be caused in a community by the release of the transported extremely hazardous materials;

(ii) the proximity of a community to major population centers;

(iii) the threat posed by such transportation to national security, including the safety and security of Federal and State government offices;

(iv) the vulnerability of a community to acts of terrorism;

(v) the threat posed by such transportation to critical infrastructure;

(vi) the threshold quantities of particular extremely hazardous materials that pose a serious threat to the public health and safety; and
(vii) such other safety or security factors that the Secretary determines appropriate to consider.

(2) CONSIDERATION OF ALTERNATE ROUTES.—

The Secretary of Homeland Security shall conduct a study to consider the possibility of reducing, through the use of alternate routes involving lower security risks, the security risks posed by the transportation by rail of extremely hazardous materials through or near communities designated as area of concern communities under paragraph (1), except in the case of emergencies or where such alternatives do not exist or are prohibitively expensive.

SEC. 3. PRESSURIZED RAILROAD CARS.

(a) NEW SAFETY STANDARDS.—

(1) REQUIREMENT FOR STANDARDS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall, in consultation with the Secretary of Transportation and the heads of other relevant Federal agencies, prescribe by regulations standards for ensuring the safety and physical integrity of pressurized tank cars that are used in the transportation by rail of extremely hazardous materials.
(2) Consideration of specific risks.—In prescribing regulations under paragraph (1), the Secretary of Homeland Security shall consider the risks posed to such pressurized tank cars by acts of terrorism, accidents, severe impacts, and other actions potentially threatening to the structural integrity of the cars or to the safe containment of the materials carried by such cars.

(b) Report on impact resistance.—

(1) In general.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall, in consultation with the Secretary of Transportation and the heads of other relevant Federal agencies, submit to the appropriate congressional committees a report on the safety and physical integrity of pressurized tank cars that are used in the transportation by rail of extremely hazardous materials, including with respect to the risks considered under subsection (a)(2).

(2) Content.—The report required under paragraph (1) shall include—

(A) the results of a study on the impact resistance of such pressurized tank cars, including a comparison of the relative impact resistance of tank cars manufactured before and
SEC. 4. REPORT ON EXTREMELY HAZARDOUS MATERIALS TRANSPORT SAFETY.

(a) Requirement for Report.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall, in consultation with the Secretary of Transportation, submit to the appropriate congressional committees a report on the safety and security of the transportation by rail of extremely hazardous materials, including the threat posed to the security of such transportation by acts of terrorism.

(b) Content.—The report required under subsection (a) shall include, in a form that does not compromise national security—

(1) information specifying—
(A) the Federal and State agencies that are responsible for the oversight of the transportation by rail of extremely hazardous materials; and

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

(2) an assessment of the operational risks associated with the transportation by rail of extremely hazardous materials, with consideration given to the safety and security of the railroad infrastructure in the United States, including railroad bridges and rail switching areas;

(3) an assessment of the vulnerability of railroad cars to acts of terrorism while being used to transport extremely hazardous materials;

(4) an assessment of the ability of individuals who transport, load, unload, or are otherwise involved in the transportation by rail of extremely hazardous materials or who are responsible for the repair of related equipment and facilities in the event of an emergency, including an incident involving terrorism, to respond to an incident involving terrorism, including an assessment of whether such individuals are adequately trained or prepared to respond to such incidents;
(5) a description of the study conducted under section 2(b)(2), including the conclusions reached by the Secretary of Homeland Security as a result of such study and any recommendations of the Secretary for reducing, through the use of alternate routes involving lower security risks, the security risks posed by the transportation by rail of extremely hazardous materials through or near area of concern communities;

(6) other recommendations for improving the safety and security of the transportation by rail of extremely hazardous materials; and

(7) an analysis of the anticipated economic impact and effect on interstate commerce of the regulations prescribed under this Act.

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

SEC. 5. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—No person involved in the transportation by rail 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 extremely hazardous materials, or any other threat to the security of shipments of extremely hazardous materials, when the information or assistance is provided to or the investigation is conducted by—

(A) a Federal regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the person (or such other person who has the authority to investigate, discover, or terminate 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 extremely 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 discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c)—

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

(B) if the Secretary has not issued a final decision within 180 days after the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, by commencing a civil action 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) Complaint to Department of Labor.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in subsection (b) of section 42121 of title 49, United States Code, except that notification made under such subsection
shall be made to the person named in the com-
plaint and to the person’s employer.

(B) COURT ACTION.—An action com-
enced under paragraph (1)(B) shall be gov-
erned by the legal burdens of proof set forth in
section 42121(b)(2)(B) of title 49, United
States Code.

(C) STATUTE OF LIMITATIONS.—An action
under paragraph (1) shall be commenced not
later than 180 days after the date on which the
violation occurs.

(c) 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) in the case of a termination of, or
other discriminatory act regarding the person’s
employment—

(i) reinstatement with the same se-
niority status that the person would have
had, but for the discrimination; and

(ii) payment of the amount of any
back pay, with interest, computed retro-
actively to the date of the discriminatory act; and

(B) 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. 6. CIVIL PENALTIES.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall prescribe regulations providing for the imposition of civil penalties for violations of—

(1) regulations prescribed under this Act; and

(2) the prohibition against discriminatory treatment under section 5(a).

SEC. 7. NO FEDERAL PREEMPTION.

Nothing in this Act shall be construed as preempting any State law, except that no such law may relieve any person of a requirement otherwise applicable under this Act.

SEC. 8. DEFINITIONS.

In this Act:
(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;

(D) high-level radioactive waste; and

(E) any other material designated by the Secretary of Homeland Security as being extremely hazardous.

(2) Appropriate Congressional Committees.—The term “appropriate congressional committees” means—

(A) the Committee on Homeland Security and Governmental Affairs and the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives.