

107TH CONGRESS  
1ST SESSION

# S. 1669

To authorize appropriations for hazardous material transportation safety,  
and for other purposes.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 2001

Mr. HOLLINGS (for himself and Mr. McCAIN) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To authorize appropriations for hazardous material  
transportation safety, 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; AMENDMENT OF TITLE 49,**  
4       **UNITED STATES CODE; TABLE OF CONTENTS.**

5       (a) SHORT TITLE.—This Act may be cited as the  
6       “Hazardous Material Transportation Safety Reauthoriza-  
7       tion Act of 2001”.

8       (b) AMENDMENT OF TITLE 49, UNITED STATES  
9       CODE.—Except as otherwise expressly provided, whenever  
10      in this Act an amendment or repeal is expressed in terms

1 of an amendment to, or a repeal of, a section or other  
2 provision, the reference shall be considered to be made to  
3 a section or other provision of title 49, United States  
4 Code.

5 (c) TABLE OF CONTENTS.—The table of contents of  
6 this Act is as follows:

Sec. 1. Short title; amendment of title 49, United States Code; table of contents.  
Sec. 2. Purpose.  
Sec. 3. Definitions.  
Sec. 4. General regulatory authority.  
Sec. 5. Representation and tampering.  
Sec. 6. Highly radioactive material.  
Sec. 7. Handling criteria.  
Sec. 8. Hazmat employee training requirements and grants.  
Sec. 9. Registration.  
Sec. 10. Motor carrier safety.  
Sec. 11. Shipping paper retention.  
Sec. 12. Rail tank cars.  
Sec. 13. Unsatisfactory safety rating.  
Sec. 14. Public sector training curriculum.  
Sec. 15. Planning and training grants.  
Sec. 16. Special permits and exclusions.  
Sec. 17. Inspectors.  
Sec. 18. Uniform forms and procedures.  
Sec. 19. Administrative.  
Sec. 20. Enforcement.  
Sec. 21. Penalties.  
Sec. 22. Preemption.  
Sec. 23. Relationship to other laws.  
Sec. 24. Judicial review.  
Sec. 25. Authorization of appropriations.  
Sec. 26. Postal service civil penalty authority.

7 **SEC. 2. PURPOSE.**

8 Section 5101 is revised to read as follows:

9 **“§ 5101. Purpose**

10 “The purpose of this chapter is to protect against the  
11 risks to life, property, and the environment that are inher-  
12 ent in the transportation of hazardous material in intra-  
13 state, interstate, and foreign commerce.”.

1 **SEC. 3. DEFINITIONS.**

2 Section 5102 is amended—

3 (1) by revising paragraph (1) to read as follows:

4 “(1) ‘commerce’ means trade or transportation  
5 in the jurisdiction of the United States—6 “(A) between a place in a State and a  
7 place outside of the State;8 “(B) that affects trade or transportation  
9 between a place in a State and a place outside  
10 of the State; or11 “(C) on a United States-registered air-  
12 craft.”;13 (2) by revising paragraphs (3) and (4) to read  
14 as follows:15 “(3) ‘hazmat employee’ means an individual  
16 who—17 “(A)(i) is employed or used by a hazmat  
18 employer; or19 “(ii) is self-employed, including an owner-  
20 operator of a motor vehicle, vessel, or aircraft  
21 transporting hazardous material in commerce;  
22 and23 “(B) performs a function regulated by the  
24 Secretary under section 5103(b)(1) of this  
25 chapter.

26 “(4) ‘hazmat employer’ means a person that—

1                   “(A)(i) has at least one hazmat employee;

2                   or

3                   “(ii) is self-employed, including an owner-  
4                   operator of a motor vehicle, vessel, or aircraft  
5                   transporting hazardous material in commerce;

6                   and

7                   “(B) performs, or employs or uses at least  
8                   one hazmat employee to perform, a function  
9                   regulated by the Secretary under section  
10                  5103(b)(1) of this chapter.”;

11                  (3) in paragraph (5), by striking “condition  
12                  that presents” and inserting “condition related to a  
13                  hazardous material that presents”;

14                  (4) in paragraph (7), by striking “title” and in-  
15                  serting “title, except a freight forwarder is included  
16                  only if performing a function related to highway  
17                  transportation”;

18                  (5) in paragraph (8), by striking “national re-  
19                  sponse team” each place it appears and inserting  
20                  “National Response Team,” and by striking “na-  
21                  tional contingency plan” and inserting “National  
22                  Contingency Plan”; and

23                  (6) in paragraph (9), by revising subparagraph  
24                  (A) to read as follows:

1                 “(A) includes a government, Indian tribe,  
2                 or authority of a government or tribe offering  
3                 hazardous material for transportation in com-  
4                 merce, transporting hazardous material to fur-  
5                 ther a commercial enterprise, or manufacturing,  
6                 designing, inspecting, testing, reconditioning,  
7                 marking, or repairing a packaging or packaging  
8                 component represented as qualified for use in  
9                 transporting hazardous material in commerce;  
10                 but”.

11 **SEC. 4. GENERAL REGULATORY AUTHORITY.**

12                 Section 5103 is amended—

13                 (1) by revising subsection (a) to read as follows:  
14                 “(a) DESIGNATING MATERIAL AS HAZARDOUS.—The  
15                 Secretary of Transportation shall designate material (in-  
16                 cluding an explosive; radioactive material; infectious sub-  
17                 stance; flammable or combustible liquid, solid or gas;  
18                 toxic, oxidizing or corrosive material; and compressed gas)  
19                 or a group or class of material as hazardous when the  
20                 Secretary determines that transporting the material in  
21                 commerce in a particular amount and form may pose an  
22                 unreasonable risk to health and safety or property.”; and

23                 (2) in subsection (b)(1), by revising subpara-  
24                 graph (A) to read as follows:

25                 “(A) apply to a person that—

1                     “(i) transports a hazardous material  
2                     in commerce;

3                     “(ii) causes a hazardous material to  
4                     be transported in commerce;

5                     “(iii) manufactures, designs, inspects,  
6                     tests, reconditions, marks, or repairs a  
7                     packaging or packaging component rep-  
8                     resented as qualified for use in trans-  
9                     porting hazardous material in commerce;

10                    “(iv) prepares, accepts, or rejects haz-  
11                     ardous material for transportation in com-  
12                     merce;

13                    “(v) is responsible for the safety of  
14                     transporting hazardous material in com-  
15                     merce;

16                    “(vi) certifies compliance with any re-  
17                     quirement issued under this chapter; or

18                    “(vii) misrepresents whether it is en-  
19                     gaged in any of the above activities; and”.

20 **SEC. 5. REPRESENTATION AND TAMPERING.**

21             Section 5104 is amended—

22                   (1) in subsection (a), by striking “A person”  
23                     and inserting “No person”;

24                   (2) by revising subsection (a)(1) to read as fol-  
25                     lows:

1           “(1) a package, component of a package, or  
2        packaging for transporting hazardous material is  
3        safe, certified, or complies with this chapter if it  
4        does not conform to each applicable regulation pre-  
5        scribed under this chapter; or”;

6           (3) in paragraph (a)(2), by striking “only if”  
7        and inserting “unless”; and

8           (4) by revising subsection (b) to read as follows:  
9           “(b) TAMPERING.—No person may, without author-  
10        ization from the owner or custodian, alter, remove, de-  
11        stroy, or tamper with—

12           “(1) a marking, label, placard, or description on  
13        a document required under this chapter or a regula-  
14        tion prescribed under this chapter; or

15           “(2) a package, container, motor vehicle, rail  
16        freight car, aircraft, or vessel used to transport haz-  
17        ardous material.”.

18 **SEC. 6. HIGHLY RADIOACTIVE MATERIAL.**

19        Section 5105 is amended by striking subsections (d)  
20        and (e).

21 **SEC. 7. HANDLING CRITERIA.**

22        Chapter 51 is amended by striking section 5106 and  
23        striking the corresponding item in the analysis of chapter  
24        51.

1 **SEC. 8. HAZMAT EMPLOYEE TRAINING REQUIREMENTS**2 **AND GRANTS.**

3 (a) Section 5107 is amended by—

4 (1) striking “or duplicate” in subsection (d);

5 (2) striking “section 5127(c)(3)” in subsection

6 (e) and inserting “section 5128”; and

7 (3) striking “and sections 5106, 5108(a)-(g)(1)  
8 and (h), and 5109 of this title” in subsection (f)(2).9 (b) Notwithstanding section 4(b)(1) of the Occupa-  
10 tional Safety and Health Act of 1970 (29 U.S.C.  
11 653(b)(1), an action of the Secretary of Transportation  
12 under chapter 51 of title 49, United States Code, does  
13 not preclude the Secretary of Labor from prescribing or  
14 enforcing standards, regulations or requirements regard-  
15 ing —16 (1) hazardous materials employee training, or  
17 (2) the occupational safety or health protection  
18 of employees responding to a release of hazardous  
19 materials.20 **SEC. 9. REGISTRATION.**

21 Section 5108 is amended—

22 (1) by striking “class A or B explosive” in sub-  
23 section (a)(1)(B) and inserting “Division 1.1, 1.2, or  
24 1.3 explosive material”;25 (2) by revising subsection (a)(2)(B) to read as  
26 follows:

1                 “(B) a person manufacturing, designing,  
2                 inspecting, testing, reconditioning, marking, or  
3                 repairing a packaging or packaging component  
4                 represented as qualified for use in transporting  
5                 a hazardous material in commerce.”;

6                 (3) by revising subsection (b)(1)(C) to read as  
7                 follows:

8                 “(C) each State in which the person car-  
9                 ries out any of the activities.”;

10                 (4) by revising subsection (c) to read as follows:

11                 “(c) **FILING SCHEDULE.**—Each person required to  
12                 file a registration statement under subsection (a) of this  
13                 section shall file that statement in accordance with regula-  
14                 tions issued by the Secretary.”;

15                 (5) in subsection (g)(1), by striking “may” and  
16                 inserting “shall”; and

17                 (6) in subsection (i)(2)(B), by striking “State,”  
18                 and inserting “State, Indian tribe.”

19 **SEC. 10. MOTOR CARRIER SAFETY.**

20                 Chapter 51 is amended by striking section 5109 and  
21                 striking the corresponding item in the analysis of chapter  
22                 51.

23 **SEC. 11. SHIPPING PAPER RETENTION.**

24                 Section 5110 is amended—

1 (1) in subsection (a), by striking “under sub-  
2 section (b) of this section” and inserting “by regula-  
3 tion”;

4 (2) by striking subsection (b) and redesignating  
5 subsections (c) through (e) as subsections (b)  
6 through (d); and

## 15 SEC. 12. RAIL TANK CARS.

16 Chapter 51 is amended by striking section 5111 and  
17 by striking the corresponding item in the analysis of chap-  
18 ter 51.

## 19 SEC. 13. UNSATISFACTORY SAFETY RATING.

20 (a) Section 5113 is amended by adding at the end  
21 the following:

22        "(e) PENALTY FOR VIOLATION.—A violation of sec-  
23 tion 31144(c)(3) of this title shall be considered a violation  
24 of this chapter and shall be subject to the penalties in sec-  
25 tions 5123 and 5124 of this chapter.".

1       (b) Section 31144(c) is amended—

2           (1) in paragraph (1), by striking “sections  
3       521(b)(5)(A) and 5113” and inserting “section  
4       521(b)(5)(A)”; and

5           (2) in paragraph (3), by striking “interstate  
6       commerce” and inserting “commerce”; and

7           (3) by adding at the end of paragraph (3) the  
8       following: “A violation of this paragraph by an  
9       owner or operator transporting hazardous material  
10      shall be considered a violation of chapter 51 of this  
11      title, and shall be subject to the penalties in sections  
12      5123 and 5124 of this chapter.”.

13       (c) Section 31144 is amended by striking the sub-  
14      section designation “(c)” at the beginning of the last sub-  
15      section and inserting “(f)”.

16 **SEC. 14. PUBLIC SECTOR TRAINING CURRICULUM.**

17       Section 5115 is amended—

18           (1) in subsection (a), by—

19               (A) striking “DEVELOPMENT AND UPDAT-  
20               ING.—Not later than November 16, 1992, in”  
21               and inserting “GENERAL.—In”;

22               (B) striking “national response team” and  
23               inserting “National Response Team” in the  
24               first sentence;

1 (C) striking “develop and update periodi-  
2 cally a” in the first sentence and inserting  
3 “maintain a current”; and

4 (D) striking the second sentence;

5 (2) in subsection (b), by—

(A) striking “developed” and inserting “maintained” in the first sentence; and

20 (4) by revising subsection (d) to read as follows:

21        "(d) DISTRIBUTION AND PUBLICATION.—With the  
22 National Response Team, the Secretary of Transportation  
23 may publish and distribute a list of courses developed  
24 under this section and of programs using any of those  
25 courses.”.

1 **SEC. 15. PLANNING AND TRAINING GRANTS.**

2 (a) Section 5116 is amended—

3 (1) in the second sentence of subsection (e), by  
4 striking “of the State or tribe under subsections  
5 (a)(2)(A) and (b)(2)(A)” and inserting “received by  
6 the State or tribe under subsections (a)(1) and  
7 (b)(1)”;

8 (2) revising subsection (f) to read as follows:

9 **“(f) MONITORING AND TECHNICAL ASSISTANCE.—**10 The Secretary of Transportation shall monitor public-sec-  
11 tor emergency response planning and training for an acci-  
12 dent or incident involving hazardous material. Considering  
13 the results of the monitoring, the Secretary shall provide  
14 technical assistance to a State, political subdivision of a  
15 State, or Indian tribe for carrying out emergency response  
16 training and planning for an accident or incident involving  
17 hazardous material and shall coordinate the assistance  
18 using the existing coordinating mechanisms of the Na-  
19 tional Response Team and, for radioactive material, the  
20 Federal Radiological Preparedness Coordinating Com-  
21 mittee.”;22 (3) in subsection (g), by striking “Government  
23 grant” and inserting “Federal financial assistance”;

24 (4) by revising subsection (i) to read as follows:

25 **“(i) EMERGENCY PREPAREDNESS FUND.—**The Sec-  
26 retary of the Treasury shall establish an Emergency Pre-

1 paredness Fund account in the Treasury into which the  
2 Secretary of the Treasury shall deposit amounts the Sec-  
3 retary of Transportation transfers to the Secretary of the  
4 Treasury under section 5108(g)(2)(C) of this title. With-  
5 out further appropriation, amounts in the account are  
6 available—

7                 “(1) to make grants under this section;  
8                 “(2) to monitor and provide technical assistance  
9                 under subsection (f) of this section;  
10                “(3) to publish and distribute the Emergency  
11                Response Guidebook; and  
12                “(4) to pay administrative costs of carrying out  
13                this section and sections 5108(g)(2) and 5115 of  
14                this title, except that not more than 10 percent of  
15                the amounts made available from the account in a  
16                fiscal year to carry out these sections may be used  
17                to pay those costs.”; and  
18                (5) by striking subsection (k).

19                (b) Chapter 51 is amended by—  
20                (1) revising the section heading for section  
21                5116 to read “Planning and training grants; emer-  
22                gency preparedness fund”; and  
23                (2) striking the item for section 5116 in the  
24                analysis of the chapter and inserting “5116. Plan-

1       ning and training grants; emergency preparedness  
2       fund.”.

3 **SEC. 16. SPECIAL PERMITS AND EXCLUSIONS.**

4       (a) Section 5117 is amended—

5               (1) by revising the section heading to read as  
6       follows:

7 **“§ 5117. Special permits and exclusions” ;**

8               (2) by striking “exemption” and “an exemption” each place they appear and inserting, respectively, “special permit” and “a special permit”;

9               (3) in subsection (a)(1), as revised by Section  
10      16(a)(2) of this Act, by striking “issue a special permit” and inserting “issue, modify, or terminate a special permit authorizing variances”, and by striking “transporting, or causing to be transported, hazardous material” and inserting “performing a function regulated by the Secretary under section 5103(b)(1) of this title”; and

11               (4) in subsection (a)(2), by striking “2” and inserting “4”.

12       (b) The chapter analysis for chapter 51 is amended  
13      by striking the item related to section 5117 and inserting  
14      the following:

15       “5117. Special permits and exclusions.”

1 **SEC. 17. INSPECTORS.**

2 Chapter 51 is amended by striking section 5118 and  
3 striking the corresponding item in the analysis of chapter  
4 51.

5 **SEC. 18. UNIFORM FORMS AND PROCEDURES.**

6 Section 5119 is revised to read as follows:

7 **“§ 5119. Uniform forms and procedures**

8 “(a) REGULATIONS.—(1) The Secretary of Transpor-  
9 tation may prescribe regulations to establish uniform  
10 forms and procedures for a State—

11 “(A) to register and issue permits to persons  
12 that transport or cause to be transported hazardous  
13 material by motor vehicle in the State; and

14 “(B) to allow the transportation of hazardous  
15 material in the State.

16 “(2) A regulation prescribed under this section may  
17 not define or limit the amount of a fee a State may impose  
18 or collect.

19 “(b) EFFECTIVE DATE.—A regulation prescribed  
20 under this section takes effect one year after it is pre-  
21 scribed. The Secretary may extend the one-year period for  
22 an additional year for good cause. After a regulation is  
23 effective, a State may establish, maintain, or enforce a re-  
24 quirement related to the same subject matter only if the  
25 requirement is the same as the regulation.

1       “(c) UNIFORMITY.—The Secretary shall develop a  
2 procedure to eliminate differences in how States carry out  
3 a regulation prescribed under this section.

4       “(d) INTERIM STATE PROGRAMS.—Pending promul-  
5 gation of regulations under this section, States may par-  
6 ticipate in a program of uniform forms and procedures  
7 recommended by the Alliance for Uniform Hazmat Trans-  
8 portation Procedures.”.

9 **SEC. 19. ADMINISTRATIVE.**

10       Section 5121 is revised to read as follows:

11 **“§ Sec. 5121. Administrative**

12       “(a) GENERAL AUTHORITY.—To carry out this chap-  
13 ter, the Secretary of Transportation may investigate, con-  
14 duct tests, make reports, issue subpoenas, conduct hear-  
15 ings, require the production of records and property, take  
16 depositions, and conduct research, development, dem-  
17 onstration, and training activities. Except as provided in  
18 subsections (c) and (d) of this section, the Secretary shall  
19 provide notice and an opportunity for a hearing prior to  
20 issuing an order directing compliance with this chapter or  
21 a regulation, order, special permit, or approval issued  
22 under this chapter.

23       “(b) RECORDS, REPORTS, PROPERTY, AND INFORMA-  
24 TION.—A person subject to this chapter shall—

1           “(1) maintain records, make reports, and pro-  
2 vide property and information that the Secretary by  
3 regulation or order requires; and

4           “(2) make the records, reports, property, and  
5 information available for inspection when the Sec-  
6 retary undertakes an investigation.

7           “(c) INSPECTIONS AND INVESTIGATIONS.—(1) A des-  
8 ignated officer or employee of the Secretary may—

9           “(A) inspect and investigate, at a reasonable  
10 time and in a reasonable way, records and property  
11 related to a function described in section 5103(b)(1)  
12 of this chapter;

13           “(B) except for the packaging immediately ad-  
14 jacent to its hazardous material contents, gain ac-  
15 cess to, open, and examine a package offered for, or  
16 in, transportation when the officer or employee has  
17 an objectively reasonable and articulable belief that  
18 the package may contain a hazardous material;

19           “(C) remove from transportation a package or  
20 related packages in a shipment offered for or in  
21 transportation, and for which such officer or em-  
22 ployee has an objectively reasonable and articulable  
23 belief that the package or packages may pose an im-  
24 minent hazard, and for which the officer or employee  
25 contemporaneously documents that belief in accord-

1       ance with procedures adopted under subsection (e)  
2       of this section;

3           “(D) gather information from the offeror, car-  
4       rier, packaging manufacturer or retester, or other  
5       person responsible for the package or packages, to  
6       ascertain the nature and hazards of the contents of  
7       the package or packages;

8           “(E) as necessary, under terms and conditions  
9       specified by the Secretary, order the offeror, carrier,  
10      packaging manufacturer or retester, or other person  
11      responsible for the package or packages to have the  
12      package or packages transported to, opened and the  
13      contents examined and analyzed at a facility appro-  
14      priate for the conduct of this activity; and

15           “(F) when safety might otherwise be com-  
16       promised, authorize properly qualified personnel to  
17       assist in the activities conducted under this sub-  
18       section.

19           “(2) An officer or employee acting under this sub-  
20       section shall display proper credentials when requested.

21           “(3) For instances when, as a result of the inspection  
22       or investigation, an imminent hazard is not found to exist,  
23       the Secretary shall develop procedures to assist in the safe  
24       resumption of transportation of the package or transport  
25       unit.

1       “(d) EMERGENCY ORDERS.—(1) If, upon inspection,  
2 investigation, testing, or research, the Secretary deter-  
3 mines that either a violation of a provision of this chapter  
4 or a regulation issued under this chapter, or an unsafe  
5 condition or practice, constitutes or is causing an immi-  
6 nent hazard, the Secretary may issue or impose emergency  
7 restrictions, prohibitions, recalls, or out-of-service orders,  
8 without notice or the opportunity for a hearing, but only  
9 to the extent necessary to abate the imminent hazard.

10       “(2) The Secretary’s action under paragraph (1) of  
11 this subsection shall be in a written order describing the  
12 violation, condition or practice that is causing the immi-  
13 nent hazard, and stating the restrictions, prohibitions, re-  
14 calls, or out-of-service orders issued or imposed. The order  
15 also shall describe the standards and procedures for ob-  
16 taining relief from the emergency order.

17       “(3) After taking action under paragraph (1) of this  
18 subsection, the Secretary shall provide an opportunity for  
19 review of that action under section 554 of title 5, if a peti-  
20 tion for review is filed within 20 calendar days after  
21 issuance of the order.

22       “(4) If a petition for review is filed and the review  
23 is not completed by the end of the 30-day period beginning  
24 on the date the petition was filed, the action will cease  
25 to be effective at the end of that period unless the Sec-

1     retary determines in writing that the emergency situation  
2     still exists.

3         “(5) For purposes of this subsection, ‘out-of-service  
4     order’ means a mandate that an aircraft, vessel, motor  
5     vehicle, train, railcar, locomotive, other vehicle, transport  
6     unit, transport vehicle, freight container, portable tank, or  
7     other package not be moved until specified conditions have  
8     been met.

9         “(e) REGULATIONS.—The Secretary shall issue regu-  
10    lations in accordance with section 553 of title 5, including  
11    an opportunity for informal oral presentation, to imple-  
12    ment the authority in subsections (c) and (d) of this sec-  
13    tion.

14         “(f) FACILITY, STAFF, AND REPORTING SYSTEM ON  
15    RISKS, EMERGENCIES, AND ACTIONS.—(1) The Secretary  
16    shall—

17             “(A) maintain a facility and technical staff suf-  
18        ficient to provide, within the United States Govern-  
19        ment, the capability of evaluating a risk related to  
20        the transportation of hazardous material and mate-  
21        rial alleged to be hazardous;

22             “(B) maintain a central reporting system and  
23        information center capable of providing information  
24        and advice to law enforcement and firefighting per-  
25        sonnel, other interested individuals, and officers and

1 employees of the United States Government and  
2 State, local and tribal governments on meeting an  
3 emergency related to the transportation of haz-  
4 ardous material; and

5 "(C) conduct a continuous review on all aspects  
6 of transporting hazardous material to decide on and  
7 take appropriate actions to ensure safe transpor-  
8 tation of hazardous material.

9 "(2) Paragraph (1) of this subsection does not pre-  
10 vent the Secretary from making a contract with a private  
11 entity for use of a supplemental reporting system and in-  
12 formation center operated and maintained by the con-  
13 tractor.

14 "(g) AUTHORITY FOR GRANTS, COOPERATIVE  
15 AGREEMENTS, AND OTHER TRANSACTIONS.—To carry  
16 out this chapter, the Secretary may enter into grants, co-  
17 operative agreements, and other transactions with a per-  
18 son, agency or instrumentality of the United States, a unit  
19 of State or local government, an Indian tribe, a foreign  
20 government (in coordination with the Department of  
21 State), an educational institution, or other entity to fur-  
22 ther the objectives of this chapter. The objectives of this  
23 chapter include the conduct of research, development,  
24 demonstration, risk assessment, and emergency response  
25 planning and training activities.".

1 **SEC. 20. ENFORCEMENT.**

2 Section 5122 is amended—

3 (1) in subsection (a), by revising the last sen-  
4 tence to read as follows:5 “The court may award appropriate relief, in-  
6 cluding a temporary or permanent injunction, puni-  
7 tive damages, and assessment of civil penalties con-  
8 sidering the same penalty amounts and factors as  
9 prescribed for the Secretary in an administrative  
10 case under section 5123 of this chapter.”; and11 (2) in subparagraph (b)(1)(B), by striking “or  
12 ameliorate the” and inserting “or mitigate the”.13 **SEC. 21. PENALTIES.**

14 (a) Section 5123 is amended—

15 (1) by revising subsection (a) to read as follows:

16 “(a) PENALTY.—(1) A person that knowingly violates  
17 this chapter, or a regulation, order, special permit, or ap-  
18 proval issued under this chapter, is liable to the United  
19 States Government for a civil penalty of at least \$250 but  
20 not more than \$100,000 for each violation.21 “(2) Knowledge by the person of the existence of a  
22 statutory provision, or a regulation or requirement pre-  
23 scribed by the Secretary is not an element of an offense  
24 under this section.

1       “(3) A separate violation occurs for each day the vio-  
2 lation, committed by a person that transports or causes  
3 to be transported hazardous material, continues”; and

4           (2) by redesignating subsections (b) through (g)  
5       as subsections (c) through (h) and inserting a new  
6       subsection (b) to read as follows:

7       “(b) KNOWING VIOLATIONS.—In this section, a per-  
8 son acts knowingly when—

9           “(1) the person has actual knowledge of the  
10       facts giving rise to the violation; or

11           “(2) a reasonable person acting in the cir-  
12       cumstances and exercising reasonable care would  
13       have that knowledge.”;

14           (3) in subsection (c), as redesignated, by strik-  
15       ing the first sentence and inserting the following:

16       “The Secretary of Transportation may find that a  
17       person has violated this chapter, or a regulation, order,  
18       special permit or approval issued under this chapter, only  
19       after notice and an opportunity for a hearing.”; and

20           (4) by revising subsection (e), as redesignated,  
21       to read as follows:

22       “(e) CIVIL ACTIONS TO COLLECT.—The Attorney  
23       General may bring a civil action in an appropriate district  
24       court of the United States to collect a civil penalty under  
25       this section and any accrued interest on that penalty cal-

1 culated in the manner described under section 2705 of  
2 title 33. In such action, the validity, amount, and appro-  
3 priateness of the civil penalty shall not be subject to re-  
4 view.”.

5 (b) Section 5124 is revised to read as follows:

6 **“§ 5124. Criminal penalty**

7 “(a) GENERAL.—A person knowingly violating sec-  
8 tion 5104(b) of this title or willfully violating this chapter  
9 or a regulation, order, special permit, or approval issued  
10 under this chapter, shall be fined under title 18, impris-  
11 oned for not more than 5 years, or both.

12 “(b) AGGRAVATED VIOLATIONS.—A person know-  
13 ingly violating section 5104(b) of this chapter or willfully  
14 violating this chapter or a regulation, order, special per-  
15 mit, or approval issued under this chapter, and thereby  
16 causing the release of a hazardous material, shall be fined  
17 under title 18, imprisoned for not more than 20 years,  
18 or both.

19 “(c) KNOWING VIOLATIONS.—In this section, a per-  
20 son acts knowingly when—

21 “(1) the person has actual knowledge of the  
22 facts giving rise to the violation; or

23 “(2) a reasonable person acting in the cir-  
24 cumstances and exercising reasonable care would  
25 have that knowledge.

1       “(d) WILLFUL VIOLATIONS.—In this section, a per-  
2 son acts willfully when the person acts with intent.

3       “(e) KNOWLEDGE OF REQUIREMENTS.—Knowledge  
4 by a person of the existence of a statutory provision, or  
5 a regulation or requirement prescribed by the Secretary,  
6 is not an element of an offense under this section.”.

7       (c) Section 46312 is amended—

8           (1) in subsection (a), by striking “under this  
9 part” and inserting “under this part or under chap-  
10 ter 51 of this title”; and

11          (2) in subsection (b), by striking “by the Sec-  
12 retary” and inserting “by the Secretary under this  
13 part or under chapter 51 of this title”.

14 **SEC. 22. PREEMPTION.**

15       Section 5125 is amended—

16           (1) by redesignating subsections (a), (b), and  
17 (c), as subsections (b), (c), and (d), and adding a  
18 new subsection (a) to read as follows:

19       “(a) PURPOSES.—The Secretary shall exercise the  
20 authority in this section to achieve uniform regulation of  
21 hazardous material transportation, eliminate inconsistent  
22 rules that apply differently than rules issued under this  
23 chapter, and promote the safe and efficient movement of  
24 hazardous material in commerce.”;

25           (2) in subsection (b), as redesignated, by—

1 (A) striking “GENERAL.—Except as pro-  
2 vided in subsections (b), (c), and (e)” and in-  
3 serting “DUAL COMPLIANCE AND OBSTACLE  
4 TESTS.—Except as provided in subsections (c),  
5 (d), and (g)”;

6 (B) in subparagraph (2), striking “car-  
7 rying out this chapter or a regulation” and in-  
8 serting “carrying out this chapter, the purposes  
9 of this chapter, or a regulation”;

10 (3) in subsection (c), by—

11 (A) in subparagraph (1), striking “(c)”  
12 and inserting “(d)”;

13 (B) revising subparagraph (1)(E) to read  
14 as follows:

15                             “(E) the manufacturing, designing, in-  
16                             specting, testing, reconditioning, marking, or  
17                             repairing of a packaging or packaging compo-  
18                             nent represented as qualified for use in trans-  
19                             porting hazardous material in commerce.”; and

20 (C) in subparagraph (2), striking “after  
21 November 16, 1990”;

22 (4) by striking subsection (f) and redesignating  
23 subsections (g), (d), and (e) as subsections (e), (f),  
24 and (g);

6 (6) in subsection (g), as redesignated, by strik-  
7 ing “subsection (a), (b)(1), or (c) of this section”  
8 and inserting “subsection (b), (c)(1), (d), or (e) of  
9 this section or subsection 5119(b) of this chapter.”;

10 and

11 (7) by adding new subsections (h) and (i) to  
12 read as follows:

13        “(h) INDEPENDENT APPLICATION OF EACH STAND-  
14 ARD.—Each preemption standard in subsections (b),  
15 (c)(1), (d), and (e) of this section and in section 5119(b)  
16 of this chapter is independent in its application to a re-  
17 quirement of any State, political subdivision of a State,  
18 or Indian tribe.

19       “(i) NONFEDERAL ENFORCEMENT STANDARDS.—  
20    This section does not apply to procedure, penalty, or re-  
21    quired mental state or other standard used by a State,  
22    political subdivision of a State, or Indian tribe to enforce  
23    a requirement applicable to transportation of a hazardous  
24    material.”.

1 **SEC. 23. RELATIONSHIP TO OTHER LAWS.**

2 Section 5126 is amended—

3 (1) by revising subsection (a) to read as follows:

4 “(a) CONTRACTS.—A person under contract with a  
5 department, agency, or instrumentality of the United  
6 States Government that transports hazardous material or  
7 causes hazardous material to be transported, or manufac-  
8 tures, designs, inspects, tests, reconditions, marks, or re-  
9 pairs a packaging or packaging component represented as  
10 qualified for use in transporting hazardous material in  
11 commerce shall comply with this chapter, regulations pre-  
12 scribed and orders issued under this chapter, and all other  
13 requirements of the United States Government, State and  
14 local governments, and Indian tribes (except a require-  
15 ment preempted by a law of the United States) in the  
16 same way and to the same extent that any person engag-  
17 ing in that transportation, manufacturing, designing, in-  
18 specting, testing, reconditioning, marking, or repairing  
19 that is in or affects commerce must comply with the provi-  
20 sion, regulation, order, or requirement.”; and

21 (2) in subsection (b), by—

22 (A) striking “title 18 or 39;” and inserting  
23 “title 18 or 39; or” in paragraph (2); and  
24 (B) adding a new paragraph (3) to read as  
25 follows:

1           “(3) marine transportation of hazardous mate-  
2       rial subject to regulation under title 33 or 46.”.

3 **SEC. 24. JUDICIAL REVIEW.**

4       (a) Chapter 51 is amended by redesignating section  
5 5127 as section 5128, and by inserting after section 5126  
6 the following new section:

7 **“§ 5127. Judicial review**

8       “(a) **FILING AND VENUE.**—Except as provided in  
9 section 20114(c) of this title, a person suffering legal  
10 wrong or adversely affected or aggrieved by a final action  
11 of the Secretary of Transportation under this chapter may  
12 petition for review of the final action in the United States  
13 Court of Appeals for the District of Columbia or in the  
14 court of appeals for the United States for the circuit in  
15 which the person resides or has its principal place of busi-  
16 ness. The petition must be filed not more than 60 days  
17 after the Secretary’s action becomes final.

18       “(b) **JUDICIAL PROCEDURES.**—When a petition is  
19 filed under subsection (a) of this section, the clerk of the  
20 court immediately shall send a copy of the petition to the  
21 Secretary. The Secretary shall file with the court a record  
22 of any proceeding in which the final action was issued,  
23 as provided in section 2112 of title 28.

24       “(c) **AUTHORITY OF COURT.**—The court has exclu-  
25 sive jurisdiction, as provided in the Administrative Proce-

1 dure Act, 5 U.S.C. 551 et seq., to affirm, amend, modify,  
2 or set aside any part of the Secretary's final action and  
3 may order the Secretary to conduct further proceedings.  
4 Findings of fact by the Secretary, if supported by substan-  
5 tial evidence, are conclusive.

6        "(d) REQUIREMENT FOR PRIOR OBJECTION.—In re-  
7 viewing a final action under this section, the court may  
8 consider an objection to a final action of the Secretary  
9 only if the objection was made in the course of a pro-  
10 ceeding or review conducted by the Secretary or if there  
11 was a reasonable ground for not making the objection in  
12 the proceeding.”.

13        (b) CONFORMING AMENDMENT.—The chapter anal-  
14 ysis for chapter 51 is amended by striking the item related  
15 to section 5127 and inserting the following:

“5127. Judicial review.  
“5128. Authorization of appropriations.”.

16 **SEC. 25. AUTHORIZATION OF APPROPRIATIONS.**

17        Section 5128, as redesignated by section 24 of this  
18 Act, is amended to read as follows:

19 **“§ 5128. Authorization of appropriations**

20        "(a) GENERAL.—To carry out this chapter (except  
21 sections 5107(e), 5108(g), 5112, 5113, 5115, 5116, and  
22 5119), not more than \$21,217,000 is authorized to be ap-  
23 propriated to the Secretary of Transportation for fiscal  
24 year 2002; and such sums as may be necessary are author-

1 ized to be appropriated to the Secretary for fiscal years  
2 2003 through 2007.

3       “(b) EMERGENCY PREPAREDNESS FUND.—There  
4 shall be available from the Emergency Preparedness Fund  
5 account the following:

6           “(1) To carry out section 5116(j) of this title,  
7           \$250,000 shall be available to the Secretary for fis-  
8           cal year 2002, and such amounts as may be nec-  
9           essary for fiscal years 2003 through 2007.

10          “(2) To carry out section 5115 of this title,  
11          \$200,000 shall be available to the Secretary for fis-  
12          cal year 2002, and such amounts as may be nec-  
13          essary for fiscal years 2003 through 2007.

14          “(3) To carry out section 5116(a) of this title,  
15          \$5,000,000 shall be available to the Secretary for  
16          fiscal year 2002, and such amounts as may be nec-  
17          essary for fiscal years 2003 through 2007.

18          “(4) To carry out section 5116(b) of this title,  
19          \$7,800,000 shall be available to the Secretary for  
20          fiscal year 2002, and such amounts as may be nec-  
21          essary for fiscal years 2003 through 2007.

22          “(5) To carry out section 5116(f) of this title,  
23          \$150,000 shall be available to the Secretary for fis-  
24          cal year 2002, and such amounts as may be nec-  
25          essary for fiscal years 2003 through 2007.

1           “(6) To publish and distribute the Emergency  
2        Response Guidebook, \$500,000 shall be available to  
3        the Secretary for fiscal year 2002, and such  
4        amounts as may be necessary for fiscal years 2003  
5        through 2007.

6           “(7) To carry out section 5107(e) of this title,  
7        such amounts as may be necessary are authorized to  
8        be appropriated to the Secretary for each of fiscal  
9        years 2002 through 2007.

10          “(8) To carry out section 5116(i)(4) of this  
11        title, \$400,000 shall be available to the Secretary for  
12        fiscal year 2002, and such amounts as may be nec-  
13        essary for fiscal years 2003 through 2007.

14          “(c) CREDITS TO APPROPRIATIONS.—The Secretary  
15        of Transportation may credit to any appropriation to carry  
16        out this chapter an amount received from a State, Indian  
17        tribe, or other public authority or private entity for ex-  
18        penses the Secretary incurs in providing training to the  
19        State, authority, or entity.

20          “(d) AVAILABILITY OF AMOUNTS.—Amounts avail-  
21        able under this section remain available until expended.”.

22 **SEC. 26. POSTAL SERVICE CIVIL PENALTY AUTHORITY.**

23          (a) Section 3001 of title 39, United States Code, is  
24        amended by adding a new subsection (o) as follows:

1       “(o)(1) Except as permitted by law and Postal Serv-  
2 ice regulation, hazardous material is nonmailable.

3       “(2) For purposes of this section, the term ‘haz-  
4 ardous material’ means a substance or material the Sec-  
5 retary of Transportation designates under section 5103(a)  
6 of title 49.”.

7       (b) Chapter 30 of title 39, United States Code, is  
8 amended by adding a new section 3018 at the end as fol-  
9 lows:

10 **“§ 3018. Hazardous material; civil penalty**

11       “(a) REGULATIONS.—The Postal Service shall pre-  
12 scribe regulations for the safe transportation of hazardous  
13 material in the mail.

14       “(b) HAZARDOUS MATERIAL IN THE MAIL.—No per-  
15 son may—

16           “(1) mail or cause to be mailed a hazardous  
17 material that has been declared by statute or Postal  
18 Service regulation to be nonmailable;

19           “(2) mail or cause to be mailed a hazardous  
20 material in violation of any statute or Postal Service  
21 regulation restricting the time, place, or manner in  
22 which a hazardous material may be mailed; or

23           “(3) manufacture, distribute, or sell any con-  
24 tainer, packaging kit, or similar device that—

1               “(A) is represented, marked, certified, or  
2               sold by such person for use in the mailing of a  
3               hazardous material; and

4               “(B) fails to conform with any statute or  
5               Postal Service regulation setting forth stand-  
6               ards for a container, packaging kit, or similar  
7               device used for the mailing of a hazardous ma-  
8               terial.

9               “(c) CIVIL PENALTY.—

10               “(1) A person that knowingly violates this sec-  
11               tion or a regulation issued under this section is lia-  
12               ble to the Postal Service for a civil penalty of at  
13               least \$250 but not more than \$100,000 for each vi-  
14               olation, and for any clean-up costs and damages. A  
15               person acts knowingly when—

16               “(A) the person has actual knowledge of  
17               the facts giving rise to the violation; or

18               “(B) a reasonable person acting in the cir-  
19               cumstances and exercising reasonable care  
20               would have that knowledge.

21               “(2) Knowledge by the person of the existence  
22               of a statutory provision, or a regulation or require-  
23               ment prescribed by the Postal Service is not an ele-  
24               ment of an offense under this section.

1           “(3) A separate violation occurs for each day a  
2       hazardous material, mailed or caused to be mailed in  
3       noncompliance with this section or a regulation  
4       issued under this section, is in the mail.

5           “(4) A separate violation occurs for each item  
6       containing a hazardous material that is mailed or  
7       caused to be mailed in noncompliance with this sec-  
8       tion or a regulation issued under this section.

9           “(d) HEARING REQUIREMENT.—The Postal Service  
10       may find that a person has violated this section or a regu-  
11       lation issued under this section only after notice and an  
12       opportunity for a hearing. Under this section, the Postal  
13       Service shall impose a penalty and recover clean-up costs  
14       and damages by giving the person written notice of the  
15       amount of the penalty, clean-up costs, and damages.

16           “(e) PENALTY CONSIDERATIONS.—In determining  
17       the amount of a civil penalty under this section, the Postal  
18       Service shall consider—

19           “(1) the nature, circumstances, extent, and  
20       gravity of the violation;

21           “(2) with respect to the person who committed  
22       the violation, the degree of culpability, any history of  
23       prior violations, the ability to pay, and any effect on  
24       the ability to continue in business;

25           “(3) the impact on postal operations; and

1               “(4) other matters that justice requires.

2               “(f) CIVIL ACTIONS TO COLLECT.—(1) In accord-  
3 ance with section 409(d) of this title, the Department of  
4 Justice or the Postal Service may commence a civil action  
5 in an appropriate district court of the United States to  
6 collect a civil penalty, clean-up costs, or damages assessed  
7 under this section. In such action, the validity, amount,  
8 and appropriateness of the civil penalty, clean-up costs,  
9 or damages shall not be subject to review.

10               “(2) The Postal Service may compromise the amount  
11 of a civil penalty, clean-up costs, or damages assessed  
12 under this section before civil action is taken to collect  
13 the penalty, costs, or damages.

14               “(g) CIVIL JUDICIAL PENALTIES.—At the request of  
15 the Postal Service, the Attorney General may bring a civil  
16 action in an appropriate district court of the United States  
17 to enforce this chapter or a regulation prescribed or order  
18 issued under this chapter. The court may award appro-  
19 priate relief, including a temporary or permanent injunc-  
20 tion, punitive damages, and assessment of civil penalties  
21 considering the same penalty amounts and factors as pre-  
22 scribed for the Postal Service in an administrative case  
23 under this section.

1        “(h) DEPOSITING AMOUNTS COLLECTED.—Amounts  
2 collected under this section shall be paid into the Postal  
3 Service Fund established by section 2003 of this title.”.

4        (c) CONFORMING AMENDMENT.—The chapter anal-  
5 ysis for chapter 30 of title 39, United States Code, is  
6 amended by adding the following:

“3018. Hazardous material; civil penalty.”.

○