

107TH CONGRESS
1ST SESSION

H. R. 3276

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2001

Mr. YOUNG of Alaska (for himself and Mr. OBERSTAR) (both by request): introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Government Reform, 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 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”.

1 (b) AMENDMENT OF TITLE 49, UNITED STATES
 2 CODE.—Except as otherwise expressly provided, whenever
 3 in this Act an amendment or repeal is expressed in terms
 4 of an amendment to, or a repeal of, a section of other
 5 provision, the reference shall be considered to be made to
 6 a section or other provision of title 49, United States
 7 Code.

8 (c) TABLE OF CONTENTS.—

- 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.

9 **SEC. 2. PURPOSE.**

10 Section 5101 is revised to read as follows:

11 **“§ 5101. Purpose**

12 “The purpose of this chapter is to protect
 13 against the risks to life, property, and the environ-

1 ment that are inherent in the transportation of haz-
2 ardous material in intrastate, interstate, and foreign
3 commerce.”.

4 **SEC. 3. DEFINITIONS.**

5 Section 5102 is amended—

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

7 “(1) ‘commerce’ means trade or transportation
8 in the jurisdiction of the United States—

9 “(A) between a place in a State and a
10 place outside of the State;

11 “(B) that affects trade or transportation
12 between a place in a State and a place outside
13 of the State; or

14 “(C) on a United States-registered air-
15 craft.”;

16 (2) by revising paragraphs (3) and (4) to read
17 as follows:

18 “(3) ‘hazmat employee’ means an individual
19 who—

20 “(A)(i) is employed or used by a hazmat
21 employer; or

22 “(ii) is self-employed, including an owner-
23 operator of a motor vehicle, vessel, or aircraft
24 transporting hazardous material in commerce;
25 and

1 “(B) performs a function regulated by the
2 Secretary under section 5103(b)(1) of this
3 chapter.”

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

5 “(A)(i) has atleast one hazmat employee;

6 or

7 “(ii) is self-employed, including an owner-

8 operator of a motor vehicle, vessel, or aircraft

9 transporting hazardous material in commerce;

10 and

11 “(B) performs, or employs or uses at least

12 one hazmat employee to perform, a function

13 regulated by the Secretary under section

14 5103(b)(1) of this chapter.”;

15 (3) in paragraph (5), by striking “condition

16 that presents” and inserting “condition related to a

17 hazardous material that presents”;

18 (4) in paragraph (7), by striking “title” and in-

19 serting “title, except a freight forwarder is included

20 only if performing a function related to highway

21 transportation”;

22 (5) in paragraph (8), by striking “national re-

23 sponse team” each place it appears and inserting

24 “National Response Team,” and by striking “na-

1 tional contingency plan” and inserting “National
2 Contingency Plan”; and

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

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

15 **SEC. 4. GENERAL REGULATORY AUTHORITY.**

16 Section 5103 is amended—

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

18 “(a) DESIGNATING MATERIAL AS HAZARDOUS.—The
19 Secretary of Transportation shall designate material (in-
20 cluding an explosive; radioactive material; infectious sub-
21 stance; flammable or combustible liquid, solid or gas;
22 toxic, oxidizing or corrosive material; and compressed gas)
23 or a group or class of material as hazardous when the
24 Secretary determines that transporting the material in

1 commerce in a particular amount and form may pose an
2 unreasonable risk to health and safety or property.”; and

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

5 “(A) apply to a person that—

6 “(i) transports a hazardous material
7 in commerce;

8 “(ii) causes a hazardous material to
9 be transported in commerce;

10 “(iii) manufactures, designs, inspects,
11 tests, reconditions, marks or repairs a
12 packaging or packaging component rep-
13 resented as qualified for use in trans-
14 porting hazardous material in commerce;

15 “(iv) prepares, accepts, or rejects haz-
16 ardous material for transportation in com-
17 merce;

18 “(v) is responsible for the safety of
19 transporting hazardous material in com-
20 merce;

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

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

1 **SEC. 5. REPRESENTATION AND TAMPERING.**

2 Section 5104 is amended—

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

5 (2) by revising subsection (a)(1) to read as fol-
6 lows:

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

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

14 (4) by revising subsection (b) to read as follows:

15 “(b) TAMPERING.—No person may, without author-
16 ization from the owner or custodian, alter, remove, de-
17 stroy, or tamper with—

18 “(1) a marking, label, placard, or description on
19 a document required under this chapter or a regula-
20 tion prescribed under this chapter; or

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

24 **SEC. 6. HIGHLY RADIOACTIVE MATERIAL.**

25 Section 5105 is amended by striking subsections (d)
26 and (e).

1 **SEC. 7. HANDLING CRITERIA.**

2 Chapter 51 is amended by striking section 5106 and
3 striking the corresponding item in the analysis of chapter
4 51.

5 **SEC. 8. HAZMAT EMPLOYEE TRAINING REQUIREMENTS**
6 **AND GRANTS.**

7 (a) Section 5107 is amended by—

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

9 (2) striking “section 5127(c)(3)” in subsection
10 (e) and inserting “section 5128”; and

11 (3) striking “and sections 5106, 5108(a)–(g)(1)
12 and (h), and 5109 of this title” in subsection (f)(2).

13 (b) Notwithstanding section 4(b)(1) of the Occupa-
14 tional Safety and Health Act of 1970 (29 U.S.C.
15 653(b)(1), an action of the Secretary of Transportation
16 under chapter 51 of title 49, United States Code, does
17 not preclude the Secretary of Labor from prescribing or
18 enforcing standards, regulations or requirements
19 regarding—

20 (1) hazardous materials employee training, or

21 (2) the occupational safety or health protection
22 of employees responding to a release of hazardous
23 materials.

24 **SEC. 9. REGISTRATION.**

25 Section 5108 is amended—

1 (1) by striking “class A or B explosive” in sub-
2 section (a)(1)(B) and inserting “Division 1.1, 1.2, or
3 1.3 explosive material”;

4 (2) by revising subsection (a)(2)(B) to read as
5 follows:

6 “(B) a person manufacturing, designing,
7 inspecting, testing, reconditioning, marking, or
8 repairing a packaging or packaging component
9 represented as qualified for use in transporting
10 a hazardous material in commerce.”;

11 (3) by revising subsection (b)(1)(C) to read as
12 follows:

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

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

16 “(c) FILING SCHEDULE.—Each person required to
17 file a registration statement under subsection (a) of this
18 section shall file that statement in accordance with regula-
19 tions issued by the Secretary.”;

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

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

1 **SEC. 10. MOTOR CARRIER SAFETY.**

2 Chapter 51 is amended by striking section 5109 and
3 striking the corresponding item in the analysis of chapter
4 51.

5 **SEC. 11. SHIPPING PAPER RETENTION.**

6 Section 5110 is amended—

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

10 (2) by striking subsection (b) and redesignating
11 subsections (c)–(e) as subsections (b)–(d); and

12 (3) by revising the first sentence in subsection
13 (d), as redesignated, to read as follows: “The person
14 that provided the shipping paper and the carrier re-
15 quired to keep it under this section shall retain the
16 paper, or an electronic image of it, for a period of
17 3 years after the shipping paper was provided to the
18 carrier, to be accessible through their respective
19 principal places of business.”.

20 **SEC. 12. RAIL TANK CARS.**

21 Chapter 51 is amended by striking section 5111 and
22 by striking the corresponding item in the analysis of chap-
23 ter 51.

24 **SEC. 13. UNSATISFACTORY SAFETY RATING.**

25 (a) Section 5113 is amended by insertion of the fol-
26 lowing text: “A violation of section 31144(c)(3) of this

1 title shall be considered a violation of this chapter and
2 shall be subject to the penalties in sections 5123 and 5124
3 of this chapter.”.

4 (b) Section 31144(c) is amended—

5 (1) in paragraph (1), by striking “sections
6 521(b)(5)(A) and 5113” and inserting “section
7 521(b)(5)(A)”;

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

10 (3) by adding at the end of paragraph (3) the
11 following: “A violation of this paragraph by an
12 owner or operator transporting hazardous material
13 shall be considered a violation of chapter 51 of this
14 title, and shall be subject to the penalties in sections
15 5123 and 5124 of this chapter.”.

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

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

20 Section 5115 is amended—

21 (1) in subsection (a), by—

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

1 (B) striking “national response team” and
2 inserting “National Response Team” in the
3 first sentence;

4 (C) striking “develop and update periodically a” in the first sentence and inserting
5 “maintain a current”; and
6

7 (D) striking the second sentence;
8 (2) in subsection (b), by—

9 (A) striking “developed” and inserting
10 “maintained” in the first sentence, and

11 (B) in paragraph (i)(C), by striking
12 “under other United States Government grant
13 programs, including those developed with grants
14 made under section 126(g) of the Superfund
15 Amendments and Reauthorization Act of 1986
16 (42 U.S.C. 9660a)” and inserting “with Federal
17 financial assistance”;

18 (3) in subsection (c)(3), by striking “the National
19 Fire Protection Association” and inserting
20 “the National Fire Protection Association and such
21 other voluntary consensus standard-setting organiza-
22 tions as the Secretary deems appropriate”; and

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

24 “(d) DISTRIBUTION AND PUBLICATION.—With the
25 National Response Team, the Secretary of Transportation

1 may publish and distribute a list of courses developed
2 under this section and of programs using any of those
3 courses.”.

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

5 (a) Section 5116 is amended—

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

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

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

1 (3) in subsection (g), by striking “Government
2 grant” and inserting “Federal financial assistance”;

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

4 “(i) EMERGENCY PREPAREDNESS FUND.—The Sec-
5 retary of the Treasury shall establish an Emergency Pre-
6 paredness Fund account in the Treasury into which the
7 Secretary of the Treasury shall deposit amounts the Sec-
8 retary of Transportation transfers to the Secretary of the
9 Treasury under section 5108(g)(2)(C) of this title. With-
10 out further appropriation, amounts in the account are
11 available—

12 “(1) to make grants under this section;

13 “(2) to monitor and provide technical assistance
14 under subsection (f) of this section;

15 “(3) to publish and distribute the Emergency
16 Response Guidebook; and

17 “(4) to pay administrative costs of carrying out
18 this section and sections 5108(g)(2) and 5115 of
19 this title, except that not more than 10 percent of
20 the amounts made available from the account in a
21 fiscal year to carry out these sections may be used
22 to pay those costs.”; and

23 (5) by striking subsection (k).

24 (b) Chapter 51 is amended by—

1 (1) revising the section heading for section
2 5116 to read “Planning and training grants’ emer-
3 gency preparedness fund”; and

4 (2) striking the item for section 5116 in the
5 analysis of the chapter and inserting “5116. Plan-
6 ning and training grants; emergency preparedness
7 fund.”.

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

9 (a) Section 5117 is amended—

10 (1) by revising the section heading to read as
11 follows:

12 **“§ 5117. Special permits and exclusions”;**

13 (2) by striking “exemption” and “an exemp-
14 tion” each place they appear and inserting, respec-
15 tively, “special permit” and “a special permit”;

16 (3) in subsection (a)(1), as revised by Section
17 16(a)(2) of this Act, by striking “issue a special per-
18 mit” and inserting “issue, modify, or terminate a
19 special permit authorizing variances”, and by strik-
20 ing “transporting, or causing to be transported, haz-
21 ardous material” and inserting “performing a func-
22 tion regulated by the Secretary under section
23 5103(b)(1) of this title”; and

24 (4) in subsection (a)(2), by striking “2” and in-
25 serting “4”.

1 (b) The chapter analysis for chapter 51 is amended
2 by striking the item related to section 5117 and inserting
3 the following:

“5117. Special permits and exclusions.”.

4 **SEC. 17. INSPECTORS.**

5 Chapter 51 is amended by striking section 5118 and
6 striking the corresponding item in the analysis of chapter
7 51.

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

9 Section 5119 is revised to read as follows:

10 **“§ 5119. Uniform forms and procedures**

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

14 “(i) to register and issue permits to persons
15 that transport or cause to be transported hazardous
16 material by motor vehicle in the State; and

17 “(ii) to allow the transportation of hazardous
18 material in the State.

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

22 “(b) EFFECTIVE DATE.—A regulation prescribed
23 under this section takes effect one year after it is pre-
24 scribed. The Secretary may extend the one-year period for
25 an additional year for good cause. After a regulation is

1 effective, a State may establish, maintain, or enforce a re-
2 quirement related to the same subject matter only if the
3 requirement is the same as the regulation.

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

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

12 **SEC. 19. ADMINISTRATIVE.**

13 Section 5121 is revised to read as follows:

14 **“§ 5121. Administrative**

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

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

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

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

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

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

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

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

1 minent hazard, and for which the officer or employee
2 contemporaneously documents that belief in accord-
3 ance with procedures adopted under subsection (e)
4 of this section;

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

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

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

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

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

1 resumption of transportation of the package or transport
2 unit.

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

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

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

24 “(4) If a petition for review is filed and the review
25 is not completed by the end of the 30-day period beginning

1 on the date the petition was filed, the action will cease
2 to be effective at the end of that period unless the Sec-
3 retary determines in writing that the emergency situation
4 still exists.

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

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

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

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

24 “(B) maintain a central reporting system and
25 information center capable of providing information

1 and advice to law enforcement and firefighting per-
2 sonnel, other interested individuals, and officers and
3 employees of the United States Government and
4 State, local and tribal governments on meeting an
5 emergency related to the transportation of haz-
6 ardous material; and

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

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

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

1 demonstration, risk assessment, and emergency response
2 planning and training activities.”.

3 **SEC. 20. ENFORCEMENT.**

4 Section 5122 is amended—

5 (1) in subsection (a), by revising the last sen-
6 tence to read as follows: “The court may award ap-
7 propriate relief, including a temporary or permanent
8 injunction, punitive damages, and assessment of civil
9 penalties considering the same penalty amounts and
10 factors as prescribed for the Secretary in an admin-
11 istrative case under section 5123 of this chapter.”;
12 and

13 (2) in subparagraph (b)(1)(B), by striking “or
14 ameliorate the” and inserting “or mitigate the”.

15 **SEC. 21. PENALTIES.**

16 (a) Section 5123 is amended—

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

18 “(a) PENALTY.—(1) A person that knowingly violates
19 this chapter, or a regulation, order, special permit, or ap-
20 proval issued under this chapter, is liable to the United
21 States Government for a civil penalty of at least \$250 but
22 not more than \$100,000 for each violation.

23 “(2) Knowledge by the person of the existence of a
24 statutory provision, or a regulation or requirement pre-

1 scribed by the Secretary is not an element of an offense
2 under this section.

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

6 (2) by redesignating subsections (b)–(g) as sub-
7 sections (c)–(h) and inserting a new subsection (b)
8 to read as follows:

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

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

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

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

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

23 (4) by revising subsection (e), as redesignated,
24 to read as follows:

1 “(e) CIVIL ACTIONS TO COLLECT.—The Attorney
2 General may bring a civil action in an appropriate district
3 court of the United States to collect a civil penalty under
4 this section and any accrued interest on that penalty cal-
5 culated in the manner described under section 2705 of
6 title 33. In such action, the validity, amount, and appro-
7 priateness of the civil penalty shall not be subject to re-
8 view.”.

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

10 **“§ 5124. Criminal penalty**

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

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

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

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

3 “(2) a reasonable person acting in the cir-
4 cumstances and exercising reasonable care would
5 have that knowledge.

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

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

12 (c) Section 46312 is amended—

13 (1) in subparagraph (a), by striking “under this
14 part” and inserting “under this part or under chap-
15 ter 51 of this title”;

16 (2) in subparagraph (b), by striking “by the
17 Secretary” and inserting “by the Secretary under
18 this part or under chapter 51 of this title”.

19 **SEC. 22. PREEMPTION.**

20 Section 5125 is amended—

21 (1) by redesignating subsections (a), (b), and
22 (c), as subsections (b), (c), and (d), and adding a
23 new subsection (a) to read as follows:

24 “(a) PURPOSES.—The Secretary shall exercise the
25 authority in this section to achieve uniform regulation of

1 hazardous material transportation, eliminate inconsistent
2 rules that apply differently than rules issued under this
3 chapter, and promote the safe and efficient movement of
4 hazardous material in commerce.”;

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

6 (A) striking “GENERAL.—Except as pro-
7 vided in subsections (b), (c), and (e)” and in-
8 serting “DUAL COMPLIANCE AND OBSTACLE
9 TESTS.—Except as provided in subsections (c),
10 (d), and (g)”;

11 (B) in subparagraph (2), striking “car-
12 rying out this chapter or a regulation” and in-
13 serting “carrying out this chapter, the purposes
14 of this chapter, or a regulation”;

15 (3) in subsection (c), by—

16 (A) in subparagraph (1), striking “(c)”
17 and inserting “(d)”;

18 (B) revising subparagraph (1)(E) to read
19 as follows:

20 “(E) the manufacturing, designing, in-
21 specting, testing, reconditioning, marking, or
22 repairing of a packaging or packaging compo-
23 nent represented as qualified for use in trans-
24 porting hazardous material in commerce.”; and

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

3 (4) by striking subsection (f) and redesignating
4 subsections (g), (d), and (e) as subsections (e), (f),
5 and (g);

6 (5) in subsection (f), 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 by striking “in the Federal Register”;

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

15 (7) by adding new subsections (h) and (i) to
16 read as follows:

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

23 “(i) NONFEDERAL ENFORCEMENT STANDARDS.—
24 This section does not apply to procedure, penalty, or re-
25 quired mental state or other standard used by a State,

1 political subdivision of a State, or Indian tribe to enforce
2 a requirement applicable to transportation of a hazardous
3 material.”.

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

5 Section 5126 is amended—

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

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

24 (2) in subsection (b), by—

1 (A) striking “title 18 or 39;” and inserting
2 “title 18 or 39; or” in paragraph (2); and

3 (B) adding a new paragraph (3) to read as
4 follows:

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

7 **SEC. 24. JUDICIAL REVIEW.**

8 (a) Chapter 51 is amended by redesignating section
9 5127 as section 5128, and by inserting after section 5126
10 the following new section:

11 **“§ 5127. Judicial review**

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

22 “(b) JUDICIAL PROCEDURES.—When a petition is
23 filed under subsection (a) of this section, the clerk of the
24 court immediately shall send a copy of the petition to the
25 Secretary. The Secretary shall file with the court a record

1 of any proceeding in which the final action was issued,
2 as provided in section 2112 of title 28.

3 “(c) **AUTHORITY OF COURT.**—The court has exclu-
4 sive jurisdiction, as provided in the Administrative Proce-
5 dure Act, 5 U.S.C. 551 et seq., to affirm, amend, modify,
6 or set aside any part of the Secretary’s final action and
7 may order the Secretary to conduct further proceedings.
8 Findings of fact by the Secretary, if supported by substan-
9 tial evidence, are conclusive.

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

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

“5127. Judicial review.

“5128. Authorization of appropriations.”.

20 **SEC. 25. AUTHORIZATION OF APPROPRIATIONS.**

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

1 **“§ 5128. Authorization of appropriations**

2 “(a) GENERAL.—To carry out this chapter (except
3 sections 5107(e), 5108(g), 5112, 5113, 5115, 5116 and
4 5119), not more than \$21,217,000 is authorized to be ap-
5 propriated to the Secretary of Transportation for fiscal
6 year 2002; and such sums as may be necessary are author-
7 ized to be appropriated to the Secretary for fiscal years
8 2003 through 2007.

9 “(b) EMERGENCY PREPAREDNESS FUND.—There
10 shall be available from the Emergency Preparedness Fund
11 account the following:

12 “(1) To carry out section 5116(j) of this title,
13 \$250,000 shall be available to the Secretary for fis-
14 cal year 2002, and such amounts as may be nec-
15 essary for fiscal years 2003 through 2007.

16 “(2) To carry out section 5115 of this title,
17 \$200,000 shall be available to the Secretary for fis-
18 cal year 2002, and such amounts as may be nec-
19 essary for fiscal years 2003 through 2007.

20 “(3) To carry out section 5116(a) of this title,
21 \$5,000,000 shall be available to the Secretary for
22 fiscal year 2002, and such amounts as may be nec-
23 essary for fiscal years 2003 through 2007.

24 “(4) To carry out section 5116(b) of this title,
25 \$7,800,000 shall be available to the Secretary for

1 fiscal year 2002, and such amounts as may be nec-
2 essary for fiscal years 2003 through 2007.

3 “(5) To carry out section 5116(f) of this title,
4 \$150,000 shall be available to the Secretary for fis-
5 cal year 2002, and such amounts as may be nec-
6 essary for fiscal years 2003 through 2007.

7 “(6) To publish and distribute the Emergency
8 Response Guidebook, \$500,000 shall be available to
9 the Secretary for fiscal year 2002, and such
10 amounts as may be necessary for fiscal years 2003
11 through 2007.

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

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

20 “(c) CREDITS TO APPROPRIATIONS.—The Secretary
21 of Transportation may credit to any appropriation to carry
22 out this chapter an amount received from a State, Indian
23 tribe, or other public authority or private entity for ex-
24 penses the Secretary incurs in providing training to the
25 State, authority, or entity.

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

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

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

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

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

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

15 **“§ 3018. Hazardous material; civil penalty**

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

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

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

24 “(2) mail or cause to be mailed a hazardous
25 material in violation of any statute or Postal Service

1 regulation restricting the time, place, or manner in
2 which a hazardous material may be mailed; or

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

5 “(i) is represented, marked, certified, or
6 sold by such person for use in the mailing of a
7 hazardous material; and

8 “(ii) fails to conform with any statute or
9 Postal Service regulation setting forth stand-
10 ards for a container, packaging kit, or similar
11 device used for the mailing of a hazardous ma-
12 terial.

13 “(c) CIVIL PENALTY.—

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

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

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

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

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

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

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

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

23 “(1) the nature, circumstances, extent, and
24 gravity of the violation;

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

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

6 “(4) other matters that justice requires.

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

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

19 “(g) CIVIL JUDICIAL PENALTIES.—At the request of
20 the Postal Service, the Attorney General may bring civil
21 action in an appropriate district court of the United States
22 to enforce this chapter or a regulation prescribed or order
23 issued under this chapter. The court may award appro-
24 priate relief, including a temporary or permanent injunc-
25 tion, punitive damages, and assessment of civil penalties

1 considering the same penalty amounts and factors as pre-
2 scribed for the Postal Service in an administrative case
3 under this section.

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

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

“3018. Hazardous material; civil penalty.”.

