

108TH CONGRESS
2D SESSION

H. R. 4824

To direct the Secretary of Homeland Security to issue regulations concerning the shipping of extremely hazardous materials.

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2004

Mr. MARKEY (for himself, Ms. MCCARTHY of Missouri, Mr. GRIJALVA, Mr. CASE, Mr. OWENS, Ms. LEE, Mr. TIERNEY, Ms. JACKSON-LEE of Texas, and Mr. GONZALEZ) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To direct the Secretary of Homeland Security to issue regulations concerning the shipping of extremely hazardous materials.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Extremely Hazardous
5 Materials Transportation Security Act of 2004”.

6 **SEC. 2. RULEMAKING.**

7 (a) IN GENERAL.—Not later than 180 days after the
8 date of enactment of this Act, the Secretary of Homeland
9 Security, in consultation with the heads of other appro-

1 p r i a t e F e d e r a l , S t a t e , a n d l o c a l g o v e r n m e n t e n t i t i e s , s e c u -
2 r i t y e x p e r t s , r e p r e s e n t a t i v e s o f t h e h a z a r d o u s m a t e r i a l s
3 s h i p p i n g i n d u s t r y a n d l a b o r u n i o n s r e p r e s e n t i n g p e r s o n s
4 w h o w o r k i n t h e h a z a r d o u s m a t e r i a l s s h i p p i n g i n d u s t r y ,
5 a n d o t h e r i n t e r e s t e d p e r s o n s , s h a l l i s s u e , a f t e r n o t i c e a n d
6 o p p o r t u n i t y f o r p u b l i c c o m m e n t , r e g u l a t i o n s c o n c e r n i n g
7 t h e s h i p p i n g o f e x t r e m e l y h a z a r d o u s m a t e r i a l s .

8 (b) P U R P O S E S O F R E G U L A T I O N S . — T h e r e g u l a t i o n s
9 s h a l l b e c o n s i s t e n t , t o t h e e x t e n t t h e S e c r e t a r y d e t e r m i n e s
10 a p p r o p r i a t e , w i t h a n d n o t d u p l i c a t i v e o f o t h e r F e d e r a l r e g -
11 u l a t i o n s a n d i n t e r n a t i o n a l a g r e e m e n t s r e l a t i n g t o t h e s h i p -
12 p i n g o f e x t r e m e l y h a z a r d o u s m a t e r i a l s a n d s h a l l r e q u i r e —

13 (1) p h y s i c a l s e c u r i t y m e a s u r e s f o r s u c h s h i p -
14 m e n t s , s u c h a s t h e u s e o f p a s s i v e s e c o n d a r y c o n t a i n -
15 m e n t o f t a n k e r v a l v e s , a d d i t i o n a l s e c u r i t y f o r c e p e r -
16 s o n n e l , a n d s u r v e i l l a n c e t e c h n o l o g i e s a n d b a r r i e r s ;

17 (2) c o n c e r n e d F e d e r a l , S t a t e , a n d l o c a l l a w e n -
18 f o r c e m e n t a u t h o r i t i e s (i n c l u d i n g , i f a p p l i c a b l e , t r a n -
19 s i t , r a i l r o a d , o r p o r t a u t h o r i t y p o l i c e a g e n c i e s) t o b e
20 i n f o r m e d b e f o r e a n e x t r e m e l y h a z a r d o u s m a t e r i a l i s
21 t r a n s p o r t e d w i t h i n , t h r o u g h , o r n e a r a n a r e a o f c o n -
22 c e r n ;

23 (3) c o o r d i n a t i o n w i t h F e d e r a l , S t a t e , a n d l o c a l
24 l a w e n f o r c e m e n t a u t h o r i t i e s t o c r e a t e r e s p o n s e p l a n s

1 for a terrorist attack on a shipment of extremely
2 hazardous materials;

3 (4) the use of currently available technologies
4 and systems to ensure effective and immediate com-
5 munication between transporters of extremely haz-
6 ardous materials, law enforcement authorities and
7 first responders;

8 (5) comprehensive and appropriate training in
9 the area of extremely hazardous materials transpor-
10 tation security for all individuals who transport,
11 load, unload, or are otherwise involved in the ship-
12 ping of extremely hazardous materials or who would
13 respond to an accident or incident involving a ship-
14 ment of extremely hazardous material or would have
15 to repair transportation equipment and facilities in
16 the event of such an accident or incident; and

17 (6) for the transportation of extremely haz-
18 ardous materials through or near an area of con-
19 cern, the Secretary to determine whether or not the
20 transportation could be made by one or more alter-
21 nate routes at lower security risk and, if the Sec-
22 retary determines the transportation could be made
23 by an alternate route, the use of such alternate
24 route, except when the origination or destination of
25 the shipment is located within the area of concern.

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

8 (1) to an order for injunctive relief; or

9 (2) to a civil penalty of not more than
10 \$100,000.

11 (d) ADMINISTRATIVE PENALTIES.—

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

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

23 (A) written notice of the proposed order;

24 and

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

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

10 **SEC. 3. WHISTLEBLOWER PROTECTION.**

11 (a) IN GENERAL.—No person involved in the
12 shipping of extremely hazardous materials may be dis-
13 charged, demoted, suspended, threatened, harassed, or in
14 any other manner discriminated against because of any
15 lawful act done by the person—

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

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

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

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

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

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

19 (b) ENFORCEMENT ACTION.—

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

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

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

10 (2) PROCEDURE.—

11 (A) IN GENERAL.— An action under para-
12 graph (1)(A) shall be governed under the rules
13 and procedures set forth in section 42121(b) of
14 title 49, United States Code.

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

19 (C) BURDENS OF PROOF.—An action
20 brought under paragraph (1)(B) shall be gov-
21 erned by the legal burdens of proof set forth in
22 section 42121(b) of title 49, United States
23 Code.

24 (D) STATUTE OF LIMITATIONS.—An action
25 under paragraph (1) shall be commenced not

1 later than 90 days after the date on which the
2 violation occurs.

3 (c) REMEDIES.—

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

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

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

12 (B) the amount of any back pay, with in-
13 terest; and

14 (C) compensation for any special damages
15 sustained as a result of the discrimination, in-
16 cluding litigation costs, expert witness fees, and
17 reasonable attorney fees.

18 (d) RIGHTS RETAINED BY PERSON.—Nothing in this
19 section shall be deemed to diminish the rights, privileges,
20 or remedies of any person under any Federal or State law,
21 or under any collective bargaining agreement.

22 **SEC. 4. DEFINITIONS.**

23 In this Act, the following definitions apply:

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

1 (A) a material that is toxic by inhalation;

2 (B) a material that is extremely flam-
3 mable;

4 (C) a material that is highly explosive; and

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

7 (2) AREA OF CONCERN.—The term “area of
8 concern” means an area that the Secretary deter-
9 mines could pose a particular interest to terrorists.

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