

109TH CONGRESS
1ST SESSION

H. R. 1414

To direct the Secretary of Homeland Security to issue regulations concerning the shipping of extremely hazardous materials, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mr. MARKEY (for himself, Ms. NORTON, Mr. KUCINICH, Mr. PALLONE, Ms. LEE, Mrs. MALONEY, Mr. THOMPSON of Mississippi, Mr. HOLT, Mrs. JONES of Ohio, Ms. BERKLEY, Mr. GRIJALVA, and Mr. DOGGETT) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Transportation and Infrastructure, 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 direct the Secretary of Homeland Security to issue regulations concerning the shipping of extremely hazardous materials, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. RULEMAKING.**

2 (a) IN GENERAL.—Not later than 180 days after the
3 date of enactment of this Act, the Secretary of Homeland
4 Security, in consultation with the heads of other appro-
5 priate Federal, State, and local government entities, secu-
6 rity experts, representatives of the hazardous materials
7 shipping industry and labor unions representing persons
8 who work in the hazardous materials shipping industry,
9 and other interested persons, shall issue, after notice and
10 opportunity for public comment, regulations concerning
11 the shipping of extremely hazardous materials.

12 (b) PURPOSES OF REGULATIONS.—The regulations
13 shall be consistent, to the extent the Secretary determines
14 appropriate, with and not duplicative of other Federal reg-
15 ulations and international agreements relating to the ship-
16 ping of extremely hazardous materials and shall require—

17 (1) physical security measures for such ship-
18 ments, such as the use of passive secondary contain-
19 ment of tanker valves and other technologies to en-
20 sure the physical integrity of pressurized tank cars
21 used to transport extremely hazardous materials, ad-
22 ditional security force personnel, and surveillance
23 technologies and barriers;

24 (2) concerned Federal, State, and local law en-
25 forcement authorities (including, if applicable, tran-
26 sit, railroad, or port authority police agencies) to be

1 informed before an extremely hazardous material is
2 transported within, through, or near an area of con-
3 cern;

4 (3) the creation of terrorism response plans for
5 shipments of extremely hazardous materials;

6 (4) the use of currently available technologies
7 and systems to ensure effective and immediate com-
8 munication between transporters of extremely haz-
9 ardous materials and all entities charged with re-
10 sponding to acts of terrorism involving shipments of
11 extremely hazardous materials;

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

21 (6) for the transportation of extremely haz-
22 ardous materials through or near an area of con-
23 cern, the Secretary to determine whether or not the
24 transportation could be made by one or more alter-
25 nate routes at lower security risk and, if the Sec-

1 retary determines the transportation could be made
2 by an alternate route, the use of such alternate
3 route, except when the origination or destination of
4 the shipment is located within the area of concern.

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

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

13 (2) to a civil penalty of not more than
14 \$100,000.

15 (d) ADMINISTRATIVE PENALTIES.—

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

23 (2) NOTICE AND HEARING.—Before issuing an
24 order described in paragraph (1), the Secretary shall

1 provide to the person against whom the penalty is to
2 be assessed—

3 (A) written notice of the proposed order;

4 and

5 (B) the opportunity to request, not later
6 than 30 days after the date on which the per-
7 son receives the notice, a hearing on the pro-
8 posed order.

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

14 **SEC. 3. WHISTLEBLOWER PROTECTION.**

15 (a) IN GENERAL.—No person involved in the ship-
16 ping of extremely hazardous materials may be discharged,
17 demoted, suspended, threatened, harassed, or in any other
18 manner discriminated against because of any lawful act
19 done by the person—

20 (1) to provide information, cause information to
21 be provided, or otherwise assist in an investigation
22 regarding any conduct which the person reasonably
23 believes constitutes a violation of any law, rule or
24 regulation related to the security of shipments of ex-
25 tremely hazardous materials, or any other threat to

1 the security of shipments of extremely hazardous
2 materials, when the information or assistance is pro-
3 vided to or the investigation is conducted by—

4 (A) a Federal regulatory or law enforce-
5 ment agency;

6 (B) any Member of Congress or any com-
7 mittee of Congress; or

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

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

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

22 (b) ENFORCEMENT ACTION.—

23 (1) IN GENERAL.—A person who alleges dis-
24 charge or other discrimination by any person in vio-

1 lation of subsection (a) may seek relief under sub-
2 section (c), by—

3 (A) filing a complaint with the Secretary of
4 Labor; or

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

14 (2) PROCEDURE.—

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

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

23 (C) BURDENS OF PROOF.—An action
24 brought under paragraph (1)(B) shall be gov-
25 erned by the legal burdens of proof set forth in

1 section 42121(b) of title 49, United States
2 Code.

3 (D) STATUTE OF LIMITATIONS.—An action
4 under paragraph (1) shall be commenced not
5 later than 90 days after the date on which the
6 violation occurs.

7 (c) REMEDIES.—

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

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

13 (A) reinstatement with the same seniority
14 status that the person would have had, but for
15 the discrimination;

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

18 (C) compensation for any special damages
19 sustained as a result of the discrimination, in-
20 cluding litigation costs, expert witness fees, and
21 reasonable attorney fees.

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

1 **SEC. 4. REPORT ON EXTREMELY HAZARDOUS MATERIALS**
2 **TRANSPORTATION SECURITY.**

3 (a) IN GENERAL.—Not later than 180 days after the
4 date of enactment of this Act, the Secretary of Homeland
5 Security, in consultation with the heads of other appro-
6 priate Federal agencies, shall transmit to Congress a re-
7 port on the security of, and risk of a terrorist attack on,
8 shipments of extremely hazardous materials.

9 (b) CONTENT.—The report under subsection (a) shall
10 include—

11 (1) information specifying—

12 (A) the Federal and State agencies that
13 are responsible for the regulation of the trans-
14 portation of extremely hazardous materials; and

15 (B) the particular authorities and respon-
16 sibilities of the heads of each such agency; and

17 (2) an assessment of the vulnerability of the in-
18 frastructure associated with the transportation of ex-
19 tremely hazardous materials.

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

22 **SEC. 5. DEFINITIONS.**

23 In this Act, the following definitions apply:

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

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

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

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

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

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

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