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TITLE 49--TRANSPORTATION

SUBTITLE III--GENERAL AND INTERMODAL PROGRAMS

CHAPTER 51--TRANSPORTATION OF HAZARDOUS MATERIAL

Sec. 5103. General regulatory authority

(a) Designating Material as Hazardous.--The Secretary of Transportation shall designate material (including an explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas) or a group or class of material as hazardous when the Secretary decides that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property.

(b) Regulations for Safe Transportation.--(1) The Secretary shall prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce. The regulations--

(A) apply to a person--

(i) transporting hazardous material in commerce;

(ii) causing hazardous material to be transported in commerce; or

(iii) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a packaging or a container that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce; and

(B) shall govern safety aspects of the transportation of hazardous material the Secretary considers appropriate.

(2) A proceeding to prescribe the regulations must be conducted under section 553 of title 5, including an opportunity for informal oral presentation.

(Pub. L. 103-272, Sec. 1(d), July 5, 1994, 108 Stat. 761; Pub. L. 103-311, title I, Sec. 117(a)(2), Aug. 26, 1994, 108 Stat. 1678; Pub. L. 103-429, Sec. 6(3), Oct. 31, 1994, 108 Stat. 4378.)

Historical and Revision Notes  
 Pub. L. 103-272

Revised Section	Source (U.S. Code)	Sour
5103(a).....	49 App.:1803.	Jan. 3, 197 104, 88 St
5103(b).....	49 App.:1804(a) (1)-(3).	Jan. 3, 197 105(a)(1)- Nov. 16, 1 4, 104 Sta

In subsection (a), the words ``such quantity and form of material'' and ``in his discretion'' are omitted as surplus.

In subsection (b)(1), before clause (A), the words ``in accordance with section 553 of title 5'' are omitted because 5:553 applies unless otherwise stated. In clause (A)(i), the words ``hazardous material in

commerce'', and in clause (A)(ii), the words ``hazardous material . . . in commerce'', are added for consistency in this chapter.

#### Pub. L. 103-429

This amends 49:5103(b)(2) to clarify the restatement of 49 App.:1804(a)(2) by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 761).

#### Amendments

1994--Subsec. (b)(1)(A)(iii). Pub. L. 103-311 substituted ``a packaging or a'' for ``a package or''.

Subsec. (b)(2). Pub. L. 103-429 substituted ``be conducted under section 553 of title 5, including'' for ``include'' and ``presentation'' for ``presentations''.

#### Effective Date of 1994 Amendment

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

#### Safe Placement of Train Cars

Section 111 of Pub. L. 103-311 provided that: ``The Secretary of Transportation shall conduct a study of existing practices regarding the placement of cars on trains, with particular attention to the placement of cars that carry hazardous materials. In conducting the study, the Secretary shall consider whether such placement practices increase the risk of derailment, hazardous materials spills, or tank ruptures or have any other adverse effect on safety. The results of the study shall be submitted to Congress within 1 year after the date of enactment of this Act [Aug. 26, 1994].''

#### Fiber Drum Packaging

Pub. L. 104-88, title IV, Sec. 406, Dec. 29, 1995, 109 Stat. 957, provided that:

``(a) In General.--In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall issue a final rule within 60 days after the date of the enactment of this Act [Dec. 29, 1995] authorizing the continued use of fiber drum packaging with a removable head for the transportation of liquid hazardous materials with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991, if--

``(1) the packaging is in compliance with regulations of the Secretary under the Hazardous Materials Transportation Act [former 49 U.S.C. 1801 et seq.] as in effect on September 30, 1991; and

``(2) the packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation or materials in Packing Groups I and II.

``(b) Expiration.--The regulation referred to in subsection (a) shall expire on the later of September 30, 1997, or the date on which funds are authorized to be appropriated to carry out chapter 51 of title 49, United States Code (relating to transportation of hazardous materials), for fiscal years beginning after September 30, 1997.

``(c) Study.--

``(1) In general.--Within 90 days after the date of the enactment of this Act [Dec. 29, 1995], the Secretary shall contract with the National Academy of Sciences to conduct a study--

((A) to determine whether the requirements of section 5103(b) of title 49, United States Code (relating to regulations for safe transportation), as they pertain to fiber drum packaging with a removable head can be met for the transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards (including fiber drum industry standards set forth in a June 8, 1992, exemption application submitted to the Department of Transportation), other than the performance-oriented packaging standards adopted under docket number HM-181 contained in part 178 of title 49, Code of Federal Regulations; and

((B) to determine whether a packaging standard (including such fiber drum industry standards), other than such performance-oriented packaging standards, will provide an equal or greater level of safety for the transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect.

((2) Completion.--The study shall be completed before March 1, 1997 and shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Transportation and Infrastructure Committee of the House of Representatives.

((d) Secretarial Action.--By September 30, 1997, the Secretary shall issue final regulations to determine what standards should apply to fiber drum packaging with a removable head for transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) after September 30, 1997. In issuing such regulations, the Secretary shall give full and substantial consideration to the results of the study conducted in subsection (c).'

Section 122 of Pub. L. 103-311 provided that:

((a) Initiation of Rulemaking Proceeding.--Not later than the 60th day following the date of enactment of this Act [Aug. 26, 1994], the Secretary of Transportation shall initiate a rulemaking proceeding to determine whether the requirements of section 5103(b) of title 49, United States Code (relating to regulations for safe transportation), as they pertain to open head fiber drum packaging can be met for the domestic transportation of liquid hazardous materials (with respect to those classifications of liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards other than the performance-oriented packaging standards adopted under docket number HM-181 contained in part 178 of title 49, Code of Federal Regulations.

((b) Issuance of Standards.--If the Secretary of Transportation determines, as a result of the rulemaking proceeding initiated under subsection (a), that a packaging standard other than the performance-oriented packaging standards referred to in subsection (a) will provide an equal or greater level of safety for the domestic transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect, the Secretary shall issue regulations which implement such other standard and which take effect before October 1, 1996.

((c) Completion of Rulemaking Proceeding.--The rulemaking proceeding initiated under subsection (a) shall be completed before October 1, 1995.

((d) Limitations.--

((1) The provisions of subsections (a), (b), and (c) shall not apply to packaging for those hazardous materials regulated by the Department of Transportation as poisonous by inhalation under chapter 51 of title 49, United States Code.

((2) Nothing in this section shall be construed to prohibit the Secretary of Transportation from issuing or enforcing regulations for the international transportation of hazardous materials.'

## Section Referred to in Other Sections

This section is referred to in sections 5102, 5117, 5120, 5125, 31101, 31132, 31136, 31301, 31310, 40113 of this title; title 8 section 1288; title 46 section 2101.