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TITLE 46--SHIPPING

Subtitle II--Vessels and Seamen

Part B--Inspection and Regulation of Vessels

CHAPTER 33--INSPECTION GENERALLY

Sec. 3306. Regulations

(a) To carry out this part and to secure the safety of individuals and property on board vessels subject to inspection, the Secretary shall prescribe necessary regulations to ensure the proper execution of, and to carry out, this part in the most effective manner for--

(1) the design, construction, alteration, repair, and operation of those vessels, including superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, and accommodations for passengers and crew, sailing school instructors, and sailing school students;

(2) lifesaving equipment and its use;

(3) firefighting equipment, its use, and precautionary measures to guard against fire;

(4) inspections and tests related to paragraphs (1), (2), and (3) of this subsection; and

(5) the use of vessel stores and other supplies of a dangerous nature.

(b) (1) Equipment and material subject to regulation under this section may not be used on any vessel without prior approval of the Secretary.

(2) Except with respect to use on a public vessel, the Secretary may treat an approval of equipment or materials by a foreign government as approval by the Secretary for purposes of paragraph (1) if the Secretary determines that--

(A) the design standards and testing procedures used by that government meet the requirements of the International Convention for the Safety of Life at Sea, 1974;

(B) the approval of the equipment or material by the foreign government will secure the safety of individuals and property on board vessels subject to inspection; and

(C) for lifesaving equipment, the foreign government--

(i) has given equivalent treatment to approvals of lifesaving equipment by the Secretary; and

(ii) otherwise ensures that lifesaving equipment approved by the Secretary may be used on vessels that are documented and subject to inspection under the laws of that country.

(c) In prescribing regulations for sailing school vessels, the Secretary shall consult with representatives of the private sector having experience in the operation of vessels likely to be certificated as sailing school vessels. The regulations shall--

(1) reflect the specialized nature of sailing school vessel operations, and the character, design, and construction of vessels operating as sailing school vessels; and

(2) include requirements for notice to sailing school instructors and sailing school students about the specialized nature

of sailing school vessels and applicable safety regulations.

(d) In prescribing regulations for nautical school vessels operated by the United States Merchant Marine Academy or by a State maritime academy (as defined in section 1302(3) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295a(3))), the Secretary shall consider the function, purpose, and operation of the vessels, their routes, and the number of individuals who may be carried on the vessels.

(e) When the Secretary finds it in the public interest, the Secretary may suspend or grant exemptions from the requirements of a regulation prescribed under this section related to lifesaving and firefighting equipment, muster lists, ground tackle and hawsers, and bilge systems.

(f) In prescribing regulations for offshore supply vessels, the Secretary shall consider the characteristics, methods of operation, and the nature of the service of offshore supply vessels.

(g) In prescribing regulations for fish processing or fish tender vessels, the Secretary shall consult with representatives of the private sector having experience in the operation of these vessels. The regulations shall reflect the specialized nature and economics of fish processing or fish tender vessel operations and the character, design, and construction of fish processing or fish tender vessels.

(h) The Secretary shall establish appropriate structural fire protection, manning, operating, and equipment requirements for vessels of at least 100 gross tons but less than 300 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title carrying not more than 150 passengers on domestic voyages, which meet the eligibility criteria of section 2113(4) of this title.

(i) The Secretary shall establish appropriate structural fire protection, manning, operating, and equipment requirements for former public vessels of the United States of at least 100 gross tons but less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title carrying not more than 150 passengers on domestic voyages, which meet the eligibility criteria of section 2113(5) of this title.

(Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 513; Pub. L. 98-364, title IV, Sec. 402(5), July 17, 1984, 98 Stat. 446; Pub. L. 103-206, title V, Sec. 512(a), Dec. 20, 1993, 107 Stat. 2442; Pub. L. 104-324, title VI, Sec. 604(a), (c), title VII, Sec. 712, Oct. 19, 1996, 110 Stat. 3930, 3931, 3936.)

Historical and Revision Notes

| Revised section | Source section (U.S. Code) |
|-----------------|----------------------------|
| 3306..... | 46:366 |
| | 46:369 |
| | 46:375 |
| | 46:390b |
| | 46:392 |
| | 46:404 |
| | 46:408 |
| | 46:411 |
| | 46:412 |
| | 46:416 |
| | 46:420 |
| | 46:445 |
| | 46:459 |
| | 46:473 |
| | 46:477 |
| | 46:478 |

46:479
46:481
46:482
46:483
46:489
46:526p
46:1295f(c)

Section 3306 contains broad authority to prescribe regulations for the proper inspection and certification of vessels. It provides regulatory flexibility for meeting technological changes. The section also permits flexibility in prescribing regulations for nautical school vessels operated by the United States Merchant Marine Academy or by a State maritime academy. The Secretary may suspend or grant exemptions to certain limited inspection requirements when the Secretary finds that this is necessary in the public interest. It also contains the requirement that in regulating offshore supply vessels consideration must be given to the special nature of their operations.

Amendments

1996--Subsec. (a)(4). Pub. L. 104-324, Sec. 604(c), substituted ``paragraphs (1), (2), and (3)'' for ``clauses (1)-(3)''.

Subsec. (b). Pub. L. 104-324, Sec. 604(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ``Equipment subject to regulation under this section may not be used on any vessel without prior approval as prescribed by regulation.''

Subsec. (h). Pub. L. 104-324, Sec. 712(1), inserted ``as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ``300 gross tons''.

Subsec. (i). Pub. L. 104-324, Sec. 712(2), inserted ``as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title'' after ``500 gross tons''.

1993--Subsecs. (h), (i). Pub. L. 103-206 added subsecs. (h) and (i).

1984--Subsec. (g). Pub. L. 98-364 added subsec. (g).

Regulations

Section 512(b), (c) of Pub. L. 103-206 provided that:

``(b) The Secretary of Transportation shall, within twenty-four months of the date of enactment of this Act [Dec. 20, 1993], prescribe regulations establishing the structural fire protection, manning, operating, and equipment requirements for vessels which meet the requirements of subsections (h) and (i) of section 3306 of title 46, United States Code, as amended by this Act.

``(c) Before the Secretary of Transportation prescribes regulations under subsections (h) and (i) of section 3306 of title 46, United States Code, as amended by this Act, the Secretary may prescribe the route, service, manning, and equipment for those vessels based on existing passenger vessel and small passenger vessel regulations.''

Foreign Approvals

Section 604(b) of Pub. L. 104-324 provided that: ``The Secretary of Transportation, in consultation with other interested Federal agencies, shall work with foreign governments to have those governments approve the use of the same equipment and materials on vessels documented under the laws of those countries that the Secretary requires on United States documented vessels.''

International Convention for Safety of Life at Sea

For International Conventions for the Safety of Life at Sea to which the United States has been a party, see section 1602 of Title 33, Navigation and Navigable Waters, and notes thereunder.

Section Referred to in Other Sections

This section is referred to in sections 3313, 3318 of this title.

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TITLE 46--SHIPPING

Subtitle II--Vessels and Seamen

Part B--Inspection and Regulation of Vessels

CHAPTER 37--CARRIAGE OF LIQUID BULK DANGEROUS CARGOES

Sec. 3703. Regulations

(a) The Secretary shall prescribe regulations for the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels to which this chapter applies, that may be necessary for increased protection against hazards to life and property, for navigation and vessel safety, and for enhanced protection of the marine environment. The Secretary may prescribe different regulations applicable to vessels engaged in the domestic trade, and also may prescribe regulations that exceed standards set internationally. Regulations prescribed by the Secretary under this subsection are in addition to regulations prescribed under other laws that may apply to any of those vessels. Regulations prescribed under this subsection shall include requirements about--

- (1) superstructures, hulls, cargo holds or tanks, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, and boilers;
- (2) the handling or stowage of cargo, the manner of handling or stowage of cargo, and the machinery and appliances used in the handling or stowage;
- (3) equipment and appliances for lifesaving, fire protection, and prevention and mitigation of damage to the marine environment;
- (4) the manning of vessels and the duties, qualifications, and training of the officers and crew;
- (5) improvements in vessel maneuvering and stopping ability and other features that reduce the possibility of marine casualties;
- (6) the reduction of cargo loss if a marine casualty occurs; and
- (7) the reduction or elimination of discharges during ballasting, deballasting, tank cleaning, cargo handling, or other such activity.

(b) In prescribing regulations under subsection (a) of this section, the Secretary shall consider the types and grades of cargo permitted to be on board a tank vessel.

(c) In prescribing regulations under subsection (a) of this section, the Secretary shall establish procedures for consulting with, and receiving and considering the views of--

- (1) interested departments, agencies, and instrumentalities of the United States Government;
- (2) officials of State and local governments;
- (3) representatives of port and harbor authorities and associations;
- (4) representatives of environmental groups; and
- (5) other interested parties knowledgeable or experienced in dealing with problems involving vessel safety, port and waterways safety, and protection of the marine environment.

(Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 522.)

Historical and Revision Notes

| Revised section | Source section (U.S. Code) |
|-----------------|----------------------------|
| 3703..... | 46:391a(6) 46:391a(12) |

Section 3703 requires the Secretary to issue regulations to implement this section. Specific items are listed to be included within the regulations issued. The regulatory authority must be exercised under the Administrative Procedure Act and, in prescribing these regulations, the Secretary must consider the kinds and grades of cargo carried on board. Furthermore, in addition to any requirements of the Administrative Procedure Act, the Secretary must establish specific consultation procedures for considering the views of various specified interested officials, groups, and individuals. The procedures are intended to provide for consultation as early as possible in the regulatory process.

Studies Addressing Various Sources of Oil Spill Risk

Pub. L. 104-324, title IX, Sec. 903, Oct. 19, 1996, 110 Stat. 3947, provided that:

((a) Study of Group-5 Fuel Oil Spills.--

((1) Definition.--In this subsection, the term 'group-5 fuel oil' means a petroleum-based oil that has a specific gravity of greater than 1.0.

((2) Coordination of study.--The Secretary of Transportation shall coordinate with the Marine Board of the National Research Council to conduct a study of the relative environmental and public health risks posed by discharges of group-5 fuel oil.

((3) Matters to be included.--The study under this subsection shall include a review and analysis of--

((A) the specific risks posed to the public health or welfare of the United States, including fish, shellfish and wildlife, public and private property, shorelines, beaches, habitat, and other natural resources under the jurisdiction or control of the United States, as a result of an actual or threatened discharge of group-5 fuel oil from a vessel or facility;

((B) cleanup technologies currently available to address actual or threatened discharge of group-5 fuel oil; and

((C) any technological and financial barriers that prevent the prompt remediation of discharges of group-5 fuel oil.

((4) Report.--Not later than 18 months after the date of enactment of this Act [Oct. 19, 1996], the Secretary of Transportation shall submit to the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the study under this subsection.

((5) Rulemaking.--If the Secretary of Transportation determines, based on the results of the study under this subsection, that there are significant risks to public health or the environment resulting from the actual or threatened discharge of group-5 fuel oil from a vessel or facility that cannot be technologically or economically addressed by existing or anticipated cleanup efforts, the Secretary may initiate a rulemaking to take such action as is necessary to abate the threat.

((b) Study of Automatic Fueling Shutoff Equipment.--

((1) Coordination of study.--The Secretary of Transportation shall coordinate with the Marine Board of the National Research Council to conduct a study of the unintentional or accidental

discharge of fuel oil during lightering or fuel loading or off-loading activity.

((2) Matters to be included.--The study under this subsection shall include a review and analysis of current monitoring and fueling practices to determine the need for automatic fuel shutoff equipment to prevent the accidental discharge of fuel oil, and whether such equipment is needed as a supplement to or replacement of existing preventive equipment or procedures.

((3) Report.--Not later than 18 months after the date of enactment of this Act [Oct. 19, 1996], the Secretary of Transportation shall submit to the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the study under this subsection.

((4) Rulemaking.--If the Secretary of Transportation determines, based on the results of the study conducted under this subsection, that the use of automatic oil shutoff equipment is necessary to prevent the actual or threatened discharge of oil during lightering or fuel loading or off[-]loading activity, the Secretary may initiate a rulemaking to take such action as is necessary to abate a threat to public health or the environment.

((c) Lightering Study.--The Secretary of Transportation shall coordinate with the Marine Board of the National Research Council on a study into the actual incidence and risk of oil spills from lightering operations off the coast of the United States. Among other things, the study shall address the manner in which existing regulations are serving to reduce oil spill risks. The study shall take into account current or proposed international rules and standards and also include recommendations on measures that would be likely to further reduce the risks of oil spills from lightering operations. Not later than 18 months after the date of enactment of this Act [Oct. 19, 1996], the Secretary shall submit a report on the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.''

Existing Tank Vessel Research

Pub. L. 104-324, title XI, Sec. 1134, Oct. 19, 1996, 110 Stat. 3985, provided that:

((a) Funding.--The Secretary of Transportation shall take steps to allocate funds appropriated for research, development, testing, and evaluation, including the combination of funds from any source available and authorized for this purpose, to ensure that any Government-sponsored project intended to evaluate double hull alternatives that provide equal or greater protection to the marine environment, or interim solutions to remediate potential environmental damage resulting from oil spills from existing tank vessels, commenced prior to the date of enactment of this section [Oct. 19, 1996], is fully funded for completion by the end of fiscal year 1997. Any vessel construction or repair necessary to carry out the purpose of this section must be performed in a shipyard located in the United States.

((b) Use of Public Vessels.--The Secretary may provide vessels owned by, or demise chartered to, and operated by the Government and not engaged in commercial service, without reimbursement, for use in and the support of projects sponsored by the Government for research, development, testing, evaluation, and demonstration of new or improved technologies that are effective in preventing or mitigating oil discharges and protecting the environment.''

Oil Spill Prevention and Response Technology Test and Evaluation Program

Pub.L. 103-206, title III, Sec. 310, Dec. 20, 1993, 107 Stat. 2425,

provided that:

``(a) Not later than 6 months after the date of enactment of this Act [Dec. 20, 1993], the Secretary of Transportation shall establish a program to evaluate the technological feasibility and environmental benefits of having tank vessels carry oil spill prevention and response technology. To implement the program the Secretary shall--

``(1) publish in the Federal Register an invitation for submission of proposals including plans and procedures for testing; and

``(2) review and evaluate technology using, to the maximum extent possible, existing evaluation and performance standards.

``(b) The Secretary shall, to the maximum extent possible, incorporate in the program established in subsection (a), the results of existing studies and evaluations of oil spill prevention and response technology carried on tank vessels.

``(c) Not later than 2 years after the date of the enactment of this Act [Dec. 20, 1993], the Secretary shall evaluate the results of the program established in subsection (a) and submit a report to Congress with recommendations on the feasibility and environmental benefits of, and appropriate equipment and utilization standards for, requiring tank vessels to carry oil spill prevention and response equipment.

``(d) Not later than 6 months after the date of the enactment of this Act [Dec. 20, 1993], the Secretary shall evaluate and report to the Congress on the feasibility of using segregated ballast tanks for emergency transfer of cargo and storage of recovered oil.''

Regulations Requiring Periodic Gauging of Plating Thickness for Oil Carrying Commercial Vessels

Pub. L. 101-380, title IV, Sec. 4109, Aug. 18, 1990, 104 Stat. 515, provided that: ``Not later than 1 year after the date of the enactment of this Act [Aug. 18, 1990], the Secretary shall issue regulations for vessels constructed or adapted to carry, or that carry, oil in bulk as cargo or cargo residue--

``(1) establishing minimum standards for plating thickness; and

``(2) requiring, consistent with generally recognized principles of international law, periodic gauging of the plating thickness of all such vessels over 30 years old operating on the navigable waters or the waters of the exclusive economic zone.''

Regulations Requiring Use of Overfill and Tank Level or Monitoring Devices on Oil Carrying Commercial Vessels

Pub. L. 101-380, title IV, Sec. 4110, Aug. 18, 1990, 104 Stat. 515, provided that:

``(a) Standards.--Not later than 1 year after the date of the enactment of this Act [Aug. 18, 1990], the Secretary shall establish, by regulation, minimum standards for devices for warning persons of overfills and tank levels of oil in cargo tanks and devices for monitoring the pressure of oil cargo tanks.

``(b) Use.--Not later than 1 year after the date of the enactment of this Act [Aug. 18, 1990], the Secretary shall issue regulations establishing, consistent with generally recognized principles of international law, requirements concerning the use of--

``(1) overfill devices, and

``(2) tank level or pressure monitoring devices, which are referred to in subsection (a) and which meet the standards established by the Secretary under subsection (a), on vessels constructed or adapted to carry, or that carry, oil in bulk as cargo or cargo residue on the navigable waters and the waters of the exclusive economic zone.''

Tanker Navigation Safety Standards Study

Pub. L. 101-380, title IV, Sec. 4111, Aug. 18, 1990, 104 Stat. 515, directed Secretary, not later than 2 years after Aug. 18, 1990, to conduct a study and report to Congress on whether existing laws and regulations are adequate to ensure safe navigation of vessels transporting oil or hazardous substances in bulk on navigable waters and waters of the exclusive economic zone.

Rules Governing Operation of Vessels on Auto-Pilot or With Unattended Engine Room

Pub. L. 101-380, title IV, Sec. 4114(a), Aug. 18, 1990, 104 Stat. 517, provided that: ``In order to protect life, property, and the environment, the Secretary shall initiate a rulemaking proceeding within 180 days after the date of the enactment of this Act [Aug. 18, 1990] to define the conditions under, and designate the waters upon, which tank vessels subject to section 3703 of title 46, United States Code, may operate in the navigable waters with the auto-pilot engaged or with an unattended engine room.''

Regulations Requiring Escorts for Certain Tankers; ``Tanker'' Defined

Pub. L. 101-380, title IV, Sec. 4116(c), (d), Aug. 18, 1990, 104 Stat. 523, provided that:

``(c) Escorts for Certain Tankers.--Not later than 6 months after the date of the enactment of this Act [Aug. 18, 1990], the Secretary shall initiate issuance of regulations under section 3703(a)(3) of title 46, United States Code, to define those areas, including Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to United States jurisdiction), on which single hulled tankers over 5,000 gross tons transporting oil in bulk shall be escorted by at least two towing vessels (as defined under section 2101 of title 46, United States Code) or other vessels considered appropriate by the Secretary.

``(d) Tanker Defined.--In this section [amending section 8502 of this title] the term `tanker' has the same meaning the term has in section 2101 of title 46, United States Code.''

Section Referred to in Other Sections

This section is referred to in title 42 section 7511b.

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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.

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TITLE 49--TRANSPORTATION

SUBTITLE III--GENERAL AND INTERMODAL PROGRAMS

CHAPTER 51--TRANSPORTATION OF HAZARDOUS MATERIAL

Sec. 5106. Handling criteria

The Secretary of Transportation may prescribe criteria for handling hazardous material, including--

- (1) a minimum number of personnel;
- (2) minimum levels of training and qualifications for personnel;
- (3) the kind and frequency of inspections;
- (4) equipment for detecting, warning of, and controlling risks posed by the hazardous material;
- (5) specifications for the use of equipment and facilities used in handling and transporting the hazardous material; and
- (6) a system of monitoring safety procedures for transporting the hazardous material.

(Pub. L. 103-272, Sec. 1(d), July 5, 1994, 108 Stat. 763.)

Historical and Revision Notes

| Revised Section | Source (U.S. Code) | Sour |
|-----------------|--------------------|---------------------------|
| 5106..... | 49 App.:1805(a). | Jan. 3, 197 106(a), 88 |

Before clause (1), the text of 49 App.:1805(a) (last sentence) is omitted as being included in ``prescribe''. In clause (4), the words ``to be used'' are omitted as surplus. In clause (6), the word ``assurance'' is omitted as surplus.

Section Referred to in Other Sections

This section is referred to in section 5107 of this title; title 8 section 1288.

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TITLE 49--TRANSPORTATION

SUBTITLE III--GENERAL AND INTERMODAL PROGRAMS

CHAPTER 51--TRANSPORTATION OF HAZARDOUS MATERIAL

Sec. 5121. Administrative

(a) General Authority.--To carry out this chapter, the Secretary of Transportation may investigate, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. After notice and an opportunity for a hearing, the Secretary may issue an order requiring compliance with this chapter or a regulation prescribed under this chapter.

(b) Records, Reports, and Information.--A person subject to this chapter shall--

(1) maintain records, make reports, and provide information the Secretary by regulation or order requires; and

(2) make the records, reports, and information available when the Secretary requests.

(c) Inspection.--(1) The Secretary may authorize an officer, employee, or agent to inspect, at a reasonable time and in a reasonable way, records and property related to--

(A) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, testing, or distributing a packaging or a container for use by a person in transporting hazardous material in commerce; or

(B) the transportation of hazardous material in commerce.

(2) An officer, employee, or agent under this subsection shall display proper credentials when requested.

(d) Facility, Staff, and Reporting System on Risks, Emergencies, and Actions.--(1) The Secretary shall--

(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk related to the transportation of hazardous material and material alleged to be hazardous;

(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, other interested individuals, and officers and employees of the Government and State and local governments on meeting an emergency related to the transportation of hazardous material; and

(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

(2) Paragraph (1) of this subsection does not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

(e) Report.--The Secretary shall, once every 2 years, prepare and submit to the President for transmittal to the Congress a comprehensive report on the transportation of hazardous materials during the preceding 2 calendar years. The report shall include--

- (1) a statistical compilation of accidents and casualties related to the transportation of hazardous material;
- (2) a list and summary of applicable Government regulations, criteria, orders, and exemptions;
- (3) a summary of the basis for each exemption;
- (4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with regulations;
- (5) a summary of outstanding problems in carrying out this chapter in order of priority; and
- (6) recommendations for appropriate legislation.

(Pub. L. 103-272, Sec. 1(d), July 5, 1994, 108 Stat. 779; Pub. L. 103-311, title I, Secs. 108, 117(a)(2), Aug. 26, 1994, 108 Stat. 1674, 1678.)

Historical and Revision Notes

| Revised Section | Source (U.S. Code) | Sour |
|-----------------|---|---|
| 5121(a)..... | 49 App.:1808(a) (1st sentence, last sentence words before semicolon). | Jan. 3, 197 109(a) (1s words befo Stat. 2159 |
| 5121(b)..... | 49 App.:1808(b). | |
| 5121(c)..... | 49 App.:1808(c). | |
| 5121(d)..... | 49 App.:1808(d). | Jan. 3, 197 109(d), 88 Pub. L. 98 2907; Nov. Sec. 11, |
| 5121(e)..... | 49 App.:1808(e). | Jan. 3, 197 109(e), 88 Pub. L. 98 2907. |

In subsection (a), the words ``to the extent necessary . . . his responsibilities under'' and ``relevant'' are omitted as surplus. The word ``documents'' is omitted as being included in ``records''. The words ``directly or indirectly'' are omitted as surplus. The word ``prescribed'' is substituted for ``issued'' for consistency in the revised title and with other titles of the United States Code.

In subsection (b), before clause (1), the words ``requirements under'' are omitted as surplus. In clause (1), the words ``establish and'' are omitted as surplus. The word ``requires'' is substituted for ``prescribe'' for clarity and consistency.

In subsection (c) (1), before clause (A), the words ``enter upon . . . and examine'' and ``of persons to the extent such records and properties'' are omitted as surplus. In clause (B), the words ``or shipment by any person'' are omitted as surplus.

In subsection (d) (1), before clause (A), the words ``establish and'' are omitted as executed. In clause (B), the words ``capable of'' are substituted for ``so as to be able to'' to eliminate unnecessary words. The words ``technical and other'' and ``of communities'' are omitted as surplus. The words ``and employees'' are added for consistency in the revised title and with other titles of the Code. In clause (C), the words ``in order'' and ``to be able to'' are omitted as surplus.

In subsection (e), before clause (1), the words ``prepare and'' and ``comprehensive'' are omitted as surplus. In clause (1), the word ``thorough'' is omitted as surplus. In clause (2), the words ``in effect'' are omitted as surplus. In clause (3), the words ``granted or maintained'' are omitted as surplus. In clause (6), the words ``additional . . . as are deemed necessary or'' are omitted as surplus.

Amendments

1994--Subsec. (c) (1) (A). Pub. L. 103-311, Sec. 117(a) (2), substituted ``a packaging or a'' for ``a package or''.

Subsec. (e). Pub. L. 103-311, Sec. 108, substituted ``Report'' for ``Annual Report'' in heading and substituted first sentence for former first sentence which read as follows: ``The Secretary shall submit to the President, for submission to Congress, not later than June 15th of each year, a report about the transportation of hazardous material during the prior calendar year.''

Termination of Reporting Requirements

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 8th item on page 135 identifies a requirement to transmit reports to Congress under a provision which, as subsequently amended, is contained in subsec. (e) of this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

Toll Free Number for Reporting

Section 116 of Pub. L. 103-311 provided that: ``The Secretary of Transportation shall designate a toll free telephone number for transporters of hazardous materials and other individuals to report to the Secretary possible violations of chapter 51 of title 49, United States Code, or any order or regulation issued under that chapter.''

Section Referred to in Other Sections

This section is referred to in section 5710 of this title.