

“(5) in order to provide reasonable, adequate, and cost-effective protection from the risks posed by the transportation of hazardous materials, a network of well-trained State and local emergency response personnel and hazmat employees is essential.”

BUY AMERICAN

Pub. L. 103-311, title I, §123, Aug. 26, 1994, 108 Stat. 1682, provided that:

“(a) COMPLIANCE WITH BUY AMERICAN ACT.—None of the funds made available under this title [see Short Title of 1994 Amendment note above] may be expended in violation of sections 2 through 4 of the Act of March 3, 1933 ([former] 41 U.S.C. 10a-10c; popularly known as the ‘Buy American Act’ [see 41 U.S.C. 8301 et seq.]), which are applicable to those funds.

“(b) SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE.—

“(1) In the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this title, it is the sense of Congress that entities receiving such assistance should, in expending such assistance, purchase only American-made equipment and products.

“(2) In providing financial assistance under this title, the Secretary of Transportation shall provide to each recipient of the assistance a notice describing the statement made in paragraph (1) by Congress.

“(c) PROHIBITION OF CONTRACTS.—If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a ‘Made in America’ inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to this title, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

“(d) RECIPROCITY.—

“(1) Except as provided in paragraph (2), no contract or subcontract may be made with funds authorized under this title to a company organized under the laws of a foreign country unless the Secretary of Transportation finds that such country affords comparable opportunities to companies organized under laws of the United States.

“(2)(A) The Secretary of Transportation may waive the provisions of paragraph (1) if the products or services required are not reasonably available from companies organized under the laws of the United States. Any such waiver shall be reported to Congress.

“(B) Paragraph (1) shall not apply to the extent that to do so would violate the General Agreement on Tariffs and Trade or any other international agreement to which the United States is a party.”

“SECRETARY” DEFINED

Pub. L. 112-141, div. C, title III, §33002, July 6, 2012, 126 Stat. 832, provided that: “In this title [see Tables for classification], the term ‘Secretary’ means the Secretary of Transportation.”

§ 5102. Definitions

In this chapter—

(1) “commerce” means trade or transportation in the jurisdiction of the United States—

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

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

(C) on a United States-registered aircraft.

(2) “hazardous material” means a substance or material the Secretary designates under section 5103(a) of this title.

(3) “hazmat employee”—

(A) means an individual—

(i) who—

(I) is employed on a full time, part time, or temporary basis by a hazmat employer; or

(II) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

(ii) who during the course of such full time, part time, or temporary employment, or such self employment, directly affects hazardous material transportation safety as the Secretary decides by regulation; and

(B) includes an individual, employed on a full time, part time, or temporary basis by a hazmat employer, or self employed, who during the course of employment—

(i) loads, unloads, or handles hazardous material;

(ii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce;

(iii) prepares hazardous material for transportation;

(iv) is responsible for the safety of transporting hazardous material; or

(v) operates a vehicle used to transport hazardous material.

(4) “hazmat employer”—

(A) means a person—

(i) who—

(I) employs or uses at least 1 hazmat employee on a full time, part time, or temporary basis; or

(II) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

(ii) who—

(I) transports hazardous material in commerce;

(II) causes hazardous material to be transported in commerce; or

(III) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; and

(B) includes a department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, carrying out an activity described in clause (ii).

(5) “imminent hazard” means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the

reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

(6) “Indian tribe” has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).¹

(7) “motor carrier”—

(A) means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102; but

(B) does not include a freight forwarder, as so defined, if the freight forwarder is not performing a function relating to highway transportation.

(8) “National Response Team” means the National Response Team established under the National Contingency Plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605).

(9) “person”, in addition to its meaning under section 1 of title 1—

(A) includes a government, Indian tribe, or authority of a government or tribe that—

(i) offers hazardous material for transportation in commerce;

(ii) transports hazardous material to further a commercial enterprise; or

(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; but

(B) does not include—

(i) the United States Postal Service; and

(ii) in sections 5123 and 5124 of this title, a department, agency, or instrumentality of the Government.

(10) “public sector employee”—

(A) means an individual employed by a State, political subdivision of a State, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material;

(B) includes an individual employed by a State, political subdivision of a State, or Indian tribe as a firefighter or law enforcement officer; and

(C) includes an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, or Indian tribe.

(11) “Secretary” means the Secretary of Transportation except as otherwise provided.

(12) “State” means—

(A) except in section 5119 of this title, a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States designated by the Secretary; and

(B) in section 5119 of this title, a State of the United States and the District of Columbia.

(13) “transports” or “transportation” means the movement of property and loading, unloading, or storage incidental to the movement.

(14) “United States” means all of the States.

(Pub. L. 103–272, §1(d), July 5, 1994, 108 Stat. 759; Pub. L. 103–311, title I, §117(a)(1), Aug. 26, 1994, 108 Stat. 1678; Pub. L. 104–88, title III, §308(d), Dec. 29, 1995, 109 Stat. 947; Pub. L. 109–59, title VII, §§7102, 7126, Aug. 10, 2005, 119 Stat. 1892, 1909; Pub. L. 110–244, title III, §302(a), June 6, 2008, 122 Stat. 1618.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5102(1)	49 App.:1802(1)–(3), (13).	Jan. 3, 1975, Pub. L. 93–633, §103, 88 Stat. 2156; re-stated Nov. 16, 1990, Pub. L. 101–615, §3(a), 104 Stat. 3245; Oct. 24, 1992, Pub. L. 102–508, §§501, 502, 106 Stat. 3311.
5102(2)	49 App.:1802(4).	
5102(3)	49 App.:1802(5).	
5102(4)	49 App.:1802(6).	
5102(5)	49 App.:1802(7).	
5102(6)	49 App.:1802(8).	
5102(7)	49 App.:1802(9).	
5102(8)	49 App.:1802(10).	
5102(9)	49 App.:1802(11).	
5102(10)	49 App.:1802(12).	
5102(11)	49 App.:1802(14).	
5102(12)	49 App.:1802(15).	
5102(13)	49 App.:1802(16).	

In this chapter, the words “or shipped” are omitted as being included in “transported”.

In clause (1), before subclause (A), the text of 49 App.:1802(1), (3), and (13) is omitted because the complete names of the Administrator of the Environmental Protection Agency, Director of the Federal Emergency Management Agency, and Secretary of Transportation are used the first time the terms appear in a section. The words “traffic, commerce” are omitted as surplus. In subclause (B), the words “between a place in a State and a place outside of the State” are substituted for “described in clause (A)” for clarity.

In clauses (3)(C) and (10)(B), the words “at a minimum” are omitted as surplus.

In clause (5), the words “administrative hearing or other” are omitted as surplus.

In clause (9), before subclause (A), the words “including any trustee, receiver, assignee, or similar representative thereof” are omitted as surplus.

In clause (12), the words “by any mode” are omitted as surplus.

REFERENCES IN TEXT

Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), referred to in par. (6), is section 4 of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2204, which was classified to section 450b of Title 25, Indians, prior to editorial reclassification as section 5304 of Title 25.

AMENDMENTS

2008—Par. (3). Pub. L. 110–244 amended Pub. L. 109–59, §7102(2). See 2005 Amendment notes below.

2005—Par. (1)(C). Pub. L. 109–59, §7102(1), added sub-par. (C).

Par. (2). Pub. L. 109–59, §7126, substituted “Secretary” for “Secretary of Transportation”.

Par. (3)(A)(i). Pub. L. 109–59, §7102(2)(A), as amended by Pub. L. 110–244, §302(a)(1), (2), added cl. (i) and struck out former cl. (i) which read as follows: “employed by a hazmat employer; and”.

Par. (3)(A)(ii). Pub. L. 109–59, §7102(2)(B), as amended by Pub. L. 110–244, §302(a)(1), (3), substituted “course of such full time, part time, or temporary employment, or such self employment,” for “course of employment” and inserted “and” at end.

¹ See References in Text note below.

Par. (3)(B). Pub. L. 109-59, §7102(2)(D)(i), as amended by Pub. L. 110-244, §302(a)(1), substituted “employed on a full time, part time, or temporary basis by a hazmat employer, or self employed,” for “employed by a hazmat employer,” in introductory provisions.

Pub. L. 109-59, §7102(2)(C), as amended by Pub. L. 110-244, §302(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “includes an owner-operator of a motor vehicle transporting hazardous material in commerce; and”.

Par. (3)(B)(ii). Pub. L. 109-59, §7102(2)(D)(ii), as amended by Pub. L. 110-244, §302(a)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: “manufactures, reconditions, or tests containers, drums, and packagings represented as qualified for use in transporting hazardous material;”.

Par. (3)(C). Pub. L. 109-59, §7102(2)(C), as amended by Pub. L. 110-244, §302(a)(1), redesignated subpar. (C) as (B).

Par. (4). Pub. L. 109-59, §7102(3), amended par. (4) generally. Prior to amendment, par. (4) consisted of subpars. (A) to (C), which included within definition of “hazmat employer” a person using at least one employee in connection with transporting or containers for transporting hazardous material, an owner-operator of a motor vehicle transporting hazardous material in commerce, and a department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, carrying out certain described activities.

Par. (5). Pub. L. 109-59, §7102(4), inserted “relating to hazardous material” after “of a condition”.

Par. (7). Pub. L. 109-59, §7102(5), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “‘motor carrier’ means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102 of this title.”

Par. (8). Pub. L. 109-59, §7102(6), substituted “National Response Team” for “national response team” in two places and “National Contingency Plan” for “national contingency plan”.

Par. (9)(A). Pub. L. 109-59, §7102(7), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “includes a government, Indian tribe, or authority of a government or tribe offering hazardous material for transportation in commerce or transporting hazardous material to further a commercial enterprise; but”.

Pars. (11) to (14). Pub. L. 109-59, §7102(8), added par. (11) and redesignated former pars. (11) to (13) as (12) to (14), respectively.

1995—Par. (7). Pub. L. 104-88 substituted “motor carrier, motor private” for “motor common carrier, motor contract carrier, motor private” and “section 13102” for “section 10102”.

1994—Pars. (3)(C)(ii), (4)(A)(iii). Pub. L. 103-311 substituted “packagings” for “packages”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-244 effective as of the date of enactment of Pub. L. 109-59 (Aug. 10, 2005) and to be treated as included in Pub. L. 109-59 as of that date, and provisions of Pub. L. 109-59, as in effect on the day before June 6, 2008, that are amended by Pub. L. 110-244 to be treated as not enacted, see section 121(b) of Pub. L. 110-244, set out as a note under section 101 of Title 23, Highways.

§ 5103. General regulatory authority

(a) DESIGNATING MATERIAL AS HAZARDOUS.—The Secretary shall designate material (including an explosive, radioactive material, infectious substance, flammable or combustible liquid, solid, or gas, toxic, oxidizing, or corrosive material, and compressed gas) or a group or class of material as hazardous when the Secretary determines 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, including security, of hazardous material in intrastate, interstate, and foreign commerce. The regulations—

(A) apply to a person who—

(i) transports hazardous material in commerce;

(ii) causes hazardous material to be transported in commerce;

(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce;

(iv) prepares or accepts hazardous material for transportation in commerce;

(v) is responsible for the safety of transporting hazardous material in commerce;

(vi) certifies compliance with any requirement under this chapter; or

(vii) misrepresents whether such person is engaged in any activity under clause (i) through (vi); and

(B) shall govern safety aspects, including security, 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.

(c) FEDERALLY DECLARED DISASTERS AND EMERGENCIES.—

(1) IN GENERAL.—The Secretary may by order waive compliance with any part of an applicable standard prescribed under this chapter without prior notice and comment and on terms the Secretary considers appropriate if the Secretary determines that—

(A) it is in the public interest to grant the waiver;

(B) the waiver is not inconsistent with the safety of transporting hazardous materials; and

(C) the waiver is necessary to facilitate the safe movement of hazardous materials into, from, and within an area of a major disaster or emergency that has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) PERIOD OF WAIVER.—A waiver under this subsection may be issued for a period of not more than 60 days and may be renewed upon application to the Secretary only after notice and an opportunity for a hearing on the waiver. The Secretary shall immediately revoke the waiver if continuation of the waiver would not be consistent with the goals and objectives of this chapter.

(3) STATEMENT OF REASONS.—The Secretary shall include in any order issued under this section the reasons for granting the waiver.

(d) CONSULTATION.—When prescribing a security regulation or issuing a security order that