

## 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.

**§ 5116. Planning and training grants, monitoring, and review**

(a) PLANNING AND TRAINING GRANTS.—(1) The Secretary shall make grants to States and Indian tribes—

(A) to develop, improve, and carry out emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.), including ascertaining flow patterns of hazardous material on lands under the jurisdiction of a State or Indian tribe, and between lands under the jurisdiction of a State or Indian tribe and lands of another State or Indian tribe;

(B) to decide on the need for regional hazardous material emergency response teams; and

(C) to train public sector employees to respond to accidents and incidents involving hazardous material.

(2) To the extent that a grant is used to train emergency responders under paragraph (1)(C), the State or Indian tribe shall provide written certification to the Secretary that the emergency responders who receive training under the grant will have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations or National Fire Protection Association standards for competence of responders to accidents and incidents involving hazardous materials.

(3) The Secretary may make a grant to a State or Indian tribe under paragraph (1) of this subsection only if—

(A) the State or Indian tribe certifies that the total amount the State or Indian tribe expends (except amounts of the Federal Government) for the purpose of the grant will at least equal the average level of expenditure for the last 5 years; and

(B) any emergency response training provided under the grant shall consist of—

(i) a course developed or identified under section 5115 of this title; or

(ii) any other course the Secretary determines is consistent with the objectives of this section.

(4) A State or Indian tribe receiving a grant under this subsection shall ensure that planning and emergency response training under the grant is coordinated with adjacent States and Indian tribes.

(5) A training grant under paragraph (1)(C) may be used—

(A) to pay—

(i) the tuition costs of public sector employees being trained;

(ii) travel expenses of those employees to and from the training facility;

(iii) room and board of those employees when at the training facility; and

(iv) travel expenses of individuals providing the training;

(B) by the State, political subdivision, or Indian tribe to provide the training; and

(C) to make an agreement with a person (including an authority of a State, a political subdivision of a State or Indian tribe, or a local jurisdiction), subject to approval by the Secretary, to provide the training if—

(i) the agreement allows the Secretary and the State or Indian tribe to conduct random examinations, inspections, and audits of the training without prior notice;

(ii) the person agrees to have an auditable accounting system; and

(iii) the State or Indian tribe conducts at least one on-site observation of the training each year.

(6) The Secretary shall allocate amounts made available for grants under this subsection among eligible States and Indian tribes based on the needs of the States and Indian tribes for emergency response planning and training. In making a decision about those needs, the Secretary shall consider—

(A) the number of hazardous material facilities in the State or on land under the jurisdiction of the Indian tribe;

(B) the types and amounts of hazardous material transported in the State or on such land;

(C) whether the State or Indian tribe imposes and collects a fee for transporting hazardous material;

(D) whether such fee is used only to carry out a purpose related to transporting hazardous material;

(E) the past record of the State or Indian tribe in effectively managing planning and training grants; and

(F) any other factors the Secretary determines are appropriate to carry out this subsection.

(b) COMPLIANCE WITH CERTAIN LAW.—The Secretary may make a grant to a State under this section in a fiscal year only if the State certifies that the State complies with sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001, 11003).

(c) APPLICATIONS.—A State or Indian tribe interested in receiving a grant under this section shall submit an application to the Secretary. The application must be submitted at the time, and contain information, the Secretary requires by regulation to carry out the objectives of this section.

(d) GOVERNMENT'S SHARE OF COSTS.—A grant under this section is for 80 percent of the cost the State or Indian tribe incurs in the fiscal year to carry out the activity for which the grant is made. Amounts of the State or tribe under subsection (a)(3)(A) of this section are not part of the non-Government share under this subsection.

(e) MONITORING AND TECHNICAL ASSISTANCE.—In coordination with the Secretaries of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the National Institute of Environmental Health Sciences, the Administrator of the Federal Emergency Management Agency shall monitor

public sector emergency response planning and training for an accident or incident involving hazardous material. Considering the results of the monitoring, the Secretaries, Administrators, and Director each shall provide technical assistance to a State, political subdivision of a State, or Indian tribe for carrying out emergency response training and planning for an accident or incident involving hazardous material and shall coordinate the assistance using the existing coordinating mechanisms of the National Response Team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee.

(f) DELEGATION OF AUTHORITY.—To minimize administrative costs and to coordinate Federal financial assistance for emergency response training and planning, the Secretary may delegate to the Administrator of the Federal Emergency Management Agency, Director of the National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, and Secretaries of Labor and Energy any of the following:

- (1) authority to receive applications for grants under this section.
- (2) authority to review applications for technical compliance with this section.
- (3) authority to review applications to recommend approval or disapproval.
- (4) any other ministerial duty associated with grants under this section.

(g) MINIMIZING DUPLICATION OF EFFORT AND EXPENSES.—The Secretaries of Transportation, Labor, and Energy, Administrator of the Federal Emergency Management Agency, Director of the National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, and Administrator of the Environmental Protection Agency shall review periodically, with the head of each department, agency, or instrumentality of the Government, all emergency response and preparedness training programs of that department, agency, or instrumentality to minimize duplication of effort and expense of the department, agency, or instrumentality in carrying out the programs and shall take necessary action to minimize duplication.

(h) ANNUAL REGISTRATION FEE ACCOUNT AND ITS USES.—The Secretary of the Treasury shall establish an account in the Treasury (to be known as the “Hazardous Materials Emergency Preparedness Fund”) into which the Secretary of the Treasury shall deposit amounts the Secretary of Transportation transfers to the Secretary of the Treasury under section 5108(g)(2)(C) of this title. Without further appropriation, amounts in the account are available—

- (1) to make grants under this section and section 5107(e);
- (2) to monitor and provide technical assistance under subsection (e) of this section;
- (3) to publish and distribute an emergency response guide; and
- (4) to pay administrative costs of carrying out this section and sections 5107(e) and 5108(g)(2) of this title, except that not more than 2 percent of the amounts made available from the account in a fiscal year may be used to pay those costs.

(i) SUPPLEMENTAL TRAINING GRANTS.—

(1) In order to further the purposes of subsection (a), the Secretary shall, subject to the availability of funds and through a competitive process, make a grant or make grants to national nonprofit fire service organizations for the purpose of training instructors to conduct hazardous materials response training programs for individuals with statutory responsibility to respond to hazardous materials accidents and incidents.

(2) For the purposes of this subsection the Secretary, after consultation with interested organizations, shall—

- (A) identify regions or locations in which fire departments or other organizations which provide emergency response to hazardous materials transportation accidents and incidents are in need of hazardous materials training; and
- (B) prioritize such needs and develop a means for identifying additional specific training needs.

(3) Funds granted to an organization under this subsection shall only be used—

- (A) to provide training, including portable training, for instructors to conduct hazardous materials response training programs;
- (B) to purchase training equipment used exclusively to train instructors to conduct such training programs; and
- (C) to disseminate such information and materials as are necessary for the conduct of such training programs.

(4) The Secretary may only make a grant to an organization under this subsection in a fiscal year if the organization enters into an agreement with the Secretary to provide training, including portable training, for instructors to conduct hazardous materials response training programs in such fiscal year that will use—

- (A) a course or courses developed or identified under section 5115 of this title; or
- (B) other courses which the Secretary determines are consistent with the objectives of this subsection;

for training individuals with statutory responsibility to respond to accidents and incidents involving hazardous materials. Such agreement also shall provide that training courses shall comply with Federal regulations and national consensus standards for hazardous materials response and be open to all such individuals on a nondiscriminatory basis.

(5) The Secretary may not award a grant to an organization under this subsection unless the organization ensures that emergency responders who receive training under the grant will have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations or National Fire Protection Association standards for competence of responders to accidents and incidents involving hazardous materials.

(6) Notwithstanding paragraphs (1) and (3), to the extent determined appropriate by the

Secretary, a grant awarded by the Secretary to an organization under this subsection to conduct hazardous material response training programs may be used to train individuals with responsibility to respond to accidents and incidents involving hazardous material.

(7) For the purposes of this subsection, the term “portable training” means live, instructor-led training provided by certified fire service instructors that can be offered in any suitable setting, rather than specific designated facilities. Under this training delivery model, instructors travel to locations convenient to students and utilize local facilities and resources.

(8) The Secretary may impose such additional terms and conditions on grants to be made under this subsection as the Secretary determines are necessary to protect the interests of the United States and to carry out the objectives of this subsection.

(j) REPORTS.—The Secretary shall submit an annual report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and make available the report to the public. The report submitted under this subsection shall include information on the allocation and uses of the planning and training grants under subsection (a) and grants under subsection (i) of this section and under subsections (e) and (i) of section 5107. The report submitted under this subsection shall identify the ultimate recipients of such grants and include—

- (1) a detailed accounting and description of each grant expenditure by each grant recipient, including the amount of, and purpose for, each expenditure;
- (2) the number of persons trained under the grant program, by training level;
- (3) an evaluation of the efficacy of such planning and training programs; and
- (4) any recommendations the Secretary may have for improving such grant programs.

(Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 773; Pub. L. 103-311, title I, §§105, 119(a), (d)(2), (3), Aug. 26, 1994, 108 Stat. 1673, 1679, 1680; Pub. L. 103-429, §7(c), Oct. 31, 1994, 108 Stat. 4389; Pub. L. 104-287, §§5(8), 6(b), Oct. 11, 1996, 110 Stat. 3389, 3398; Pub. L. 109-59, title VII, §§7114(a)–(d)(2), (e), 7126, Aug. 10, 2005, 119 Stat. 1900, 1909; Pub. L. 109-295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410; Pub. L. 112-141, div. C, title III, §33004(b), July 6, 2012, 126 Stat. 832; Pub. L. 114-94, div. A, title VII, §7203(a), (b)(2), Dec. 4, 2015, 129 Stat. 1589, 1591.)

HISTORICAL AND REVISION NOTES  
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5116(a) .....	49 App.:1815(a).	Jan. 3, 1975, Pub. L. 93-633, 88 Stat. 2156, §117A(a)–(f), (g)(7), (9), (h)(6); added Nov. 16, 1990, Pub. L. 101-615, §17, 104 Stat. 3263, 3266, 3267, 3268.
5116(b)(1) ....	49 App.:1815(b)(1).	
5116(b)(2) ....	49 App.:1815(b)(2)–(4).	
5116(b)(3) ....	49 App.:1815(b)(5), (6).	

HISTORICAL AND REVISION NOTES—CONTINUED  
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5116(b)(4) ....	49 App.:1815(b)(7).	
5116(c) .....	49 App.:1815(c).	
5116(d) .....	49 App.:1815(e).	
5116(e) .....	49 App.:1815(d).	
5116(f) .....	49 App.:1815(g)(7).	
5116(g) .....	49 App.:1815(f).	
5116(h) .....	49 App.:1815(g)(9).	
5116(i) .....	49 App.:1815(h)(6).	

In subsections (a)(2)(A) and (b)(2)(A), the words “at least equal” are substituted for “be maintained at a level which does not fall below” to eliminate unnecessary words.

In subsection (a)(2)(B), the words “by the State emergency response commission” are omitted as surplus.

In subsection (b)(2)(B)(i), the words “or courses” are omitted because of 1.1.

In subsection (c), the words “including compliance with such sections with respect to accidents and incidents involving the transportation of hazardous materials” are omitted as surplus.

In subsection (d), the word “section” is substituted for “subsection” for clarity because there are no objectives in the subsection being restated.

In subsection (e), the words “A grant under this section is for” are substituted for “By a grant under this section, the Secretary shall reimburse any State or Indian tribe an amount not to exceed” to eliminate unnecessary words and for consistency in the revised title. The words “which are required to be expended under subsections (a)(2) and (b)(2) of this section” are omitted as surplus. The words “under this subsection” are added for clarity.

In subsection (h), the words “including coordination of training programs” are omitted as surplus.

PUB. L. 104-287, §5(8)

This amends 49:5116(j)(4)(A) to correct an erroneous cross-reference.

REFERENCES IN TEXT

The Emergency Planning and Community Right-To-Know Act of 1986, referred to in subsec. (a)(1)(A), is title III of Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1728, which is classified generally to chapter 116 (§11001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11001 of Title 42 and Tables.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-94, §7203(a)(3), added subsec. (a) and struck out former subsec. (a) which related to planning grants.

Subsecs. (b), (c). Pub. L. 114-94, §7203(a)(1), (2), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which related to training grants.

Subsec. (d). Pub. L. 114-94, §7203(a)(1), (b)(2)(A), redesignated subsec. (e) as (d) and substituted “subsection (a)(3)(A)” for “subsections (a)(2)(A) and (b)(2)(A)”. Former subsec. (d) redesignated (c).

Subsecs. (e) to (g). Pub. L. 114-94, §7203(a)(1), redesignated subsecs. (f) to (h) as (e) to (g), respectively. Former subsec. (e) redesignated (d).

Subsec. (h). Pub. L. 114-94, §7203(a)(1), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Subsec. (h)(1). Pub. L. 114-94, §7203(b)(2)(B)(i), inserted “and section 5107(e)” after “section”.

Subsec. (h)(2). Pub. L. 114-94, §7203(b)(2)(B)(ii), substituted “subsection (e)” for “subsection (f)”.

Subsec. (h)(4). Pub. L. 114-94, §7203(b)(2)(B)(iii), substituted “5107(e) and 5108(g)(2)” for “5108(g)(2) and 5115”.

Subsec. (i). Pub. L. 114-94, §7203(a)(1), (b)(2)(C), redesignated subsec. (j) as (i) and substituted “subsection (a)” for “subsection (b)” in par. (1). Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 114-94, § 7203(b)(2)(D), substituted, in introductory provisions, “planning and training grants under subsection (a) and grants under subsection (i) of this section and under subsections (e) and (i) of section 5107” for “planning grants allocated under subsection (a), training grants under subsection (b), and grants under subsection (j) of this section and under section 5107” and redesignated subpars. (A) to (D) as pars. (1) to (4), respectively.

Pub. L. 114-94, § 7203(a)(1), redesignated subsec. (k) as (j). Former subsec. (j) redesignated (i).

Subsec. (k). Pub. L. 114-94, § 7203(a)(1), redesignated subsec. (k) as (j).

2012—Subsec. (b)(1). Pub. L. 112-141, § 33004(b)(1), inserted at end “To the extent that a grant is used to train emergency responders, the State or Indian tribe shall provide written certification to the Secretary that the emergency responders who receive training under the grant will have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations or National Fire Protection Association standards for competence of responders to accidents and incidents involving hazardous materials.”

Subsec. (j)(1). Pub. L. 112-141, § 33004(b)(2)(A), substituted “funds and through a competitive process, make a grant or make grants to national nonprofit fire service organizations for” for “funds, make grants to national nonprofit employee organizations engaged solely in fighting fires for”.

Subsec. (j)(3)(A). Pub. L. 112-141, § 33004(b)(2)(B), substituted “provide training, including portable training, for” for “train”.

Subsec. (j)(4). Pub. L. 112-141, § 33004(b)(2)(C)(ii), which directed insertion of “comply with Federal regulations and national consensus standards for hazardous materials response and” after “training course shall”, was executed by making the insertion after “training courses shall” in concluding provisions, to reflect the probable intent of Congress.

Pub. L. 112-141, § 33004(b)(2)(C)(i), substituted “provide training, including portable training, for” for “train” in introductory provisions.

Subsec. (j)(5) to (8). Pub. L. 112-141, § 33004(b)(2)(D), (E), added pars. (5) to (7) and redesignated former par. (5) as (8).

Subsec. (k). Pub. L. 112-141, § 33004(b)(3), substituted “an annual report” for “annually” and inserted “the report” after “make available” in first sentence, substituted “. The report submitted under this subsection shall include information” for “information” and “The report submitted under this subsection shall identify the ultimate recipients of such grants and include—” for “The report shall identify the ultimate recipients of training grants and include a detailed accounting of all grant expenditures by grant recipients, the number of persons trained under the grant programs, and an evaluation of the efficacy of training programs carried out.”, and added pars. (A) to (D).

2005—Subsec. (a)(1), (2). Pub. L. 109-59, § 7126, substituted “Secretary” for “Secretary of Transportation” in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 109-59, § 7114(a), substituted “5 fiscal years” for “2 fiscal years”.

Subsec. (b)(1). Pub. L. 109-59, § 7126, substituted “Secretary” for “Secretary of Transportation”.

Subsec. (b)(2). Pub. L. 109-59, § 7126, substituted “Secretary” for “Secretary of Transportation” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 109-59, § 7114(a), substituted “5 fiscal years” for “2 fiscal years”.

Subsec. (b)(3)(C), (4). Pub. L. 109-59, § 7126, substituted “Secretary” for “Secretary of Transportation” in introductory provisions of par. (3)(C) and “Secretary shall allocate” for “Secretary of Transportation shall allocate” in introductory provisions of par. (4).

Subsecs. (c), (d). Pub. L. 109-59, § 7126, substituted “Secretary” for “Secretary of Transportation” in subsec. (c) and “Secretary.” for “Secretary of Transportation.” in subsec. (d).

Subsec. (f). Pub. L. 109-59, § 7114(b), substituted “National Response Team” for “national response team”.

Subsec. (g). Pub. L. 109-59, § 7126, substituted “Secretary” for “Secretary of Transportation” in introductory provisions.

Pub. L. 109-59, § 7114(c), substituted “Federal financial assistance” for “Government grant programs” in introductory provisions.

Subsec. (i). Pub. L. 109-59, § 7114(d)(1), (2), in introductory provisions, inserted “(to be known as the ‘Hazardous Materials Emergency Preparedness Fund’)” after “an account in the Treasury” and struck out “collects under section 5108(g)(2)(A) of this title and” before “transfers to the Secretary”, added par. (3), and redesignated former par. (3) as (4) and substituted “2 percent” for “10 percent”.

Subsec. (k). Pub. L. 109-59, § 7114(e), substituted “The Secretary shall submit annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and make available to the public information on the allocation and uses of the planning grants allocated under subsection (a), training grants under subsection (b), and grants under subsection (j) of this section and under section 5107” for “Not later than September 30, 1997, the Secretary shall submit to Congress a report on the allocation and uses of training grants authorized under subsection (b) for fiscal year 1993 through fiscal year 1996 and grants authorized under subsection (j) and section 5107 for fiscal years 1995 and 1996” and “The report” for “Such report”.

1996—Subsec. (a)(2). Pub. L. 104-287, § 6(b), made technical correction to directory language of Pub. L. 103-311, § 105(b)(2). See 1994 Amendment note below.

Subsec. (j)(4)(A). Pub. L. 104-287, § 5(8), substituted “section 5115 of this title” for “subsection (g)”.

1994—Subsec. (a)(1). Pub. L. 103-311, § 105(a), in introductory provisions inserted “and Indian tribes” after “States”, and in subpar. (A) substituted “on lands under the jurisdiction of a State or Indian tribe, and between lands under the jurisdiction of a State or Indian tribe and lands of another State or Indian tribe” for “in a State and between States”.

Subsec. (a)(2). Pub. L. 103-311, § 105(b)(2), as amended by Pub. L. 104-287, § 6(b), struck out “the State” after “only if” in introductory provisions.

Pub. L. 103-311, § 105(b)(1), inserted “or Indian tribe” after “grant to a State” in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 103-311, § 105(b)(1), (3), inserted “the State or Indian tribe” before “certifies” and “or Indian tribe” before “expends”.

Subsec. (a)(2)(B). Pub. L. 103-311, § 105(b)(4), inserted “the State” before “agrees”.

Subsec. (a)(3). Pub. L. 103-311, § 105(c), added par. (3).

Subsec. (i)(1). Pub. L. 103-311, § 119(d)(2), as amended by Pub. L. 103-429, struck out “and section 5107(e) of this title” after “under this section”.

Subsec. (i)(3). Pub. L. 103-311, § 119(d)(3), as amended by Pub. L. 103-429, substituted “5108(g)(2)” for “5107(e), 5108(g)(2)”.

Subsecs. (j), (k). Pub. L. 103-311, § 119(a), added subsecs. (j) and (k).

#### CHANGE OF NAME

“Administrator of the Federal Emergency Management Agency”, “Administrators, and Director”, and “Administrator of the Federal Emergency Management Agency, Director of the National Institute of Environmental Health Sciences” substituted for “Director of the Federal Emergency Management Agency”, “Administrator, and Directors”, and “Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences”, respectively, in subsecs. (f) to (h), on authority of section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109-295 or an amendment by title VI to be considered to refer and apply to the

Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109-295, set out as a note under section 313 of Title 6.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-287, §6(b), Oct. 11, 1996, 110 Stat. 3398, provided that the amendment made by section 6(b) is effective Aug. 26, 1994.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-429, §7(c), Oct. 31, 1994, 108 Stat. 4389, provided that the amendment made by section 7(c) is effective Aug. 26, 1994.

SAVINGS CLAUSE

Pub. L. 114-94, div. A, title VII, §7203(c), Dec. 4, 2015, 129 Stat. 1591, provided that: "Nothing in this section [amending this section and section 5108 of this title] may be construed to prohibit the Secretary [of Transportation] from recovering and deobligating funds from grants that are not managed or expended in compliance with a grant agreement."

**§ 5117. Special permits and exclusions**

(a) **AUTHORITY TO ISSUE SPECIAL PERMITS.**—(1) As provided under procedures prescribed by regulation, the Secretary may issue, modify, or terminate a special permit authorizing a variance from this chapter or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title to a person performing a function regulated by the Secretary under section 5103(b)(1) in a way that achieves a safety level—

(A) at least equal to the safety level required under this chapter; or

(B) consistent with the public interest and this chapter, if a required safety level does not exist.

(2) A special permit issued under this section shall be effective for an initial period of not more than 2 years and may be renewed by the Secretary upon application for successive periods of not more than 4 years each or, in the case of a special permit relating to section 5112, for an additional period of not more than 2 years.

(b) **APPLICATIONS.**—When applying for a special permit or renewal of a special permit under this section, the person must provide a safety analysis prescribed by the Secretary that justifies the special permit. The Secretary shall publish in the Federal Register notice that an application for a new special permit or a modification to an existing special permit has been filed and shall give the public an opportunity to inspect the safety analysis and comment on the application. The Secretary shall make available to the public on the Department of Transportation's Internet Web site any special permit other than a new special permit or a modification to an existing special permit and shall give the public an opportunity to inspect the safety analysis and

comment on the application for a period of not more than 15 days. This subsection does not require the release of information protected by law from public disclosure.

(c) **APPLICATIONS TO BE DEALT WITH PROMPTLY.**—The Secretary shall issue or renew a special permit or approval for which an application was filed or deny such issuance or renewal within 120 days after the first day of the month following the date of the filing of such application, or the Secretary shall make available to the public a statement of the reason why the Secretary's decision on a special permit or approval is delayed, along with an estimate of the additional time necessary before the decision is made.

(d) **EXCLUSIONS.**—(1) The Secretary shall exclude, in any part, from this chapter and regulations prescribed under this chapter—

(A) a public vessel (as defined in section 2101 of title 46);

(B) a vessel exempted under section 3702 of title 46 from chapter 37 of title 46; and

(C) a vessel to the extent it is regulated under the Ports and Waterways Safety Act of 1972<sup>1</sup> (33 U.S.C. 1221 et seq.).

(2) This chapter and regulations prescribed under this chapter do not prohibit—

(A) or regulate transportation of a firearm (as defined in section 232 of title 18), or ammunition for a firearm, by an individual for personal use; or

(B) transportation of a firearm or ammunition in commerce.

(e) **LIMITATION ON AUTHORITY.**—Unless the Secretary decides that an emergency exists, a special permit or renewal granted under this section is the only way a person subject to this chapter may be granted a variance from this chapter.

(f) **INCORPORATION INTO REGULATIONS.**—

(1) **IN GENERAL.**—Not later than 1 year after the date on which a special permit has been in continuous effect for a 10-year period, the Secretary shall conduct a review and analysis of that special permit to determine whether it may be converted into the hazardous materials regulations.

(2) **FACTORS.**—In conducting the review and analysis under paragraph (1), the Secretary may consider—

(A) the safety record for hazardous materials transported under the special permit;

(B) the application of a special permit;

(C) the suitability of provisions in the special permit for incorporation into the hazardous materials regulations; and

(D) rulemaking activity in related areas.

(3) **RULEMAKING.**—After completing the review and analysis under paragraph (1) and after providing notice and opportunity for public comment, the Secretary shall either institute a rulemaking to incorporate the special permit into the hazardous materials regulations or publish in the Federal Register the Secretary's justification for why the special permit is not appropriate for incorporation into the regulations.

<sup>1</sup> See References in Text note below.