

CHAPTER 277

TRANSPORTATION

SENATE BILL 93-226

BY SENATORS Meiklejohn, Casey, Tebedo, and Wattenberg;
also REPRESENTATIVES Faatz, Armstrong, Fleming, Greenwood, Hagedorn, Piffner, and Williams.

AN ACT**CONCERNING THE REGULATION OF THE TRANSPORTATION OF NUCLEAR MATERIALS BY MOTOR VEHICLE.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 6 of title 43, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW PARTS CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS, to read:

PART 4
NUCLEAR MATERIALS

~~**40-2.2-101. Short title.** This article shall be known and may be cited as the "Colorado Nuclear Materials Transportation Act of 1986".~~

43-6-401. [Formerly 40-2.2-102.] Legislative declaration. It is hereby determined and declared that nuclear materials create a potential risk to the public health, safety, and welfare of the people of the state of Colorado. As an origination point of nuclear waste and a corridor state through which nuclear materials pass, the state has a duty to protect its citizens and environment from all hazards created by the transportation of nuclear materials within its borders. State and public participation in planning for the transport of nuclear materials and in the development of a plan to cope with all phases of the nuclear materials problem is essential in order to adequately prepare for potential nuclear incidents. To that end, it is the purpose OF PARTS 4 AND 5 of this article to require safe and environmentally acceptable methods of transporting nuclear materials within this state in a manner consistent with the laws

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

of the United States and the rules and regulations promulgated by agencies of the United States.

43-6-402. [Formerly 40-2.2-103.] Definitions. As used in PARTS 4 AND 5 OF this article, unless the context otherwise requires:

(1) "Carrier" means any person transporting goods or property on the public roads of this state in, to, from, or through this state, whether or not such transportation is for hire.

(2) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION.

~~(2) (a)~~ (3) (a) "Nuclear materials" means highway route controlled quantities of radioactive materials as defined in 49 C.F.R. 173.403 (I).

(b) "Nuclear materials" does not include nuclear materials used for research or medical purposes within Colorado. FOR THE PURPOSE OF THIS PARAGRAPH (b), HIGHWAY ROUTE CONTROLLED QUANTITIES OF RADIOACTIVE MATERIALS USED TO IRRADIATE MEDICAL SUPPLIES AND EQUIPMENT ARE NOT CONSIDERED TO BE USED FOR MEDICAL PURPOSES.

(c) (I) "Nuclear materials" includes radioactive materials being transported to the waste isolation pilot plant in New Mexico and radioactive materials being transported to any facility provided pursuant to section 135 of the federal "Nuclear Waste Policy Act of 1982", 42 U.S.C. 10101 et seq., or any repository licensed by the United States nuclear regulatory commission that is used for the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel.

(II) Except as provided in subparagraph (I) of this paragraph (c), "nuclear materials" does not include radioactive materials utilized in national security activities under the direct control of the United States department of defense, nor does it include radioactive materials under the direct control of the United States department of energy which are utilized in carrying out atomic energy defense activities, as defined in the federal "Nuclear Waste Policy Act of 1982", 42 U.S.C. 10101 et seq., or wastes from mining, milling, smelting, or similar processing of ores and mineral-bearing material.

(III) Notwithstanding the provisions of subparagraph (I) of this paragraph (c), "nuclear materials" does not include ores or products from mining, milling, smelting, or similar processing of ores, or the transportation thereof.

~~**40-2.2-104. Code of federal regulations.** All references in this article to the code of federal regulations or to C.F.R. refer to those regulations which are in effect on July 1, 1986.~~

43-6-403. [Formerly 40-2.2-105.] Chief to promulgate rules and regulations - motor vehicles. The ~~commission~~ CHIEF shall promulgate rules and regulations for the safe transportation of nuclear materials by motor vehicle. Such rules shall not be

inconsistent with any federal rule or regulation governing the transportation of the nuclear materials subject to PARTS 4 AND 5 OF this article. SUCH RULES SHALL BE APPLICABLE TO ANY PERSON WHO TRANSPORTS OR SHIPS, OR WHO CAUSES TO BE TRANSPORTED OR SHIPPED, A NUCLEAR MATERIAL BY MOTOR VEHICLE.

43-6-404. [Formerly 40-2.2-106.] Inspections. All vehicles carrying nuclear materials entering the state on the public highways shall be inspected by port of entry personnel or Colorado state patrol officers at the port of entry weigh station nearest the point at which the shipment enters the state or at a location specified by the Colorado state patrol. For all shipments originating within the state, inspection shall be made at the point of origination by Colorado state patrol officers. All such inspections conducted by port of entry weigh station personnel and Colorado state patrol officers shall be in accordance with the rules promulgated pursuant to ~~section 40-2.2-105 and sections 42-4-234 and 43-6-108 (1), C.R.S.~~ SECTION 42-4-234, C.R.S., AND SECTIONS 43-6-108 (1) AND 43-6-403.

43-6-405. [Formerly 40-2.2-107.] Violations - criminal penalties.
(1) Notwithstanding the provisions of section 40-7-107, any person who violates any provision OF PART 4 OR 5 of this article or rule or regulation promulgated by the ~~commission~~ CHIEF pursuant to PARTS 4 AND 5 OF this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. No conviction pursuant to this section shall bar enforcement by the commission of any provision of ~~article 10 or 11 of this title 40, C.R.S., with respect to violations by persons subject to those articles~~ SAID TITLE.

(2) Every court having jurisdiction over offenses committed under subsection (1) of this section shall forward to the ~~commission~~ CHIEF a record of the conviction of any person in said court for a violation of any provision OF PART 4 OR 5 of this article or any rule or regulation promulgated pursuant thereto within forty-eight hours after such conviction. As used in this subsection (2), "conviction" means a final conviction.

43-6-406. [Formerly 40-2.2-108.] Violations - civil penalties - motor vehicles.
(1) Any person who violates any provision OF PART 4 OR 5 of this article or a rule or regulation promulgated by the ~~commission~~ CHIEF pursuant to PARTS 4 AND 5 OF this article, except for the violations enumerated in subsection (3) of this section and ~~section 40-2.2-205~~ SECTION 43-6-505, shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. The penalty shall be assessed by the ~~commission~~ CHIEF upon receipt of a complaint by any investigative personnel of the commission, port of entry personnel, or Colorado state patrol officer and after written notice and an opportunity for a hearing pursuant to section 24-4-105, C.R.S. Payment of a civil penalty under this section shall not relieve any person from liability pursuant to article 11 of title 25, part 3 of article 15 of title 25, or article 22 of title 29, C.R.S. Any person who is assessed a penalty pursuant to this subsection (1) shall have the right to appeal the ~~commission's~~ CHIEF'S decision by filing a notice of appeal with the court of appeals as specified in

section 24-4-106 (11), C.R.S.

(2) Any person who commits any of the acts enumerated in subsection (3) of this section shall be subject to the civil penalty listed in said subsection (3). Ports of entry personnel, investigative personnel of the commission, and officers of the Colorado state patrol shall have the authority to issue civil penalty assessments for the enumerated violations. At any time that a person is cited for a violation enumerated in subsection (3) of this section, the person in charge of or operating the motor vehicle involved shall be given a notice in the form of a civil penalty assessment notice. Such notice shall be tendered by the enforcement official and shall contain the name and address of such person, the license number of the motor vehicle involved, if any, the number of such person's driver's license, the nature of the violation, the amount of the penalty prescribed for such violation, the date of the notice, a place for such person to execute a signed acknowledgment of his OR HER receipt of the civil penalty assessment notice, a place for such person to execute a signed acknowledgment of liability for the cited violation, and such other information as may be required by law to constitute such notice as a complaint to appear in court should the prescribed penalty not be paid within ten days. Every cited person shall execute the signed acknowledgment of his OR HER receipt of the civil penalty assessment notice. The acknowledgment of liability shall be executed at the time the cited person pays the prescribed penalty. The person cited shall pay the civil penalty specified in subsection (3) of this section for the violation involved at the office of the department of revenue, motor vehicle division, Denver, Colorado, either in person or by postmarking such payment within ten days of the citation. The motor vehicle division of the department of revenue shall accept late payment of any penalty assessment up to twenty days after such payment becomes due. If the person cited does not pay the prescribed penalty within ten days of the notice, the civil penalty assessment notice shall constitute a complaint to appear in court unless payment for such penalty assessment has been accepted by the motor vehicle division of the department of revenue as evidenced by receipt, and the person cited shall, within the time specified in the civil penalty assessment notice, file an answer to this complaint with the county court for the county in which the penalty assessment was issued. The attorney general shall represent the state agency which issued the civil penalty assessment notice if so requested by the agency.

(3) The following penalties shall apply only to the transportation of nuclear materials by motor vehicle and shall be assessed against drivers, shippers, carriers, operators, brokers, and other persons, as appropriate:

(a) Any person who operates a motor vehicle without a driver's log book in his OR HER possession, as required by 49 C.F.R. 395.8, shall be assessed a civil penalty of one hundred dollars.

(b) Any person who operates a motor vehicle without maintaining a driver's log book in current condition, in accordance with 49 C.F.R. 395.8, shall be assessed a civil penalty of one hundred dollars.

(c) Any person who enters false information in a driver's log book in violation of 49 C.F.R. 395.8 (e) shall be assessed a civil penalty of two hundred fifty dollars.

(d) Any person who exceeds maximum driving or on duty time, as established by

49 C.F.R. 395.3, shall be assessed a civil penalty of two hundred fifty dollars.

(e) Any person who fails to produce his OR HER driver's log book on demand of any law enforcement official, port of entry personnel, or investigative personnel of the commission in violation of 49 C.F.R. 395.8 shall be assessed a civil penalty of two hundred fifty dollars.

(f) Any person who fails to have a valid medical certificate in his OR HER possession, in accordance with 49 C.F.R. 391.41, shall be assessed a civil penalty of one hundred dollars.

(g) Any person who operates a motor vehicle without meeting driver qualifications, as established in 49 C.F.R. 177.825 (d) and ~~section 40-2-2-201~~ SECTION 43-6-501, shall be assessed a civil penalty of five hundred dollars.

(h) Any person who carries an unauthorized passenger, as defined in 49 C.F.R. 392.60, shall be assessed a civil penalty of one hundred dollars.

(i) Any person who operates a motor vehicle while that person is declared to be out of service, as defined in 49 C.F.R. 395.13, shall be assessed a civil penalty of five hundred dollars.

(j) Any person who operates an unsafe vehicle, as defined in 49 C.F.R. 396, shall be assessed a civil penalty of one hundred fifty dollars.

(k) Any person who operates a motor vehicle without correcting defects as noted on a safety inspection report in violation of 49 C.F.R. 396.9 shall be assessed a civil penalty of five hundred dollars.

(l) Any person who operates a motor vehicle while that vehicle is declared to be out of service, as defined in 49 C.F.R. 396.9 (c) (2), shall be assessed a civil penalty of one thousand dollars.

(m) Any person who transports nuclear materials without proper visibility and display of placards in violation of 49 C.F.R. 172.504 shall be assessed a civil penalty of two hundred dollars.

(n) Any person who transports nuclear materials without proper placards, as provided in 49 C.F.R. 172.504, shall be assessed a civil penalty of five hundred dollars.

(o) Any person who displays nuclear materials placards on vehicles not transporting nuclear materials in violation of 49 C.F.R. 172.502 shall be assessed a civil penalty of one hundred dollars.

(p) Any person who fails to have hazardous materials shipping papers in conformance with 49 C.F.R. 177.817 shall be assessed a civil penalty of five hundred dollars.

(q) Any person who parks a motor vehicle transporting nuclear materials in violation of 49 C.F.R. 397.7 shall be assessed a civil penalty of five hundred dollars.

(r) Any person who violates a provision of ~~section 40-2.2-208~~ SECTION 43-6-508 or the rules adopted pursuant thereto shall be assessed a civil penalty of five hundred dollars.

(s) Any person who improperly fills out the shipping papers required by 49 C.F.R. 172, subpart C, shall be assessed a civil penalty of five hundred dollars.

(t) Any person who fails to report a nuclear incident, or fails to take necessary response actions, as required by 49 C.F.R. 171.15 ~~through 171.17~~ AND 171.16 and 49 C.F.R. 177.861, shall be assessed a civil penalty of five hundred dollars.

~~(u) Repealed, L. 87, p. 1584, § 48, effective July 10, 1987.~~

~~(v)~~ (u) Any person who supplies inaccurate information in, or who fails to comply with, the route plan required by 49 C.F.R. 177.825 (c), shall be assessed a civil penalty of five hundred dollars.

~~(w)~~ (v) Any person who transports nuclear materials in violation of the radiation level limitations established in 49 C.F.R. 173.441 shall be assessed a civil penalty of one thousand dollars.

(w) Any person who transports nuclear materials in excess of the maximum permissible transport index, as provided in 49 C.F.R. 173, shall be assessed a civil penalty of one thousand dollars.

43-6-407. [Formerly 40-2.2-109.] Repeat violations - civil penalties. (1) If any person receives two penalty assessments within one year for a violation of ~~section 40-2.2-108~~ SECTION 43-6-406 and the first penalty assessment has not been reversed by a court of competent jurisdiction, the penalty for the second violation shall be two times the amount of the penalty listed for the violation in ~~section 40-2.2-108~~ SECTION 43-6-406.

(2) If any person receives three or more penalty assessments within one year for a violation of ~~section 40-2.2-108~~ SECTION 43-6-406 and if two or more of the previous penalty assessments have not been reversed by a court of competent jurisdiction, the penalty for each of the third and subsequent violations shall be three times the amount of the penalty listed for the violation in ~~section 40-2.2-108~~ SECTION 43-6-406.

43-6-408. [Formerly 40-2.2-110.] Compliance orders - penalty. (1) Whenever the ~~commission~~ CHIEF finds that any person is in violation of any rule, regulation, or requirement OF PART 4 OR 5 of this article, the ~~commission~~ CHIEF may issue an order requiring such person to comply with any such rule, regulation, or requirement and may request the attorney general to bring suit for injunctive relief or for penalties pursuant to ~~section 40-2.2-108~~ SECTION 43-6-406.

(2) Any person who violates any compliance order of the ~~commission~~ CHIEF which is not subject to a stay pending judicial review and which has been issued pursuant

to this ~~part~~ PART 4 shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs.

PART 5
NUCLEAR MATERIALS PERMIT SYSTEM

43-6-501. [Formerly 40-2.2-201.] Nuclear materials transportation permit required - application. (1) No transportation of nuclear materials shall take place in, to, from, or through this state until the commission ~~or its designee~~ issues a permit, in accordance with the provisions of this section, which is not inconsistent with federal law, authorizing the applicant to operate or move upon public roads of this state a motor vehicle or combination of motor vehicles which carry nuclear materials.

(2) Each carrier desiring to transport nuclear materials shall submit a permit application, in the form designated by the commission, to the commission prior to beginning such transportation. ~~No permit application shall be approved unless the applicant supplies the following:~~

~~(a) A certification that each driver or operator of a motor vehicle has successfully completed a training program, approved by the commission, which has prepared the driver or operator for transporting route controlled quantities of radioactive materials; such training program to specifically include preparation for driving on mountainous roads under all types of weather conditions. A copy of such certification shall be deposited with the commission along with the permit application.~~

~~(b) Proof that the applicant has obtained liability insurance required by the federal rules and regulations for transporters of route controlled quantities of radioactive materials. Insurance or indemnification agreements obtained by either the shipper or receiver as provided by 10 C.F.R. 140.91, 10 C.F.R. 140.92, or 41 C.F.R. 9-50.704 shall be deemed to satisfy this requirement.~~

~~(c) A nuclear incident clean-up plan which demonstrates, to the satisfaction of the commission, after consultation with the department of public safety and the department of health, the applicant's ability to respond to a nuclear incident. Such plan shall provide for:~~

~~(I) The removal of the motor vehicle and its cargo from the scene of the incident within a reasonable amount of time;~~

~~(II) The prevention or minimization of releases of radioactivity into the environment;~~

~~(III) The decontamination of the environment after a release of radiation to the levels existing prior to the incident.~~

43-6-502. [Formerly 40-2.2-202.] Permits - fees. Each permit issued pursuant to ~~section 40-2.2-201~~ SECTION 43-6-501 shall be valid ~~until the July~~ FOR ONE YEAR following its issuance and shall be issued after approval of the carrier's permit application and upon payment of a five-hundred-dollar permit fee. In addition to the

permit fee, each carrier shall pay a two-hundred-dollar fee for each shipment. The shipment fee shall be paid either by mail, in which case it must be postmarked at least seven days before the shipment is to be made, or at the time the shipment enters the state at the port of entry weigh station nearest the point at which the shipment enters the state. If the shipment originates in this state, payment shall be made at the port of entry weigh station nearest the point of origination of the shipment.

43-6-503. [Formerly 40-2.2-203.] Carrying of shipping papers. ~~(1) Any person transporting nuclear materials in this state shall carry a copy of the shipping papers required in 49 C.F.R. 172, subpart C. and a copy of the nuclear materials transportation permit issued by the commission in the motor vehicle. Such permit shall be open to inspection by Colorado state patrol officers, ports of entry personnel, or investigative personnel of the commission.~~

~~(2) In the event of an accident involving nuclear materials, the operator of the motor vehicle shall provide access to the shipping papers for the first police officers, fire fighters, Colorado state patrol officers, town marshal, or sheriff arriving on the scene and immediately bring to their attention the fact that the vehicle is carrying nuclear materials.~~

43-6-504. [Formerly 40-2.2-204.] Rules and regulations. The commission CHIEF is authorized to promulgate reasonable rules and regulations which are necessary or desirable in governing the issuance of permits if such rules and regulations are not in conflict with or inconsistent with federal rules and regulations.

43-6-505. [Formerly 40-2.2-205.] Penalties - permit system. (1) The investigative personnel of the commission, the ports of entry personnel, and the officers of the Colorado state patrol may assess ~~the following~~ A civil penalties for violations of the PENALTY OF ONE THOUSAND DOLLARS AGAINST EVERY CARRIER WHO TRANSPORTS NUCLEAR MATERIALS WITHOUT FIRST OBTAINING A nuclear materials transportation permit. ~~system established pursuant to this part 2:~~

~~(a) Every carrier who transports nuclear materials without first obtaining a nuclear materials transportation permit shall be assessed a civil penalty of one thousand dollars.~~

~~(b) Every carrier who fails to have a nuclear materials transportation permit in the cab of a motor vehicle while transporting nuclear materials in, to, from, or through this state shall be assessed a civil penalty of one hundred dollars.~~

(2) Every carrier who misrepresents information in the carrier's application for a nuclear materials transportation permit, violates the terms of the permit, or commits a second violation of paragraph (a) or (b) of subsection (1) of this section within one calendar year shall be assessed a civil penalty of not less than five hundred dollars nor more than three thousand dollars.

(3) The penalties in subsection (1) of this section shall be assessed upon an action brought by the commission, the ports of entry division of the department of revenue,

or the Colorado state patrol in accordance with the procedure set forth in ~~section 40-2.2-108 (1)~~ SECTION 43-6-406 (1).

43-6-506. [Formerly 40-2.2-206.] Permit suspension and revocation. In addition to any other civil or criminal penalties, the commission may suspend the nuclear materials transportation permit of any carrier for a period not to exceed six months or revoke such permit for failure to comply with the permit terms, misrepresentation of information in the permit application, failure to pay a civil penalty assessed pursuant to ~~section 40-2.2-108~~ SECTION 43-6-406, or failure to comply with the regulations promulgated pursuant to PARTS 4 AND 5 OF this article. The permit may be suspended or revoked only for good cause shown after due notice and opportunity for a hearing pursuant to section 24-4-105, C.R.S., if requested by the carrier.

43-6-507. [Formerly 40-2.2-207.] Local government preemption. No county, city and county, city, or town shall establish any permit or fee system for the transportation of nuclear materials by motor vehicle or railcar in, to, from, or through this state.

43-6-508. [Formerly 40-2.2-208.] Route designation - motor vehicles. (1) The chief of the Colorado state patrol shall have the authority to adopt rules to designate which state highways shall be used and which shall not be used by motor vehicles transporting nuclear materials in this state.

(2) The carrier shall not deviate from the routes designated pursuant to subsection (1) of this section except in order to make local pickups and deliveries and in cases of emergency conditions which would make continued use of the designated route unsafe, or to refuel, or when the designated route is closed due to road conditions, road construction, or maintenance operations. When making local pickups and deliveries or when refueling, the carrier shall remain on the routes designated by the Colorado state patrol and shall minimize the distance traveled on nondesignated routes.

~~**40-2.2-209. Prenotification of nuclear materials shipments.** (1) Every person who receives a nuclear materials transportation permit pursuant to section 40-2.2-201 shall be required to give advance notification of the shipment to the governor or his designee. Such notification, if delivered by mail, shall be postmarked at least seven days before transport of a shipment within or through this state. If the notification is delivered by messenger, it must reach the office of the governor or his designee at least four days before said transport. Notification shall include:~~

- ~~(a) The name, address, and telephone number of the shipper, carrier, and receiver;~~
- ~~(b) A description of the kind, quantity, and physical properties of the nuclear materials to be transported;~~
- ~~(c) The transport index, as defined in 49 C.F.R. 173.403 (bb), of the nuclear~~

~~materials to be transported;~~

~~(d) A listing of routes to be used within this state; and~~

~~(e) The estimated date and time of the shipment's original departure and entry into this state.~~

~~(2) Schedule information provided to the state and emergency response authorities shall be protected against unauthorized disclosure until at least ten days after a shipment has entered or originated within this state.~~

~~(3) Upon request, the information in the advance notification shall be made available to the emergency response authorities which have been designated pursuant to section 29-22-102, C.R.S., and whose jurisdiction includes the route of shipment.~~

~~(4) The commission is authorized to promulgate rules and regulations for the implementation of this section which are not inconsistent with federal rules and regulations.~~

~~(5) Any person who violates a provision of this section shall be subject to a civil penalty of not less than five hundred dollars and not more than ten thousand dollars. The penalty shall be assessed by the commission in accordance with the procedure set forth in section 40-2.2-108 (1).~~

43-6-509. [Formerly 40-2.2-210.] Strict liability for nuclear incidents. Any person who causes the release of any nuclear material being transported shall be strictly liable for all injuries and damages resulting therefrom. The conduct of the claimant shall not be a defense to liability; except that this section does not waive any defense based on the claimant's failure to mitigate damages or related to any injury or damage to the claimant or the claimant's property which is intentionally sustained by the claimant or which results from the release of any nuclear material being transported intentionally and wrongfully caused by the claimant.

43-6-510. [Formerly 40-2.2-211.] Statute of limitations. No person who has been injured or damaged as a result of a nuclear incident shall be precluded from bringing a suit against the person or persons responsible for causing the nuclear incident if such suit is instituted within three years after the date on which the injured person first knew, or reasonably could have known, of his OR HER injury or damage and the cause thereof; except that such suit must be brought within forty years after the date of the nuclear incident.

43-6-511. [Formerly 40-2.2-212.] Nuclear materials transportation fund. All moneys collected pursuant to PARTS 4 AND 5 OF this article shall be transmitted to the state treasurer, who shall credit the same to the nuclear materials transportation fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of PARTS 4 AND 5 OF this article.

~~**40-2.2-213. Nuclear materials transportation advisory committee.** (1) There is hereby created a nuclear materials transportation advisory committee to be composed of one senator appointed by the president of the senate, one representative appointed by the speaker of the house of representatives, and seven persons appointed by the governor. The committee shall have a politically balanced membership, with no more than five members from any one political party. The governor's appointees shall represent the transportation industry, the environmental community, and the public at large:~~

~~(2) The committee is authorized to conduct hearings to address:~~

~~(a) Coordination problems that exist with regard to emergency response;~~

~~(b) Liability and compensation issues;~~

~~(c) Rail and airline issues; and~~

~~(d) Revisions to statutory provisions relating to the transportation of nuclear materials.~~

~~(3) (a) This section is repealed, effective July 1, 1995.~~

~~(b) Prior to said repeal, the nuclear materials transportation advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.~~

SECTION 2. 2-3-1203 (3) (h) (III), Colorado Revised Statutes, 1980 Repl. Vol., as amended, is repealed as follows:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal:

(h) July 1, 1995:

(III) The nuclear materials transportation advisory committee, appointed pursuant to section ~~40-2.2-213~~, C.R.S.;

SECTION 3. 40-7-112 (2), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

40-7-112. Carriers subject to civil penalties. (2) The civil penalties provided in sections 40-7-113 and 40-7-114 shall not apply to persons transporting nuclear materials who commit violations of ~~section 40-2.2-108 (3), 40-2.2-109, or 40-2.2-205~~ SECTION 43-6-406 (3), 43-6-407, OR 43-6-505, C.R.S., ~~nor~~ OR to persons transporting hazardous materials who commit violations of section 43-6-204, C.R.S.

SECTION 4. 43-6-101, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

43-6-101. Short title. PARTS 1, 2, AND 3 OF this article shall be known and may be cited as the "Hazardous Materials Transportation Act of 1987".

SECTION 5. 43-6-102, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

43-6-102. Legislative declaration. The general assembly finds that the permitting and routing of motor vehicles transporting hazardous materials is a matter of statewide concern and is affected with a public interest and that the provisions of PARTS 1, 2, AND 3 OF this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and welfare of the people of this state.

SECTION 6. 43-6-104, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

43-6-104. General powers and duties of chief - department of public safety - cooperation from other state agencies. (1) In addition to any other powers and duties granted to him OR HER in PARTS 1, 2, AND 3 OF this article, the chief shall promulgate such rules and regulations and conduct such hearings as may be necessary for the administration of this article.

(2) In addition to any other powers and duties granted to him OR HER in PARTS 1, 2, AND 3 OF this article and except as otherwise provided in PARTS 1, 2, AND 3 OF this article, the chief shall have the general authority and duty to carry out the provisions of PARTS 1, 2, AND 3 OF this article and shall promulgate such rules and regulations, subject to the provisions of article 4 of title 24, C.R.S., as may be necessary to clarify the enforcement provisions of PARTS 1, 2, AND 3 OF this article.

(3) Upon request, other agencies of state government, including but not limited to the department of health and the department of transportation, shall provide advice and assistance to the department of public safety relating to the program established by PARTS 1, 2, AND 3 OF this article.

SECTION 7. 43-6-105 (1), (3), and (4), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

43-6-105. Enforcement. (1) The provisions of PARTS 1, 2, AND 3 OF this article relating to the transportation of hazardous materials by motor vehicle may only be enforced by an enforcement official.

(3) All enforcement officials may, at their discretion and in lieu of issuing the penalty assessments pursuant to subsection (2) of this section, issue warning citations to persons who violate the provisions of PART 1, 2, OR 3 OF this article.

(4) Enforcement of any law relating to the fixed-site storage or use of hazardous materials shall not be affected by the provisions of PART 1, 2, OR 3 OF this article.

SECTION 8. 43-6-106, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

43-6-106. Regulatory authority of local governments - preemption - disposition of local fines and penalties. (1) Except as specifically authorized in PARTS 1, 2, AND 3 OF this article, no county, town, city, or city and county shall have any authority to regulate the transportation of hazardous materials separate and apart from the regulation of other commodities. However, a county, town, city, or city and county may adopt and enforce regulations or ordinances which are no more stringent than the provisions of state law and regulations adopted pursuant thereto, if violations of such local regulations or ordinances carry penalties which are not more than the penalties imposed upon violations of state law and regulations adopted pursuant thereto. Any local government which adopts a regulation or ordinance pursuant to this section shall file a certified copy of such regulation or ordinance, and any amendment thereto, with the patrol.

(2) No person shall be prosecuted for a violation of both the provisions of PART 1, 2, OR 3 OF this article and the provisions of such local ordinance or regulation when such prosecution arises out of the same incident.

SECTION 9. 43-6-107 (1) (e), (1) (f), and (2), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

43-6-107. Hazardous materials safety fund. (1) There is hereby created in the state treasury the hazardous materials safety fund, which shall consist of:

(e) Any gifts or donations made to the state of Colorado or any agency thereof specifically for the purpose of carrying out the provisions of PARTS 1, 2, AND 3 OF this article;

(f) Any federal funds made available to the state of Colorado or any agency thereof specifically for the purpose of carrying out the provisions of PARTS 1, 2, AND 3 OF this article.

(2) The moneys in the hazardous materials safety fund shall be subject to appropriation by the general assembly for the purposes of PARTS 1, 2, AND 3 OF this article.

SECTION 10. 43-6-111, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

43-6-111. Additional penalties. Any person, corporation, partnership, or other entity which intentionally or knowingly authorizes, solicits, requests, commands, conspires in, or aids and abets in the violation of any of the provisions of PART 1, 2, OR 3 OF this article commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

SECTION 11. 43-6-205, Colorado Revised Statutes, 1984 Repl. Vol., as

amended, is amended to read:

43-6-205. Permit suspension or revocation. In addition to any other civil or criminal penalties, the public utilities commission may suspend the hazardous materials transportation annual permit for a period not to exceed six months or may revoke such permit for failure to comply with the terms and conditions of such permit, for failure to pay a civil penalty assessed pursuant to section 43-6-204, or for continuing violations of the regulations promulgated pursuant to PART 1, 2, OR 3 OF this article. The permit may be suspended or revoked only for good cause shown after due notice and an opportunity for a hearing as provided in article 4 of title 24, C.R.S., if requested by the permit holder.

SECTION 12. 43-6-301 (3), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

43-6-301. Route designation. (3) Notwithstanding any other provision of PART 1, 2, OR 3 OF this article to the contrary, the commission may regulate hours of operation of the Eisenhower-Johnson tunnels, structure numbers F13Y and F13X, respectively, on interstate 70.

SECTION 13. 43-6-304, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

43-6-304. Emergency closure of public roads. Nothing in PARTS 1, 2, OR 3 OF this article shall limit the authority of state and local authorities to close public roads temporarily if necessary because of any road construction or maintenance, an accident, a natural disaster, the weather conditions, or any other emergency circumstances resulting in making road conditions unsafe for travel by motor vehicles transporting hazardous materials.

SECTION 14. Repeal of provisions being relocated in this act. Parts 1 and 2 of article 2.2 of title 40, Colorado Revised Statutes, 1984 Repl. Vol., as amended, are repealed.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 1993