

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. _____
OFFERED BY MR. NEHLS OF TEXAS**

At the end of subtitle F of title X, add the following:

1 **SEC. ____ . CLARIFICATION OF REGULATORY AUTHORITY**
2 **OVER THERMITES.**

3 (a) DEFINITIONS.—Section 5102 of title 49, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 “(15) THERMITE.—The term ‘thermite’ means
7 a mixture primarily composed of a powdered metal
8 oxide and a powdered metal fuel which, upon igni-
9 tion, undergoes an exothermic reaction producing
10 molten metal and slag. Thermites do not meet the
11 definition of a pyrotechnic in the United Nations
12 Recommendations on the Transport of Dangerous
13 Goods, Model Regulations.

14 “(16) THERMATE.—The term ‘thermate’ means
15 a metal and metal oxide thermite enriched with a
16 sulfur, salt[1]based oxidizer, and/or other reaction
17 enhancing chemicals. Thermates do not meet the
18 definition of a pyrotechnic in the United Nations

1 Recommendations on the Transport of Dangerous
2 Goods, Model Regulations.”.

3 (b) GENERAL REGULATORY AUTHORITY.—Section
4 5103 of title 49, United States Code, is amended by add-
5 ing at the end the following:

6 “(f) LIMITATIONS ON CLASSIFICATION AUTHOR-
7 ITY.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of law, the Secretary shall, not later than
10 60 days after the enactment of this subsection, en-
11 sure that thermite and thermate substances which
12 pass the United Nations Test N.1 Preliminary
13 Screening for readily combustible solids, as defined
14 in the United Nations Recommendations on the
15 Transport of Dangerous Goods, Manual of Tests
16 and Criteria, Rev. 7 (2019), shall not be classified
17 as a hazardous material under this chapter, unless
18 data in accordance with paragraph (2) demonstrates
19 that the substance poses an unreasonable risk to
20 health, safety, or property during transportation.

21 “(2) DATA AND JUSTIFICATION.—Any classi-
22 fication or regulation of a thermite and thermate
23 substance must be based on publicly available, peer-
24 reviewed scientific data, testing under the United
25 Nations Recommendations on the Transport of Dan-

1 gerous Goods, Manual of Tests and Criteria, and a
2 finding that transporting such substance in com-
3 merce in a particular amount and form poses an un-
4 reasonable risk to health, safety, or property. The
5 justification shall be published in the Federal Reg-
6 ister and subject to a 30-day public comment period.

7 “(3) LIMITATION ON RETROACTIVE ENFORCE-
8 MENT.—No enforcement action may be undertaken
9 or civil penalty imposed for the transportation of
10 thermite and thermate substances (or articles con-
11 taining thermite and thermate substances) based on
12 unpublished guidance or internal agency policy not
13 publicly available at the time of transportation of
14 such substance or article.”.

