

Pub. L. 109-59, § 7118(d)(1), redesignated subsec. (e) as (h).

Subsec. (h)(4). Pub. L. 109-59, § 7118(f)(2), inserted “relating to a function regulated by the Secretary under section 5103(b)(1)” after “activities”.

1994—Subsec. (c)(1)(A). Pub. L. 103-311, § 117(a)(2), substituted “a packaging or a” for “a package or”.

Subsec. (e). Pub. L. 103-311, § 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.”

#### 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.

#### PAPERLESS HAZARD COMMUNICATIONS PILOT PROGRAM

Pub. L. 112-141, div. C, title III, § 33005, July 6, 2012, 126 Stat. 833, provided that:

“(a) IN GENERAL.—The Secretary [of Transportation] may conduct pilot projects to evaluate the feasibility and effectiveness of using paperless hazard communications systems. At least 1 of the pilot projects under this section shall take place in a rural area.

“(b) REQUIREMENTS.—In conducting pilot projects under this section, the Secretary—

“(1) may not waive the requirements under section 5110 of title 49, United States Code; and

“(2) shall consult with organizations representing—

“(A) fire services personnel;

“(B) law enforcement and other appropriate enforcement personnel;

“(C) other emergency response providers;

“(D) persons who offer hazardous material for transportation;

“(E) persons who transport hazardous material by air, highway, rail, and water; and

“(F) employees of persons who transport or offer for transportation hazardous material by air, highway, rail, and water.

“(c) REPORT.—Not later than 2 years after the date of enactment of this Act [see section 3(a), (b) of Pub. L. 112-141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of Title 23, Highways], the Secretary shall—

“(1) prepare a report on the results of the pilot projects carried out under this section, including—

“(A) a detailed description of the pilot projects;

“(B) an evaluation of each pilot project, including an evaluation of the performance of each paperless hazard communications system in such project;

“(C) an assessment of the safety and security impact of using paperless hazard communications systems, including any impact on the public, emergency response, law enforcement, and the conduct of inspections and investigations;

“(D) an analysis of the associated benefits and costs of using the paperless hazard communications systems for each mode of transportation; and

“(E) a recommendation that incorporates the information gathered in subparagraphs (A), (B), (C), and (D) on whether paperless hazard communications systems should be permanently incorporated into the Federal hazardous material transportation safety program under chapter 51 of title 49, United States Code; and

“(2) submit a final report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that contains the results of the pilot projects carried out under this section, including the matters described in paragraph (1).

“(d) PAPERLESS HAZARD COMMUNICATIONS SYSTEM DEFINED.—In this section, the term ‘paperless hazard com-

munications system’ means the use of advanced communications methods, such as wireless communications devices, to convey hazard information between all parties in the transportation chain, including emergency responders and law enforcement personnel. The format of communication may be equivalent to that used by the carrier.”

#### HAZARDOUS MATERIAL ENFORCEMENT TRAINING

Pub. L. 112-141, div. C, title III, § 33008, July 6, 2012, 126 Stat. 836, provided that:

“(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act [see section 3(a), (b) of Pub. L. 112-141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of Title 23, Highways], the Secretary [of Transportation] shall develop uniform performance standards for training hazardous material inspectors and investigators on—

“(1) how to collect, analyze, and publish findings from inspections and investigations of accidents or incidents involving the transportation of hazardous material; and

“(2) how to identify noncompliance with regulations issued under chapter 51 of title 49, United States Code, and take appropriate enforcement action.

“(b) STANDARDS AND GUIDELINES.—The Secretary may develop—

“(1) guidelines for hazardous material inspector and investigator qualifications;

“(2) best practices and standards for hazardous material inspector and investigator training programs; and

“(3) standard protocols to coordinate investigation efforts among Federal, State, and local jurisdictions on accidents or incidents involving the transportation of hazardous material.

“(c) AVAILABILITY.—The standards, protocols, and guidelines established under this section—

“(1) shall be mandatory for—

“(A) the Department of Transportation’s multimodal personnel conducting hazardous material enforcement inspections or investigations; and

“(B) State employees who conduct federally funded compliance reviews, inspections, or investigations; and

“(2) shall be made available to Federal, State, and local hazardous material safety enforcement personnel.”

#### FINALIZING REGULATIONS

Pub. L. 112-141, div. C, title III, § 33009(b)(2), July 6, 2012, 126 Stat. 837, provided that: “In accordance with section 5103(b)(2) of title 49, United States Code, not later than 1 year after the date of enactment of this Act [see section 3(a), (b) of Pub. L. 112-141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of Title 23, Highways], the Secretary [of Transportation] shall take all actions necessary to finalize a regulation under paragraph (1) of this subsection [amending this section].”

#### TOLL FREE NUMBER FOR REPORTING

Pub. L. 103-311, title I, § 116, Aug. 26, 1994, 108 Stat. 1678, 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.”

#### § 5122. Enforcement

(a) GENERAL.—At the request of the Secretary, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter or a regulation prescribed or order, special permit, or approval

issued under this chapter. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same penalty amounts and factors as prescribed for the Secretary in an administrative case under section 5123.

(b) **IMMINENT HAZARDS.**—(1) If the Secretary has reason to believe that an imminent hazard exists, the Secretary may bring a civil action in an appropriate district court of the United States—

(A) to suspend or restrict the transportation of the hazardous material responsible for the hazard; or

(B) to eliminate or mitigate the hazard.

(2) On request of the Secretary, the Attorney General shall bring an action under paragraph (1) of this subsection.

(c) **WITHHOLDING OF CLEARANCE.**—(1) If any owner, operator, or individual in charge of a vessel is liable for a civil penalty under section 5123 of this title or for a fine under section 5124 of this title, or if reasonable cause exists to believe that such owner, operator, or individual in charge may be subject to such a civil penalty or fine, the Secretary of Homeland Security, upon the request of the Secretary, shall with respect to such vessel refuse or revoke any clearance required by section 60105 of title 46.

(2) Clearance refused or revoked under this subsection may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

(Pub. L. 103-272, § 1(d), July 5, 1994, 108 Stat. 780; Pub. L. 104-324, title III, § 312(a), Oct. 19, 1996, 110 Stat. 3920; Pub. L. 109-59, title VII, §§ 7119, 7126, Aug. 10, 2005, 119 Stat. 1905, 1909; Pub. L. 109-304, § 17(h)(1), Oct. 6, 2006, 120 Stat. 1709.)

#### HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5122(a) .....	49 App.:1808(a) (last sentence words after semicolon).	Jan. 3, 1975, Pub. L. 93-633, §§ 109(a) (last sentence words after semicolon), 111(a), 88 Stat. 2159, 2161.
5122(b) .....	49 App.:1810(a). 49 App.:1810(b).	Jan. 3, 1975, Pub. L. 93-633, § 111(b), 88 Stat. 2161; Nov. 16, 1990, Pub. L. 101-615, § 3(b), 104 Stat. 3247.

In this section, the words “bring a civil action” are substituted for “bring an action in” in 49 App.:1810 and “petition . . . for an order . . . for such other order” for consistency in the revised title and with other titles of the United States Code.

In subsection (a), the text of 49 App.:1808(a) (last sentence words after semicolon) and the words “for equitable relief” in 49 App.:1810(a) are omitted as surplus. The words “enforce this chapter” are substituted for “redress a violation by any person of a provision of this chapter” to eliminate unnecessary words. The words “regulation prescribed or order issued” are substituted for “order or regulation issued” for consistency in the revised title and with other titles of the Code. The words “The court may award appropriate relief, including” are substituted for “Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and” to eliminate unnecessary words.

In subsection (b)(1), before clause (A), the words “as is necessary” are omitted as surplus.

#### AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109-304 substituted “Secretary of Homeland Security” and “section 60105 of title 46” for “Secretary of the Treasury” and “section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91)”, respectively.

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

Pub. L. 109-59, § 7119(a), substituted “this chapter or a regulation prescribed or order, special permit, or approval” for “this chapter or a regulation prescribed or order” and “The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same penalty amounts and factors as prescribed for the Secretary in an administrative case under section 5123” for “The court may award appropriate relief, including punitive damages”.

Subsec. (b)(1)(B). Pub. L. 109-59, § 7119(b), substituted “or mitigate the hazard” for “or ameliorate the hazard”.

1996—Subsec. (c). Pub. L. 104-324 added subsec. (c).

#### § 5123. Civil penalty

(a) **PENALTY.**—(1) A person that knowingly violates this chapter or a regulation, order, special permit, or approval issued under this chapter is liable to the United States Government for a civil penalty of not more than \$75,000 for each violation. A person acts knowingly when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

(2) If the Secretary finds that a violation under paragraph (1) results in death, serious illness, or severe injury to any person or substantial destruction of property, the Secretary may increase the amount of the civil penalty for such violation to not more than \$175,000.

(3) If the violation is related to training, a person described in paragraph (1) shall be liable for a civil penalty of at least \$450.

(4) A separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(b) **HEARING REQUIREMENT.**—The Secretary may find that a person has violated this chapter or a regulation prescribed or order, special permit, or approval issued under this chapter only after notice and an opportunity for a hearing. The Secretary shall impose a penalty under this section by giving the person written notice of the amount of the penalty.

(c) **PENALTY CONSIDERATIONS.**—In determining the amount of a civil penalty under this section, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) other matters that justice requires.

(d) **CIVIL ACTIONS TO COLLECT.**—The Attorney General may bring a civil action in an appropriate district court of the United States to collect a civil penalty under this section and any accrued interest on the civil penalty as calculated in accordance with section 1005 of the