

gency 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 as-

essment 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 Oil Pollution Act of 1990 (33 U.S.C. 2705). In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.

(e) COMPROMISE.—The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(f) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(g) DEPOSITING AMOUNTS COLLECTED.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(h) PENALTY FOR OBSTRUCTION OF INSPECTIONS AND INVESTIGATIONS.—

(1) The Secretary may impose a penalty on a person who obstructs or prevents the Secretary from carrying out inspections or investigations under subsection (c) or (i) of section 5121.

(2) For the purposes of this subsection, the term “obstructs” means actions that were known, or reasonably should have been known, to prevent, hinder, or impede an investigation.

(i) PROHIBITION ON HAZARDOUS MATERIAL OPERATIONS AFTER NONPAYMENT OF PENALTIES.—

(1) IN GENERAL.—Except as provided under paragraph (2), a person subject to the jurisdiction of the Secretary under this chapter who fails to pay a civil penalty assessed under this chapter, or fails to arrange and abide by an acceptable payment plan for such civil penalty, may not conduct any activity regulated under this chapter beginning on the 91st day after the date specified by order of the Secretary for payment of such penalty unless the person has filed a formal administrative or judicial appeal of the penalty.

(2) EXCEPTION.—Paragraph (1) shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11.

(3) RULEMAKING.—Not later than 2 years after the date of enactment of this subsection, the Secretary, after providing notice and an opportunity for public comment, shall issue regulations that—

(A) set forth procedures to require a person who is delinquent in paying civil penalties to cease any activity regulated under this chapter until payment has been made or an acceptable payment plan has been arranged; and

(B) ensures<sup>1</sup> that the person described in subparagraph (A)—

(i) is notified in writing; and

(ii) is given an opportunity to respond before the person is required to cease the activity.

(Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 780; Pub. L. 109-59, title VII, §§7120(a)-(c), 7126, Aug. 10, 2005, 119 Stat. 1905, 1906, 1909; Pub. L. 112-141, div. C, title III, §33010, July 6, 2012, 126 Stat. 837.)

<sup>1</sup> So in original. Probably should be “ensure”.