

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) ensures¹ 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.)

¹ So in original. Probably should be “ensure”.

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5123(a)(1)	49 App.:1809(a)(1) (1st sentence less 3d–16th words, 2d sentence words before 4th comma, 3d sentence). 49 App.:1809(a)(3).	Jan. 3, 1975, Pub. L. 93–633, §110(a)(1), 88 Stat. 2160; Nov. 16, 1990, Pub. L. 101–615, §12(a)(1), 104 Stat. 3259. Jan. 3, 1975, Pub. L. 93–633, 88 Stat. 2156, §110(a)(3); added Nov. 16, 1990, Pub. L. 101–615, §12(a)(2), 104 Stat. 3259.
5123(a)(2)	49 App.:1809(a)(1) (2d sentence words after 4th comma).	
5123(b)	49 App.:1809(a)(1) (1st sentence 3d–16th words, 4th sentence).	
5123(c)	49 App.:1809(a)(1) (last sentence).	
5123(d), (e)	49 App.:1809(a)(2) (1st sentence).	Jan. 3, 1975, Pub. L. 93–633, §110(a)(2), 88 Stat. 2160.
5123(f)	49 App.:1809(a)(2) (2d sentence).	
5123(g)	49 App.:1809(a)(2) (last sentence).	

In subsection (a)(1), before clause (1), the words “A person that knowingly violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of at least \$250 but not more than \$25,000 for each violation” are substituted for 49 App.:1809(a)(1) (1st sentence less 3d–16th words, 2d sentence words before 4th comma, 3d sentence) to eliminate unnecessary words.

In subsection (b), the word “impose” is substituted for “assessed” for consistency.

In subsection (c)(2), the words “the violator” are substituted for “the person found to have committed such violation” to eliminate unnecessary words.

In subsection (f), the words “imposed or compromised” are substituted for “of such penalty, when finally determined (or agreed upon in compromise)” to eliminate unnecessary words and for consistency. The words “liable for the penalty” are substituted for “charged” for clarity.

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (i)(3), is the date of enactment of Pub. L. 112–141, which was approved July 6, 2012.

AMENDMENTS

2012—Subsec. (a)(1). Pub. L. 112–141, §33010(1)(A), in introductory provisions, struck out “at least \$250 but” after “civil penalty of” and substituted “\$75,000” for “\$50,000”.

Subsec. (a)(2). Pub. L. 112–141, §33010(1)(B), substituted “\$175,000” for “\$100,000”.

Subsec. (a)(3). Pub. L. 112–141, §33010(1)(C), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “If the violation is related to training, paragraph (1) shall be applied by substituting ‘\$450’ for ‘\$250.’”

Subsecs. (h), (i). Pub. L. 112–141, §33010(2), added subsecs. (h) and (i).

2005—Subsec. (a)(1). Pub. L. 109–59, §7120(a)(1), in introductory provisions substituted “regulation, order, special permit, or approval issued” for “regulation prescribed or order issued” and “\$50,000” for “\$25,000”.

Subsec. (a)(2) to (4). Pub. L. 109–59, §7120(a)(2), (3), added pars. (2) and (3) and redesignated former par. (2) as (4).

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

Pub. L. 109–59, §7120(b), substituted “regulation prescribed or order, special permit, or approval issued” for “regulation prescribed”.

Subsec. (d). Pub. L. 109–59, §7120(c), substituted “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.” for “section.”

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 2005 AMENDMENT

Pub. L. 109–59, title VII, §7120(d), Aug. 10, 2005, 119 Stat. 1906, provided that:

“(1) HEARING REQUIREMENT.—The amendment made by subsection (b) [amending this section] shall take effect on the date of enactment of this Act [Aug. 10, 2005], and shall apply with respect to violations described in section 5123(a) of title 49, United States Code (as amended by this section), that occur on or after that date.

“(2) CIVIL ACTIONS TO COLLECT.—The amendment made by subsection (c) [amending this section] shall apply with respect to civil penalties imposed on violations described in section 5123(a) of title 49, United States Code (as amended by this section), that occur on or after the date of enactment of this Act [Aug. 10, 2005].”

§ 5124. Criminal penalty

(a) IN GENERAL.—A person knowingly violating section 5104(b) or willfully or recklessly violating this chapter or a regulation, order, special permit, or approval issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to any person.

(b) KNOWING VIOLATIONS.—For purposes of this section—

- (1) 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; and
- (2) knowledge of the existence of a statutory provision, or a regulation or a requirement required by the Secretary, is not an element of an offense under this section.

(c) WILLFUL VIOLATIONS.—For purposes of this section, a person acts willfully when—

- (1) the person has knowledge of the facts giving rise to the violation; and
- (2) the person has knowledge that the conduct was unlawful.

(d) RECKLESS VIOLATIONS.—For purposes of this section, a person acts recklessly when the person displays a deliberate indifference or conscious disregard to the consequences of that person’s conduct.

(Pub. L. 103–272, §1(d), July 5, 1994, 108 Stat. 781; Pub. L. 109–59, title VII, §7121, Aug. 10, 2005, 119 Stat. 1906.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5124	49 App.:1809(b).	Jan. 3, 1975, Pub. L. 93–633, §110(b), 88 Stat. 2161; restated Nov. 16, 1990, Pub. L. 101–615, §12(b), 104 Stat. 3259.