

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.

AMENDMENTS

2005—Pub. L. 109-59 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.”

§ 5125. Preemption

(a) GENERAL.—Except as provided in subsections (b), (c), and (e) of this section and unless authorized by another law of the United States, a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or

(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.

(b) SUBSTANTIVE DIFFERENCES.—(1) Except as provided in subsection (c) of this section and unless authorized by another law of the United States, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security, is preempted:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material and other written hazardous materials transportation incident reporting involving State or local emergency responders in the initial response to the incident.

(E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

(2) If the Secretary prescribes or has prescribed under section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provision of law a regulation or standard related to a subject referred to in paragraph (1) of this subsection, a

State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall decide on and publish in the Federal Register the effective date of section 5103(b) of this title for any regulation or standard about any of those subjects that the Secretary prescribes. The effective date may not be earlier than 90 days after the Secretary prescribes the regulation or standard nor later than the last day of the 2-year period beginning on the date the Secretary prescribes the regulation or standard.

(3) If a State, political subdivision of a State, or Indian tribe imposes a fine or penalty the Secretary decides is appropriate for a violation related to a subject referred to in paragraph (1) of this subsection, an additional fine or penalty may not be imposed by any other authority.

(c) COMPLIANCE WITH SECTION 5112(b) REGULATIONS.—(1) Except as provided in paragraph (2) of this subsection, after the last day of the 2-year period beginning on the date a regulation is prescribed under section 5112(b) of this title, a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b), and is published in the Department’s hazardous materials route registry under section 5112(c).

(2)(A) A highway routing designation, limitation, or requirement established before the date a regulation is prescribed under section 5112(b) of this title does not have to comply with section 5112(b)(1)(B), (C), and (F).

(B) This subsection and section 5112 of this title do not require a State or Indian tribe to comply with section 5112(b)(1)(I) if the highway routing designation, limitation, or requirement was established before November 16, 1990.

(C) The Secretary may allow a highway routing designation, limitation, or requirement to continue in effect until a dispute related to the designation, limitation, or requirement is resolved under section 5112(d) of this title.

(d) DECISIONS ON PREEMPTION.—(1) A person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision, or tribe may apply to the Secretary, as provided by regulations prescribed by the Secretary, for a decision on whether the requirement is preempted by subsection (a), (b)(1), or (c) of this section or section 5119(f). The Secretary shall publish notice of the application in the Federal Register. The Secretary shall issue a decision on an application for a determination within 180 days after the date of the publication of the notice of having received such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary’s decision on the application is delayed, along with an estimate of the additional time necessary before the decision is made. After notice is published, an applicant may not seek judicial