

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.”

Statutory Notes and Related Subsidiaries

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; re-stated Nov. 16, 1990, Pub. L. 101-615, §12(b), 104 Stat. 3259.

Editorial Notes

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, re-