

**§ 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 stand-

ard 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 relief on the same or substantially the same issue until the Secretary takes final action on the application or until 180 days after the application is filed, whichever occurs first.

(2) After consulting with States, political subdivisions of States, and Indian tribes, the Secretary shall prescribe regulations for carrying out paragraph (1) of this subsection.

(3) Subsection (a) of this section does not prevent a State, political subdivision of a State, or

Indian tribe, or another person directly affected by a requirement, from seeking a decision on preemption from a court of competent jurisdiction instead of applying to the Secretary under paragraph (1) of this subsection.

(e) **WAIVER OF PREEMPTION.**—A State, political subdivision of a State, or Indian tribe may apply to the Secretary for a waiver of preemption of a requirement the State, political subdivision, or tribe acknowledges is preempted by subsection (a), (b)(1), or (c) of this section or section 5119(f). Under a procedure the Secretary prescribes by regulation, the Secretary may waive preemption on deciding the requirement—

(1) provides the public at least as much protection as do requirements of this chapter and regulations prescribed under this chapter; and

(2) is not an unreasonable burden on commerce.

(f) **FEEES.**—(1) A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

(2) A State or political subdivision thereof or Indian tribe that levies a fee in connection with the transportation of hazardous materials shall biennially report to the Secretary on—

(A) the basis on which the fee is levied upon persons involved in such transportation;

(B) the purposes for which the revenues from the fee are used;

(C) the annual total amount of the revenues collected from the fee; and

(D) such other matters as the Secretary requests.

(g) **APPLICATION OF EACH PREEMPTION STANDARD.**—Each standard for preemption in subsection (a), (b)(1), or (c), and in section 5119(f), is independent in its application to a requirement of a State, political subdivision of a State, or Indian tribe.

(h) **NON-FEDERAL ENFORCEMENT STANDARDS.**—This section does not apply to any procedure, penalty, required mental state, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.

(Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 781; Pub. L. 103-311, title I, §§107, 117(a)(2), 120(b), Aug. 26, 1994, 108 Stat. 1674, 1678, 1681; Pub. L. 103-429, §6(6), Oct. 31, 1994, 108 Stat. 4378; Pub. L. 107-296, title XVII, §1711(b), Nov. 25, 2002, 116 Stat. 2320; Pub. L. 109-59, title VII, §§7122, 7123(a), 7126, Aug. 10, 2005, 119 Stat. 1907, 1909; Pub. L. 110-244, title III, §302(c), June 6, 2008, 122 Stat. 1618; Pub. L. 112-141, div. C, title III, §§33006(d), 33011, 33013(b), July 6, 2012, 126 Stat. 835, 838, 839.)

HISTORICAL AND REVISION NOTES  
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5125(a) .....	49 App.:1811(a).	Jan. 3, 1975, Pub. L. 93-633, §112(a)-(e), 88 Stat. 2161; Nov. 30, 1979, Pub. L. 96-129, §216(a), 93 Stat. 1015; restated Nov. 16, 1990, Pub. L. 101-615, §13, 104 Stat. 3259.
5125(b) .....	49 App.:1804(a)(4), (5).	Jan. 3, 1975, Pub. L. 93-633, §105(a)(4), (5), (b)(4), 88 Stat. 2157; restated Nov. 16, 1990, Pub. L. 101-615, §4, 104 Stat. 3247, 3250.
5125(c) .....	49 App.:1804(b)(4).	
5125(d) .....	49 App.:1811(c).	
5125(e) .....	49 App.:1811(d).	
5125(f) .....	49 App.:1811(e).	
5125(g) .....	49 App.:1811(b).	

In subsections (a) and (b)(1), the words “and unless authorized by Federal law” are omitted as surplus.

In subsection (a), before clause (1), the reference to subsections (b) and (c) is substituted for 49 App.:1811(a)(3) for clarity.

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

In subsection (b)(3), the word “imposes” is substituted for “assesses” for consistency.

In subsection (c)(1), the words “the procedural requirements of” and “the substantive requirements of” are omitted as surplus.

In subsection (c)(2)(A), the words “procedural requirements of the Federal standards established pursuant to” are omitted as surplus.

In subsection (f), the words “may bring a civil action for judicial review” are substituted for “may seek judicial review . . . only by filing a petition” for consistency in the revised title.

PUB. L. 103-429

This amends 49:5125(a) and (b)(1) to clarify the re-statement of 49 App.:1804(a)(4) and 1811(a) by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 781).

AMENDMENTS

2012—Subsec. (b)(1)(D). Pub. L. 112-141, §33006(d), inserted “and other written hazardous materials transportation incident reporting involving State or local emergency responders in the initial response to the incident” before period at end.

Subsec. (c)(1). Pub. L. 112-141, §33013(b), inserted “, and is published in the Department’s hazardous materials route registry under section 5112(c)” before period at end.

Subsec. (f)(2). Pub. L. 112-141, §33011, substituted “biennially” for “, upon the Secretary’s request.”.

2008—Subsec. (d)(1). Pub. L. 110-244, §302(c)(1), substituted “5119(f)” for “5119(e)”.

Subsec. (e). Pub. L. 110-244, §302(c)(2), substituted “5119(f)” for “5119(b)” in introductory provisions.

Subsec. (g). Pub. L. 110-244, §302(c)(2), (3), substituted “(a), (b)(1), or (c)” for “(b), (c)(1), or (d)” and “5119(f)” for “5119(b)”.

2005—Subsec. (b)(1)(E). Pub. L. 109-59, §7122(a)(1), added subpar. (E) and struck out former subpar. (E) which read as follows: “the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.”

Subsec. (b)(2). Pub. L. 109-59, §7126, substituted “If the Secretary” for “If the Secretary of Transportation”.

Pub. L. 109-59, §7122(a)(2), substituted “subjects that the Secretary prescribes. The” for “subjects that the Secretary prescribes after November 16, 1990. However, the”.

Subsec. (d)(1). Pub. L. 109-59, §7122(b), inserted “or section 5119(e)” before period at end of first sentence.

Subsec. (e). Pub. L. 109-59, §7122(c), inserted “or section 5119(b)” before period at end of first sentence.

Subsec. (f). Pub. L. 109-59, §7123(a), redesignated subsec. (g) as (f), realigned margins, and struck out heading and text of former subsec. (f). Text read as follows: “A party to a proceeding under subsection (d) or (e) of this section may bring a civil action in an appropriate district court of the United States for judicial review of the decision of the Secretary not later than 60 days after the decision becomes final.”

Subsec. (g). Pub. L. 109-59, §7123(a)(2), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 109-59, §7123(a)(2), redesignated subsecs. (h) and (i) as (g) and (h), respectively.

Pub. L. 109-59, §7122(d), added subsecs. (h) and (i).

2002—Subsecs. (a), (b)(1). Pub. L. 107-296 substituted “chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security” for “chapter or a regulation prescribed under this chapter” wherever appearing.

1994—Subsecs. (a), (b)(1). Pub. L. 103-429 inserted “and unless authorized by another law of the United States” after “section” in introductory provisions.

Subsec. (b)(1)(E). Pub. L. 103-311, §117(a)(2), substituted “a packaging or a” for “a package or”.

Subsec. (d). Pub. L. 103-311, §120(b), inserted after second sentence “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.”

Subsec. (g). Pub. L. 103-311, §107, designated existing provisions as par. (1) and added par. (2).

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 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

§ 5126. Relationship to other laws

(a) CONTRACTS.—A person under contract with a department, agency, or instrumentality of the United States Government that transports hazardous material, or causes hazardous material to be transported, or designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented as qualified for use in transporting hazardous material shall comply with this chapter, regulations prescribed and orders issued under this chapter, and all other requirements of the Government, State and local governments, and Indian tribes (except a requirement preempted by a law of the United States) in the same way and to the same extent that any person engaging in that transportation, designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing that is in or affects commerce must comply with the provision, regulation, order, or requirement.

(b) NONAPPLICATION.—This chapter does not apply to—

- (1) a pipeline subject to regulation under chapter 601 of this title; or
- (2) any matter that is subject to the postal laws and regulations of the United States under this chapter or title 18 or 39.

(Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 783; Pub. L. 103-311, title I, §117(a)(2), Aug. 26, 1994, 108 Stat. 1678; Pub. L. 109-59, title VII, §7124, Aug. 10, 2005, 119 Stat. 1908; Pub. L. 110-244, title III, §302(d), June 6, 2008, 122 Stat. 1618.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5126(a) .....	49 App.:1818.	Jan. 3, 1975, Pub. L. 93-633, 88 Stat. 2156, §120; added Nov. 16, 1990, Pub. L. 101-615, §20, 104 Stat. 3270.
5126(b) .....	49 App.:1811(f).	Jan. 3, 1975, Pub. L. 93-633, §112(f), 88 Stat. 2161; Nov. 30, 1979, Pub. L. 96-129, §216(a), 93 Stat. 1015; re-stated Nov. 16, 1990, Pub. L. 101-615, §13, 104 Stat. 3260.

In subsection (a), the word “manufactures” is substituted for “manufacturers” to correct an error in the source provisions. The words “of the executive, legislative, or judicial branch”, “be subject to and”, “substantive and procedural”, and “this chapter or any other” are omitted as surplus.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-244 amended Pub. L. 109-59. See 2005 Amendment note below.

2005—Subsec. (a). Pub. L. 109-59, §7124(4), substituted “designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing” for “manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing”.

Pub. L. 109-59, §7124(3), as amended by Pub. L. 110-244, substituted “shall comply with this chapter” for “must comply with this chapter”.

Pub. L. 109-59, §7124(1), (2), substituted “transports hazardous material, or causes hazardous material to be transported,” for “transports or causes to be transported hazardous material,” and “designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented” for “manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a container that the person represents, marks, certifies, or sells”.

1994—Subsec. (a). Pub. L. 103-311 substituted “a packaging or a” for “a package or”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-244 effective as of the date of enactment of Pub. L. 109-59 (Aug. 10, 2005) and to be treated as included in Pub. L. 109-59 as of that date, and provisions of Pub. L. 109-59, as in effect on the day before June 6, 2008, that are amended by Pub. L. 110-244 to be treated as not enacted, see section 121(b) of Pub. L. 110-244, set out as a note under section 101 of Title 23, Highways.

§ 5127. Judicial review

(a) FILING AND VENUE.—Except as provided in section 20114(c), a person adversely affected or aggrieved by a final action of the Secretary under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides or has its