

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
21107 .....	45:63a(d) (related to 45:64).	Mar. 4, 1907, ch. 2939, 34 Stat. 1415, §3A(d) (related to §4); added July 8, 1976, Pub. L. 94-348, §4(d), 90 Stat. 819; June 22, 1988, Pub. L. 100-342, §16(4), 102 Stat. 635.
	45:64.	Mar. 4, 1907, ch. 2939, §4, 34 Stat. 1417; restated Dec. 26, 1969, Pub. L. 91-169, §1, 83 Stat. 464; June 22, 1988, Pub. L. 100-342, §16(5), 102 Stat. 635.

§ 21108. Pilot projects

(a) IN GENERAL.—As of the date of enactment of the Rail Safety Improvement Act of 2008, a railroad carrier or railroad carriers and all non-profit employee labor organizations representing any class or craft of directly affected covered service employees of the railroad carrier or railroad carriers, may jointly petition the Secretary of Transportation for approval of—

- (1) a waiver of compliance with this chapter as in effect on the date of enactment of the Rail Safety Improvement Act of 2008; or
- (2) a waiver of compliance with this chapter as it will be effective 9 months after the enactment of the Rail Safety Improvement Act of 2008,

to enable the establishment of one or more pilot projects to demonstrate the possible benefits of implementing alternatives to the strict application of the requirements of this chapter, including requirements concerning maximum on-duty and minimum off-duty periods.

(b) GRANTING OF WAIVERS.—The Secretary may, after notice and opportunity for comment, approve such waivers described in subsection (a) for a period not to exceed two years, if the Secretary determines that such a waiver of compliance is in the public interest and is consistent with railroad safety.

(c) EXTENSIONS.—Any such waiver, based on a new petition, may be extended for additional periods of up to two years, after notice and opportunity for comment. An explanation of any waiver granted under this section shall be published in the Federal Register.

(d) REPORT.—The Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, no later than December 31, 2012, or, if no projects are completed prior to December 31, 2012, no later than 6 months after the completion of a pilot project, a report that—

- (1) explains and analyzes the effectiveness of any pilot project established pursuant to a waiver granted under subsection (a);
- (2) describes the status of all other waivers granted under subsection (a) and their related pilot projects, if any; and
- (3) recommends any appropriate legislative changes to this chapter.

(e) DEFINITION.—For purposes of this section, the term “directly affected covered service employees” means covered service employees to whose hours of service the terms of the waiver petitioned for specifically apply.

(Added Pub. L. 103-440, title II, §203(a), Nov. 2, 1994, 108 Stat. 4619; amended Pub. L. 110-432, div. A, title I, §110, Oct. 16, 2008, 122 Stat. 4867.)

REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsec. (a), is the date of enactment of div. A of Pub. L. 110-432, which was approved Oct. 16, 2008.

AMENDMENTS

2008—Pub. L. 110-432 amended section generally, revising and restating provisions of former subsec. (a) relating to waivers as subssecs. (a) to (c), provisions of former subsec. (b) relating to requirement of a report to Congress as subsec. (d), and provisions of former subsec. (c) defining “directly affected covered service employees” as subsec. (e).

§ 21109. Regulatory authority

(a) IN GENERAL.—In order to improve safety and reduce employee fatigue, the Secretary may prescribe regulations—

- (1) to reduce the maximum hours an employee may be required or allowed to go or remain on duty to a level less than the level established under this chapter;
- (2) to increase the minimum hours an employee may be required or allowed to rest to a level greater than the level established under this chapter;
- (3) to limit or eliminate the amount of time an employee spends waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release that is considered neither on duty nor off duty under this chapter;
- (4) for signal employees—

(A) to limit or eliminate the amount of time that is considered to be neither on duty nor off duty under this chapter that an employee spends returning from an outlying worksite after scheduled duty hours or returning from a trouble call to the employee’s headquarters or directly to the employee’s residence; and

(B) to increase the amount of time that constitutes a release period, that does not break the continuity of service and is considered time off duty; and

- (5) to require other changes to railroad operating and scheduling practices, including unscheduled duty calls, that could affect employee fatigue and railroad safety.

(b) REGULATIONS GOVERNING THE HOURS OF SERVICE OF TRAIN EMPLOYEES OF COMMUTER AND INTERCITY PASSENGER RAILROAD CARRIERS.—Within 3 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary shall prescribe regulations and issue orders to establish hours of service requirements for train employees engaged in commuter rail passenger transportation and intercity rail passenger transportation (as defined in section 24102 of this title) that may differ from the requirements of this chapter. Such regulations and orders may address railroad operating and scheduling practices, including unscheduled duty calls, communications during time off duty, and time spent waiting for deadhead transportation or in deadhead transportation from a

duty assignment to the place of final release, that could affect employee fatigue and railroad safety.

(c) **CONSIDERATIONS.**—In issuing regulations under subsection (a) the Secretary shall consider scientific and medical research related to fatigue and fatigue abatement, railroad scheduling and operating practices that improve safety or reduce employee fatigue, a railroad's use of new or novel technology intended to reduce or eliminate human error, the variations in freight and passenger railroad scheduling practices and operating conditions, the variations in duties and operating conditions for employees subject to this chapter, a railroad's required or voluntary use of fatigue management plans covering employees subject to this chapter, and any other relevant factors.

(d) **TIME LIMITS.**—

(1) If the Secretary determines that regulations are necessary under subsection (a), the Secretary shall first request that the Railroad Safety Advisory Committee develop proposed regulations and, if the Committee accepts the task, provide the Committee with a reasonable time period in which to complete the task.

(2) If the Secretary requests that the Railroad Safety Advisory Committee accept the task of developing regulations under subsection (b) and the Committee accepts the task, the Committee shall reach consensus on the rulemaking within 18 months after accepting the task. If the Committee does not reach consensus within 18 months after the Secretary makes the request, the Secretary shall prescribe appropriate regulations within 18 months.

(3) If the Secretary does not request that the Railroad Safety Advisory Committee accept the task of developing regulations under subsection (b), the Secretary shall prescribe regulations within 3 years after the date of enactment of the Rail Safety Improvement Act of 2008.

(e) **PILOT PROJECTS.**—

(1) **IN GENERAL.**—Not later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary shall conduct at least 2 pilot projects of sufficient size and scope to analyze specific practices which may be used to reduce fatigue for train and engine and other railroad employees as follows:

(A) A pilot project at a railroad or railroad facility to evaluate the efficacy of communicating to employees notice of their assigned shift time 10 hours prior to the beginning of their assigned shift as a method for reducing employee fatigue.

(B) A pilot project at a railroad or railroad facility to evaluate the efficacy of requiring railroads who use employee scheduling practices that subject employees to periods of unscheduled duty calls to assign employees to defined or specific unscheduled call shifts that are followed by shifts not subject to call, as a method for reducing employee fatigue.

(2) **WAIVER.**—The Secretary may temporarily waive the requirements of this section, if nec-

essary, to complete a pilot project under this subsection.

(f) **DUTY CALL DEFINED.**—In this section the term “duty call” means a telephone call that a railroad places to an employee to notify the employee of his or her assigned shift time.

(Added Pub. L. 110-432, div. A, title I, §108(e)(1), Oct. 16, 2008, 122 Stat. 4864.)

#### REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsecs. (b), (d)(3), and (e)(1), is the date of enactment of div. A of Pub. L. 110-432, which was approved Oct. 16, 2008.

### CHAPTER 213—PENALTIES

#### SUBCHAPTER I—CIVIL PENALTIES

Sec.

- 21301. Chapter 201 general violations.
- 21302. Chapter 201 accident and incident violations and chapter 203-209 violations.
- 21303. Chapter 211 violations.
- 21304. Willfulness requirement for penalties against individuals.

#### SUBCHAPTER II—CRIMINAL PENALTIES

- 21311. Records and reports.

#### SUBCHAPTER I—CIVIL PENALTIES

### § 21301. Chapter 201 general violations

(a) **PENALTY.**—(1) A person may not fail to comply with section 20160 or with a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title. Subject to section 21304 of this title, a person violating section 20160 of this title or a regulation prescribed or order issued by the Secretary under chapter 201 is liable to the United States Government for a civil penalty. The Secretary shall impose the penalty applicable under paragraph (2) of this subsection. A separate violation occurs for each day the violation continues.

(2) The Secretary shall include in, or make applicable to, each regulation prescribed and order issued under chapter 201 of this title a civil penalty for a violation. The Secretary shall impose a civil penalty for a violation of section 20160 of this title. The amount of the penalty shall be at least \$500 but not more than \$25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury to individuals, the amount may be not more than \$100,000.

(3) The Secretary may compromise the amount of a civil penalty imposed under this subsection to not less than \$500 before referring the matter to the Attorney General for collection. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(b) **SETOFF.**—The Government may deduct the amount of a civil penalty imposed or com-