

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-

promised under this section from amounts it owes the person liable for the penalty.

(c) DEPOSIT IN TREASURY.—A civil penalty collected under this section or section 20113(b) of this title shall be deposited in the Treasury as miscellaneous receipts.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 891; Pub. L. 104–287, §5(53), Oct. 11, 1996, 110 Stat. 3393; Pub. L. 110–432, div. A, title II, §204(d), title III, §302(a), Oct. 16, 2008, 122 Stat. 4871, 4878.)

HISTORICAL AND REVISION NOTES
PUB. L. 103–272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
21301(a)(1) ..	45:438(a). 45:438(c) (1st, 3d sentences).	Oct. 16, 1970, Pub. L. 91–458, §209(a), 84 Stat. 975; re-stated Jan. 14, 1983, Pub. L. 97–468, §706, 96 Stat. 2581; June 22, 1988, Pub. L. 100–342, §3(a)(1), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102–365, §9(a)(1), 106 Stat. 977. Oct. 16, 1970, Pub. L. 91–458, §209(c) (1st, 3d, 5th–8th sentences), 84 Stat. 975; June 22, 1988, Pub. L. 100–342, §3(a)(3)(A), (C), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102–365, §4(c)(1), 106 Stat. 974.
21301(a)(2) ..	45:438(b) (related to rules, regulations, orders, or standards issued under this subchapter).	Oct. 16, 1970, Pub. L. 91–458, §209(b) (related to rules, regulations, orders, or standards issued under this title), 84 Stat. 975; Jan. 3, 1975, Pub. L. 93–633, §204(a), 88 Stat. 2165; June 22, 1988, Pub. L. 100–342, §3(a)(2), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102–365, §4(a)(1), 106 Stat. 973.
21301(a)(3) ..	45:438(c) (5th, 6th sentences).	
21301(b)	45:438(c) (7th sentence).	
21301(c)	45:438(c) (8th sentence).	

In subsection (a), the words “impose” and “imposed” are substituted for “assessed”, for consistency in the revised title.

In subsection (a)(1), the first 2 sentences are substituted for 45:438(a) and (c) (1st sentence) for consistency in the revised title and to eliminate unnecessary words. The words “(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)” are omitted as surplus because of the definition of “person” in 1:1 and because the provision being violated indicates to whom it applies. The word “shall” in 45:438(c) (1st sentence) is retained from the source provisions. For a discussion of whether the authority of the Secretary of Transportation to impose a penalty is mandatory or permissive, see *Railway Labor Executives’ Ass’n v. Dole*, 760 F.2d 1021, 1024, 1025 (9th Cir. 1985); H.R. Conf. Rept. No. 100–637, 100th Cong., 2d Sess., p. 20; 134 Cong. Rec. H3470, May 23, 1988 (daily ed.); 134 Cong. Rec. S7510, June 9, 1988 (daily ed.). See also 134 Cong. Rec. E1946, June 10, 1988 (daily ed.). For an extended discussion of FRA’s prosecutorial discretion, see *Nationwide Rail Safety: Hearing Before the Subcommittee on Transportation, Tourism, and Hazardous Materials of the House Energy and Commerce Committee*, 100th Cong., 1st Sess., pp. 54–65 (1987). See also section 6 of this bill that provides that this bill restates, without substantive change, the provisions of law replaced by this bill, and that this bill may not be construed as making a substantive change in the law restated. Therefore, the word “shall” in this subsection has the same meaning it has under existing

law. The words “A separate violation” are substituted for “a separate offense” for consistency.

In subsection (a)(3), the words “may compromise the amount . . . to not less than \$500” are substituted for “may, however, be compromised . . . for any amount, but in no event for an amount less than the minimum provided in subsection (b) of this section” for clarity and to eliminate unnecessary words. In clause (B), the words “prior or subsequent” are omitted as unnecessary.

In subsection (c), the words “deposited in” are substituted for “covered into” for consistency in the revised title and with other titles of the United States Code.

PUB. L. 104–287

This amends 49:21301(a)(1) to clarify the restatement of 45:438(a) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 891).

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–432, §204(d)(1), inserted “with section 20160 or” after “comply” and “section 20160 of this title or” after “violating”.

Subsec. (a)(2). Pub. L. 110–432, §302(a), substituted “\$25,000.” for “\$10,000.” and “\$100,000.” for “\$20,000.”

Pub. L. 110–432, §204(d)(2), inserted “The Secretary shall impose a civil penalty for a violation of section 20160 of this title.” after first sentence.

1996—Subsec. (a)(1). Pub. L. 104–287, §5(53)(B), substituted “Secretary under chapter 201 is liable” for “Secretary of Transportation under chapter 201 of this title is liable”.

Pub. L. 104–287, §5(53)(A), inserted “A person may not fail to comply with a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title.” before “Subject to”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of this title.

§ 21302. Chapter 201 accident and incident violations and chapter 203–209 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued under chapter 201 of this title related to accident and incident reporting or investigation, or violating chapters 203–209 of this title or a regulation or requirement prescribed or order issued under chapters 203–209, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. 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, the amount may be not more than \$100,000.

(3) The Secretary may compromise the amount of the civil penalty under section 3711 of title 31. 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