United States Government for a civil penalty'' are substituted for ''liable to a penalty'' for clarity. The text of 45:438(b) (related to 45:39) is omitted as covered by 45:43.

In subsection (a)(2), the words ''The Secretary of Transportation imposes a civil penalty under this subsection'' are substituted for ''to be assessed by the Secretary of Transportation'' in 45:6, ''Such penalty shall be assessed by the Secretary of Transportation'' in 45:13, the text of 45:10 (words after 7th comma) and 14 (words after semicolon), and ''in such amount . . . as the Secretary of Transportation deems reasonable'' in 45:34 and 43 and 49 App.:26(h) for clarity and to eliminate unnecessary words. The words ''per violation'' are omitted as surplus.

In subsections (a)(3) and (b), the words ''Attorney General'' are substituted for ''United States attorney'', ''such attorneys, subject to the direction of the Attorney General'', ''proper United States attorney'' and ''proper United States attorneys'' because of 28:509.

In subsection (a)(3), the words ''section 3711 of title 31'' are substituted for ''the Federal Claims Collection Act of 1966'' and ''sections 3711 and 3716 to 3718 of title 31'' because the Federal Claims Collection Act of 1966 has been repealed and reenacted as part of title 31 and penalties are compromised under 31:3711. In clause (B), the words ''prior or subsequent'' are omitted as unnecessary.

In subsection (a)(4), the words ''the Secretary shall refer the matter to the Attorney General for collection'' are substituted for ''recovered in a suit or suits to be brought by'' for clarity. The words ''and it shall also be the duty of the Secretary of Transportation to lodge with . . . information of any such violations as may come to his knowledge'' and ''and it shall be the duty of the director of locomotive inspection to give information . . . of all violations coming to his knowledge'' are omitted as obsolete.

In subsection (b), the words ''The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section'' are substituted for ''and it shall be the duty of such United States attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred'' in 45:6, and for ''It shall be the duty of such attorneys to bring such suits upon duly verified information being lodged with them showing such violations having occurred'' in 49 App.:26, for clarity and consistency in this section and with other provisions of the revised title.

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110–432 substituted ''$25,000.'' for ''$10,000.'' and ''$100,000.'' for ''$20,000.''

§ 21303. Chapter 211 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating chapter 211 of this title, including section 21103 (as such section was in effect on the day before the date of enactment of the Rail Safety Improvement Act of 2008), or violating any provision of a waiver applicable to that person that has been granted under section 21108 of this title, 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. For a violation of section 21106 of this title, a separate violation occurs for each day a facility is not in compliance.

(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

(C) other matters that justice requires.

(4) If the Secretary does not compromise the amount of the civil penalty, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—(1) The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action under this subsection must be brought not later than 2 years after the date of the violation unless administrative notification under section 3711 of title 31 is given within that 2-year period to the person committing the violation. However, even if notification is given, the action must be brought within the period specified in section 2462 of title 28.

(c) IMPUTATION OF KNOWLEDGE.—In any proceeding under this section, a railroad carrier is deemed to know the acts of its officers and agents.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 892; Pub. L. 103–440, title II, § 204, Nov. 2, 1994, 108 Stat. 4620; Pub. L. 104–287, § 5(54), Oct. 11, 1996, 110 Stat. 3393; Pub. L. 110–432, div. A, title I, § 108(e)(2)(B), title III, § 302(c), Oct. 16, 2008, 122 Stat. 4866, 4878.)

HISTORICAL AND REVISION NOTES
PUB. L. 103–272

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
21303	45:63a(d) (related to 45:64a).	Mar. 4, 1907, ch. 2939, 34 Stat. 1415, § 3A(d) (related to § 5); 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.
	45:64a(a)(1) (1st sentence words before last comma, 2d–4th sentences, 5th sentence words before last comma, last sentence).	Mar. 4, 1907, ch. 2939, § 5(a)(1) (1st sentence words before last comma, 2d–4th sentences, 5th sentence words before last comma, last sentence), 34 Stat. 1417; Dec. 26, 1969, Pub. L. 91–169, § 1, 83 Stat. 464; July 8, 1976, Pub. L. 94–348, § 4(e), 90 Stat. 819; Oct. 10, 1980, Pub. L. 96–423, § 12, 94 Stat. 1816; restated June 22, 1988, Pub. L. 100–342, § 16(6)(A), 102 Stat. 635; Sept. 3, 1992, Pub. L,. 102–365, §§ 4(a)(2), (c)(2), 9(a)(2), 106 Stat. 973, 974, 977.

HISTORICAL AND REVISION NOTES—CONTINUED

PUB. L. 103–272

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	45:64a(a)(2).	Mar. 4, 1907, ch. 2939, §5(a)(2), 34 Stat. 1417; Dec. 26, 1969, Pub. L. 91–169, §1, 83 Stat. 464; July 8, 1976, Pub. L. 94–348, §4(e), 90 Stat. 819; restated Oct. 10, 1980, Pub. L. 96–423, §12, 94 Stat. 1816; June 22, 1988, Pub. L. 100–342, §16(6)(B), 102 Stat. 635.
	45:64a(b).	Mar. 4, 1907, ch. 2939, §5(b), 34 Stat. 1417; restated Dec. 26, 1969, Pub. L. 91–169, §1, 83 Stat. 464.
	45:64a(c).	Mar. 4, 1907, ch. 2939, §5(c), 34 Stat. 1417; restated Dec. 26, 1969, Pub. L. 91–169, §1, 83 Stat. 464; June 22, 1988, Pub. L. 100–342, §16(6)(C), 102 Stat. 635.

In this section, the words ''Attorney General'' are substituted for ''United States attorney'' because of 28:509. The words ''civil action'' are substituted for ''suit or suits'', ''action'', and ''prosecutions'' for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (a)(1), 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 words ''violating chapter 211 of this title'' are substituted for ''that requires or permits any employee to go, be, or remain on duty in violation of section 62, section 63, or section 63a of this title, or that violates any other provision of this chapter'' to eliminate unnecessary words. The words ''to the United States Government for a civil penalty'' are substituted for ''for a penalty'' for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(2), the words ''The Secretary of Transportation imposes a civil penalty under this subsection'' are substituted for ''as the Secretary of Transportation deems reasonable'' for clarity and consistency.

In subsection (a)(3), the words ''section 3711 of title 31'' are substituted for ''sections 3711 and 3716 to 3718 of title 31'' because penalties are compromised under 31:3711. In clause (B), the words ''prior or subsequent'' are omitted as unnecessary.

In subsection (a)(4), the words ''the Secretary shall refer the matter to the Attorney General for collection'' are substituted for ''recovered in a suit or suits to be brought by'' for clarity. The text of 45:64a(b) is omitted as obsolete.

In subsection (b)(1), the words ''The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General'' are substituted for ''It shall be the duty of the United States attorney to bring such an action upon satisfactory information being lodged with him'' for clarity and consistency in this section and with other provisions of the revised title.

In subsection (c), the words ''any proceeding'' are substituted for ''all prosecutions'' for consistency in the revised title.

PUB. L. 104–287

This amends 49:21303(a)(1) to correct a grammatical error.

REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsec. (a)(1), is the date of enactment of div. A of Pub. L. 110–432, which was approved Oct. 16, 2008.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–432, §108(e)(2)(B), inserted ''including section 21103 (as such section was in effect on the day before the date of enactment of the Rail Safety Improvement Act of 2008),'' after ''chapter 211 of this title,''.

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

1996—Subsec. (a)(1). Pub. L. 104–287 inserted a comma after ''chapter 211 of this title''.

1994—Subsec. (a)(1). Pub. L. 103–440 inserted ''or violating any provision of a waiver applicable to that person that has been granted under section 21108 of this title,'' after ''chapter 211 of this title''.

§21304. Willfulness requirement for penalties against individuals

A civil penalty under this subchapter may be imposed against an individual only for a willful violation. An individual is deemed not to have committed a willful violation if the individual was following the direct order of a railroad carrier official or supervisor under protest communicated to the official or supervisor. The individual is entitled to document the protest.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 893.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
21304	45:6 (1st sentence words between 23d and 24th commas, 2d sentence words after 2d comma, 3d sentence).	Mar. 2, 1893, ch. 196, §6 (1st sentence words between 23d and 24th commas, 2d sentence words after 2d comma, 3d sentence), 27 Stat. 532; restated June 22, 1988, Pub. L. 100–342, §13(1)(F), 102 Stat. 630; Sept. 3, 1992, Pub. L. 102–365, §9(a)(3), 106 Stat. 977.
	45:13 (1st sentence words after last comma, 3d, 4th sentences).	Apr. 14, 1910, ch. 160, §4 (1st sentence words after last comma, 3d, 4th sentences), 36 Stat. 299; June 22, 1988, Pub. L. 100–342, §13(3)(C)(iii), (v), 102 Stat. 632.
	45:34 (1st sentence words after last comma, 3d, 4th sentences).	Feb. 17, 1911, ch. 103, §9 (1st sentence words after last comma, 3d, 4th sentences), 36 Stat. 916; June 22, 1988, Pub. L. 100–342, §14(7), 102 Stat. 633.
	45:43 (1st sentence words after last comma, 3d sentence words after 5th comma, 4th sentence).	May 6, 1910, ch. 208, §7 (1st sentence words after last comma, 3d sentence words after 5th comma, 4th sentence), 36 Stat. 351; Sept. 13, 1960, Pub. L. 86–762, §3, 74 Stat. 904; restated June 22, 1988, Pub. L. 100–342, §15(4), 102 Stat. 634.
	45:64a(a)(1) (1st sentence words after last comma, 5th sentence words after last comma, 6th sentence).	Mar. 4, 1907, ch. 2939, §5(a)(1) (1st sentence words after last comma, 5th sentence words after last comma, 6th sentence), 34 Stat. 1417; restated June 22, 1988, Pub. L. 100–342, §16(6)(A), 102 Stat. 635.
	45:438(c) (2d, 9th, last sentences).	Oct. 16, 1970, Pub. L. 91–458, §209(c) (2d, 8th, last 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.