

(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.)

Editorial Notes

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 subsecs. (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 necessary, 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

COMPLETION OF HOURS OF SERVICE AND FATIGUE STUDIES

Pub. L. 117-58, div. B, title II, §22408, Nov. 15, 2021, 135 Stat. 739, provided that:

“(a) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act [Nov. 15, 2021], the Administrator of the Federal Railroad Administration shall commence the pilot programs required under subparagraphs (A) and (B) of section 21109(e)(1) of title 49, United States Code.

“(b) **CONSULTATION.**—The Federal Railroad Administration shall consult with the class or craft of employees impacted by the pilot projects, including railroad carriers, and representatives of labor organizations representing the impacted employees when designing and conducting the pilot programs referred to in subsection (a).

“(c) **REPORT.**—If the pilot programs required under section 21109(e)(1) of title 49, United States Code, have not commenced on the date that is 1 year and 120 days after the date of enactment of this Act, the Secretary [of Transportation], not later than 30 days after such date, submit [sic] a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that describes—

“(1) the status of such pilot programs;

“(2) actions that the Federal Railroad Administration has taken to commence the pilot programs, including efforts to recruit participant railroads;

“(3) any challenges impacting the commencement of the pilot programs; and

“(4) any other details associated with the development of the pilot programs that affect progress toward meeting the mandate under such section 21109(e)(1).”

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.
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SUBCHAPTER II—CRIMINAL PENALTIES

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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, the amount may be not more than \$100,000.

(3) The Secretary may find that a person has violated this chapter or a regulation prescribed or order, special permit, or approval issued under this chapter only after notice and an opportunity for a hearing. The Secretary shall impose a penalty under this section by giving the person written notice of the amount of the penalty. The Secretary may compromise the amount of a civil penalty by settlement agreement without issuance of an order. 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) The Attorney General may bring a civil action in an appropriate district court of the United States to collect a civil penalty imposed or compromise under this section and any accrued interest on the civil penalty. In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.

(b) **SETOFF.**—The Government may deduct the amount of a civil penalty imposed or compromised 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; Pub. L. 117-58, div. B, title II, §22418, Nov. 15, 2021, 135 Stat. 749.)