

TITLE 49 - TRANSPORTATION
SUBTITLE V - RAIL PROGRAMS
PART A - SAFETY
CHAPTER 213 - PENALTIES
SUBCHAPTER I - CIVIL PENALTIES

§ 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. | | |
| | 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”.