

being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (other than information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(d) **REHABILITATION.**—The Secretary of Transportation shall prescribe regulations or issue orders establishing requirements for rehabilitation programs that at least provide for the identification and opportunity for treatment of railroad employees responsible for safety-sensitive functions (as decided by the Secretary) in need of assistance in resolving problems with the use of alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which employees shall be required to participate in a program. Each railroad carrier is encouraged to make such a program available to all of its employees in addition to employees responsible for safety-sensitive functions. This subsection does not prevent a railroad carrier from establishing a program under this subsection in cooperation with another railroad carrier.

(e) **INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS AND REGULATIONS.**—In carrying out this section, the Secretary of Transportation—

(1) shall establish only requirements that are consistent with international obligations of the United States; and

(2) shall consider applicable laws and regulations of foreign countries.

(f) **OTHER REGULATIONS ALLOWED.**—This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed or order issued before October 28, 1991, governing the use of alcohol or a controlled substance in railroad operations.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 876; Pub. L. 104–59, title III, §342(b), Nov. 28, 1995, 109 Stat. 609.)

In subsection (b)(1), before clause (A), the words “controlled substances” are substituted for “drug” for consistency in this section. In clauses (B) and (C), the word “found” is substituted for “determined” for consistency in the revised title.

In subsection (c)(3), the words “of any employee” are omitted as surplus.

In subsection (c)(4), the words “by any employee” are omitted as surplus.

In subsection (c)(5), the word “tested” is substituted for “assayed” for consistency. The words “2d confirmation test” are substituted for “independent test” for clarity and consistency.

AMENDMENTS

1995—Subsec. (b)(1)(A). Pub. L. 104–59 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “a railroad carrier to conduct pre-employment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a United States Government regulation; and”.

ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR MAINTENANCE-OF-WAY EMPLOYEES

Pub. L. 110–432, div. A, title IV, §412, Oct. 16, 2008, 122 Stat. 4889, provided that: “Not later than 2 years following the date of enactment of this Act [Oct. 16, 2008], the Secretary of Transportation shall complete a rulemaking proceeding to revise the regulations prescribed under section 20140 of title 49, United States Code, to cover all employees of railroad carriers and contractors or subcontractors to railroad carriers who perform maintenance-of-way activities.”

[For definition of “railroad carrier”, as used in section 412 of Pub. L. 110–432, set out above, see section 2(a) of Pub. L. 110–432, set out as a note under section 20102 of this title.]

§ 20141. Power brake safety

(a) **REVIEW AND REVISION OF EXISTING REGULATIONS.**—The Secretary of Transportation shall review existing regulations on railroad power brakes and, not later than December 31, 1993, revise the regulations based on safety information presented during the review. Where applicable, the Secretary shall prescribe regulations that establish standards on dynamic braking equipment.

(b) **2-WAY END-OF-TRAIN DEVICES.**—(1) The Secretary shall require 2-way end-of-train devices (or devices able to perform the same function) on road trains, except locals, road switchers, or work trains, to enable the initiation of emergency braking from the rear of a train. The Secretary shall prescribe regulations as soon as possible, but not later than December 31, 1993, requiring the 2-way end-of-train devices. The regulations at least shall—

(A) establish standards for the devices based on performance;

(B) prohibit a railroad carrier, on or after the date that is one year after the regulations are prescribed, from acquiring any end-of-train device for use on trains that is not a 2-way device meeting the standards established under clause (A) of this paragraph;

(C) require that the trains be equipped with 2-way end-of-train devices meeting those standards not later than 4 years after the regulations are prescribed; and

(D) provide that any 2-way end-of-train device acquired for use on trains before the regu-

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20140(a)	45:431(r)(5).	Oct. 16, 1970, Pub. L. 91–458, 84 Stat. 971, §202(r); added Oct. 28, 1991, Pub. L. 102–143, §4, 105 Stat. 957.
20140(b)	45:431(r)(1) (1st–3d sentences).	
20140(c)	45:431(r)(2).	
20140(d)	45:431(r)(3).	
20140(e)	45:431(r)(4).	
20140(f)	45:431(r)(1) (last sentence).	

lations are prescribed shall be deemed to meet the standards.

(2) The Secretary may consider petitions to amend the regulations prescribed under paragraph (1) of this subsection to allow the use of alternative technologies that meet the same basic performance requirements established by the regulations.

(3) In developing the regulations required by paragraph (1) of this subsection, the Secretary shall consider information presented under subsection (a) of this section.

(c) EXCLUSIONS.—The Secretary may exclude from regulations prescribed under subsections (a) and (b) of this section any category of trains or rail operations if the Secretary decides that the exclusion is in the public interest and is consistent with railroad safety. The Secretary shall make public the reasons for the exclusion. The Secretary at least shall exclude from the regulations prescribed under subsection (b)—

- (1) trains that have manned cabooses;
- (2) passenger trains with emergency brakes;
- (3) trains that operate only on track that is not part of the general railroad system;
- (4) trains that do not exceed 30 miles an hour and do not operate on heavy grades, except for any categories of trains specifically designated by the Secretary; and
- (5) trains that operate in a push mode.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 878.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20141(a)	45:431(r)(1), (2).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §202(r); added Sept. 3, 1992, Pub. L. 102-365, §7, 106 Stat. 976.
20141(b)	45:431(r)(3).	
20141(c)	45:431(r)(4).	

§ 20142. Track safety

(a) REVIEW OF EXISTING REGULATIONS.—Not later than March 3, 1993, the Secretary of Transportation shall begin a review of Department of Transportation regulations related to track safety standards. The review at least shall include an evaluation of—

- (1) procedures associated with maintaining and installing continuous welded rail and its attendant structure, including cold weather installation procedures;
- (2) the need for revisions to regulations on track excepted from track safety standards; and
- (3) employee safety.

(b) REVISION OF REGULATIONS.—Not later than September 1, 1995, the Secretary shall prescribe regulations and issue orders to revise track safety standards, considering safety information presented during the review under subsection (a) of this section and the report of the Comptroller General submitted under subsection (c) of this section.

(c) COMPTROLLER GENERAL'S STUDY AND REPORT.—The Comptroller General shall study the effectiveness of the Secretary's enforcement of track safety standards, with particular attention to recent relevant railroad accident experi-

ence and information. Not later than September 3, 1993, the Comptroller General shall submit a report to Congress and the Secretary on the results of the study, with recommendations for improving enforcement of those standards.

(d) IDENTIFICATION OF INTERNAL RAIL DEFECTS.—In carrying out subsections (a) and (b), the Secretary shall consider whether or not to prescribe regulations and issue orders concerning—

- (1) inspection procedures to identify internal rail defects, before they reach imminent failure size, in rail that has significant shelling; and
- (2) any specific actions that should be taken when a rail surface condition, such as shelling, prevents the identification of internal defects.

(e) TRACK STANDARDS.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this subsection, the Federal Railroad Administration shall—

(A) require each track owner using continuous welded rail track to include procedures (in its procedures filed with the Administration pursuant to section 213.119 of title 49, Code of Federal Regulations) to improve the identification of cracks in rail joint bars;

(B) instruct Administration track inspectors to obtain copies of the most recent continuous welded rail programs of each railroad within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections; and

(C) establish a program to review continuous welded rail joint bar inspection data from railroads and Administration track inspectors periodically.

(2) INSPECTION.—Whenever the Administration determines that it is necessary or appropriate, the Administration may require railroads to increase the frequency of inspection, or improve the methods of inspection, of joint bars in continuous welded rail.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 879; Pub. L. 103-440, title II, §208, Nov. 2, 1994, 108 Stat. 4621; Pub. L. 109-59, title IX, §9005(a), Aug. 10, 2005, 119 Stat. 1924.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20142(a)	45:431(s)(1) (1st sentence), (2).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §202(s); added Sept. 3, 1992, Pub. L. 102-365, §8, 106 Stat. 976.
20142(b)	45:431(s)(1) (last sentence).	
20142(c)	45:431(s)(3).	

In subsection (c), the word "information" is substituted for "data" for consistency in the revised title.

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (e)(1), is the date of enactment of Pub. L. 109-59, which was approved Aug. 10, 2005.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109-59 added subsec. (e).
 1994—Subsec. (a)(1). Pub. L. 103-440, §208(2), inserted "including cold weather installation procedures" after "attendant structure".