

**49 U.S.C.A. § 20140**

United States Code Annotated [Currentness](#)

Title 49. Transportation ([Refs & Annos](#))

**Subtitle V. Rail Programs**

Part A. Safety

[Chapter 201.](#) General ([Refs & Annos](#))

[Subchapter II.](#) Particular Aspects of Safety

**§ 20140. Alcohol and controlled substances testing**

**(a) Definition.**--In this section, "controlled substance" means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([21 U.S.C. 802](#)) specified by the Secretary of Transportation.

**(b) General.--(1)** In the interest of safety, the Secretary of Transportation shall prescribe regulations and issue orders, not later than October 28, 1992, related to alcohol and controlled substances use in railroad operations. The regulations shall establish a program requiring--

**(A)** a railroad carrier to conduct preemployment, 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 a controlled substance in violation of law or a United States Government regulation, and to conduct reasonable suspicion, random, and post-accident testing of such employees for the use of alcohol in violation of law or a United States Government regulation; the regulations shall permit such railroad carriers to conduct preemployment testing of such employees for the use of alcohol; and

**(B)** when the Secretary considers it appropriate, disqualification for an established period of time or dismissal of any employee found--

**(i)** to have used or been impaired by alcohol when on duty; or

**(ii)** to have used a controlled substance, whether or not on duty, except as allowed for medical purposes by law or a regulation or order under this chapter.

**(2)** When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations and issue orders requiring railroad carriers to conduct periodic recurring testing of 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 Government regulation.

**(c) Testing and laboratory requirements.**--In carrying out this section, the Secretary of Transportation shall develop requirements that shall--

**(1)** promote, to the maximum extent practicable, individual privacy in the collection of specimens;

**(2)** for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing--

**(A)** comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

**(B)** the minimum list of controlled substances for which individuals may be tested; and

**(C)** appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

**(3)** require that a laboratory involved in controlled substances testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

**(4)** provide that all tests indicating the use of alcohol or a controlled substance in violation of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

**(5)** provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual's confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after 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.

CREDIT(S)

(Added [Pub.L. 103-272, § 1\(e\)](#), July 5, 1994, 108 Stat. 876, and amended [Pub.L. 104-59, Title III, § 342\(b\)](#), Nov. 28, 1995, 109 Stat. 609.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

**1994 Acts.**



## Amendments

1995 Amendments. Subsec. (b)(1)(A). [Pub.L. 104-59, § 342\(b\)](#), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A) a railroad carrier to conduct preemployment, 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".

## CROSS REFERENCES

Mass transportation alcohol and controlled substances testing as including any form of mass transportation except a form adequately covered under this section, see [49 USCA § 5331](#).


## CODE OF FEDERAL REGULATIONS


Qualification and certification of locomotive engineers, see [49 CFR § 240.1](#) et seq.

Railroad safety enforcement procedures, see [49 CFR § 209.1](#) et seq.

## American Digest System

 Addiction to drugs or alcohol; commitment and treatment of substance abusers, see Chemical Dependents 1 et seq., 10 et seq.

 Offenses in operation of trains; employee intoxication, see Railroads 255(1) et seq.

 Taking samples of blood or other physical specimens; testing and identification procedures, see Searches and Seizures 14, 78.


## Encyclopedias

## NOTES OF DECISIONS


### **Preemption 2**

**Private action 1**

1. Private action

 Federal Omnibus Transportation Employee Testing Act (FOTETA) and regulations promulgated thereunder do not provide for, nor imply, private right of action. [Howell v. Lab One, Inc., D.Neb.2003, 243 F.Supp.2d 987](#). Action 3

2. Preemption

 Railroad employee's state law tort claims against drug testing laboratory, including claims for negligence, misrepresentation, and tortious interference, stemming from laboratory's testing of the employee's urine sample, were pre-empted by the Federal Railroad Safety Act (FRSA); FRSA and its corresponding regulations covered the same subject matter as the employee's claims, all of which were predicated on the manner in which the laboratory tested the sample and subsequently reported the results to the railroad. [Chapman v. LabOne, S.D.Iowa 2003, 252 F.Supp.2d 814](#). Fraud 31; Health 607; States 18.15; Torts 10(3)

49 U.S.C.A. § 20140, 49 USCA § 20140

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