

113TH CONGRESS  
2D SESSION

# S. 2858

To enhance rail safety and provide for the safe transport of hazardous materials, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2014

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To enhance rail safety and provide for the safe transport of hazardous materials, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Toxics by Rail Ac-  
5 countability and Community Knowledge (TRACK) Act of  
6 2014”.

7 **SEC. 2. CHEMICAL EXPOSURE RIGHT-TO-KNOW.**

8 (a) DEFINITIONS.—In this section:

9 (1) LONG-LASTING OR IRREVERSIBLE HEALTH  
10 CONSEQUENCES.—The term “long-lasting or irre-

1       versible health consequences” means those health  
2       consequences occurring at the exposure threshold de-  
3       fined in the Acute Exposure Guideline Level AEGL-  
4       2 or AEGL-3, as established by the National Advi-  
5       sory Committee on Acute Exposure Guideline Levels  
6       for Hazardous Substances.

7               (2) POST-ACCIDENT PUBLIC HEALTH ASSESS-  
8       MENT.—The term “post-accident public health as-  
9       sessment” means a scientific assessment of the im-  
10      pacts of a hazardous material release on public  
11      health made by a qualified entity.

12              (3) QUALIFIED ENTITY.—The term “qualified  
13      entity” means a Federal, State, or other govern-  
14      mental entity responsible for emergency response,  
15      public health, chemical safety or transportation, or  
16      environmental protection.

17              (b) RIGHT-TO-KNOW PROTECTIONS.—Beginning 180  
18      days after the date of the enactment of this Act, railroad  
19      carriers that are found to be at fault by an administrative,  
20      judicial, or investigatory process for an accident or inci-  
21      dent during calendar year 2010 or later that led to an  
22      unintended release of hazardous materials shall periodi-  
23      cally review any post-accident public health assessments  
24      regarding the extent to which individuals exposed to the

1 hazardous material that was released could experience  
2 long-lasting or irreversible health consequences, and—

3           (1) inform in a timely manner individuals ex-  
4 posed to the hazardous material of any health infor-  
5 mation, including information regarding long-lasting  
6 or irreversible health consequences, included in such  
7 reports; and

8           (2) offer to renegotiate any legal settlements  
9 made to individuals impacted by a hazardous mate-  
10 rial release for which additional information about  
11 the potential for long-lasting or irreversible health  
12 consequences has been later disclosed in a post-acci-  
13 dent public health assessment.

14       (c) ENFORCEMENT.—Any railroad carrier violating  
15 subsection (b)(2) or a regulation prescribed pursuant to  
16 such subsection shall be liable to the Federal Government  
17 for a civil penalty for each violation or for each day the  
18 violation continues, as follows:

19           (1) For a railroad carrier that has annual car-  
20 rier operating revenues that meet the threshold  
21 amount for Class I carriers as determined by the  
22 Surface Transportation Board under section  
23 1201.1–1 of title 49, Code of Federal Regulations,  
24 the penalty shall be not less than \$100,000 and not  
25 more than \$1,000,000.

1           (2) For a railroad carrier that has annual car-  
2 rier operating revenues that meet the threshold  
3 amount for Class II carriers as determined by the  
4 Surface Transportation Board under section  
5 1201.1–1 of title 49, Code of Federal Regulations,  
6 the penalty shall be not less than \$25,000 and not  
7 more than \$250,000.

8           (3) For a railroad carrier that has annual car-  
9 rier operating revenues that meet the threshold  
10 amount for Class III carriers as determined by the  
11 Surface Transportation Board under section  
12 1201.1–1 of title 49, Code of Federal Regulations,  
13 the penalty shall be not less than \$10,000 and not  
14 more than \$100,000.

15 **SEC. 3. COMMODITY FLOW TRANSPARENCY.**

16       Not later than two years after the date of the enact-  
17 ment of this Act, the Secretary of Transportation shall  
18 prescribe regulations requiring a railroad carrier trans-  
19 porting a hazardous material to provide first responders,  
20 emergency response officials, and law enforcement per-  
21 sonnel in the communities through which the hazardous  
22 material is transported with accurate and current com-  
23 modity flow data and assist with development of emer-  
24 gency operations and response plans designed to protect  
25 public health and community safety in the event of a rail-

1 road accident or incident involving the hazardous material.  
2 In prescribing these regulations, the Secretary may con-  
3 sider which hazardous materials or classes of hazardous  
4 materials are most relevant to be included within com-  
5 modity flow information based on factors including the  
6 volume of the hazardous material transported and the  
7 threat to public health and community safety posed by  
8 each hazardous material.

9 **SEC. 4. MOVEABLE BRIDGE INSPECTION BEFORE TRAIN**  
10 **MOVEMENT.**

11 (a) **PROCEDURE REQUIRED.**—Not later than 18  
12 months after the date of the enactment of this Act, the  
13 Secretary of Transportation shall prescribe regulations es-  
14 tablishing a procedure for a railroad carrier to permit a  
15 train to pass a red signal aspect protecting a moveable  
16 bridge.

17 (b) **TRAINING AND QUALIFICATIONS.**—

18 (1) **TRAINING PROGRAM.**—The procedure estab-  
19 lished pursuant to subsection (a) shall require a rail-  
20 road carrier that operates across a moveable bridge  
21 to have in place a program to train and qualify em-  
22 ployees of the carrier to determine whether a train  
23 can safely travel across a moveable bridge when a  
24 signal protecting the bridge is displaying a red sig-  
25 nal aspect.

1           (2) REQUIRED QUALIFICATIONS.—The railroad  
2 carrier shall ensure that only an individual qualified  
3 under the railroad carrier’s training program is re-  
4 sponsible for making a determination regarding  
5 whether it is safe for a train to travel across a move-  
6 able bridge when a signal protecting the bridge is  
7 displaying a red signal aspect.

8           (c) ENFORCEMENT.—Any railroad carrier violating  
9 this section or a regulation prescribed in this section shall  
10 be liable to the Federal Government for a civil penalty for  
11 each violation or for each day the violation continues, as  
12 follows:

13           (1) For a railroad carrier that has annual car-  
14 rier operating revenues that meet the threshold  
15 amount for Class I carriers as determined by the  
16 Surface Transportation Board under section  
17 1201.1–1 of title 49, Code of Federal Regulations,  
18 the penalty shall be not less than \$100,000 and not  
19 more than \$1,000,000.

20           (2) For a railroad carrier that has annual car-  
21 rier operating revenues that meet the threshold  
22 amount for Class II carriers as determined by the  
23 Surface Transportation Board under section  
24 1201.1–1 of title 49, Code of Federal Regulations,

1 the penalty shall be not less than \$25,000 and not  
2 more than \$250,000.

3 (3) For a railroad carrier that has annual car-  
4 rier operating revenues that meet the threshold  
5 amount for Class III carriers as determined by the  
6 Surface Transportation Board under section  
7 1201.1–1 of title 49, Code of Federal Regulations,  
8 the penalty shall be not less than \$10,000 and not  
9 more than \$100,000.

10 **SEC. 5. ROUTE RISK ASSESSMENT.**

11 (a) ROUTE RISK ASSESSMENT TOOLS.—The Sec-  
12 retary of Transportation, in collaboration with the Sec-  
13 retary of Homeland Security and the American Short Line  
14 and Regional Railroad Association, shall develop a route  
15 risk assessment tool for the use of short line and regional  
16 railroad carriers that—

17 (1) addresses any known limitations of the Rail  
18 Corridor Risk Management Safety software tool for  
19 short line and regional railroad carriers; and

20 (2) allows for safety and security risk assess-  
21 ments to be performed by short line and regional  
22 railroad carriers in instances when alternative routes  
23 are not available.

24 (b) ROUTE RISK ASSESSMENT AUDITS.—The Sec-  
25 retary of Transportation, in collaboration with the Sec-

1 retary of Homeland Security and the American Short Line  
2 and Regional Railroad Association, shall implement a pro-  
3 gram to conduct audits of short line and regional railroads  
4 to ensure that proper route risk assessments that identify  
5 safety and security vulnerabilities are being performed and  
6 are incorporated into a safety management system pro-  
7 gram.

8 **SEC. 6. RAILROAD SAFETY RISK REDUCTION PROGRAM**  
9 **AMENDMENTS.**

10 (a) SAFETY MANAGEMENT SYSTEMS.—Section  
11 20156(d)(1) of title 49, United States Code, is amended—

12 (1) in subparagraph (A), by striking “; and”  
13 and inserting a semicolon;

14 (2) in subparagraph (B), by striking the period  
15 at the end and inserting “; and”; and

16 (3) by adding at the end the following new sub-  
17 paragraph:

18 “(C) the use of safety management sys-  
19 tems and their associated key principles, includ-  
20 ing top-down ownership and policies, analysis of  
21 operational incidents and accidents, and contin-  
22 uous evaluation and improvement programs.”.

23 (b) SENSE OF CONGRESS.—It is the sense of Con-  
24 gress that, under the Railroad Safety Risk Reduction Pro-  
25 gram under section 20156 of title 49, United States Code,



1 the Secretary of Transportation should include within the  
2 definition of “a railroad carrier that has an inadequate  
3 safety performance” any railroad carrier that is at fault  
4 for an incident, accident, or emergency involving haz-  
5 ardous materials that has led to a fatality or personal in-  
6 jury, an evacuation, or environmental damage within the  
7 last five years.

8 **SEC. 7. FIRST RESPONDER RIGHT-TO-KNOW.**

9 (a) **REAL-TIME EMERGENCY RESPONSE NOTIFICA-**  
10 **TION.**—Not later than one year after the date of the enact-  
11 ment of this Act, the Secretary of Transportation shall  
12 prescribe regulations—

13 (1) requiring a railroad carrier transporting a  
14 hazardous material to have the capability to gen-  
15 erate, maintain, retrieve, and promptly deliver accu-  
16 rate and real-time consists that include the identity  
17 and location of the hazardous material on the train;

18 (2) requiring a railroad carrier transporting a  
19 hazardous material to provide such information  
20 promptly to first responders, emergency response of-  
21 ficials, and law enforcement personnel in the event  
22 of an incident, accident, or emergency, or as re-  
23 quired by these entities to protect public health and  
24 community safety; and

1           (3) prohibiting a railroad carrier, employee, or  
2           agent from withholding, or a railroad carrier from  
3           instructing its employees or agents to withhold, a  
4           train consist or a real-time train consist from first  
5           responders, emergency response officials, and law  
6           enforcement personnel in the event of an incident,  
7           accident, or emergency involving the transportation  
8           of hazardous materials by railroad that threatens  
9           public health or safety.

10          (b) EMERGENCY RESPONSE STANDARDIZATION.—

11       The Secretary of Transportation, in consultation with rail-  
12       road carriers, shall ensure that emergency response infor-  
13       mation carried by train crews transporting hazardous ma-  
14       terials is consistent with and is at least as protective as  
15       the emergency response guidance provided in the Emer-  
16       gency Response Guidebook issued by the Department of  
17       Transportation.

18          (c) ENFORCEMENT.—Any railroad carrier violating  
19       subsection (a)(3) or a regulation prescribed under sub-  
20       section (a)(3) shall be liable to the Federal Government  
21       for a civil penalty for each violation or each day the viola-  
22       tion continues, as follows:

23               (1) For a railroad carrier that has annual car-  
24               rier operating revenues that meet the threshold  
25               amount for Class I carriers as determined by the

1 Surface Transportation Board under section  
2 1201.1-1 of title 49, Code of Federal Regulations,  
3 the penalty shall be not less than \$100,000 and not  
4 more than \$1,000,000.

5 (2) For a railroad carrier that has annual car-  
6 rier operating revenues that meet the threshold  
7 amount for Class II carriers as determined by the  
8 Surface Transportation Board under section  
9 1201.1-1 of title 49, Code of Federal Regulations,  
10 the penalty shall be not less than \$25,000 and not  
11 more than \$250,000.

12 (3) For a railroad carrier that has annual car-  
13 rier operating revenues that meet the threshold  
14 amount for Class III carriers as determined by the  
15 Surface Transportation Board under section  
16 1201.1-1 of title 49, Code of Federal Regulations,  
17 the penalty shall be not less than \$10,000 and not  
18 more than \$100,000.

19 **SEC. 8. PUBLIC EDUCATION.**

20 Not later than one year after the date of the enact-  
21 ment of this Act, the Secretary of Transportation shall  
22 prescribe regulations requiring railroad carriers trans-  
23 porting hazardous materials to develop, implement, and  
24 periodically evaluate a public education program for the  
25 communities along railroad hazardous materials routes.

1 The public education program may include the following  
2 elements:

3 (1) Procedures for reporting the release of a  
4 hazardous material.

5 (2) Physical indications of a release of a haz-  
6 arduous material, including a focus on hazardous ma-  
7 terials that are most commonly transported in or  
8 near a given community.

9 (3) Methods of communication that will be used  
10 to alert the community in the event of a railroad in-  
11 cident, accident, or emergency involving a hazardous  
12 material.

13 (4) Steps that should be taken by community  
14 residents to ensure public health and safety in the  
15 event of a hazardous material release.

16 (5) Discussion of possible public health and  
17 safety concerns associated with an unintended re-  
18 lease of a hazardous material, including a focus on  
19 hazardous materials that are most commonly trans-  
20 ported in or near a given community.

21 **SEC. 9. INFLATION ADJUSTMENTS.**

22 The Secretary of Transportation shall issue a state-  
23 ment of agency policy adjusting the penalty schedules for  
24 violations outlined in this Act as necessary to account for  
25 inflation, each time the Secretary is required by law to

1 review the minimum and maximum civil monetary penalty  
2 for inflation under the Federal Civil Penalties Inflation  
3 Adjustment Act of 1990 (Public Law 101–410; 28 U.S.C.  
4 2461 note). The Secretary may subject the statement of  
5 agency policy to notice and comment, as the Secretary  
6 considers appropriate.

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