AMENDMENT NO. ________    Calendar No. ______

Purpose: In the nature of a substitute.


S. 576

To enhance safety requirements for trains transporting hazardous materials, and for other purposes.

Referred to the Committee on ________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Ms. CANTWELL (for herself and Mr. VANCE)

Viz:

1  Strike all after the enacting clause and insert the following:

3  SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4  (a) SHORT TITLE.—This Act may be cited as the "Railway Safety Act of 2023".

6  (b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—RAIL SAFETY

Sec. 101. Definitions.
Sec. 102. Safety requirements for high-hazard trains.
Sec. 103. Ensuring the safety of long trains.
Sec. 104. Blocked highway-rail grade crossings.
Sec. 105. Inspections.
Sec. 106. Defect detection systems.
Sec. 108. Increased penalties for violations of rail safety regulations.
Sec. 109. Safer tank cars.
Sec. 110. Rail safety infrastructure research and development grants.
Sec. 111. Authorization of appropriations for tank car research and development.
Sec. 112. Federal Railroad Administration safety culture.

TITLE II—HAZARDOUS MATERIALS EMERGENCY RESPONSE AND PREPAREDNESS

Sec. 201. Hazardous materials registration fees.
Sec. 202. Virtual training options.
Sec. 203. Hazardous materials transportation emergency response and preparedness grants.
Sec. 204. Emergency response assistance.

TITLE I—RAIL SAFETY

SEC. 101. DEFINITIONS.

In this title:

(1) IN GENERAL.—Except as otherwise provided, terms used in this title have the definitions given such terms in section 20155 of title 49, United States Code, as amended by section 102(a).

(2) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

SEC. 102. SAFETY REQUIREMENTS FOR HIGH-HAZARD TRAINS.

(a) TANK CAR SAFETY REQUIREMENTS.—Section 20155 of title 49, United States Code, is amended to read as follows:

“§ 20155. High-hazard trains

“(a) DEFINITIONS.—In this section:

“(1) EXPLOSIVES.—The term ‘explosives’ means Class 1 explosives categorized in Division 1.1,
1.2, or 1.3 (as such terms are defined in section 173.50 of title 49, Code of Federal Regulations).

“(2) Flammable gas.—The term ‘flammable gas’ has the meaning given such term in section 173.115(a) of title 49, Code of Federal Regulations.

“(3) Flammable liquid.—The term ‘flammable liquid’ has the meaning given such term in section 173.120(a) of title 49, Code of Federal Regulations.

“(4) Hazardous material.—The term ‘hazardous material’ means a substance or material designated by the Secretary of Transportation as hazardous pursuant to section 5103 of title 49, United States Code.

“(5) High-hazard train.—The term ‘high-hazard train’ means a single train transporting, throughout the train consist—

“(A) 20 or more tank cars loaded with a flammable liquid;

“(B) 1 tank car or intermodal portable tank load with a material toxic or poisonous by inhalation;

“(C) 1 or more cars loaded with high-level radioactive waste or spent nuclear fuel;
“(D) 10 or more cars loaded with explosives;

“(E) 5 or more tank cars loaded with a flammable gas; or

“(F) 20 or more cars loaded with any combination of flammable liquids, flammable gases, or explosives.

“(6) HIGH-LEVEL RADIOACTIVE WASTE; SPENT NUCLEAR FUEL.—The terms ‘high-level radioactive waste’ and ‘spent nuclear fuel’ have the meanings given to a ‘type B package’ or a ‘fissile material package’, respectively, in section 173.403 of title 49, Code of Federal Regulations.

“(7) MATERIAL TOXIC OR POISONOUS BY INHALATION.—The term ‘material toxic or poisonous by inhalation’ has the meaning given the term ‘material poisonous by inhalation or Material toxic by inhalation’ in section 171.8 of title 49, Code of Federal Regulations.

“(b) RULEMAKING.—Not later than 1 year after the date of the enactment of the Railway Safety Act of 2023, the Secretary, in consultation with appropriate Federal agencies, shall issue regulations that—

“(1) rescind the requirements set forth in paragraphs (4) and (5) of section 174.310(a) of title 49,
Code of Federal Regulations, with respect to tank cars carrying hazardous materials other than Class 3 flammable liquids;

“(2) revise the requirement set forth in section 174.310(a)(2) of title 49, Code of Federal Regulations—

“(A) to limit all trains to a maximum speed of 50 miles per hour; and

“(B) to limit high-hazard trains carrying 20 or more cars loaded with flammable liquids to a maximum speed of 40 miles per hour while that train travels within the limits of high-threat urban areas (HTUAs) (as defined in 1508.3 of title 49, Code of Federal Regulations, unless all tank cars containing a Class 3 flammable liquid meet or exceed the DOT specification 117 standards, the DOT specification 117P performance standards, or the DOT specification 117R retrofit standards set forth in subpart D of part 179 of title 49, Code of Federal Regulations, including DOT–105A, DOT–105H, DOT–105J, DOT–105S, DOT–112H, DOT–112J, DOT–112S, and DOT–120S tank cars;
“(3) require rail carriers operating high hazard trains to comply with the requirements applicable to high-hazard flammable trains under section 174.310 of title 49, Code of Federal Regulations;

“(4) require any Class I railroad transporting hazardous materials—

“(A) to generate accurate, real-time, and electronic train consist information, including—

“(i) the identity, quantity, and location of hazardous materials on a train;

“(ii) the point of origin and destination of the train;

“(iii) any emergency response information or resources required by the Secretary; and

“(iv) an emergency response point of contact designated by the Class I railroad;

and

“(B) to enter into a memorandum of understanding with each applicable fusion center to provide the fusion center with secure and confidential access to the electronic train consist information described in subparagraph (A) for each train transporting hazardous materials in the jurisdiction of the fusion center;
“(5) require each Class I railroad to provide commodity flow reports of the hazardous materials transported by a high-hazard train to each State emergency response commission, Tribal emergency response commission, or other responsible State or Tribal agency, consistent with the notification content requirements under section 174.312 of title 49, Code of Federal Regulations (or a successor regulation), including—

“(A) a reasonable estimate of the number of high-hazard trains that are expected to travel, per week, through each county within the applicable jurisdiction;

“(B) updates to such estimate when making a change in volume of 25 percent;

“(C) a description of the hazardous materials being transported on such trains;

“(D) applicable emergency response information, as required by regulation;

“(E) identification of the routes over which the hazardous materials on such trains will be transported; and

“(F) a point of contact at the Class I railroad who—
“(i) has knowledge of the railroads’ transportation of hazardous materials; and
“(ii) is responsible for serving as the point of contact for the State emergency response commission, Tribal emergency response commission, or other State or Tribal agency responsible for receiving such information;
“(6) require each applicable State emergency response commission to provide to a political subdivision of a State, or the public agency responsible for emergency response or law enforcement, upon request of the political subdivision or public agency, the information the commission receives from a Class I railroad pursuant to paragraph (3), including, for any such political subdivision or public agency responsible for emergency response or law enforcement that makes an initial request for such information, any updates received by the State emergency response commission;
“(7) prohibit any Class I railroad, employee, or agent from withholding, or causing to be withheld, the train consist information from first responders, emergency response officials, Federal and State agencies, and law enforcement personnel described
in paragraph (2)(B) who are responding to an incident, accident, or public health or safety emergency involving the rail transportation of hazardous materials; and

“(8) establish security and confidentiality protections, in coordination with the Secretary of Homeland Security, including protections from the public release of proprietary information or security sensitive information (as defined in section 15.5 of title 49, Code of Federal Regulations), to prevent the release to unauthorized persons any electronic train consist information or advanced notification or information provided by Class I railroads under this section.

“(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to prohibit a Class I railroad from voluntarily entering into a memorandum of understanding with a State emergency response commission or an entity representing or including first responders, emergency response officials, and law enforcement personnel.

“(d) SAFETY IMPROVEMENTS.—Not later than 1 year after the date of the enactment of the Railway Safety Act of 2023, the Secretary shall evaluate and update, to the extent necessary for safety and in compliance with Executive Order 12866 (5 U.S.C. 601 note; relating to regu-
latory planning and review), the operational requirements for high-hazard trains to ensure the safe transportation of hazardous materials by rail, including—

“(1) preventing the placement of blocks of empty railcars in locations within the consist of the train that increase the chance or severity of a derailment; and

“(2) requirements for an adequate number of buffer cars between a locomotive or railcar and tank cars transporting hazardous materials.

“(e) HAZARDOUS MATERIALS EMERGENCY RESPONSE PLANS.—

“(1) PLAN CONTENTS.—The Secretary shall promulgate regulations, in compliance with Executive Order 12866, requiring all Class I railroads that operate high-hazard trains to submit to the Secretary hazardous materials emergency response plans that are consistent with the format of the National Response Team ‘One Plan’. Such plans shall include—

“(A) consideration of potential hazardous materials release for the hazardous materials identified under subsection (a)(7) that the railroad is transporting;
“(B) identification of the railroad’s hazardous materials response teams that can quickly respond to a release or potential release within a reasonable amount of time;

“(C) identification of the equipment and resources available to the hazardous materials response teams;

“(D) organizational charts for the hazardous materials response teams; and

“(E) plans to facilitate hazardous materials release liability claims.

“(2) COORDINATION.—Railroads shall coordinate with relevant States and Tribes when creating the plans required under paragraph (1).

“(3) TRIENNIAL REVIEW.—Not later than 1 year after a Class I railroad submits a hazardous materials emergency response plan pursuant to paragraph (1), and on a triennial basis thereafter, the Secretary shall review such plan. If the Secretary identifies deficiencies during such review, the Secretary shall describe the nature of any deficiencies and allow for correction.

“(4) VERIFICATION.—The Secretary shall periodically audit a railroad’s hazardous materials emergency response plan.”
(b) Clerical Amendment.—The analysis in chapter 201 of title 49, United States Code, is amended by inserting after the item relating to section 20154 the following:

“20155. High-hazard trains.”.

SEC. 103. ENSURING THE SAFETY OF LONG TRAINS.

(a) Reviewing and Updating Safety Regulations.—Not later than 1 year after the date on which the Secretary submits to Congress the report required under section 22422(d) of the Passenger Rail Expansion and Rail Safety Act of 2021 (title II of division B of Public Law 117–58), the Secretary shall independently evaluate any safety concerns identified in the Comptroller General’s report titled “Freight Trains Are Getting Longer, and Additional Information Is Needed to Assess Their Impact” (GAO-19-443) and in the report required under section 22422(d) of the Passenger Rail Expansion and Rail Safety Act of 2021, by reviewing and subsequently updating, if necessary for safety and in compliance with Executive Order 12866 (5 U.S.C. 601 note; relating to regulatory planning and review), existing safety regulations to ensure the safe transportation of goods and passengers by rail, including consideration of the impact that train length and weight have on the safe transportation of high-hazard trains.
(b) Report.—Not later than 3 years after the date
on which the Secretary submits the report required under
subsection (a), if the Secretary has not addressed any rec-
ommendation contained within such report, the Secretary
shall submit a report to the Committee on Commerce,
Science, and Transportation of the Senate and the Com-
mittee on Transportation and Infrastructure of the House
of Representatives that justifies such inaction.

(c) Reporting Requirement.—

(1) In general.—The Secretary shall revise
the existing railroad accident or incident reporting
forms to require railroads to report the weight trail-
ing tonnages of any train involved in a reportable
accident or incident.

(2) Publication.—The Federal Railroad Ad-
ministration shall publish on its Rail Safety Data
website a summary of all reportable incidents and
accidents, categorized by train length and weight.

SEC. 104. BLOCKED HIGHWAY-RAIL GRADE CROSSINGS.

(a) Study.—The Secretary shall seek to enter into
an agreement with the National Academy of Sciences
under which the National Academy shall—

(1) conduct a study of 20 most frequently
blocked highway-rail grade crossings in not fewer
than 10 different States, as determined by the Secretary based on—

(A) Federal Railroad Administration data;

(B) the work experience of the Office of Railroad Safety's Grade Crossing and Trespasser Outreach Division;

(C) data from the blocked highway-rail grade crossing portal. In selecting the crossings;

and

(D) geographic diversity; and

(2) provide recommendations to the Secretary for solutions in preventing or reducing occurrences or repeated occurrences where highway-rail grade crossings are blocked for extended periods.

(b) Members.—In establishing the membership to conduct the study described in subsection (a)(1), the National Academy of Sciences shall appoint not fewer than 3 of its members who—

(1) are engineering or rail experts;

(2) are not railroad carriers, or entities funded by railroad carriers;

(3) have relevant experience in railroad safety technology or railroad operating experience; and

(4) have no financial ties to the rail industry.
(c) ELEMENTS.—The study conducted pursuant to subsection (a)(1) shall—

(1) examine any potential impacts to railroad and community safety due to blocked highway-rail grade crossings;

(2) identify potential financial impacts incurred by the railroad or its customers due to blocked crossings;

(3) identify potential freight network efficiency impacts due to solutions that will reduce or eliminate the impacts of blocked crossings;

(4) examine community impacts that result from blocked crossings;

(5) examine causes for blocked crossings;

(6) examine the potential impacts on railroad operations of the recommendations made in the report submitted pursuant to subsection (c), including reliability of service to customers; and

(7) identify practical solutions to prevent blocked crossings.

(d) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Rep-
resentatives that contains the results of the study conducted by the National Academy of Sciences pursuant to this section.

(e) **FUNDING.**—From the amounts appropriated for fiscal year 2024 to carry out section 20108 of title 49, United States Code, the Secretary shall expend such sums as may be necessary, but not more than $2,000,000, to carry out the study required under this section.

**SEC. 105. INSPECTIONS.**

(a) **Time Available for Inspection.**—

(1) **In general.**—Subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following:

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§ 20172. Time available for inspection

“No railroad may limit the time required for an employee to complete a railcar, locomotive, or brake inspection to ensure that each railcar, locomotive, and brake system complies with safety laws and regulations.”.
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(2) **Clerical Amendment.**—The analysis for subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following:

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“20172. Time available for inspection.”.
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(b) **Pre-departure Railcar Inspections.**—Not later than 120 days after the date of the enactment of this Act, the Secretary shall amend the pre-departure in-
inspection requirements for Class I railroads under part 215 of title 49, Code of Federal Regulations (as written on such date of enactment)—

(1) to ensure that after initial consultation with the Federal Railroad Administration, and after each subsequent annual consultation, each railroad identifies inspection locations and, at such locations, has inspectors designated under part 215 available for the purpose of inspecting freight cars;

(2) to ensure that all freight cars are inspected by an inspector designated under part 215 at a designated inspection location in the direction of travel as soon as practicable; and

(3) to require each railroad that operates railroad freight cars to which such part 215 applies to designate persons qualified to inspect railroad freight rail cars, subject to any existing collective bargaining agreement, for compliance and determinations required under such part.

(c) Periodic Railcar Inspections.—

(1) Freight Car Periodic Inspections.—
Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue regulations amending part 215 of title 49, Code of Federal
Regulations to create minimum requirements for the periodic inspection of freight cars.

(2) REQUIREMENTS.—The regulations issued pursuant to paragraph (1) shall—

(A) consider the periodic inspection requirements applicable to locomotives under part 229 of title 49, Code of Federal Regulations, and to passenger cars under part 238 of such title;

(B) establish inspection intervals and criteria, taking into account differences in the utilization and service to which freight cars are put and other factors as appropriate, including ownership of the cars, provided that—

(i) initial inspections shall be performed within a reasonable period, as determined by the Secretary, which period shall not be shorter than 6 years after the issuance of regulations pursuant to paragraph (1);

(ii) after the initial inspections required under clause (i), periodic inspections shall be required not more frequently than once every 5 years; and
(iii) if a freight car is not at a suitable location for safely performing a periodic inspection on the date such inspection is required under this subsection, or if the freight car is not on a Class I railroad, the freight car may be moved to the next forward location suitable for safely performing the inspection on a Class I railroad;

(C) provide that periodic inspections may be performed in conjunction with any other inspections or tests required under chapter I or II of subtitle B of title 49, Code of Federal Regulations;

(D) ensure that periodic inspections are performed only where adequate facilities are available for safely inspecting all components of freight cars; and

(E) require that Class I railroads use inspectors designated under section 215 of title 49, Code of Federal Regulations, to perform periodic inspections pursuant to this subsection and that their primary responsibility is the inspection, testing, maintenance, or repair of freight cars or their components.
(d) Qualified Locomotive Inspections.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall review and amend, as necessary, regulations under chapters 229 and 243 of title 49, Code of Federal Regulations—

(1) to ensure appropriate training qualifications and proficiency of employees, including qualified mechanical inspectors, performing locomotive inspections; and

(2) for locomotives in service on a Class I railroad, to require an additional daily inspection to be performed by a qualified mechanical inspector between the current intervals under section 229.23(b)(2) of title 49, Code of Federal Regulations.

(e) Audits.—

(1) In general.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall initiate audits of Federal railcar, locomotive, and train brake system inspection compliance with chapter II of subtitle B of title 49, Code of Federal Regulations, which—

(A) consider whether the railroad has in place procedures necessary for railcar, loco-
motive, and train brake system inspection compliance under such chapter;

(B) assess the type, content, and adequacy of training and performance metrics the railroad provides employees who perform railcar, locomotive, and train brake system inspections, including the qualifications specified for such employees;

(C) determine whether the railroad has practices that would interfere with an employee’s responsibility to perform an inspection safely;

(D) determine whether railcars, locomotives, and train brake systems are inspected on the railroad’s network in accordance with such chapter;

(E) involve proper communication of identified defects to railroad personnel and make appropriate use of remedial action reports to verify that repairs are made;

(F) determine whether managers coerce employees to sign off on any documents verifying an inspection or repair of a railcar, locomotive, or train brake system;
(G) determine whether the railroad’s inspection procedures reflect the current operating practices of the railroad carrier; and

(H) ensure that railroad inspection procedures only provide for the use of persons permitted to perform each relevant inspection under such chapter.

(2) Audit Scheduling.—The Secretary shall—

(A) schedule the audits required under paragraph (1) to ensure that—

(i) every Class I railroad is audited not less frequently than once every 5 years; and

(ii) a limited number, as determined by the Secretary, of Class II and Class III railroads are audited annually, provided that—

(I) no audit of a tourist, scenic, historic, or excursion operation may be required under this subsection; and

(II) no other Class II or III railroad may be audited more frequently than once every 5 years; and
(B) conduct the audits described in sub-
paragraph (A)(ii) in accordance with—

(i) the Small Business Regulatory En-
forcement Fairness Act of 1996 (5 U.S.C.
601 note); and

(ii) appendix C of part 209 of title 49,
Code of Federal Regulations.

(3) Updates to Inspection Program and
Procedures.—If, during an audit required under
this subsection, the auditor identifies a deficiency in
a railroad’s procedures or practices necessary to en-
sure compliance with chapter II of subtitle B of title
49, Code of Federal Regulations, the railroad shall
eliminate such deficiency, after first being provided
the opportunity to address whether such a deficiency
exists.

(4) Consultation and Cooperation.—

(A) Consultation.—In conducting any
audit required under this subsection, the Sec-
retary shall consult with the railroad being au-
dited and its employees, including any nonprofit
employee labor organization representing the
employees of the railroad that conduct railcar,
locomotive, or train brake system inspections.
(B) Cooperation.—The railroad being audited and its employees, including any non-profit employee labor organization representing mechanical employees, shall fully cooperate with any audit conducted pursuant to this subsection—

(i) by providing any relevant documents requested; and

(ii) by making available any employees for interview without undue delay or obstruction.

(C) Failure to Cooperate.—If the Secretary determines that a railroad or any of its employees, including any nonprofit employee labor organization representing mechanical employees of the railroad is not fully cooperating with an audit conducted pursuant to this subsection, the Secretary shall electronically notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of such non-cooperation.

(f) Review of Regulations.—Not later than 5 years after the date of the enactment of this Act, and peri-
odically thereafter, the Secretary shall determine whether
any update to chapters I and II of subtitle B of title 49,
Code of Federal Regulations, is necessary to ensure the
adequacy of railcar, locomotive, and train brake system
inspections.

(g) Annual Report.—The Secretary shall publish
an annual report on the public website of the Federal Rail-
road Administration that—

(1) summarizes the findings of the audits con-
ducted pursuant to subsection (d) during the most
recently concluded fiscal year;

(2) summarizes any updates made to chapter I
or II of subtitle B of title 49, Code of Federal Regu-
lations, pursuant to this section; and

(3) excludes any confidential business informa-
tion or sensitive security information.

(h) Rule of Construction.—Nothing in this sec-
tion may be construed—

(1) to provide the Secretary with any authority
to interpret, revise, alter, or apply a collectively bar-
gained agreement, nor any authority over collective
bargaining, collectively bargained agreements, or any
aspect of the Railway Labor Act (45 U.S.C. 151 et
seq.);
(2) to alter the terms or interpretations of existing collective bargaining agreements; or

(3) to abridge any procedural rights or remedies provided under a collectively bargained agreement.

SEC. 106. DEFECT DETECTION SYSTEMS.

(a) In general.—Subchapter II of chapter 201 of title 49, United States Code, as amended by section 105(a)(1), is further amended by adding at the end the following:

“§ 20173. Defect detection systems

“(a) Definitions.—In this section:

“(1) Covered rail carrier.—The term ‘covered rail carrier’ has the meaning given the term ‘Class I carrier’ in section 10102.

“(2) Defect detection system.—The term ‘defect detection system’ means the use of defect detectors, the analysis of the data defect detectors produce, and any other aspects a system that help railroads identifying and understand the severity of known safety conditions.

“(3) Defect detector.—The term ‘defect detector’ means any device or equipment situated within the rail system that can detect and communicate a potential or known safety condition.
“(4) HIGH-HAZARD TRAIN.—The term ‘high-hazard train’ has the meaning given such term in section 20155(a)(6).

“(5) MAIN LINE.—The term ‘main line’ means—

“(A) a segment or route of railroad tracks—

“(i) over which 5,000,000 or more gross tons of railroad traffic is transported annually; and

“(ii) that has a maximum authorized speed for freight trains in excess of 25 miles per hour; and

“(B) intercity rail passenger transportation or commuter rail passenger transportation routes or segments over which high-hazard trains operate.

“(6) PHYSICAL CHARACTERISTICS.—The term ‘physical characteristics’ means the physical terrain and operating considerations related to the physical terrain for the relevant main line.

“(b) RAIL DEFECT DETECTOR ANALYSIS PROGRAM.—The Secretary shall develop a program for the research, development, testing, and evaluation of defect detector systems to inform and support the rulemaking re-
quired under subsection (d) and the evaluation of plans under subsection (e), which shall include—

“(1) an evaluation of existing manufacturer recommended practices, industry-developed voluntary consensus technical standards, and railroad safety data to inform appropriate standards for commercially available defect detector systems and ensure the integrity and reliability of their use on the general railroad system, including standards relating to—

“(A) maintenance;

“(B) testing;

“(C) inspection; and

“(D) installation;

“(2) an assessment of existing alert thresholds and trending algorithms to determine appropriate metrics and levels to ensure that defect detector systems identify unsafe equipment or operations in time to take appropriate safety actions;

“(3) an evaluation of existing processes and procedures for decision making and communication of appropriate safety actions necessary to address unsafe equipment or operations, including—

“(A) stoppage of rail equipment;

“(B) setting out rail equipment;
“(C) train speed reduction;

“(D) diverting a train; and

“(E) inspection requirements;

“(4) research to understand the capabilities and limitations of existing technologies in use or developed to better assess the plans required under the final rule issued pursuant to subsection (c); and

“(5) research to understand new or developing technologies.

“(c) PLAN ELEMENTS.—

“(1) RISK-BASED.—Each defect detection system plan required under the final rule issued pursuant to subsection (d) shall be risk-based.

“(2) CONTENTS.—Each plan referred to in paragraph (1) shall include—

“(A) a summary of the railroad’s proposed defect detector network, including—

“(i) how the network will reduce the risk of incidents near population centers and on high-hazard train routes; and

“(ii) a description of how the network will be implemented by the deadline set forth in subsection (d)(1)(B); and

“(B) a description of how the railroad’s defect detection system meets or exceeds the de-
fect detection performance standards described in subsection (d)(1)(D);

“(C) except as provided in paragraph (3), a risk-based approach for identifying overheated wheel bearings that require the placement of the types and spacing of defect detectors—

“(i) for main lines traveling within an urbanized area with a population of at least 75,000, at a distance that provides for any train operating along the railroad’s route to undergo detection not less than 10 miles before entering such an area;

“(ii) for main lines not equipped with acoustic bearing detectors or other similar technology, at a distance averaging 15 route miles to the extent possible based on the physical characteristics of the route; and

“(iii) for main lines equipped with acoustic bearing detectors or other similar technology, at a distance averaging 20 route miles to the extent possible based on the physical characteristics of the route along which such detectors are being installed;
“(D) the types and spacing of other way-side defect detectors required to be placed, to the extent such detectors are utilized;

“(E) the manufacturer’s expected performance for each type of defect detector and how the carrier will assess compliance with such performance;

“(F) procedures for promptly providing pertinent safety alerts to train employees, including locomotive engineers and conductors, train dispatchers, and relevant maintenance employees;

“(G) the ability to share relevant safety data from the defect detector network with other railroad carriers and with rail car owners;

“(H) policies and procedures for training employees regarding relevant elements of the defect detector system, including—

“(i) persons whose duties include installing, maintaining, repairing, modifying, inspecting, reviewing data, and testing safety-critical elements of the railroad’s defect detector, including central office, way-side, or onboard subsystems;
“(ii) persons who receive and review defect detector alerts; and

“(iii) persons who operate trains or serve as a train or engine crew member;

“(I) policies for maintaining records regarding the required elements of the rail defect detector network for not less than 5 years, which shall not include data on individual alerts; and

“(J) designs for the collection and analysis, including applicable alerts, thresholds, and corresponding safety actions.

“(3) ALTERNATIVE HOT BEARING DETECTION PLAN.—

“(A) SUBMISSION.—A rail carrier may comply with an alternative hot bearing detection plan instead of the requirements described in paragraph (2)(C) if—

“(i) the rail carrier submits such plan to the Secretary and the Secretary approves the plan; and

“(ii) the plan provides an equivalent or higher level of safety as the requirements described in paragraph (2)(B).
“(B) Triennial reviews.—Not less frequently than triennially, the Secretary shall review each alternative plan approved pursuant to subparagraph (A) to determine its continuing effectiveness at detecting bearing-related defects.

“(d) Rulemaking.—

“(1) In general.—Not later than 1 year after the date of the enactment of the Railway Safety Act of 2023, the Secretary shall initiate a rulemaking, and not later than 2 years after such date of enactment, the Secretary shall issue a final rule, in compliance with Executive Order 12866 (5 U.S.C. 601 note; relating to regulatory planning and review), that—

“(A) requires covered rail carriers to submit, not later than 1 year after the issuance of such final rule, defect detector network plans that include the elements described in subsection (e)(2);

“(B) requires the covered rail carrier to implement the plan required under paragraph (1) not later than 3 years after the issuance of such final rule;
“(C) creates procedures to review, approve, monitor compliance of such plans;

“(D) establishes performance standards measured by the ability of a defect detection system to identify defects before a condition that is likely to result in an accident or incident, including how such ability will be measured and reported for data related to requirements;

“(E) requires the reporting of data regarding the defect defector network effectiveness, including defect detector failures;

“(F) creates requirements for covered rail carriers to test, inspect, and maintain any defect detector based on the evaluation completed pursuant to subsection (b)(1); and

“(G) establish appropriate thresholds for alerts and corresponding safety actions, to the extent necessary.

“(2) UPDATED STANDARDS.—The performance standards established pursuant to paragraph (1)(D) shall be updated not less frequently than once every 5 years.

“(e) UPDATES AND APPROVALS.—
“(1) Updates.—Each entity subject to the mandate in subsection (a) shall update the plans required under subsection (d)(1)—

“(A) to reflect material changes to its railcar defect detector network; or

“(B) to address changes made to the performance standards pursuant to subsection (d)(2).

“(2) Approvals.—To ensure safety, the Secretary shall promptly review each plan submitted pursuant to subsection (d)(1), including the sufficiency of the performance standards required under subsection (e)(1)(D), and approve or reject each plan and update that is required to be submitted under this section.

“(3) Reviews for Compliance.—Not less frequently than biannually, the Secretary shall conduct reviews to ensure that railroad carriers are complying with the plans required under paragraph (1).

“(4) Public Availability.—Not later than 60 days after receipt, the Secretary shall make available to the public on the website of the Department of Transportation any plan or update submitted pursuant to this section, but the Secretary shall redact—
“(A) proprietary information, as verified by the Secretary; and

“(B) security-sensitive information, including information described in section 1520.5(a) of title 49, Code of Federal Regulations (or successor regulation), as verified by the Secretary.

“(f) ENFORCEMENT.—The Secretary may assess a civil penalty under chapter 213 of this title for any violation pursuant to the rulemaking under subsection (a) for—

“(1) each accident or incident on a route where the railroad is noncompliant with the plan approved under subsection (e)(2); and

“(2) failing to take any corresponding safety action to an alert as set forth in the approved plan pursuant to subsection (c)(2)(J).

“(g) PRESERVATION OF AUTHORITY.—Nothing in this section may be construed to restrict the authority of the Secretary.”.

(b) CLERICAL AMENDMENT.—The analysis for subchapter II of chapter 201 of title 49, United States Code, as amended by section 105(a)(2), is further amended by adding at the end the following:

“20173. Defect detection systems.”.

(c) TEMPORARY DEFECT DETECTION ASSISTANCE.—
(1) FORMULA GRANT PROGRAM.—The Administrator of the Federal Railroad Administration shall establish a formula grant program to assist commuter railroads with installing defect detection technology.

(2) ELIGIBLE ENTITIES.—A commuter railroad that has a contract with a Class I railroad, as of May 1, 2023, that requires the commuter railroad to install defect detection technology that complies with the approved plan submitted pursuant to section 20173 of title 49, United States Code, is eligible to receive a grant under this subsection.

(3) FORMULA.—Grant funding under this subsection shall be allocated based on the number of defect detectors required to be installed to comply with the grant conditions set forth in section 22909(j) of title 49, United States Code.

(4) REQUIREMENTS.—Any eligible entity that receive grant funding under this subsection shall comply with the grant conditions set forth in such section 22909(j).

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Federal Railroad Administration such amounts as may
be necessary to carry out the formula grant program under this subsection.

SEC. 107. SAFE FREIGHT ACT OF 2023.

(a) SHORT TITLE.—This section may be cited as the “Safe Freight Act of 2023”.

(b) FREIGHT TRAIN CREW SIZE.—Subchapter II of chapter 201 of title 49, United States Code, is amended by inserting after section 20153 the following:

“§ 20154. Freight train crew size safety standards

“(a) MINIMUM CREW SIZE.—Except as provided in subsections (b) and (c), a freight train operated by a Class I railroad may not be operated without a 2-person crew consisting of at least 1 appropriately qualified and certified conductor and 1 appropriately qualified and certified locomotive engineer.

“(b) EXCEPTIONS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the requirement under subsection (a) shall not apply with respect to—

“(A) train operations on track that is not a main line track (as defined in section 20173(a)(2));

“(B) locomotives performing assistance to a train that has incurred mechanical failure or lacks the power to traverse difficult terrain, in-
including traveling to or from the location where assistance is provided;

“(C) locomotives that—

“(i) are not attached to any equipment or are attached only to a caboose; and

“(ii) do not travel farther than 50 miles from the point of origin of such locomotive; and

“(D) train operations staffed with fewer than a 2-person crew at least 1 year before the date of the enactment of the Safe Freight Act of 2023 unless the Secretary determines that such operations do not achieve an equivalent level of safety as would result from compliance with the requirement under subsection (a).

“(2) TRAINS INELIGIBLE FOR EXCEPTION.—

The exceptions under paragraph (2) may not be applied to—

“(A) a high-hazard train (as defined in section 20155(a)); or

“(B) a train consist with a total length of at least 7,500 feet.
“(c) WAIVER.—A railroad carrier may seek a waiver of the requirements under subsection (a) in accordance with section 20103(d).

“(d) PRESERVATION OF AUTHORITY.—Nothing in this section may be construed to restrict the authority of the Secretary.”.

(e) CLERICAL AMENDMENT.—The analysis for subchapter II of chapter 201 of title 49, United States Code, is amended by inserting after the item relating to section 20153 the following:

“20154. Freight train crew size safety standards.”.

SEC. 108. INCREASED PENALTIES FOR VIOLATIONS OF RAIL SAFETY REGULATIONS.

(a) RAILROAD SAFETY VIOLATIONS.—Section 21301(a) of title 49, United States Code, is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

“(1) A person may not fail to comply with a requirement of, a regulation prescribed under, or an order issued by, the Secretary under chapters 201 through 211. Subject to section 21304, a person violating a requirement of, a regulation prescribed under, or an order issued by, the Secretary under chapters 201 through 211 is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in such a violation constitutes a violation of this para-
graph. A separate violation occurs for each day such violation continues.

“(2) The Secretary shall include in, or make applicable to, each requirement of, regulation prescribed under, and order issued under chapters 201 through 211 a civil penalty for a violation of such requirement, regulation, or order in an amount equal to—

“(A) at least $5,000 and not more than $1,000,000; or

“(B) if the person committing such violation is a small business concern (as such term is used in part 121 of title 13, Code of Federal Regulations (or a successor regulation)), including a Class III railroad, at least $1,000 and not more than $200,000”;

(2) by redesignating paragraphs (3) and (4) as paragraphs (5) and (6), respectively;

(3) by inserting after paragraph (2) the following:

“(3) If a violation described in paragraph (1) results in death, serious illness, or severe injury to any person, causes an imminent hazard of death or injury, or results in the substantial destruction of property, the Secretary may increase the civil penalty required under paragraph (2) to—

“(A) a maximum of $5,000,000; or
“(B) if the person committing such violation is a small business concern (as such term is used in part 121 of title 13, Code of Federal Regulations (or a successor regulation)), a maximum of $500,000.

“(4) The Secretary may double the civil penalty otherwise required under paragraph (2) or (3) if the violation follows a pattern of repeated violations or otherwise reflects a deliberate indifference or conscious disregard to the consequences of the conduct.”; and

(4) in paragraph (6), as redesignated, by adding at the end the following: “Such civil action may be brought in the judicial district in which the violation occurred or in which the defendant has its principal executive office. If the civil action is against an individual, the action may also be brought in the judicial district in which such individual resides.”.

(b) HOURS OF SERVICE VIOLATIONS.—Section 21301 of title 49, United States Code, is amended by adding at the end the following:

“(d) ADDITIONAL PROVISIONS RELATED TO VIOLATIONS OF CHAPTER 211.—(1) In any proceeding involving a violation of chapter 211, or a violation of a regulation or order issued pursuant to such chapter, a railroad carrier is deemed to have knowledge of the acts of its officers and agents.
“(2) A civil action involving a violation of chapter 211, or a violation of a regulation or order issued pursuant to such chapter, shall be brought in an appropriate district court of the United States not later than 2 years after the date of such violation unless administrative notification under section 3711 of title 31 is given within such 2-year period to the person committing the violation. If such notification is given, the action shall be brought not later than the last day of the 5-year period specified in section 2462 of title 28.

“(3) A separate violation of section 21106 occurs for each day employee sleeping quarters are not in compliance with the requirements under such section.”.

(e) Updates of Penalties for Inflation.—Notwithstanding any other provision of law, including the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), the inflation adjustment—

(1) for minimum penalty amounts amended by this section, and any discretionary inflation adjustment of guideline penalty amounts by the Secretary, shall be rounded to the nearest multiple of $100; and

(2) for maximum penalty amounts amended by this section, shall be rounded to the nearest multiple of $1,000.
(d) REPEAL.—

(1) IN GENERAL.—Chapter 213 of title 49, United States Code, is amended by striking sections 21302 and 21303.

(2) CLERICAL AMENDMENT.—The analysis for chapter 213 of title 49, United States Code, is amended by striking the items relating to sections 21302 and 21303.

SEC. 109. SAFER TANK CARS.

(a) CLASS 3 FLAMMABLE LIQUIDS PHASE-OUT SCHEDULE.—Beginning on December 31, 2027, no railroad tank car, regardless of its construction date, may be used to transport Class 3 flammable liquids in packing groups II and III (other than Class 3 flammable liquids listed in paragraphs (1) and (2) of section 7304(b) of the Hazardous Materials Transportation Safety Improvement Act of 2015 (49 U.S.C. 20155 note)), regardless of the composition of the train consist, unless such tank car meets or exceeds the DOT–117, DOT–117P, or DOT–117R specifications (as in effect on the date of the enactment of this Act), including DOT–105A, DOT–105H, DOT–105J, DOT–105S, DOT–112H, DOT–112S, DOT–112J, DOT–120J, and DOT–120S tank cars.

(b) CONFORMING REGULATORY AMENDMENTS.—

(1) IN GENERAL.—The Secretary—
(A) shall immediately remove or revise the
date-specific deadlines in any applicable regula-
tions or orders to the extent necessary to con-
form with the requirement under subsection (a);
and

(B) may not enforce any date-specific
deadlines or requirements that are inconsistent
with the requirement under subsection (a).

(2) RULE OF CONSTRUCTION.—Except as re-
quired under paragraph (1), nothing in this section
may be construed to require the Secretary to issue
regulations to implement this section.

(c) AMENDING THE PHASE-OUT DATE.—If the Sec-
retary, based on the data contained in the report issued
pursuant to subsection (d), determines that the phase-out
date under subsection (a) cannot be met due to insuffi-
cient manufacturing capacity or would otherwise result in
significant impacts to interstate commerce, the Secretary
may delay the phase-out scheduled under subsection (a)
to not later than December 31, 2028.

(d) GAO REVIEW.—Not later than 18 months after
the date of the enactment of this Act, the Comptroller
General of the United States shall issue a report to the
Secretary, the Committee on Commerce, Science, and
Transportation of the Senate and the Committee on
Transportation and Infrastructure of the House of Representatives that—

(1) identifies the manufacturing capacity of tank car manufacturers in North America, that manufacture tank cars to meet DOT–117 and DOT–117P specification requirements;

(2) identifies the retrofit capacity of tank car manufacturers and other entities in North America that can retrofit DOT–111 tank cars to meet DOT–117R specification requirements;

(3) estimates the schedule of replacing tank cars currently in service that are reaching the end of their life cycle;

(4) identifies the number of tank cars that need to be phased out or retrofitted under subsection (a) and paragraph (2) and the number that could be retrofitted; and

(5) estimates the demand for new tank cars.

SEC. 110. RAIL SAFETY INFRASTRUCTURE RESEARCH AND DEVELOPMENT GRANTS.

(a) RESEARCH REQUIREMENT.—The Administrator of the Federal Railroad Administration shall award grants, in accordance with the restrictions and limitation on eligibility for Class I railroads under section 22907 of title 49, United States Code, which shall be used for re-
search and development of defect detectors and the prevention of derailments of trains transporting hazardous materials.

(b) Authorization of Appropriations.—There is authorized to be appropriated to the Federal Railroad Administration, $22,000,000, which shall be used for the grants authorized under subsection (a) and shall remain available until expended.

SEC. 111. AUTHORIZATION OF APPROPRIATIONS FOR TANK CAR RESEARCH AND DEVELOPMENT.

There is authorized to be appropriated to the Pipeline and Hazardous Materials Safety Administration, $5,000,000, which shall be used for expenses related to the development of—

(1) stronger, safer tank cars and valves for tank cars; and

(2) other tank car safety features.

SEC. 112. FEDERAL RAILROAD ADMINISTRATION SAFETY CULTURE.

(a) Review.—Not later than 1 year after the date of the enactment of this Act, the Inspector General of the Department of Transportation shall—

(1) conduct a review of the Federal Railroad Administration’s safety culture using the framework developed by the Nuclear Energy Agency of the
Organisation for Economic Co-operation and Development; and

(2) submit 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 includes recommendations for improving the Federal Railroad Administration’s safety culture.

(b) CONSIDERATIONS.—As a part of the review conducted pursuant to subsection (a)(1), the Inspector General shall consider the impacts of the Federal Railroad Administration’s—

(1) reorganization of its safety offices and management structure;

(2) reorganization of its policy and research offices; and

(3) telework policies, including any change in policies since the beginning of the COVID–19 pandemic.

(e) ACTION PLAN.—Not later than 1 year after the submission of the report required under subsection (a)(2), the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and post on a public-facing
website an action plan that addresses the recommendations and findings made by the Inspector General in such report.

**TITLE II—HAZARDOUS MATERIALS EMERGENCY RESPONSE AND PREPAREDNESS**

**SEC. 201. HAZARDOUS MATERIALS REGISTRATION FEES.**

Section 5108(g) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking “(1) The Secretary” and inserting the following:

“(1) IN GENERAL.—The Secretary”; and

(2) in paragraph (2)—

(A) in subparagraph (C), by striking “(C) The Secretary” and inserting the following:

“(D) TRANSFER AND DEPOSIT.—The Secretary”;

(B) in subparagraph (B), by striking “(B) The Secretary” and inserting the following:

“(C) ADJUSTMENT.—The Secretary”; and

(C) by striking“(2)(A) In addition” and all that follows through the end of clause (ix) of subparagraph (A) and inserting the following:

“(2) ANNUAL FEE.—
“(A) Establishment.—In addition to a fee established under paragraph (1), the Secretary shall establish and impose by regulation and collect an annual fee.

“(B) Requirement.—Subject to subparagraph (C), the fee established under subparagraph (A) shall be—

“(i) at least $250 but not more than $500 from each person that—

“(I) is required to file a registration statement under this section; and

“(II) is identified as a small business (within the meaning of part 121 of title 13, Code of Federal Regulations (or successor regulations)); and

“(ii) at least $500 but not more than $5,000 from each person that—

“(I) is required to file a registration statement under this section; and

“(II) is not identified as a small business (within the meaning of part 121 of title 13, Code of Federal Regulations (or successor regulations)).”. 
SEC. 202. VIRTUAL TRAINING OPTIONS.

Section 5115(b)(1) of title 49, United States Code, is amended—

(1) in subparagraph (B), by striking “and” after the semicolon at the end; and

(2) by adding at the end the following:

“(D) recommendations for the development of courses described in subparagraph (B) that have been adapted for virtual learning and any courses for which the Secretary has recommended adaptation to provide virtual options, subject to the condition that the Secretary ensures that the virtual options recommended will provide an equivalent level of training as in-person courses; and”.

SEC. 203. HAZARDOUS MATERIALS TRANSPORTATION EMERGENCY RESPONSE AND PREPAREDNESS GRANTS.

(a) IN GENERAL.—Section 5116 of title 49, United States Code, is amended—

(1) by striking the section designation and heading and inserting the following:

“§ 5116. Hazardous materials transportation emergency response and preparedness”;

(2) in subsection (a)—

(A) in paragraph (1)—
(i) in subparagraph (B), by striking “and” after the semicolon at the end;

(ii) in subparagraph (C)—

(I) by striking “public sector employees” and inserting “emergency response personnel”; and

(II) by striking the period at the end and inserting a semicolon; and

(iii) by adding at the end the following:

“(D) until September 31, 2026, to purchase personal protective equipment, as determined by the Secretary, needed to respond to a hazardous materials emergency response incident, consistent with paragraph (7) and subject to the condition that not more than 50 percent of the funds made available under this subsection may be used for that purpose;

“(E) to conduct and organize simulated and field exercises relating to hazardous materials transportation incidents; and

“(F) to develop a hazardous materials transportation emergency response preparedness gap analysis in accordance with paragraph (9).”;

(B) in paragraph (5)(A)—
(i) in clause (i), by striking “public sector employees being trained” and inserting “emergency response personnel being trained virtually or in person”;

(ii) in clause (ii), by striking “employees” and inserting “personnel”;

(iii) in clause (iii)—

(I) by striking “employees” and inserting “personnel”; and

(II) by striking “and” after the semicolon at the end; and

(iv) by adding at the end the following:

“(v) to cover the costs of personnel needed to replace any personnel being trained; and

“(vi) to cover lost wages for any volunteer being trained, up to a reasonable amount determined by the Secretary;”;

(C) in paragraph (6)—

(i) by striking subparagraph (A) and inserting the following:

“(A) whether grant funds will be used to support the ability of the United States to respond to hazardous materials incidents near infrastructure
commonly used to transport hazardous materials;”;

and

(ii) in subparagraph (B), by striking “amounts” and inserting “number of shipments”;

(D) by redesignating paragraphs (5) and (6) as paragraphs (6) and (8), respectively;

(E) by inserting after paragraph (4) the following:

“(5)(A) Subject to subparagraph (C), any State receiving a grant under this subsection shall, not later than 180 days after receiving the grant funds, make available to eligible local entities—

“(i) not less than 70 percent of the grant funds; or

“(ii) eligible services or activities described in paragraph (1) having a value of not less than 70 percent of the amount of the grant.

“(B) A State shall certify to the Secretary that the State has made the distribution to eligible local entities required under paragraph (1) by providing such information as the Secretary shall require.

“(C)(i) The Governor of a State may request in writing that the Secretary extend the period under subparagraph (A) for an additional period of time.
“(ii) The Secretary may approve a request under clause (i) if the Secretary determines that the delay in providing grant funding to eligible local entities pursuant to the extension is necessary to promote effective investments to prepare for or respond to hazardous materials transportation incidents.

“(D) Subparagraph (A) shall not apply to Tribes, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the Virgin Islands.

“(E) An eligible local entity may petition the Secretary to request that grant funds be provided by the Secretary directly to the eligible local entity if a State fails to apply for a grant under this subsection.

“(F) For purposes of this paragraph, term ‘eligible local entity’ means each of the following:

“(i) A political subdivision of a State.

“(ii) A public emergency response organization.”;

(F) by inserting after paragraph (6) (as so redesignated) the following:

“(7) A recipient of funds provided under this subsection may use the funds to purchase personal protective equipment only if the recipient agrees to properly maintain and store that personal protective equipment.”; and
(G) by inserting after paragraph (8) (as so redesignated) the following:

“(9)(A) Each hazardous materials transportation emergency response preparedness gap analysis shall include—

“(i) an identification of gaps and limitations of the hazard response program of the applicable jurisdiction, including—

“(I) knowledge and personal protective equipment gaps; and

“(II) gaps in training, including Incident Command Management training and ASTM Standard E3241 training; and

“(ii) a strategic plan to address the gaps and limitations identified under clause (i).

“(B) In developing a hazardous materials transportation emergency response preparedness gap analysis under subparagraph (A), the entity preparing the analysis shall—

“(i) coordinate with Regional Response Teams (as described in section 300.115 of title 40, Code of Federal Regulations (or a successor regulation));

“(ii) include States, Tribes, hazardous materials emergency response programs, local governments, and emergency response personnel (including fire
service organizations) in that development, as appropriate; and

“(iii) provide an opportunity for States, Tribes, hazardous materials emergency response programs, local governments, and emergency response personnel (including fire service organizations) to review and comment on the analysis before the analysis is published.”;

(3) in subsection (d)—

(A) in the second sentence, by striking “Amounts” and inserting the following:

“(2) CERTAIN AMOUNTS.—Amounts”;

(B) in the first sentence, by striking “A grant under this section is for 80 percent of the cost the State or Indian tribe incurs” and inserting the following:

“(1) IN GENERAL.—A grant under this section is for 90 percent of the costs incurred by a State, or 100 percent of the costs incurred by a Tribe,”;

and

(C) by adding at the end the following:

“(3) IN-KIND CONTRIBUTIONS.—For purposes of this subsection, the contributions of a State or Tribe toward the costs of an activity funded by a
grant under this section may be in the form of in-
kind contributions.”;

(4) in subsection (h)—

(A) in the second sentence—

(i) in paragraph (4), by striking “2 percent” and inserting “4 percent”;

(ii) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and indenting appropriately; and

(iii) in the matter preceding subparagraph (A) (as so redesignated), by striking “Without” and inserting the following:

“(2) USES.—Without”; and

(B) in the first sentence—

(i) by striking “section 5108(g)(2)(C) of this title” and inserting “section 5108(g)(2)(D)”; and

(ii) by striking “The Secretary” and inserting the following:

“(1) IN GENERAL.—The Secretary”; and

(C) by adding at the end the following:

“(3) SET ASIDE.—

“(A) IN GENERAL.—The amounts collected under section 5123—
“(i) shall be set aside for the purpose of carrying out subsection (k); and
“(ii) shall be available, without further appropriation, for that purpose.
“(B) APPLICATION.—The set-aside described in subparagraph (A)—
“(i) shall apply until the earliest date on which the total amount set aside and available for expenditure under that subparagraph equals or exceeds $50,000,000; and
“(ii) after that date, shall apply to each subsequent period—
“(I) beginning on a date on which the total amount set aside and available for expenditure under that subparagraph is less than $20,000,000; and
“(II) ending on the earliest subsequent date on which the total amount set aside and available for expenditure under that subparagraph equals or exceeds $50,000,000.”;
(5) in subsection (k)—
(A) in paragraph (3), by striking “such planning and training programs” and inserting “each grant program”; 

(B) by redesignating paragraphs (1) through (4) as subparagraphs (A), (B), (D), and (E), respectively, and indenting appropriately; 

(C) by inserting after subparagraph (B) (as so redesignated) the following: 

“(C) a description of any personal protective equipment purchased using grant funds;”; 

and 

(D) in the matter preceding subparagraph (A) (as so redesignated)— 

(i) in the first sentence, by striking “an annual report”; and 

(ii) by striking “the report to the public” in the first sentence and all that follows through “grants and include—” in the third sentence and inserting the following: “to the public an annual report that— 

“(1) includes information on the allocation and uses of the grants made available under— 

“(A) this section; and
“(B) subsections (e) and (i) of section 5107;

“(2) identifies the ultimate recipients of those grants;

“(3) identifies the amount of funding available for each grant;

“(4) describes any unobligated balances, total annual drawdown by each grantee, and recovered balances;

“(5) includes the amount of funding rescinded, by grant recipient, for each grant; and

“(6) includes—”;

(6) by striking “tribe” each place it appears and inserting “Tribe”; and

(7) by striking “tribes” each place it appears and inserting “Tribes”.

(b) ASSISTANCE FOR LOCAL EMERGENCY RESPONSE TRAINING.—Section 5116(j)(1)(A) of title 49, United States Code, is amended by striking “liquids” and inserting “materials”.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 5128(b) of title 49, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking “Hazardous Materials Preparedness Fund”
and inserting “Hazardous Materials Emergency Preparedness Fund”;

(2) in paragraph (3), by striking “section 5116(h)(3); and” and inserting “section 5116(h)(2)(C);” and

(3) by striking paragraph (4) and inserting the following:

“(4) $4,000,000 to carry out section 5116(i); and

“(5) $1,000,000 to carry out section 5116(j).”.

(d) CLERICAL AMENDMENT.—The analysis for chapter 51 of title 49, United States Code, is amended by striking the item relating to section 5116 and inserting the following:

“5116. Hazardous materials transportation emergency response and preparedness.”.

(e) CONFORMING AMENDMENTS.—

(1) Section 5102 of title 49, United States Code, is amended by striking paragraph (6) and inserting the following:

“(6) ‘Indian tribe’, ‘Indian Tribe’, and ‘Tribe’ have the meaning given the term ‘Indian Tribe’ in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).”.


(2) Section 5123 of title 49, United States Code, is amended by striking subsection (g) and inserting the following:

“(g) Transfer of amounts collected.—Amounts collected under this section shall be transferred to the Hazardous Materials Emergency Preparedness Fund established under section 5116(h).”.

SEC. 204. EMERGENCY RESPONSE ASSISTANCE.

Section 5116 of title 49, United States Code, is amended—

(1) by redesignating subsection (k) as subsection (l);

(2) by inserting after subsection (j) the following:

“(k) Emergency response assistance.—

“(1) Definitions.—In this subsection:

“(A) Significant hazardous materials transportation incident.—The term ‘significant hazardous materials transportation incident’ means an incident that—

“(i) involves hazardous materials being moved by a motor carrier or rail carrier;

“(ii) requires a response by at least 1 eligible entity described in paragraph (6)
for which the Secretary estimates the costs
to the eligible entity to be at least $15,000;
and
“(iii) results in a serious injury, fatal-
ity, or substantial property damage.
“(B) Substantial property damage.—
The term ‘substantial property damage’ means
damage to public or private property or the en-
vironment (including clean up costs) the Sec-
retary reasonably estimates to be more than
$45,000.
“(2) Establishment of Program.—Not later
than 1 year after the date of enactment of the Rail-
way Safety Act of 2023, the Secretary, in consulta-
tion with the Administrator of the Federal Emer-
gency Management Agency and the Administrator of
the Environmental Protection Agency, after pro-
viding an opportunity for notice and comment, shall
establish an emergency response assistance program
to provide immediate financial assistance to commu-
nities responding to a significant hazardous mate-
rials transportation incident.
“(3) Significant Hazardous Materials
Transportation Incident.—
“(A) IN GENERAL.—The Secretary shall have the authority to declare a significant hazardous materials transportation incident.

“(B) GUIDELINES.—The Secretary shall establish and publish guidelines to determine whether a significant hazardous materials transportation incident has occurred.

“(4) RELEASE OF FUNDS.—

“(A) IN GENERAL.—The Secretary shall immediately make available from the amount set aside under subsection (h)(3) in the Hazardous Materials Emergency Preparedness Fund established under subsection (h)(1) (referred to in this subsection as the ‘Fund’) up to $10,000,000 to quickly reimburse eligible entities described in paragraph (6) that responded to a significant hazardous materials transportation incident if—

“(i) the Secretary declares the incident a significant hazardous materials transportation incident; and

“(ii) at least 14 days but not later than 21 days after the declaration of a significant hazardous materials transportation incident, the Secretary determines, in ac-
cordance with paragraph (8), that the respon-
sible party does not have an accept-
able reimbursement plan.

“(B) ADDITIONAL FUNDS.—In addition to any amounts made available under subpara-
graph (A), the Secretary shall make additional funding available from the amount set aside under subsection (h)(3) in the Fund if the Sec-
retary determines that the additional funding is necessary.

“(C) AUTHORITY.—The Secretary may make funds available under this subsection if the Secretary determines the responsible party is not complying with its acceptable plan under paragraph (8).

“(5) ADMINISTRATION OF FUNDS.—The Sec-
retary may provide funds from the amount set aside under subsection (h)(3) in the Fund to a State in which a hazardous materials transportation incident occurred for the State to use and administer reimbursements in accordance with this subsection, in-
cluding by providing funds to eligible entities de-
scribed in paragraph (6).
“(6) ELIGIBLE ENTITIES DESCRIBED.—The eligible entities referred to in paragraphs (4)(A) and (5) are—

“(A) States, territories, and Tribes;

“(B) political subdivisions of a State or territory; and

“(C) public emergency response organizations.

“(7) USE OF FUNDS.—

“(A) IN GENERAL.—Funds made available under paragraph (4) or (5) may be used only—

“(i) for the cost of replacing personal protective equipment that is damaged, contaminated, or otherwise rendered unusable as a result of the response of the eligible entity to a significant hazardous materials transportation incident;

“(ii) for overtime pay of employees of eligible entities that responded to the scene of a significant hazardous materials transportation incident;

“(iii) for operational costs exceeding standard operating expenses that are directly related to the cost of responding to the significant hazardous materials trans-
portation incident, such as the costs of running a supplementary emergency response center;

“(iv) for the cost of providing baseline health care assessments to emergency response personnel who responded to the significant hazardous materials transportation incident, but not more than $1,000 per person, which shall be adjusted annually for inflation; and

“(v) to reimburse an eligible entity for an eligible cost described in any of clauses (i) through (iv) that is incurred within 30 days of the date of a significant hazardous materials transportation incident.

“(B) DOCUMENTATION OF COSTS.—Not later than 1 year after the date on which the Secretary declares a significant hazardous materials transportation incident for which an eligible entity receives assistance under this subsection, the eligible entity shall submit to the Secretary documentation for each item for which that assistance was used pursuant to the eligible uses of funds described in subparagraph (A).
“(C) MISUSE OF FUNDS.—If the Secretary determines that an eligible entity has used assistance received under this subsection in a manner that violates subparagraph (A) or any other provision of this subsection, the eligible entity shall reimburse the Fund (if the assistance was provided from the Fund) or the responsible party (if the assistance was provided by the responsible party), for the amount of that assistance.

“(8) ACCEPTABLE PLAN.—

“(A) IN GENERAL.—For purposes of paragraph (4)(A)(ii), the Secretary shall consider a reimbursement plan of a responsible party to be acceptable if the plan seeks to review and process claims made by eligible entities for the costs described in paragraph (7) not later than 90 days after the date of the significant hazardous materials transportation incident.

“(B) ADVANCE SUBMISSION; CERTAIN PLANS.—

“(i) ADVANCE SUBMISSION.—A plan to provide reimbursement to eligible entities in accordance with subparagraph (A) may be submitted to the Secretary for ap-
proval in advance of any significant haz-
ardous materials transportation incident to
which the plan might apply.

“(ii) CERTAIN PLAN.—A hazardous
materials emergency response plan ap-
proved by the Secretary in accordance with
section 20155(e) shall be considered an ac-
ceptable plan for purposes of this sub-
section.

“(9) REIMBURSEMENT BY RESPONSIBLE
PARTY.—

“(A) IN GENERAL.—Subject to subpara-
graph (F), the party responsible for a signifi-
cant hazardous materials transportation inci-
dent shall be liable to the Secretary for reim-
bursement of all amounts disbursed from the
Fund under this subsection for that significant
hazardous materials transportation incident.

“(B) REQUIREMENT.—Any funding recov-
ered by the Secretary under this subsection
shall be deposited back into the Fund.

“(C) NOTICE.—After the Secretary has re-
ceived the documented costs under paragraph
(7)(B), the Secretary shall provide notice to the
responsible party regarding the total amount owed.

“(D) Final Agency Action.—Not later than 30 days after the Secretary makes a determination of the amount for which the responsible party is liable under subparagraph (A), the responsible party may challenge that determination as a final agency action.

“(E) Civil Action.—

“(i) In general.—The Attorney General may bring a civil action in an appropriate district court of the United States to collect unpaid amounts under this paragraph and any accrued interest on those amounts.

“(ii) Limitation on Judicial Review.—In a civil action under clause (i), the amount for which a responsible party is liable, as determined by the Secretary, unless challenged under subparagraph (D), shall not be subject to judicial review.

“(F) Discretion.—If the responsible party is a small business concern (within the meaning of part 121 of title 13, Code of Federal Regulations (or successor regulations)) that
is unable to fully reimburse the Secretary, the Secretary shall have discretion with respect to the amount of funds the Secretary requests from the responsible party under this paragraph.

“(10) Streamlined Application Process.—

The Secretary shall streamline the application process for the receipt of funds under this subsection, including by—

“(A) providing technical assistance to eligible entities; and

“(B) creating a template that eligible entities can use to apply for funding.

“(11) Savings Provisions.—

“(A) Liability.—Nothing in this subsection limits, or may be construed to limit, the liability of a responsible party.

“(B) Reimbursement.—

“(i) In general.—A responsible party may, in accordance with any other applicable law—

“(I) seek to establish that another party was responsible, in whole or in part (as such other law allows), for the applicable significant haz-
ardous materials transportation incident; and

“(II) seek reimbursement (to the extent such other law allows) from that other party.

“(ii) Effect of subsection.—Nothing in this subsection limits, or may be construed to limit, the ability of a responsible party to seek reimbursement from any other party found to be responsible in any civil action arising from the applicable significant hazardous materials transportation incident.

“(iii) Effect of determination.—A determination by the Secretary that a party is a responsible party for purposes of this subsection shall not be considered or otherwise have any effect with respect to the determination of liability in any civil action described in clause (ii).

“(iv) Effect of reimbursements and other activities.—No activity taken under this subsection to reimburse an eligible entity, reimburse the Secretary, prepare or carry out a reimbursement
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plan, or otherwise comply with or make a
payment under this subsection shall be
considered or otherwise have any effect
with respect to the determination of liabil-
ity in any civil action described in clause
(ii).

“(12) COMPTROLLER GENERAL REPORT.—

“(A) IN GENERAL.—Not later than Sep-
tember 30, 2027, the Comptroller General of
the United States shall submit to Congress a
report on the effectiveness this subsection.

“(B) CONTENTS.—The report submitted
under subparagraph (A) shall include, at a min-
imum, information on—

“(i) the number of significant haz-
ardous materials transportation incidents
that received funding under this sub-
section;

“(ii) the amount of financial assist-
ance the Secretary provided to eligible enti-
ties;

“(iii) the amount of financial assist-
ance responsible parties submitted to the
Secretary under paragraph (9);
“(iv) the amount of reimbursement the Secretary received from eligible entities as required under paragraph (7)(C);

“(v) whether the amounts provided by the Secretary under this subsection adequately reflect the amounts actually spent by the eligible entities;

“(vi) whether the Secretary was able to provide the financial assistance quickly enough to the eligible entities so that the assistance effectively supported the preparedness of the eligible entities to respond to potential future incidents; and

“(vii) any other factors the Comptroller General of the United States considers to be appropriate to review the effectiveness of this subsection.”; and

(3) by adding at the end the following:

“(m) DEFINITIONS.—In this section:

“(1) EMERGENCY RESPONSE PERSONNEL.—

The term ‘emergency response personnel’ means—

“(A) an employee of a State, territory, Tribe, or political subdivision of a State; and

“(B) a person belonging to a public emergency response organization.
“(2) Public emergency response organization.—

“(A) In general.—The term ‘public emergency response organization’ means—

“(i) a fire department that has an all-paid force of firefighting personnel other than paid-on-call firefighters;

“(ii) a fire department that has—

“(I) paid firefighting personnel;

and

“(II) volunteer firefighting personnel;

“(iii) a nonaffiliated EMS organization; and

“(iv) a fire department that has an all-volunteer force of firefighting personnel.

“(B) Associated definition.—For purposes of subparagraph (A)(iii), the term ‘nonaffiliated EMS organization’ means a public or private nonprofit emergency medical services organization that—

“(i) is not affiliated with a hospital; and

“(ii) does not serve a geographic area for which the Secretary or a State finds
that emergency medical services are adequately provided by a fire department.”