

114TH CONGRESS  
1ST SESSION

# H. R. 2074

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

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IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2015

Mr. NORCROSS introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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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 Act of 2015” or  
6 the “TRACK Act”.

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 for the Development of Acute Expo-  
6       sure Guideline Levels 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—

23           (1) periodically review any post-accident public  
24      health assessments regarding the extent to which in-  
25      dividuals exposed to the hazardous material that was

1 released could experience long-lasting or irreversible  
2 health consequences;

3 (2) timely inform individuals exposed to the  
4 hazardous material of any health information, in-  
5 cluding information regarding long-lasting or irre-  
6 versible health consequences, included in such re-  
7 ports; and

8 (3) 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)(3), or a regulation prescribed pursuant to  
16 subsection (b)(3), shall be liable to the Federal Govern-  
17 ment for a civil penalty for each violation or for each day  
18 the violation continues, as follows:

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

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

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

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

16          (a) RULEMAKING.—Not later than 2 years after the  
17          date of the enactment of this Act, the Secretary of Trans-  
18          portation shall prescribe regulations requiring a railroad  
19          carrier transporting a hazardous material—

20                 (1) to provide first responders, emergency re-  
21                 sponse officials, and law enforcement personnel in  
22                 the communities through which the hazardous mate-  
23                 rial is transported with accurate and current com-  
24                 modity flow data; and



1 road carrier that operates across a moveable bridge  
2 to have an active program to train and qualify its  
3 employees to determine whether a train can safely  
4 travel across a moveable bridge when a signal pro-  
5 tecting the bridge is displaying a red signal aspect.

6 (2) REQUIRED QUALIFICATIONS.—A railroad  
7 carrier described in paragraph (1) shall ensure that  
8 only an individual qualified under the railroad car-  
9 rier’s training program is given responsibility for de-  
10 termining whether a train can safely travel across a  
11 moveable bridge when a signal protecting the bridge  
12 is displaying a red signal aspect.

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

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

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

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

15 **SEC. 5. ROUTE RISK ASSESSMENT.**

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

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

1           (2) allows for safety and security risk assess-  
2           ments to be performed by short line and regional  
3           railroad carriers when alternative routes are not  
4           available.

5           (b) ROUTE RISK ASSESSMENT AUDITS.—The Sec-  
6           retary of Transportation, in collaboration with the Sec-  
7           retary of Homeland Security and the American Short Line  
8           and Regional Railroad Association, shall conduct audits  
9           of short line and regional railroads to ensure that proper  
10          route risk assessments that identify safety and security  
11          vulnerabilities are being performed and are incorporated  
12          into a safety management system program.

13   **SEC. 6. RAILROAD SAFETY RISK REDUCTION PROGRAM**  
14                                   **AMENDMENTS.**

15          (a) SAFETY MANAGEMENT SYSTEMS.—Section  
16          20156(d)(1) of title 49, United States Code, is amended—

17                 (1) in subparagraph (A), by striking “and” at  
18                 the end;

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

21                 (3) by adding at the end the following:

22                         “(C) the use of safety management sys-  
23                         tems and their associated key principles, includ-  
24                         ing top-down ownership and policies, analysis of



1 operational incidents and accidents, and contin-  
2 uous evaluation and improvement programs.”.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-  
4 gress that, under the Railroad Safety Risk Reduction Pro-  
5 gram under section 20156 of title 49, United States Code,  
6 the Secretary of Transportation should include within the  
7 definition of “a railroad carrier that has an inadequate  
8 safety performance” any railroad carrier that is at fault  
9 for an incident, accident, or emergency involving haz-  
10 ardous materials that has led to a fatality or personal in-  
11 jury, an evacuation, or environmental damage within the  
12 last 5 years.

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

14 (a) REAL-TIME EMERGENCY RESPONSE NOTIFICA-  
15 TION.—Not later than 1 year after the date of the enact-  
16 ment of this Act, the Secretary of Transportation shall  
17 prescribe regulations that—

18 (1) require a railroad carrier transporting a  
19 hazardous material—

20 (A) to have the capability to generate,  
21 maintain, retrieve, and promptly deliver accu-  
22 rate and real-time consists that include the  
23 identity and location of the hazardous material  
24 on the train; and

1 (B) to provide such information promptly  
2 to first responders, emergency response offi-  
3 cials, and law enforcement personnel in the  
4 event of an incident, accident, or emergency, or  
5 as required by such entities to protect public  
6 health and community safety; and

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

16 (b) EMERGENCY RESPONSE STANDARDIZATION.—  
17 The Secretary of Transportation, in consultation with rail-  
18 road carriers, shall ensure that emergency response infor-  
19 mation carried by train crews transporting hazardous ma-  
20 terials is consistent with, and is at least as protective as,  
21 the emergency response guidance provided in the Emer-  
22 gency Response Guidebook issued by the Department of  
23 Transportation.

24 (c) ENFORCEMENT.—Any railroad carrier violating  
25 subsection (a)(2) or a regulation prescribed pursuant to

1 subsection (a)(2) shall be liable to the Federal Govern-  
2 ment for a civil penalty for each violation or each day the  
3 violation continues, as follows:

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

11           (2) A railroad carrier that has annual carrier  
12 operating revenues that meet the threshold amount  
13 for Class II carriers as determined by the Surface  
14 Transportation Board under section 1201.1–1 of  
15 title 49, Code of Federal Regulations, shall be liable  
16 for a civil penalty of not less than \$25,000 and not  
17 more than \$250,000.

18           (3) A railroad carrier that has annual carrier  
19 operating revenues that meet the threshold amount  
20 for Class III carriers as determined by the Surface  
21 Transportation Board under section 1201.1–1 of  
22 title 49, Code of Federal Regulations, shall be liable  
23 for a civil penalty of not less than \$10,000 and not  
24 more than \$100,000.

1 **SEC. 8. PUBLIC EDUCATION.**

2 Not later than 1 year after the date of the enactment  
3 of this Act, the Secretary of Transportation shall prescribe  
4 regulations requiring railroad carriers transporting haz-  
5 ardous materials to develop, implement, and periodically  
6 evaluate a public education program for the communities  
7 along railroad hazardous materials routes, which may in-  
8 clude—

9 (1) procedures for reporting the release of a  
10 hazardous material;

11 (2) physical indications of a release of a haz-  
12 ardous material, including a focus on hazardous ma-  
13 terials that are most commonly transported in or  
14 near a given community;

15 (3) methods of communication that will be used  
16 to alert the community in the event of a railroad in-  
17 cident, accident, or emergency involving a hazardous  
18 material;

19 (4) steps that should be taken by community  
20 residents to ensure public health and safety in the  
21 event of a hazardous material release; and

22 (5) a discussion of possible public health and  
23 safety concerns associated with an unintended re-  
24 lease of a hazardous material, including a focus on  
25 hazardous materials that are most commonly trans-  
26 ported in or near a given community.

1 **SEC. 9. INFLATION ADJUSTMENTS.**

2       The Secretary of Transportation shall issue a state-  
3 ment of agency policy adjusting the penalty schedules for  
4 violations outlined in this Act as necessary to account for  
5 inflation, each time the Secretary is required by law to  
6 review the minimum and maximum civil monetary penalty  
7 for inflation under the Federal Civil Penalties Inflation  
8 Adjustment Act of 1990 (Public Law 101–410; 28 U.S.C.  
9 2461 note). The Secretary may subject the statement of  
10 agency policy to notice and comment, as the Secretary  
11 considers appropriate.

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