

The Crude-By-Rail Safety Act

Section-by-Section

Sec. 1. Short title. “Crude-By-Rail Safety Act.”

Sec. 2. Definitions.

Definitions of the terms High-Hazard Flammable Train, Oil, Rail Carrier, and Worst Case Discharge.

Sec. 3. Certainty on Safety Regulations

Within 90 days, directs the Secretary of Transportation to establish an interim national standard for the maximum volatility of crude oil transported by rail within the United States. Volatility in the interim national standard shall be measured by the vapor pressure of the crude oil. Requires the standard to take effect not later than 90 days after it is issued.

Within 2 years, directs the Secretary of Transportation, in collaboration with the Secretary of Energy, to complete a study on the best methods for reliably measuring the volatility of crude oil and the level of volatility that is consistent with the safest practicable shipment of crude oil by rail.

No later than 90 days after the completion of the study on volatility, requires the Secretary of Transportation to issue a final rule that establishes the maximum volatility of crude oil that is transported by rail. The final national standard is to be consistent with the findings of the study and require that transportation of crude oil by rail be as safe as practicable.

Within 90 days, directs the Secretary of Transportation to issue a final rule on *Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains*. Ensures that the rule requires new rail cars to meet or exceed the strongest tank car design option under consideration – Option 1: PHMSA and FRA Designed Car. Requires all new tank cars designed to transport a Class 3 flammable liquid constructed after October 1, 2015 to meet the new standard.

Requires all high-hazard flammable trains to operate with electronically controlled pneumatic brakes beginning on the date identified in the final rule on *Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains*.

Sec. 4. Ending Use of Unsafe Tank Cars for Crude Oil and Ethanol Transport

Requires the Secretary of Transportation to immediately prohibit the shipment of oil in all DOT-111 tank cars, and unjacketed CPC-1232 cars. Allows jacketed CPC-1232 cars to remain in service.

Requires the Secretary of Transportation to prohibit, after 2 years, the shipment of ethanol in all DOT-111 tank cars, and unjacketed CPC-1232 cars. Allows jacketed CPC-1232 cars to remain in service.

Encourages any rail carrier or shipper who offers for transportation, or transports, in a tank car by rail in commerce to, from, or within the United States, a bulk quantity of oil or ethanol to take additional precautionary measures to enhance the safe shipment of such liquids, including by avoiding the shipment

of such liquids in tank cars with unsafe tank car attributes identified by the Secretary of Transportation, to the extent practicable.

Allows the continued use of prohibited tank cars providing they have been retrofitted to meet or exceed the design standards outlined in *Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains* for Option 3 – Enhanced CPC-1232 Tank Car. Requires all retrofitted tank cars to be equipped with electronically controlled pneumatic brakes, which goes further than the rule.

Requires the Secretary of Transportation to establish in the future, by regulation, a retrofit standard and timeline for jacketed CPC-1232 tank cars that transport oil or ethanol.

Savings provision to ensure nothing in this section may be construed to prohibit the Secretary of Transportation from issuing, by regulation or order, a safety standard for tank cars transporting oil or ethanol that is more stringent than the requirements referred to in section 3(d).

Sec. 5. Crude-By-Rail Inspections

On routes that 1 or more high-hazard flammable trains operate, requires rail carriers to perform at least 2 additional internal rail inspections per calendar year than is currently required under section 213.237(c) of title 49, Code of Federal Regulations, and conduct at least 4 track geometry inspections each calendar year.

Requires that a person that offers oil for transportation complete spot inspections on 5 percent of all individual rail cars loaded with crude oil—

- (A) to test and record the volatility of the crude oil in such cars; and
- (B) to ensure that such crude oil meets—
 - (i) the interim national standard for maximum volatility in section 3; or
 - (ii) any subsequently enacted volatility standard that is more restrictive than such standard.

Requires the Secretary of Transportation to complete spot inspections on crude oil volatility to ensure that the national standard for the maximum volatility of crude oil for rail transport is met.

Requires the Secretary of Transportation to audit records of the spot inspections to ensure that the volatility of the crude oil does not exceed the national standard for the maximum volatility of crude oil for rail transport.

Sec. 6. Penalties for Noncompliance

Amends Section 5123(a) of title 49, United States Code, to increase the limit for a civil penalty from \$75,000 to \$500,000. Gives the Secretary of Transportation the authority to increase the amount of the civil penalty to not more than \$1,000,000 (from \$175,000) if the violation results in death, serious illness, or severe injury to any person, substantial destruction of property, or significant environmental damage. Allows a separate violation to occur each day a person continues to knowingly violate the law.

Establishes a civil penalty of not more than \$1,000,000 if any person that offers oil for transportation violates the maximum volatility rule issued pursuant to section 3, or the inspection requirement under section 5.

Establishes a civil penalty of not more than \$1,000,000 if any rail carrier violates the rail inspections requirement under section 5.

Sec. 7. Safe Transportation of Energy Products.

Requires the Secretary of Transportation to establish or expand safety programs relating to the transportation of energy products and other Class 3 flammable liquids by rail, pipeline, highway, and waterway, which shall include initiatives—

- (1) to expedite rulemaking proceedings;
- (2) to conduct technical studies of energy products;
- (3) to increase rail, pipeline, and energy product inspections;
- (4) to provide grants to States for additional railroad track and pipeline inspectors;
- (5) to improve notification procedures from State Emergency Response Commission contacts to first responders;
- (6) to develop and conduct first responder training programs, in collaboration with the Federal Emergency Management Agency, the Department of Homeland Security, the Coast Guard, the Environmental Protection Agency, and national first responder organizations;
- (7) to conduct technical research on infrastructure-related causes of train and pipeline accidents;
- (8) to identify ways to mitigate the causes and consequences of train accidents;
- (9) to provide grants to communities to update emergency response plans developed by local emergency planning committees; and
- (10) to audit comprehensive oil spill response plans under section 8.

Authorizes \$40,000,000 for fiscal year 2016 and \$40,000,000 for fiscal year 2017.

Sec. 8. Oil Spill Response Plans.

Defines the term maximum extent practical.

Requires that Pipeline and Hazardous Materials Safety Administration revise the spill response planning thresholds set forth in part 130 of title 49, Code of Federal Regulations, to require comprehensive response plans to effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and petroleum products. In addition, the spill response plans outlined above shall be consistent with the National Contingency Plan and coordinated with either the Environmental Protection Agency or the United States Coast Guard, depending on the location of the region of transport.

Requires that the rail response plans be integrated into Regional Area Contingency Plans, which are currently in place for discharge scenarios under other forms of oil and petroleum transport.

Requires the Federal Railroad Administration to develop a program to audit response plans for rail carriers of petroleum products to ensure that adequate provisions are in place to mitigate or prevent a substantial threat of a worst-case discharge, and respond to such a scenario if it were to occur. The Administrator is also required to audit shippers and rail carriers to ensure that they are using proper hazardous material classifications, that they have developed safety and security plans, and that they have made adequate provision for safety and security.

Savings provision to ensure nothing in this section may be construed to prohibit the Secretary of Transportation from issuing, by regulation or order, a requirement for comprehensive response plans for railroads transporting oil or ethanol that is more stringent than the requirements in section 8.

Sec. 9. Disclosure Requirement.

Requires rail carriers operating any high-hazard flammable trains within a state to provide the State Emergency Response Commission (SERC) and any Local Emergency Planning Committee (LEPC) located along the route with:

- (1) a reasonable estimate of the number of such trains that are expected to travel, per week, through the State;
- (2) a description of the flammable liquid expected to be transported through the State, in accordance with subpart C of part 172 of title 49, Code of Federal Regulations;
- (3) all applicable emergency response information required under subpart G of such part;
- (4) the identification of the routes over which the oil or ethanol will be transported; and
- (5) the contact information for at least 1 point of contact at the rail carrier responsible for serving as the point of contact for the State Emergency Response Commission and relevant emergency responders.

Savings provision to ensure nothing in this section may be construed to prohibit the Secretary of Transportation from issuing, by regulation or order, a disclosure requirement for high-hazard flammable train movement that is wider than the requirements under section 9.

Sec. 10. Emergency Response Resource Inventory.

Requires rail carriers to develop an inventory of emergency response resources along routes over which 1 or more high-hazard flammable trains operate for responding to worst case discharges resulting from accidents involving unit trains or blocks of tank cars transporting Class 3 flammable liquids in the event of an incident. The inventory should include:

- (1) a detailed description of the type and quantity of private emergency response resources;
- (2) sufficient equipment to respond to a worst case discharge from accidents involving unit trains or blocks of tank cars;
- (3) sufficient equipment to respond to a fire or explosion that could result from a worst case discharge from accidents involving unit trains or blocks of tank cars;
- (4) locations for the staging of emergency response equipment; and
- (5) contacts for the notification of communities, as appropriate.

The inventory should be provided to the Department of Transportation and relevant first responders, upon request.

Sec. 11. Confidential Close Call Reporting Systems.

Requires USDOT to, within one year, promulgate regulations for applicable railroad carriers to follow in establishing a confidential close call reporting system. Defines applicable railroad carriers as:

- (1) a railroad carrier that is a Class I railroad;
- (2) a railroad carrier that has inadequate safety performance, as determined by the Secretary; or
- (3) a railroad carrier that provides intercity rail passenger or commuter rail passenger transportation.

Requires applicable railroad carriers to develop proposed confidential close call reporting programs within 180 days of the final regulations, and submit those proposals to USDOT for review and approval. Programs developed by railroad carriers shall:

- (1) provide a safe environment for its employees to report unsafe events and conditions;
- (2) for unsafe events and conditions reported within the scope of a confidential close call reporting system, ensure its employees are protected from railroad carrier discipline;
- (3) use information collected through the confidential close call reporting system to develop and implement targeted corrective actions, as appropriate; and

(4) use information collected by the programs to supplement inspection data in identifying safety issues and emerging risks before they develop into accidents.

Requires USDOT to review and approve or disapprove each proposed program, and in the case of deficient programs, notify the applicable railroad carrier how to improve their program.

Confidential close call programs should be updated as needed, and USDOT shall conduct annual reviews to ensure each applicable railroad carrier is in compliance.

Requires each applicable railroad carrier to consult with, employ good faith with, and use its best efforts to reach agreement with all of its directly affected employees on the development and implementation of the proposed program.

Allows USDOT to use confidential close call reporting data:

- (1) when implementing or updating the Federal Railroad Administration's National Inspection Plan;
- (2) when performing focused inspections; or
- (3) when developing agency rulemakings and guidance, as appropriate.

Authorizes such sums as may be necessary to implement this section and support the nationwide implementation of confidential close call reporting system programs.

Sec. 12. High-Hazard Flammable Train Liability Study.

Requires USDOT to contract with the Transportation Research Board of the National Academy of Sciences to conduct a study on high-hazard flammable train liability. The study shall evaluate—

- (1) the level of insurance, including self insurance, available in the private market against the full liability potential for damages arising from an incident involving a high-hazard flammable train;
- (2) the ability of the level and availability of insurance referred to in paragraph (1)—
 - (A) to address externalities that exist because of gaps between insurance coverage and liability risk;
 - (B) to equitably allocate risk and financial responsibility for claims;
 - (C) to ensure that rail carriers have sufficient financial capacity to pay claims to those affected by high consequence incidents in a timely manner; and
 - (D) to ensure that rail carriers and shippers of high-hazard flammable trains can continue to operate despite the risk of catastrophic disaster; and
- (3) the potential applicability to high-hazard flammable trains of—
 - (A) a liability regime modeled after section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210); and
 - (B) a liability regime modeled after subtitle 2 of title XXI of the Public Health Service Act (42 U.S.C. 300aa–10 et seq.).

After 1 year, the Transportation Research Board of the National Academy of Sciences shall submit a report containing the results of the study and recommendations for addressing high hazard flammable train liability issues to the relevant Committees in Congress.

Sec. 13. Review and Recommendations.

Requires the Secretary of Transportation, in cooperation with the Secretary of Energy, the Secretary of Homeland Security, the Commanding General of the United States Army Corps of Engineers, and the

Administrator of the Environmental Protection Agency, to conduct a comprehensive review of existing regulations for energy products that are transported by all modes of transportation.

The review shall assess the effectiveness of existing regulations and industry capability—

- (1) to improve the safety of energy product transportation through populated or environmentally sensitive areas;
- (2) to maximize, to the extent possible, the stability and uniformity of energy products prior to transportation;
- (3) to eliminate the occurrence of accidents involving transportation of such products, and minimize the severity of such accidents should they occur;
- (4) to minimize energy product routing through populated or environmentally sensitive areas;
- (5) to reduce the environmental impact of transporting, loading, or unloading energy products;
- (6) to improve the security of energy product transportation; and
- (7) to prepare for an appropriate emergency response to accidents.

Not later than June 30, 2016, the Secretary of Transportation, in cooperation with the Secretary of Energy, the Secretary of Homeland Security, the Commanding General of the United States Army Corps of Engineers, and the Administrator of the Environmental Protection Agency, shall submit the results of the review to Congress, in conjunction with recommendations for—

- (1) improving all aspects of energy product transport by all transportation modes;
- (2) regulatory measures that the Secretary of Transportation is authorized to undertake that would improve the safety and reduce the environmental and community impact of transporting energy products; and
- (3) legislative changes that should be made to improve the safety and reduce the environmental and community impact of transporting energy products.

###