To protect the public, communities across America, and the environment by increasing the safety of crude oil transportation by railroad, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. Cantwell (for herself, Ms. Cantwell, Ms. Baldwin, Mrs. Feinstein, and Mrs. Murray) introduced the following bill; which was read twice and referred to the Committee on ________

A BILL

To protect the public, communities across America, and the environment by increasing the safety of crude oil transportation by railroad, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Crude-By-Rail Safety Act”.

4 SEC. 2. DEFINITIONS.

5 In this Act—

6 (1) HIGH-HAZARD FLAMMABLE TRAIN.—The term “high-hazard flammable train” means a single
train transporting 20 or more tank cars loaded with a Class 3 flammable liquid (as defined in section 173.120(a) of title 49, Code of Federal Regulations).

(2) Oil.—The term “oil” means oil of any kind or in any form, including crude, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes other than dredged spoil, any bitumen or bituminous mixture, oil derived from a bitumen or bituminous mixture, any oil derived from kerogen-bearing sources, developing oils, and emerging oils.

(3) Rail Carrier.—The term “rail carrier” has the meaning given the term “railroad carrier” in section 20102 of title 49, United States Code.

(4) Worst Case Discharge.—The term “worst case discharge” has the meaning given such term in section 130.5 of title 49, Code of Federal Regulations.

SEC. 3. CERTAINTY ON SAFETY REGULATIONS.

(a) Interim National Standard for Maximum Volatility.—

(1) Rulemaking.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation, by regulation, shall 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.

(2) Effective date.—The national standard established pursuant to paragraph (1) shall take effect not later than 90 days after it is issued by the Secretary.

(b) Study of crude oil characteristics and associated safety.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Transportation, in collaboration with the Secretary of Energy, shall complete a study of—

(1) the best methods for reliably measuring the volatility of crude oil; and

(2) the level of volatility that is consistent with the safest practicable shipment of crude oil by rail.

(c) Final national standard for maximum volatility.—

(1) In general.—Not later than 90 days after the completion of the study under subsection (b), the Secretary of Transportation shall issue a final rule that establishes the maximum volatility of crude oil that is transported by rail.

(2) Requirements.—The maximum volatility standard established pursuant to paragraph (1)—
(A) shall be consistent with the findings of
the study conducted under subsection (b); and
(B) shall require that the transportation of
crude oil by rail be as safe as practicable.

(d) Tank Car Design.—Not later than 90 days
after the date of the enactment of this Act, the Secretary
of Transportation shall issue a final rule, based on the
safety standards contained in the Notice of Proposed
Rulemaking issued on August 1, 2014, and entitled
"Enhanced Tank Car Standards and Operational Controls
for High-Hazard Flammable Trains, which requires that
all new tank cars designed to transport a Class 3 flam-
mable liquid that are constructed after October 1, 2015
meet or exceed the design standards set forth under option
1 of table 2 in such rulemaking.

(e) Enhanced Braking.—Beginning on the date
identified in the final rule issued pursuant to subsection
(d), all high-hazard flammable trains shall operate with
electronically controlled pneumatic brakes.

SEC. 4. ENDING USE OF UNSAFE TANK CARS.

(a) Minimum Safety Standard.—

(1) Oil.—Except as provided under paragraph
(4), the Secretary of Transportation shall imme-
diately prohibit the shipment of oil in—
(A) any DOT–111 tank car that does not meet the requirements of Casualty Prevention Circular 1232, issued by the Association of American Railroads on August 31, 2011; or

(B) any unjacketed CPC–1232 tank car.

(2) ETHANOL.—Except as provided under paragraph (4), beginning on the date that is 2 years after the date of the enactment of this Act, the Secretary of Transportation shall prohibit the shipment of ethanol in any tank car described in subparagraph (A) or (B) of paragraph (1).

(3) ADDITIONAL PRECAUTIONARY MEASURES.—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 shall 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.

(4) EXCEPTION.—Notwithstanding paragraphs (1) and (2), tank cars described in subparagraph (A) and (B) of paragraph (1) may continue to transport oil or ethanol if they have been retrofitted to
meet or exceed the design standards set forth under Option 3 of table 2 in the Notice of Proposed Rulemaking issued on August 1, 2014, and entitled "Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains. All retrofitted tank cars shall be equipped with electronically controlled pneumatic brakes.

(5) Jacketed CPC–1232 Tank Cars.—The Secretary of Transportation shall establish, by regulation, a retrofit standard and timeline for jacketed CPC–1232 tank cars that transport oil or ethanol.

(b) Savings Provision.—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.

(a) Rail Inspections for Hazardous Material Routes.—Rail carriers shall—

(1) perform at least 2 additional internal rail inspections per calendar year than is required under section 213.237(e) of title 49, Code of Federal Regulations, on routes that—
(A) the rail carrier owns or has been assigned maintenance responsibility under section 213.5 of such title; and

(B) over which 1 or more high-hazard flammable trains are operated.

(2) conduct at least 4 track geometry inspections each calendar year on routes that—

(A) the rail carrier owns or has been assigned maintenance responsibility under such section 213.5; and

(B) over which 1 or more high-hazard flammable trains are operated.

(b) Energy Product Inspections.—

(1) Inspection Requirement.—A person that offers oil for transportation shall 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 established pursuant to section 3(a); or
(ii) any subsequently enacted volatility standard that is more restrictive than such standard.

(2) SPOT INSPECTIONS AND AUDITS.—

(A) SPOT INSPECTIONS.—The Secretary of Transportation shall complete spot inspections on crude oil volatility to ensure that the volatility standards referred to in paragraph (1)(B) are being met.

(B) AUDITS.—The Secretary of Transportation shall audit records of the inspections conducted under paragraph (1) to ensure that the volatility of the crude oil does not exceed the volatility standards referred to in paragraph (1)(B).

SEC. 6. PENALTIES FOR NONCOMPLIANCE.

(a) FINES FOR VIOLATING HAZARDOUS MATERIALS TRANSPORTATION LAW.—Section 5123(a) of title 49, United States Code, is amended to read as follows:

“(a) PENALTY.—

“(1) IN GENERAL.—A person that knowingly violates this chapter or a regulation, order, special permit, or approval issued under this chapter is liable to the United States Government for a civil pen-
alty of not more than $500,000 for each such viola-

tion. A person acts knowingly when—

“(A) the person has actual knowledge of
the facts giving rise to the violation; or

“(B) a reasonable person acting in the
same circumstances and exercising reasonable
care would have such knowledge.

“(2) ENHANCED PENALTY.—If the Secretary
finds that a violation under paragraph (1) results in
death, serious illness, or severe injury to any person,
substantial destruction of property, or significant en-
vironmental damage, the Secretary may increase the
amount of the civil penalty for such violation to not
more than $1,000,000.

“(3) SEPARATE VIOLATION.—A separate viola-
tion occurs for each day a person continues to know-
ingly violate this chapter or any regulation, order,
special permit, or approval issued under this chap-
ter.”.

(b) FINES FOR VIOLATING ENERGY PRODUCT IN-
spections.—A person that offers oil for transportation
that violates the maximum volatility rule issued pursuant
to subsection (a) or (c) of section 3, or the inspection re-
requirement under section 5(b) shall be liable to the United
States Government for a civil penalty of not more than $1,000,000 for each such violation.

(c) FINES FOR VIOLATING RAIL INSPECTIONS.—A rail carrier that violates the rail inspections requirement under section 5(a) shall be liable to the United States Government for a civil penalty of not more than $1,000,000 for each such violation.

SEC. 7. SAFE TRANSPORTATION OF ENERGY PRODUCTS.

(a) IN GENERAL.—The Secretary of Transportation shall 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 established under section 8(b).

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the safety initiatives described in subsection (a)—

(1) $40,000,000 for fiscal year 2016; and

(2) $40,000,000 for fiscal year 2017.

SEC. 8. OIL SPILL RESPONSE PLANS.

(a) DEFINED TERM.—In this section, the term “maximum extent practicable” has the meaning given such term in section 130.5 of title 49, Code of Federal Regulations.

(b) COMPREHENSIVE RESPONSE PLANS.—
(1) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of the department in which the Coast Guard is operating and the Administrator of the Environmental Protection Agency, shall publish a final rule revising the regulations set out in part 130 of title 49, Code of Federal Regulations (relating to oil spill prevention and response plans)—

(A) to modify the 1,000 barrels (42,000 gallons) requirement for a comprehensive written plan in subsection (b) of section 130.31 of title 49, Code of Federal Regulations, to account for worst-case discharges resulting from accidents involving unit trains or blocks of tank cars; and

(B) to include additional requirements in each written plan required under such section 130.31 to respond to a discharge of oil that occurs during transportation by a rail carrier that has a reasonable probability of impacting a water body or other area that is subject to the jurisdiction of the Coast Guard or of the Environmental Protection Agency under the Federal
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Water Pollution Control Act (33 U.S.C. 1251 et seq.) including such a discharge—

(i) into or on the navigable waters of the United States;

(ii) on the adjoining shorelines to the navigable waters;

(iii) inland waters; or

(iv) other impacted lands.

(2) COORDINATION.—The additional requirements under paragraph (1)(B) shall be promulgated by the Secretary of Transportation in coordination with—

(A) the Secretary of the department in which the Coast Guard is operating, in the case of potential impacts to a water body or other area subject to the jurisdiction of the Coast Guard; and

(B) the Administrator of the Environmental Protection Agency, in the case of potential impacts to a water body or other area subject to the jurisdiction of the Environmental Protection Agency under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(c) NATIONAL CONTINGENCY PLAN.—To ensure efficient and timely prevention, preparedness, and response
by the lead agency and the rail carrier in the event of
a discharge of oil, the President shall, for each comprehen-
sive written plan required under section 130.31(b) of title
49, Code of Federal Regulations (or similar successor reg-
ulation)—

(1) include such plan in the National Conting-
gency Plan required under section 311(d) of the
Federal Water Pollution Control Act (33 U.S.C.
1321(d)); and

(2) integrate such plan into the appropriate Re-
gional Response Plan required under section
300.210(b) of title 40, Code of Federal Regulations
(or similar successor regulation).

(d) AUDITS REQUIRED.—The Secretary of Transpor-
tation shall—

(1) develop a program to audit response plans
for rail carriers of oil to ensure that adequate provi-
sions are in place—

(A) to respond to and remove a worst-case
discharge to the maximum extent practicable;
and

(B) to mitigate or prevent a substantial
threat of a worst-case discharge; and
(2) audit rail carriers of oil to ensure that the
shippers and rail carriers with respect to trans-
porting oil by railroad—
   (A) are using appropriate hazardous mate-
rials shipping classifications;
   (B) have developed transportation safety
   and security plans; and
   (C) have made adequate provision for safe-
ty and security.

(e) SAVINGS PROVISION.—Nothing in this section
may be construed to prohibit the Secretary of Transpor-
tation from issuing, by regulation or order, a requirement
for comprehensive response plans for railroads trans-
porting oil or ethanol that is more stringent than the re-
quirements under subsection (b).

SEC. 9. DISCLOSURE REQUIREMENT.

(a) IN GENERAL.—A rail carrier may not operate any
high-hazard flammable train in any State until the rail
carrier has provided the Emergency Response Commission
for such State and any local emergency planning com-
mittee along the route such train will operate 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.

(b) SAVINGS PROVISION.—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 subsection (a).

SEC. 10. EMERGENCY RESPONSE RESOURCE INVENTORY.

(a) IN GENERAL.—Rail carriers shall collaborate 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.

(b) INCLUSIONS.—The inventory developed pursuant to subsection (a) shall 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.

(c) ACCESS.—Rail carriers shall—

(1) provide the Department of Transportation with access to the inventory developed under this section; and

(2) make relevant information from the inventory, upon request, available to emergency responders located along identified routes over which 1 or more high-hazard flammable trains operate.
SEC. 11. CONFIDENTIAL CLOSE CALL REPORTING SYSTEMS.

(a) IN GENERAL.—Subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following:

“§ 20168. Confidential close call reporting systems

“(a) RULEMAKING.—

“(1) IN GENERAL.—Not later than 1 year after the date of the enactment of the Crude-By-Rail Safety Act, the Secretary of Transportation shall promulgate regulations setting forth the requirements for an applicable railroad carrier to follow in establishing a confidential close call reporting system program.

“(2) CONSIDERATIONS.—The Secretary may use any information and experience gathered through research and pilot programs on confidential close call reporting systems in developing the regulations, including continuing the use of third parties for the collection of close call reports and distribution of close call data. The Secretary shall ensure that an applicable railroad carrier’s employees receive protection under its program from any related Federal Railroad Administration enforcement actions.

“(b) PROGRAM DEVELOPMENT AND OVERSIGHT.—
“(1) IN GENERAL.—Not later than 180 days after the date of the final regulations under subsection (a), an applicable railroad carrier shall develop a proposed program and submit it to the Secretary of Transportation for review and approval.

“(2) CONTENTS.—A railroad carrier shall describe its proposed program’s core principles and values, explain the rights, roles, and responsibilities of program stakeholders, identify concerns and interests, and describe how the program will operate.

“(3) REVIEW.—

“(A) IN GENERAL.—The Secretary shall review and approve or disapprove each proposed program within a reasonable amount of time. If a proposed program is not approved, the Secretary shall notify the applicable railroad carrier in writing as to the specific areas in which the proposed program is deficient. The applicable railroad carrier shall correct all deficiencies within a reasonable period of time following receipt of written notice from the Secretary.

“(B) UPDATES.—An applicable railroad carrier shall update its program as needed and obtain the Secretary’s approval before making any major changes to its program.
“(C) ANNUAL REVIEWS.—The Secretary shall conduct an annual review to ensure that each applicable railroad carrier is in compliance with its program.

“(c) IN GENERAL.—Not later than 2 years after the date of the enactment of the Crude-By-Rail Safety Act, each applicable railroad carrier shall establish a confidential close call reporting system.

“(d) PROGRAM ELEMENTS.—Each applicable railroad carrier 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.

“(e) CONSENSUS.—
“(1) IN GENERAL.—Each applicable railroad carrier shall consult with, employ good faith with, and use its best efforts to reach agreement with all of its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the applicable railroad carrier, on the development and implementation of the proposed program.

“(2) STATEMENTS.—If an applicable railroad carrier and its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the applicable railroad carrier, cannot reach consensus on the development and implementation of the proposed program, then directly affected employees and such organization may file a statement with the Secretary of Transportation explaining their views on the proposed program on which consensus was not reached. The Secretary shall consider such views during review of the proposed program under subsection (b)(3)(A).

“(f) VOLUNTARY PROGRAM ESTABLISHMENT.—Any railroad carrier that is not an applicable railroad carrier may voluntarily establish a program under this section. This section, and any regulations promulgated under this
section, shall apply to a program that is voluntarily estab-
lished.

“(g) Use of Data.—The Secretary of Transpor-
tation may use the confidential close call reporting data—
“(1) when implementing or updating the Fed-
eral Railroad Administration’s National Inspection
Plan;
“(2) when performing focused inspections; or
“(3) when developing agency rulemakings and
guidance, as appropriate.

“(h) Definition of Applicable Railroad Car-
rrier.—In this section, the term ‘applicable railroad car-
rier’ means—
“(1) a railroad carrier that is a Class I rail-
road;
“(2) a railroad carrier that has inadequate safe-
ty performance, as determined by the Secretary; or
“(3) a railroad carrier that provides intercity
rail passenger or commuter rail passenger transpor-
tation.

“(i) Authorization of Appropriations.—There is
authorized to be appropriated to the Secretary of Trans-
portation such sums as may be necessary to implement
this section and to support the nationwide implementation,
as the Secretary determines appropriate, of confidential
close call reporting system programs.”.

(b) CLERICAL AMENDMENT.—The table of contents
for subchapter II of chapter 201 of title 49, United States
Code, is amended by adding at the end the following:
“20168. Confidential close call reporting systems.”.

SEC. 12. HIGH-HAZARD FLAMMABLE TRAIN LIABILITY
STUDY.

(a) IN GENERAL.—Not later than 30 days after the
date of the enactment of this Act, the Secretary of Trans-
portation shall contract with the Transportation Research
Board of the National Academy of Sciences to conduct a
study on high-hazard flammable train liability.

(b) PURPOSE.—The study conducted under sub-
section (a) shall evaluate—

(1) the level of insurance, including self insur-
ance, available in the private market against the full
liability potential for damages arising from an inci-
dent involving a high-hazard flammable train;

(2) the ability of the level and availability of in-
surance referred to in paragraph (1)—

(A) to address externalities that exist be-
cause 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 sub-title 2 of title XXI of the Public Health Service Act (42 U.S.C. 300aa–10 et seq.).

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, 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—

(1) the Secretary of Transportation;

(2) the Committee on Commerce, Science, and Transportation of the Senate; and
(3) the Committee on Transportation and Infrastructure of the House of Representatives.

SEC. 13. REVIEW AND RECOMMENDATIONS.

(a) IN GENERAL.—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 conduct a comprehensive review of existing regulations for energy products that are transported by all modes of transportation.

(b) REVIEW ELEMENTS.—The review under subsection (a) 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;
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.

(e) Submission of Review and Recommendations.—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 under subsection (a) 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.