

115TH CONGRESS
2D SESSION

S. 2848

To improve Department of Transportation controlled substances and alcohol testing, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2018

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

A BILL

To improve Department of Transportation controlled substances and alcohol testing, 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 “Fighting Opioid Abuse
5 in Transportation Act”.

6 **SEC. 2. RAIL MECHANICAL EMPLOYEE CONTROLLED SUB-**
7 **STANCES AND ALCOHOL TESTING.**

8 (a) RAIL MECHANICAL EMPLOYEES.—Not later than
9 2 years after the date of enactment of this Act, the Sec-
10 retary of Transportation shall publish a final rule in the

1 Federal Register revising the regulations promulgated
2 under section 20140 of title 49, United States Code, to
3 designate a rail mechanical employee as a railroad em-
4 ployee responsible for safety-sensitive functions for pur-
5 poses of that section.

6 (b) DEFINITION OF RAIL MECHANICAL EM-
7 PLOYEE.—The Secretary shall define the term “rail me-
8 chanical employee” by regulation under subsection (a).

9 (c) SAVINGS CLAUSE.—Nothing in this section may
10 be construed as limiting or otherwise affecting the discre-
11 tion of the Secretary of Transportation to set different re-
12 quirements by railroad size or other factors, consistent
13 with applicable law.

14 **SEC. 3. RAIL YARDMASTER CONTROLLED SUBSTANCES**
15 **AND ALCOHOL TESTING.**

16 (a) YARDMASTERS.—Not later than 2 years after the
17 date of enactment of this Act, the Secretary of Transpor-
18 tation shall publish a final rule in the Federal Register
19 revising the regulations promulgated under section 20140
20 of title 49, United States Code, to designate a yardmaster
21 as a railroad employee responsible for safety-sensitive
22 functions for purposes of that section.

23 (b) DEFINITION OF YARDMASTER.—The Secretary
24 shall define the term “yardmaster” by regulation under
25 subsection (a).

1 (c) SAVINGS CLAUSE.—Nothing in this section may
2 be construed as limiting or otherwise affecting the discre-
3 tion of the Secretary of Transportation to set different re-
4 quirements by railroad size or other factors, consistent
5 with applicable law.

6 **SEC. 4. GAO REPORT ON DEPARTMENT OF TRANSPOR-**
7 **TATION'S COLLECTION AND USE OF DRUG**
8 **TESTING DATA.**

9 (a) IN GENERAL.—Not later than 18 months after
10 the date of enactment of this Act, the Comptroller General
11 of the United States shall—

12 (1) review the Department of Transportation
13 Drug and Alcohol Testing Management Information
14 System; and

15 (2) submit to the Committee on Commerce,
16 Science, and Transportation of the Senate and the
17 Committee on Transportation and Infrastructure of
18 the House of Representatives a report on the review,
19 including recommendations under subsection (c).

20 (b) CONTENTS.—The report under subsection (a)
21 shall include—

22 (1) a description of the process the Department
23 of Transportation uses to collect and record drug
24 and alcohol testing data submitted by employers for
25 each mode of transportation;

1 (2) an assessment of whether and, if so, how
2 the Department of Transportation uses the data de-
3 scribed in paragraph (1) in carrying out its respon-
4 sibilities;

5 (3) an assessment of the extent to which the
6 data described in paragraph (1) is distributed and
7 available within the Department of Transportation;
8 and

9 (4) an assessment of the extent to which drug
10 and alcohol positive rates for each mode of transpor-
11 tation are publicly available.

12 (c) RECOMMENDATIONS.—The report under sub-
13 section (a) may include recommendations regarding—

14 (1) how the Department of Transportation can
15 best use the data described in subsection (b)(1);

16 (2) any improvements that could be made to
17 the process described in subsection (b)(1);

18 (3) whether and, if so, how drug and alcohol
19 positive rates for each mode of transportation should
20 be made publicly available in an easily accessible for-
21 mat; and

22 (4) such other recommendations as the Comp-
23 troller General considers appropriate.

1 **SEC. 5. TRANSPORTATION WORKPLACE DRUG AND ALCO-**
2 **HOL TESTING PROGRAM; ADDITION OF**
3 **FENTANYL.**

4 (a) **MANDATORY GUIDELINES FOR FEDERAL WORK-**
5 **PLACE DRUG TESTING PROGRAMS.—**

6 (1) **IN GENERAL.—**Not later than 180 days
7 after the date of enactment of this Act, the Sec-
8 retary of Health and Human Services shall deter-
9 mine whether a revision of the Mandatory Guidelines
10 for Federal Workplace Drug Testing Programs to
11 expand the opiate category on the list of authorized
12 drug testing to include fentanyl is justified, based on
13 the reliability and cost-effectiveness of available test-
14 ing.

15 (2) **REVISION OF GUIDELINES.—**If the expan-
16 sion of the opiate category is determined to be justi-
17 fied under paragraph (1), the Secretary of Health
18 and Human Services shall publish in the Federal
19 Register, not later than 1 year after the date of the
20 determination under that paragraph, a final notice
21 of the revision of the Mandatory Guidelines for Fed-
22 eral Workplace Drug Testing Programs to expand
23 the opiate category on the list of authorized drug
24 testing to include fentanyl.

25 (b) **DEPARTMENT OF TRANSPORTATION DRUG-TEST-**
26 **ING PANEL.—**If the expansion of the opiate category is

1 determined to be justified under subsection (a)(1) and the
2 Secretary of Transportation concurs with that determina-
3 tion, the Secretary of Transportation shall publish in the
4 Federal Register, not later than 18 months after the date
5 the final notice is published under subsection (a)(2), a
6 final rule revising part 40 of title 49, Code of Federal Reg-
7 ulations, to include fentanyl in the Department of Trans-
8 portation's drug-testing panel, consistent with the Manda-
9 tory Guidelines for Federal Workplace Drug Testing Pro-
10 grams as revised by the Secretary of Health and Human
11 Services under subsection (a).

12 (c) SAVINGS PROVISION.—Nothing in this section
13 may be construed as limiting or otherwise affecting any
14 authority of the Secretary of Health and Human Services
15 or the Secretary of Transportation to expand the list of
16 authorized drug testing to include an additional substance.

17 **SEC. 6. REPORT ON HAIR TESTING GUIDELINES.**

18 Not later than 30 days after the date of enactment
19 of this Act, and every 30 days thereafter until the date
20 that the Secretary of Health and Human Services pub-
21 lishes in the Federal Register a final notice of scientific
22 and technical guidelines for hair testing in accordance
23 with section 5402(b) of the Fixing America's Surface
24 Transportation Act (Public Law 114–94; 129 Stat. 1312),
25 the Secretary of Health and Human Services shall submit

1 to the Committee on Commerce, Science, and Transpor-
2 tation of the Senate and the Committee on Transportation
3 and Infrastructure of the House of Representatives a re-
4 port on—

5 (1) the status of the hair testing guidelines;

6 (2) an explanation for why the hair testing
7 guidelines have not been issued;

8 (3) a schedule, including benchmarks, for the
9 completion of the hair testing guidelines; and

10 (4) an estimated date of completion of the hair
11 testing guidelines.

12 **SEC. 7. MANDATORY GUIDELINES FOR FEDERAL WORK-**
13 **PLACE DRUG TESTING PROGRAMS USING**
14 **ORAL FLUID.**

15 (a) **DEADLINE.**—Not later than December 31, 2018,
16 the Secretary of Health and Human Services shall publish
17 in the Federal Register a final notice of the Mandatory
18 Guidelines for Federal Workplace Drug Testing Programs
19 using Oral Fluid, based on the notice of proposed manda-
20 tory guidelines published in the Federal Register on May
21 15, 2015 (94 FR 28054).

22 (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-
23 tion may be construed as—

24 (1) limiting or otherwise affecting the discretion
25 of the Secretary of Health and Human Services to

1 revise the proposed mandatory guidelines described
2 in subsection (a) to address issues raised during
3 rulemaking, including issues involving passive expo-
4 sure to marijuana use, prior to publishing the final
5 notice; or

6 (2) requiring the Secretary of Health and
7 Human Services to reissue a notice of proposed
8 mandatory guidelines to carry out subsection (a).

9 **SEC. 8. ELECTRONIC RECORDKEEPING.**

10 Not later than December 31, 2019, the Secretary of
11 Transportation shall issue a final rule revising part 40 of
12 title 49, Code of Federal Regulations, to authorize, to the
13 extent practicable, the use of electronic signatures or dig-
14 ital signatures executed to electronic forms instead of tra-
15 ditional handwritten signatures executed on paper forms.

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