

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

S. 2848

To improve Department of Transportation controlled substances and alcohol testing, 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 Mr. THUNE

Viz:

1 Strike all after the enacting clause and insert the following:
2

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 Secretary of Transportation shall publish a final rule in the
10 Federal Register revising the regulations promulgated
11 under section 20140 of title 49, United States Code, to
12

1 designate a rail mechanical employee as a railroad em-
2 ployee responsible for safety-sensitive functions for pur-
3 poses of that section.

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

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

12 **SEC. 3. RAIL YARDMASTER CONTROLLED SUBSTANCES**
13 **AND ALCOHOL TESTING.**

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

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

24 (c) SAVINGS CLAUSE.—Nothing in this section may
25 be construed as limiting or otherwise affecting the discre-

1 tion of the Secretary of Transportation to set different re-
2 quirements by railroad size or other factors, consistent
3 with applicable law.

4 **SEC. 4. DEPARTMENT OF TRANSPORTATION PUBLIC DRUG**
5 **AND ALCOHOL TESTING DATABASE.**

6 (a) IN GENERAL.—Subject to subsection (c), the Sec-
7 retary of Transportation shall—

8 (1) not later than March 31, 2019, establish
9 and make publicly available on its website a data-
10 base of the drug and alcohol testing data reported
11 by employers for each mode of transportation; and

12 (2) update the database annually.

13 (b) CONTENTS.—The database under subsection (a)
14 shall include, for each mode of transportation—

15 (1) the total number of drug and alcohol tests
16 by type of substance tested;

17 (2) the drug and alcohol test results by type of
18 substance tested;

19 (3) the reason for the drug or alcohol test, such
20 as pre-employment, random, post-accident, reason-
21 able suspicion or cause, return-to-duty, or follow-up,
22 by type of substance tested; and

23 (4) the number of individuals who refused test-
24 ing.

1 (c) **COMMERCIALLY SENSITIVE DATA.**—The Depart-
2 ment of Transportation shall not release any commercially
3 sensitive data furnished by an employer under this section
4 unless the data is aggregated or otherwise in a form that
5 does not identify the employer providing the data.

6 (d) **SAVINGS CLAUSE.**—Nothing in this section may
7 be construed as limiting or otherwise affecting the require-
8 ments of the Secretary of Transportation to adhere to re-
9 quirements applicable to confidential business information
10 and sensitive security information, consistent with applica-
11 ble law.

12 **SEC. 5. GAO REPORT ON DEPARTMENT OF TRANSPOR-**
13 **TATION'S COLLECTION AND USE OF DRUG**
14 **AND ALCOHOL TESTING DATA.**

15 (a) **IN GENERAL.**—Not later than 2 years after the
16 date the Department of Transportation public drug and
17 alcohol testing database is established under section 4, the
18 Comptroller General of the United States shall—

19 (1) review the Department of Transportation
20 Drug and Alcohol Testing Management Information
21 System; and

22 (2) submit to the Committee on Commerce,
23 Science, and Transportation of the Senate and the
24 Committee on Transportation and Infrastructure of

1 the House of Representatives a report on the review,
2 including recommendations under subsection (c).

3 (b) CONTENTS.—The report under subsection (a)
4 shall include—

5 (1) a description of the process the Department
6 of Transportation uses to collect and record drug
7 and alcohol testing data submitted by employers for
8 each mode of transportation;

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

13 (3) an assessment of the Department of Trans-
14 portation public drug and alcohol testing database
15 under section 4.

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

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

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

22 (3) whether and, if so, how the Department of
23 Transportation public drug and alcohol testing data-
24 base under section 4 could be made more effective;
25 and

1 (4) such other recommendations as the Comp-
2 troller General considers appropriate.

3 **SEC. 6. TRANSPORTATION WORKPLACE DRUG AND ALCO-**
4 **HOL TESTING PROGRAM; ADDITION OF**
5 **FENTANYL.**

6 (a) MANDATORY GUIDELINES FOR FEDERAL WORK-
7 PLACE DRUG TESTING PROGRAMS.—

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

17 (2) REVISION OF GUIDELINES.—If the expan-
18 sion of the opiate category is determined to be justi-
19 fied under paragraph (1), the Secretary of Health
20 and Human Services shall—

21 (A) notify the Committee on Commerce,
22 Science, and Transportation of the Senate and
23 the Committee on Transportation and Infra-
24 structure of the House of Representatives of
25 the determination; and

1 (B) publish in the Federal Register, not
2 later than 18 months after the date of the de-
3 termination under that paragraph, a final no-
4 tice of the revision of the Mandatory Guidelines
5 for Federal Workplace Drug Testing Programs
6 to expand the opiate category on the list of au-
7 thorized drug testing to include fentanyl.

8 (3) REPORT.—If the expansion of the opiate
9 category is determined not to be justified under
10 paragraph (1), the Secretary of Health and Human
11 Services shall submit to the Committee on Com-
12 merce, Science, and Transportation of the Senate
13 and the Committee on Transportation and Infra-
14 structure of the House of Representatives a report
15 explaining, in detail, the reasons the expansion of
16 the opiate category on the list of authorized drugs
17 to include fentanyl is not justified.

18 (b) DEPARTMENT OF TRANSPORTATION DRUG-TEST-
19 ING PANEL.—If the expansion of the opiate category is
20 determined to be justified under subsection (a)(1), the
21 Secretary of Transportation shall publish in the Federal
22 Register, not later than 18 months after the date the final
23 notice is published under subsection (a)(2), a final rule
24 revising part 40 of title 49, Code of Federal Regulations,
25 to include fentanyl in the Department of Transportation's

1 drug-testing panel, consistent with the Mandatory Guide-
2 lines for Federal Workplace Drug Testing Programs as
3 revised by the Secretary of Health and Human Services
4 under subsection (a).

5 (c) SAVINGS PROVISION.—Nothing in this section
6 may be construed as—

7 (1) delaying the publication of the notices de-
8 scribed in sections 7 and 8 of this Act until the Sec-
9 retary of Health and Human Services makes a de-
10 termination or publishes a notice under this section;
11 or

12 (2) limiting or otherwise affecting any authority
13 of the Secretary of Health and Human Services or
14 the Secretary of Transportation to expand the list of
15 authorized drug testing to include an additional sub-
16 stance.

17 **SEC. 7. STATUS REPORTS ON HAIR TESTING GUIDELINES.**

18 (a) IN GENERAL.—Not later than 30 days after the
19 date of enactment of this Act, and every 180 days there-
20 after until the date that the Secretary of Health and
21 Human Services publishes in the Federal Register a final
22 notice of scientific and technical guidelines for hair testing
23 in accordance with section 5402(b) of the Fixing Amer-
24 ica’s Surface Transportation Act (Public Law 114-94; 129
25 Stat. 1312), the Secretary of Health and Human Services

1 shall submit to the Committee on Commerce, Science, and
2 Transportation of the Senate and the Committee on
3 Transportation and Infrastructure of the House of Rep-
4 resentatives a report 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 (b) REQUIREMENT.—To the extent practicable and
13 consistent with the objective of the hair testing described
14 in subsection (a) to detect illegal or unauthorized use of
15 substances by the individual being tested, the final notice
16 of scientific and technical guidelines under that sub-
17 section, as determined by the Secretary of Health and
18 Human Services, shall eliminate the risk of positive test
19 results of the individual being tested caused solely by the
20 drug use of others and not caused by the drug use of the
21 individual being tested.

1 **SEC. 8. MANDATORY GUIDELINES FOR FEDERAL WORK-**
2 **PLACE DRUG TESTING PROGRAMS USING**
3 **ORAL FLUID.**

4 (a) DEADLINE.—Not later than December 31, 2018,
5 the Secretary of Health and Human Services shall publish
6 in the Federal Register a final notice of the Mandatory
7 Guidelines for Federal Workplace Drug Testing Programs
8 using Oral Fluid, based on the notice of proposed manda-
9 tory guidelines published in the Federal Register on May
10 15, 2015 (94 FR 28054).

11 (b) REQUIREMENT.—To the extent practicable and
12 consistent with the objective of the testing described in
13 subsection (a) to detect illegal or unauthorized use of sub-
14 stances by the individual being tested, the final notice of
15 scientific and technical guidelines under that subsection,
16 as determined by the Secretary of Health and Human
17 Services, shall eliminate the risk of positive test results
18 of the individual being tested caused solely by the drug
19 use of others and not caused by the drug use of the indi-
20 vidual being tested.

21 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
22 tion may be construed as requiring the Secretary of
23 Health and Human Services to reissue a notice of pro-
24 posed mandatory guidelines to carry out subsection (a).

1 **SEC. 9. ELECTRONIC RECORDKEEPING.**

2 (a) DEADLINE.—Not later than 1 year after the date
3 of enactment of this Act, the Secretary of Health and
4 Human Services shall—

5 (1) ensure that each certified laboratory that
6 requests approval for the use of completely paperless
7 electronic Federal Drug Testing Custody and Con-
8 trol Forms from the National Laboratory Certifi-
9 cation Program's Electronic Custody and Control
10 Form systems receives approval for those completely
11 paperless electronic forms instead of forms that in-
12 clude any combination of electronic traditional hand-
13 written signatures executed on paper forms; and

14 (2) establish a deadline for a certified labora-
15 tory to request approval under paragraph (1).

16 (b) SAVINGS CLAUSE.—Nothing in this section may
17 be construed as limiting or otherwise affecting any author-
18 ity of the Secretary of Health and Human Services to
19 grant approval to a certified laboratory for use of com-
20 pletely paperless electronic Federal Drug Testing Custody
21 and Control Forms, including to grant approval outside
22 of the process under subsection (a).

23 (c) ELECTRONIC SIGNATURES.—Not later than 18
24 months after the date of the deadline under subsection
25 (a)(2), the Secretary of Transportation shall issue a final
26 rule revising part 40 of title 49, Code of Federal Regula-

1 tions, to authorize, to the extent practicable, the use of
2 electronic signatures or digital signatures executed to elec-
3 tronic forms instead of traditional handwritten signatures
4 executed on paper forms.

5 **SEC. 10. STATUS REPORTS ON COMMERCIAL DRIVER'S LI-**
6 **CENSE DRUG AND ALCOHOL CLEARING-**
7 **HOUSE.**

8 (a) IN GENERAL.—Not later than 180 days after the
9 date of enactment of this Act, and biannually thereafter
10 until the compliance date, the Administrator of the Fed-
11 eral Motor Carrier Safety Administration shall submit to
12 the Committee on Commerce, Science, and Transportation
13 of the Senate and the Committee on Transportation and
14 Infrastructure of the House of Representatives a status
15 report on implementation of the final rule for the Com-
16 mercial Driver's License Drug and Alcohol Clearinghouse
17 (81 FR 87686), including—

18 (1) an updated schedule, including benchmarks,
19 for implementing the final rule as soon as prac-
20 ticable, but not later than the compliance date; and
21 (2) a description of each action the Federal
22 Motor Carrier Safety Administration is taking to im-
23 plement the final rule before the compliance date.

24 (b) DEFINITION OF COMPLIANCE DATE.—In this sec-
25 tion, the term “compliance date” means the earlier of—

- 1 (1) January 6, 2020; or
- 2 (2) the date that the national clearinghouse re-
- 3 quired under section 31306a of title 49, United
- 4 States Code, is operational.