EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51

General references to ''this title'' deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

§ 22903. Project management oversight

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive Federal financial assistance for a major capital project under this chapter, an applicant must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

(3) a construction schedule for the project;

(4) a document control procedure and recordkeeping system;

(5) a change order procedure that includes a documented, systematic approach to handling the construction change orders;

(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

(8) material testing policies and procedures;

(9) internal plan implementation and reporting requirements;

(10) criteria and procedures to be used for testing the operational system or its major components;

(11) periodic updates of the plan, especially related to project budget and project schedule, financing, and ridership estimates; and

(12) the recipient's commitment to submit periodically a project budget and project schedule to the Secretary.

[(b) Repealed. Pub. L. 114–94, div. A, title XI, § 11316(p), Dec. 4, 2015, 129 Stat. 1679]

(c) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this chapter shall provide the Secretary and a contractor the Secretary chooses under subsection (b) of this section with access to the construction sites and records of the recipient when reasonably necessary.

(Added Pub. L. 110–432, div. B, title III, § 301(a), Oct. 16, 2008, 122 Stat. 4941, § 24403; amended Pub. L. 114–94, div. A, title XI, § 11316(p), Dec. 4, 2015, 129 Stat. 1679; renumbered § 22903, Pub. L. 115–420, § 7(a)(1), Jan. 3, 2019, 132 Stat. 5445.)

AMENDMENTS

2019—Pub. L. 115–420 renumbered section 24403 of this title as this section.

2015—Subsec. (b). Pub. L. 114–94 struck out subsec. (b) which related to secretarial oversight.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

§ 22904. Use of capital grants to finance first-dollar liability of grant project

Notwithstanding the requirements of section 22902 of this chapter, the Secretary of Transportation may approve the use of a capital assistance grant under this chapter to fund self-insured retention of risk for the first tier of liability insurance coverage for rail passenger service associated with the grant, but the coverage may not exceed $20,000,000 per occurrence or $20,000,000 in aggregate per year.

(Added Pub. L. 110–432, div. B, title III, § 301(a), Oct. 16, 2008, 122 Stat. 4942, § 24404; renumbered § 22904 and amended Pub. L. 115–420, § 7(a)(1), (b)(2)(B), Jan. 3, 2019, 132 Stat. 5445, 5446.)

AMENDMENTS

2019—Pub. L. 115–420 renumbered section 24404 of this title as this section and substituted ''section 22902'' for ''section 24402''.

§ 22905. Grant conditions

(a) BUY AMERICA.—(1) The Secretary of Transportation may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.

(2) The Secretary of Transportation may waive paragraph (1) of this subsection if the Secretary finds that—

(A) applying paragraph (1) would be inconsistent with the public interest;

(B) the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(C) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or

(D) including domestic material will increase the cost of the overall project by more than 25 percent.

(3) For purposes of this subsection, in calculating the components' costs, labor costs involved in final assembly shall not be included in the calculation.

(4) If the Secretary determines that it is necessary to waive the application of paragraph (1) based on a finding under paragraph (2), the Secretary shall, before the date on which such finding takes effect—

(A) publish in the Federal Register a detailed written justification as to why the waiver is needed; and

(B) provide notice of such finding and an opportunity for public comment on such finding for a reasonable period of time not to exceed 15 days.

(5) Not later than December 31, 2012, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on any waivers granted under paragraph (2).

(6) The Secretary of Transportation may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—

(A) has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection; and

(B) has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies.

(7) A person is ineligible to receive a contract or subcontract made with amounts authorized under this chapter if a court or department, agency, or instrumentality of the Government decides the person intentionally—

(A) affixed a ''Made in America'' label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this subsection applies but not produced in the United States; or

(B) represented that goods described in subparagraph (A) of this paragraph were produced in the United States.

(8) The Secretary may not impose any limitation on assistance provided under this chapter that restricts a State from imposing more stringent requirements than this subsection on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with that assistance or restricts a recipient of that assistance from complying with those State-imposed requirements.

(9) The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this subsection if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.

(10) A party adversely affected by an agency action under this subsection shall have the right to seek review under section 702 of title 5.

(11) The requirements of this subsection shall only apply to projects for which the costs exceed $100,000.

(b) OPERATORS DEEMED RAIL CARRIERS AND EMPLOYERS FOR CERTAIN PURPOSES.—A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this chapter shall be considered a rail carrier as defined in section 10102(5) of this title for purposes of this title and any other statute that adopts that definition or in which that definition applies, including—

(1) the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.);

(2) the Railway Labor Act (45 U.S.C. 151 et seq.); and

(3) the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

(c) GRANT CONDITIONS.—The Secretary shall require as a condition of making any grant under this chapter for a project that uses rights-of-way owned by a railroad that—

(1) a written agreement exist between the applicant and the railroad regarding such use and ownership, including—

(A) any compensation for such use;

(B) assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations;

(C) an assurance by the railroad that collective bargaining agreements with the railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and

(D) an assurance that an applicant complies with liability requirements consistent with section 28103 of this title; and

(2) the applicant agrees to comply with—

(A) the standards of section 24312 of this title, as such section was in effect on September 1, 2003, with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under section 24308(a) of this title; and

(B) the protective arrangements that are equivalent to the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this chapter.

(d) REPLACEMENT OF EXISTING INTERCITY PASSENGER RAIL SERVICE.—

(1) COLLECTIVE BARGAINING AGREEMENT FOR INTERCITY PASSENGER RAIL PROJECTS.—Any entity providing intercity passenger railroad transportation that begins operations after the date of enactment of this Act[1] on a project funded in whole or in part by grants made under this chapter and replaces intercity rail passenger service that was provided by Amtrak, unless such service was provided solely by Amtrak to another entity or unless Amtrak ceased providing intercity passenger railroad transportation over the affected route more than 3 years before the commencement of new service, as of such date shall enter into an agreement with the authorized bargaining agent or agents for adversely affected employees of the predecessor provider that—

(A) gives each such qualified employee of the predecessor provider priority in hiring according to the employee's seniority on the

[1] See References in Text note below.

predecessor provider for each position with the replacing entity that is in the employee's craft or class and is available within 3 years after the termination of the service being replaced;

(B) establishes a procedure for notifying such an employee of such positions;

(C) establishes a procedure for such an employee to apply for such positions; and

(D) establishes rates of pay, rules, and working conditions.

(2) IMMEDIATE REPLACEMENT SERVICE.—

(A) NEGOTIATIONS.—If the replacement of preexisting intercity rail passenger service occurs concurrent with or within a reasonable time before the commencement of the replacing entity's rail passenger service, the replacing entity shall give written notice of its plan to replace existing rail passenger service to the authorized collective bargaining agent or agents for the potentially adversely affected employees of the predecessor provider at least 90 days before the date on which it plans to commence service. Within 5 days after the date of receipt of such written notice, negotiations between the replacing entity and the collective bargaining agent or agents for the employees of the predecessor provider shall commence for the purpose of reaching agreement with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1). The negotiations shall continue for 30 days or until an agreement is reached, whichever is sooner. If at the end of 30 days the parties have not entered into an agreement with respect to all such matters, the unresolved issues shall be submitted for arbitration in accordance with the procedure set forth in subparagraph (B).

(B) ARBITRATION.—If an agreement has not been entered into with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1) as described in subparagraph (A) of this paragraph, the parties shall select an arbitrator. If the parties are unable to agree upon the selection of such arbitrator within 5 days, either or both parties shall notify the National Mediation Board, which shall provide a list of seven arbitrators with experience in arbitrating rail labor protection disputes. Within 5 days after such notification, the parties shall alternately strike names from the list until only 1 name remains, and that person shall serve as the neutral arbitrator. Within 45 days after selection of the arbitrator, the arbitrator shall conduct a hearing on the dispute and shall render a decision with respect to the unresolved issues among the matters set forth in subparagraphs (A) through (D) of paragraph (1). The arbitrator shall be guided by prevailing national standard rates of pay, benefits, and working conditions for comparable work. This decision shall be final, binding, and conclusive upon the parties. The salary and expenses of the arbitrator shall be borne equally by the parties; all other expenses shall be paid by the party incurring them.

(3) SERVICE COMMENCEMENT.—A replacing entity under this subsection shall commence service only after an agreement is entered into with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1) or the decision of the arbitrator has been rendered.

(4) SUBSEQUENT REPLACEMENT OF SERVICE.—If the replacement of existing rail passenger service takes place within 3 years after the replacing entity commences intercity passenger rail service, the replacing entity and the collective bargaining agent or agents for the adversely affected employees of the predecessor provider shall enter into an agreement with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1). If the parties have not entered into an agreement with respect to all such matters within 60 days after the date on which the replacing entity replaces the predecessor provider, the parties shall select an arbitrator using the procedures set forth in paragraph (2)(B), who shall, within 20 days after the commencement of the arbitration, conduct a hearing and decide all unresolved issues. This decision shall be final, binding, and conclusive upon the parties.

(e) INAPPLICABILITY TO CERTAIN RAIL OPERATIONS.—Nothing in this section applies to—

(1) commuter rail passenger transportation (as defined in section 24102) operations of a State or local governmental authority (as those terms are defined in section 5302) eligible to receive financial assistance under section 5307 of this title, or to its contractor performing services in connection with commuter rail passenger operations (as so defined);

(2) the Alaska Railroad or its contractors; or

(3) Amtrak's access rights to railroad rights of way and facilities under current law.

(f) LIMITATION.—No grants shall be provided under this chapter for commuter rail passenger transportation (as defined in section 24102(3)).

(Added Pub. L. 110–432, div. B, title III, § 301(a), Oct. 16, 2008, 122 Stat. 4942, § 24405; amended Pub. L. 114–94, div. A, title XI, § 11303(b)(1)(D), Dec. 4, 2015, 129 Stat. 1654; renumbered § 22905 and amended Pub. L. 115–420, § 7(a)(1), (b)(1)(B), (2)(C), Jan. 3, 2019, 132 Stat. 5445, 5446.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (b)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Railway Labor Act, referred to in subsec. (b)(2), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(3), is act June 25, 1938, ch. 680, 52 Stat. 1094, which is classified principally to chapter 11 (§ 351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

The date of enactment of this Act, referred to in subsec. (d)(1), probably means the date of enactment of Pub. L. 110–432, which enacted this section and was approved Oct. 16, 2008.

AMENDMENTS

2019—Pub. L. 115–420, § 7(a)(1), renumbered section 24405 of this title as this section.

Subsec. (e)(1). Pub. L. 115–420, § 7(b)(1)(B), (2)(C), substituted ''section 24102) operations of a State or local governmental authority (as those terms are defined in section 5302)'' for ''section 24102(4) of this title) operations of a State or local government authority (as those terms are defined in section 5302(11) and (6), respectively, of this title)''.

2015—Subsec. (b)(2). Pub. L. 114–94, § 11303(b)(1)(D)(i), substituted ''(45'' for ''(43''.

Subsec. (c)(2)(B). Pub. L. 114–94, § 11303(b)(1)(D)(ii), substituted ''protective arrangements that are equivalent to the protective arrangements established'' for ''protective arrangements established''.

Subsec. (d)(1). Pub. L. 114–94, § 11303(b)(1)(D)(iii), in introductory provisions, inserted ''or unless Amtrak ceased providing intercity passenger railroad transportation over the affected route more than 3 years before the commencement of new service'' after ''unless such service was provided solely by Amtrak to another entity''.

Subsec. (f). Pub. L. 114–94, § 11303(b)(1)(D)(iv), substituted ''under this chapter for commuter rail passenger transportation (as defined in section 24102(3)).'' for ''under this chapter for commuter rail passenger transportation, as defined in section 24102(4) of this title.''

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

ASSISTANCE WITH BUY AMERICA WAIVER REQUESTS

Pub. L. 110–432, div. B, title III, § 301(c), Oct. 16, 2008, 122 Stat. 4946, as amended by Pub. L. 115–420, § 7(b)(3)(B)(i), Jan. 3, 2019, 132 Stat. 5447, provided that: ''In implementing section 22905(a) of title 49, United States Code, the Federal Highway Administration shall, upon request by the Federal Railroad Administration, assist the Federal Railroad Administration in developing a process for posting on its website or distributing via email notices of waiver requests received pursuant to such subsection and soliciting public comments on the intent to issue a waiver. The Federal Railroad Administration's development of such a process does not relieve the Federal Railroad Administration of the requirements under paragraph (4) of such subsection.''

§ 22906. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Transportation for capital grants under this chapter the following amounts:

(1) For fiscal year 2009, $100,000,000.
(2) For fiscal year 2010, $300,000,000.
(3) For fiscal year 2011, $400,000,000.
(4) For fiscal year 2012, $500,000,000.
(5) For fiscal year 2013, $600,000,000.

(Added Pub. L. 110–432, div. B, title III, § 301(a), Oct. 16, 2008, 122 Stat. 4946, § 24406; renumbered § 22906, Pub. L. 115–420, § 7(a)(1), Jan. 3, 2019, 132 Stat. 5445.)

AMENDMENTS

2019—Pub. L. 115–420 renumbered section 24406 of this title as this section.

§ 22907. Consolidated rail infrastructure and safety improvements

(a) GENERAL AUTHORITY.—The Secretary may make grants under this section to an eligible recipient to assist in financing the cost of improving passenger and freight rail transportation systems in terms of safety, efficiency, or reliability.

(b) ELIGIBLE RECIPIENTS.—The following entities are eligible to receive a grant under this section:

(1) A State.
(2) A group of States.
(3) An Interstate Compact.
(4) A public agency or publicly chartered authority established by 1 or more States.
(5) A political subdivision of a State.
(6) Amtrak or another rail carrier that provides intercity rail passenger transportation (as defined in section 24102).
(7) A Class II railroad or Class III railroad (as those terms are defined in section 20102).
(8) Any rail carrier or rail equipment manufacturer in partnership with at least 1 of the entities described in paragraphs (1) through (5).
(9) The Transportation Research Board and any entity with which it contracts in the development of rail-related research, including cooperative research programs.
(10) A University transportation center engaged in rail-related research.
(11) A non-profit labor organization representing a class or craft of employees of rail carriers or rail carrier contractors.

(c) ELIGIBLE PROJECTS.—The following projects are eligible to receive grants under this section:

(1) Deployment of railroad safety technology, including positive train control and rail integrity inspection systems.
(2) A capital project as defined in section 22901(2), except that a project shall not be required to be in a State rail plan developed under chapter 227.
(3) A capital project identified by the Secretary as being necessary to address congestion challenges affecting rail service.
(4) A capital project identified by the Secretary as being necessary to reduce congestion and facilitate ridership growth in intercity passenger rail transportation along heavily traveled rail corridors.
(5) A highway-rail grade crossing improvement project, including installation, repair, or improvement of grade separations, railroad crossing signals, gates, and related technologies, highway traffic signalization, highway lighting and crossing approach signage, roadway improvements such as medians or other barriers, railroad crossing panels and surfaces, and safety engineering improvements to reduce risk in quiet zones or potential quiet zones.
(6) A rail line relocation and improvement project.
(7) A capital project to improve short-line or regional railroad infrastructure.
(8) The preparation of regional rail and corridor service development plans and corresponding environmental analyses.
(9) Any project that the Secretary considers necessary to enhance multimodal connections or facilitate service integration between rail service and other modes, including between