

the State government and any other participant; and

“(ii) the State government acts throughout the term of the contract as the lead procurement agency.

“(B) APPLICABILITY OF POLICIES AND PROCEDURES.—In procuring rolling stock and related equipment under a cooperative procurement contract under this subsection, a State government shall comply with the policies and procedures that apply to procurement by the State government when using non-Federal funds, to the extent that the policies and procedures are in conformance with applicable Federal law.

“(3) PILOT PROGRAM FOR NONPROFIT COOPERATIVE PROCUREMENTS.—

“(A) ESTABLISHMENT.—The Secretary [of Transportation] shall establish and carry out a pilot program to demonstrate the effectiveness of cooperative procurement contracts administered by eligible nonprofit entities.

“(B) DESIGNATION.—In carrying out the program under this paragraph, the Secretary shall designate not less than 3 eligible nonprofit entities to enter into a cooperative procurement contract under which the eligible nonprofit entity acts throughout the term of the contract as the lead nonprofit entity.

“(C) NOTICE OF INTENT TO PARTICIPATE.—At a time determined appropriate by the lead nonprofit entity, each participant in a cooperative procurement contract under this paragraph shall submit to the lead nonprofit entity a nonbinding notice of intent to participate.

“(4) JOINT PROCUREMENT CLEARINGHOUSE.—

“(A) IN GENERAL.—The Secretary shall establish a clearinghouse for the purpose of allowing grantees to aggregate planned rolling stock purchases and identify joint procurement participants.

“(B) NONPROFIT CONSULTATION.—In establishing the clearinghouse under subparagraph (A), the Secretary may consult with nonprofit entities with expertise in public transportation or procurement, and other stakeholders as the Secretary determines appropriate.

“(C) INFORMATION ON PROCUREMENTS.—The clearinghouse may include information on bus size, engine type, floor type, and any other attributes necessary to identify joint procurement participants.

“(D) LIMITATIONS.—

“(i) ACCESS.—The clearinghouse shall only be accessible to the Federal Transit Administration, a nonprofit entity coordinating for such clearinghouse with the Secretary, and grantees.

“(ii) PARTICIPATION.—No grantee shall be required to submit procurement information to the database.

“(C) LEASING ARRANGEMENTS.—

“(1) CAPITAL LEASE DEFINED.—

“(A) IN GENERAL.—In this subsection, the term ‘capital lease’ means any agreement under which a grantee acquires the right to use rolling stock or related equipment for a specified period of time, in exchange for a periodic payment.

“(B) MAINTENANCE.—A capital lease may require that the lessor provide maintenance of the rolling stock or related equipment covered by the lease.

“(2) PROGRAM TO SUPPORT INNOVATIVE LEASING ARRANGEMENTS.—

“(A) AUTHORITY.—A grantee may use assistance provided under chapter 53 of title 49, United States Code, to enter into a capital lease if—

“(i) the rolling stock or related equipment covered under the lease is eligible for capital assistance under such chapter; and

“(ii) there is or will be no Federal interest in the rolling stock or related equipment covered under the lease as of the date on which the lease takes effect.

“(B) GRANTEE REQUIREMENTS.—A grantee that enters into a capital lease shall—

“(i) maintain an inventory of the rolling stock or related equipment acquired under the lease; and

“(ii) maintain on the accounting records of the grantee the liability of the grantee under the lease.

“(C) ELIGIBLE LEASE COSTS.—The costs for which a grantee may use assistance under chapter 53 of title 49, United States Code, with respect to a capital lease, include—

“(i) the cost of the rolling stock or related equipment;

“(ii) associated financing costs, including interest, legal fees, and financial advisor fees;

“(iii) ancillary costs such as delivery and installation charges; and

“(iv) maintenance costs.

“(D) TERMS.—A grantee shall negotiate the terms of any lease agreement that the grantee enters into.

“(E) APPLICABILITY OF PROCUREMENT REQUIREMENTS.—

“(i) LEASE REQUIREMENTS.—Part 639 of title 49, Code of Federal Regulations, or any successor regulation, and implementing guidance applicable to leasing shall not apply to a capital lease.

“(ii) BUY AMERICA.—The requirements under section 5323(j) of title 49, United States Code, shall apply to a capital lease.

“(3) CAPITAL LEASING OF CERTAIN ZERO EMISSION VEHICLE COMPONENTS.—

“(A) DEFINITIONS.—In this paragraph—

“(i) the term ‘removable power source’—

“(I) means a power source that is separately installed in, and removable from, a zero emission vehicle; and

“(II) may include a battery, a fuel cell, an ultra-capacitor, or other advanced power source used in a zero emission vehicle; and

“(ii) the term ‘zero emission vehicle’ has the meaning given the term in section 5339(c) of title 49, United States Code.

“(B) LEASED POWER SOURCES.—Notwithstanding any other provision of law, for purposes of this subsection, the cost of a removable power source that is necessary for the operation of a zero emission vehicle shall not be treated as part of the cost of the vehicle if the removable power source is acquired using a capital lease.

“(C) ELIGIBLE CAPITAL LEASE.—A grantee may acquire a removable power source by itself through a capital lease.

“(D) PROCUREMENT REGULATIONS.—For purposes of this section, a removable power source shall be subject to section 200.88 of title 2, Code of Federal Regulations.

“(4) REPORTING REQUIREMENT.—Not later than 3 years after the date on which a grantee enters into a capital lease under this subsection, the grantee shall submit to the Secretary a report that contains—

“(A) an evaluation of the overall costs and benefits of leasing rolling stock; and

“(B) a comparison of the expected short-term and long-term maintenance costs of leasing versus buying rolling stock.

“(5) REPORT.—The Secretary shall make publicly available an annual report on this subsection for each fiscal year, not later than December 31 of the calendar year in which that fiscal year ends. The report shall include a detailed description of the activities carried out under this subsection, and evaluation of the program including the evaluation of the data reported in paragraph (4).

“(d) BUY AMERICA.—The requirements of section 5323(j) of title 49, United States Code, shall apply to all procurements under this section.”

### § 5326. Transit asset management

(a) DEFINITIONS.—In this section the following definitions shall apply:

(1) **CAPITAL ASSET.**—The term “capital asset” includes equipment, rolling stock, infrastructure, and facilities for use in public transportation and owned or leased by a recipient or subrecipient of Federal financial assistance under this chapter.

(2) **TRANSIT ASSET MANAGEMENT PLAN.**—The term “transit asset management plan” means a plan developed by a recipient of funding under this chapter that—

(A) includes, at a minimum, capital asset inventories and condition assessments, decision support tools, and investment prioritization; and

(B) the recipient certifies complies with the rule issued under this section.

(3) **TRANSIT ASSET MANAGEMENT SYSTEM.**—The term “transit asset management system” means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively throughout the life cycle of such assets.

(b) **TRANSIT ASSET MANAGEMENT SYSTEM.**—The Secretary shall establish and implement a national transit asset management system, which shall include—

(1) a definition of the term “state of good repair” that includes objective standards for measuring the condition of capital assets of recipients, including equipment, rolling stock, infrastructure, and facilities;

(2) a requirement that recipients and subrecipients of Federal financial assistance under this chapter develop a transit asset management plan;

(3) a requirement that each designated recipient of Federal financial assistance under this chapter report on the condition of the system of the recipient and provide a description of any change in condition since the last report;

(4) an analytical process or decision support tool for use by public transportation systems that—

(A) allows for the estimation of capital investment needs of such systems over time; and

(B) assists with asset investment prioritization by such systems; and

(5) technical assistance to recipients of Federal financial assistance under this chapter.

(c) **PERFORMANCE MEASURES AND TARGETS.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a final rule to establish performance measures based on the state of good repair standards established under subsection (b)(1).

(2) **TARGETS.**—Not later than 3 months after the date on which the Secretary issues a final rule under paragraph (1), and each fiscal year thereafter, each recipient of Federal financial assistance under this chapter shall establish performance targets in relation to the performance measures established by the Secretary.

(3) **REPORTS.**—Each designated recipient of Federal financial assistance under this chapter shall submit to the Secretary an annual report that describes—

(A) the progress of the recipient during the fiscal year to which the report relates toward meeting the performance targets established under paragraph (2) for that fiscal year; and

(B) the performance targets established by the recipient for the subsequent fiscal year.

(d) **RULEMAKING.**—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a final rule to implement the transit asset management system described in subsection (b).

(Added Pub. L. 112–141, div. B, §20019, July 6, 2012, 126 Stat. 707.)

### Editorial Notes

#### REFERENCES IN TEXT

The date of enactment of the Federal Public Transportation Act of 2012, referred to in subsecs. (c)(1) and (d), is deemed to be Oct. 1, 2012, see section 3(a), (b) of Pub. L. 112–141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of Title 23, Highways.

#### CODIFICATION

Pub. L. 112–141, div. B, §20019, July 6, 2012, 126 Stat. 707, which directed that section 5326 of this title be amended generally, was executed by adding a new section 5326 to reflect the probable intent of Congress. A prior section 5326 was repealed by Pub. L. 109–59, title III, §3025(b), Aug. 10, 2005, 119 Stat. 1622.

#### PRIOR PROVISIONS

A prior section 5326, Pub. L. 103–272, §1(d), July 5, 1994, 108 Stat. 826; Pub. L. 103–429, §6(11), Oct. 31, 1994, 108 Stat. 4379; Pub. L. 105–178, title III, §3023(a), (b), June 9, 1998, 112 Stat. 364, related to turnkey system projects, acquisition of rolling stock, and procurement of associated capital maintenance items, prior to repeal by Pub. L. 109–59, title III, §3025(b), Aug. 10, 2005, 119 Stat. 1622.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

### § 5327. Project management oversight

(a) **PROJECT MANAGEMENT PLAN REQUIREMENTS.**—To receive Federal financial assistance for a major capital project for public transportation under this chapter or any other provision of Federal law, a recipient must prepare a project management plan approved by the Secretary and carry out the project in accordance with the project management plan. 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;