

ROLLING STOCK PROTECTION ACT

MAY 14, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRAVES of Missouri, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 3317]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3317) to amend title 49, United States Code, to remove the lifetime exemption from the prohibition on procurement of rolling stock from certain vehicle manufacturers for parties to executed contracts, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE OF LEGISLATION

The purpose of H.R. 3317 is to amend title 49, United States Code, to remove the lifetime exemption from the prohibition on procurement of rolling stock from certain vehicle manufacturers for parties to executed contracts.

BACKGROUND AND NEED FOR LEGISLATION

In 2019, Congress passed legislation that amended Federal Transit Administration (FTA) procurement guidelines by imposing a prohibition on the use of FTA funds to purchase rolling stock from Chinese-owned or Chinese-domiciled manufacturers.¹ Section 7613 of the *National Defense Authorization Act for Fiscal Year 2020* incorporated legislative language from the *Transit Infrastructure Vehicle Security Act* that prevents Federal funding assistance for public transportation rolling stock procurements from being allocated to state owned enterprises (SOE) or state-related enterprises in countries named on certain watch lists. This includes entities connected to the Chinese Communist Party (CCP).² This section also instituted a two-year delay in the enactment of those prohibitions.³

FTA’s authority to enact the funding prohibitions instituted in Section 7613 was codified in Title 49, of the United States Code of Federal Regulations (C.F.R.), Section 5323(u). Section 5323(u)(5) “Special Rules” provides an exemption to the funding prohibitions for specific transit agencies engaged in contracts with restricted rolling stock manufacturers which were executed prior to the law’s enactment, stating:

[t]his subsection, including the certification requirement under paragraph (4), shall not apply to the award of any contract or subcontract made by a public transportation agency with a rail rolling stock manufacturer described in paragraph (1) if the manufacturer and the public transportation agency have executed a contract for rail rolling stock before the date of enactment of this subsection.⁴

FTA’s enforcement of Title 49, C.F.R. Section 5323(u) is clarified on a public agency-maintained website titled “Frequently Asked Questions Regarding Section 7613.”⁵ The FTA states: “Any public transportation agency that formed a contract for rail rolling stock with an otherwise restricted manufacturer prior to December 20, 2019, is permanently exempt from the restrictions of Section 5323(u) for rail rolling stock procured from that particular manufacturer.”⁶ As enacted, Title 49, C.F.R. Section 5323(u) allowed the

¹Jeff Davis, *Final Defense Bill Bans New Purchases of Mass Transit Vehicles from Chinese Companies—After 2-Year Delay*, ENO CENTER FOR TRANSP., (Dec. 10, 2019), available at <https://enotrans.org/article/final-defense-bill-bans-new-purchases-of-mass-transit-vehicles-from-chinese-companies-after-2-year-delay>.

²See *Transit Infrastructure Vehicle Security Act*, H.R. 2739, 116th Cong. (2019); *National Defense Authorization Act for Fiscal Year 2020*, Pub. L. No. 116–92 § 7613, 133 Stat. 2314.

³National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116–92 § 7613, 133 Stat. 2314.

⁴49 U.S.C. § 5323, available at <https://www.govinfo.gov/content/pkg/USCODE-2021-title49/pdf/USCODE-2021-title49-subtitleIII-chap53-sec5323.pdf>.

⁵U.S. DEPT OF TRANSP., FED. TRANSIT ADMIN., *Frequently Asked Questions Regarding Section 7613 of the National Defense Authorization Act for Fiscal Year 2020*, (Feb. 2, 2022), available at <https://www.transit.dot.gov/funding/procurement/frequently-asked-questions-regarding-section-7613-national-defense>.

⁶*Id.*

FTA to grant lifetime exemptions from rail rolling stock procurement restrictions to four public transit agencies.⁷

H.R. 3317 eliminates that exemption and will disallow any transit agency from purchasing rolling stock from certain SOEs using FTA financial assistance. H.R. 3317 will strike the relevant subparagraph in Section 5323(u) of Title 49, C.F.R., and prevent further expenditure of taxpayer funds from being allocated to CCP-controlled or connected entities. Eliminating this exemption strengthens domestic manufacturing opportunity and competitiveness and diminishes potential National and economic security concerns associated with allocations of Federal funding to Chinese-owned or Chinese-domiciled entities affiliated with the CCP.

HEARINGS

For the purposes of rule XIII, clause 3(c)(6)(A) of the 118th Congress—

On Wednesday, February 1, 2023, the Committee on Transportation and Infrastructure held a hearing entitled, “*The State of Transportation Infrastructure and Supply Chain Challenges*.” The hearing provided an opportunity for Members of the Committee to discuss the current state of our Nation’s transportation infrastructure, receive stakeholder input related to domestic manufacturing and supply chain challenges, and engage in dialogue related to industrial dependency on foreign entities, including China. Members received testimony from Mr. Chris Spear, President and Chief Executive Officer, American Trucking Associations; Mr. Ian Jefferies, President and Chief Executive Officer, Association of American Railroads (AAR); Mr. Jeff Firth, President, Hamilton Construction, on behalf of Associated General Contractors of America (AGC); Mr. Roger Guenther, Executive Director, Port Houston; and Mr. Greg Regan, President, Transportation Trades Department, AFL–CIO (TTD). The witnesses testified about the need to address National industrial production and supply chain policies, including the risks association with further reliance on China for domestic transportation and infrastructure equipment needs and resources.

LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 3317, the *Rolling Stock Protection Act*, was introduced in the United States House of Representatives of May 15, 2023, by Mr. Crawford of Arkansas, with Mr. Nehls of Texas and Mr. Perry of Pennsylvania as original cosponsors, and referred to the Committee on Transportation and Infrastructure. Within the Committee on Transportation and Infrastructure, H.R. 3317 was referred to the Subcommittee on Highways and Transit. The Subcommittee on Highways and Transit was discharged from further consideration of H.R. 3317 on May 23, 2023.

The Committee considered H.R. 3317 on May 23, 2023, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by voice vote.

⁷*Id.*

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

No recorded votes were requested during consideration of H.R. 3317.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act of 1974* has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the enclosed cost estimate for H.R. 3317 from the Director of the Congressional Budget Office:

At a Glance

Supply Chain Legislation

As ordered reported by the House Committee on Transportation and Infrastructure on May 23, 2023

On May 23, 2023, the House Committee on Transportation and Infrastructure ordered the following 12 bills to be reported—all aimed at easing concerns about the U.S. supply chain. This single, comprehensive document provides estimates for those bills.

Pay-as-you-go procedures apply to three bills that would affect direct spending—and thus affect the deficit. One bill would affect only direct spending; two bills would affect direct spending and spending subject to appropriation. Nine bills would affect only spending subject to appropriation. None of the bills would affect revenues.

None of the bills would increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2034.

None of the bills would impose intergovernmental or private-sector mandates.

Details of the estimated costs of each bill are discussed in the text below.

Bill	Net Increase or Decrease (-) in the Deficit Over the 2023-2033 Period (Millions of Dollars)	Changes in Spending Subject to Appropriation Over the 2023-2028 Period (Outlays, Millions of Dollars)	Mandate Effects?
H.R. 915	0	*	No
H.R. 1500	0	30	No
H.R. 1836	0	7	No
H.R. 2948	0	*	No
H.R. 3013	0	*	No
H.R. 3316	*	*	No
H.R. 3317 ^a	*	0	No
H.R. 3318	0	*	No
H.R. 3365 ^a	*	*	No
H.R. 3372	0	*	No
H.R. 3395	0	*	No
H.R. 3447	0	*	No

* = between -\$500,000 and \$500,000.

a. Funding for programs affected by H.R. 3317 and H.R. 3365 was designated as an emergency requirement in keeping with section 4112(a) of H. Con. Res. 71 (115th Congress); the Concurrent Resolution on the Budget for Fiscal Year 2018; and section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Summary: On May 23, 2023, the House Committee on Transportation and Infrastructure considered multiple pieces of legislation. This document provides estimates for 12 bills that were ordered reported.

The bills would, among other things, direct the Department of Transportation (DOT) or the Federal Maritime Commission to:

Prioritize grant applications for projects that would improve the resiliency of the supply chain and revise the permitting process for certain port, airport, and pipeline projects, with the goal of accelerating approval;

Change restrictions on the type, size, and weight of vehicles that can travel on the Interstate highways; and Require data collection and new studies aimed at improving the safety and efficiency of domestic transportation systems.

Estimated federal cost: The bills' estimated budgetary effects are shown in Table 1. This cost estimate does not include any effects of interaction among the bills. If all 12 bills were combined and enacted as a single piece of legislation, the effects could be different

from the sum of the separate estimates, although CBO expects that any differences would be small. The bills' costs fall within budget function 400 (transportation).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF THE SUPPLY CHAIN LEGISLATION

	By fiscal year, millions of dollars—						
	2023	2024	2025	2026	2027	2028	2023– 2028
Changes in Spending Subject to Appropriation							
H.R. 1500, Intelligent Transportation Integration Act:							
Estimated Authorization	0	6	6	6	6	7	31
Estimated Outlays	0	5	6	6	6	7	30
H.R. 1836, Ocean Shipping Reform Implementation Act of 2023:							
Estimated Authorization	0	1	1	1	2	2	7
Estimated Outlays	0	1	1	1	2	2	7

CBO estimates that H.R. 915, H.R. 2948, H.R. 3013, H.R. 3316, H.R. 3318, H.R. 3365, H.R. 3372, H.R. 3395, and H.R. 3447, would each increase spending subject to appropriation by less than \$500,000 in every year and over the 2023–2028 period.

CBO estimates that H.R. 3316, H.R. 3317, and H.R. 3365 would each affect direct spending by less than \$500,000 in every year and over the 2023–2033 period.

Basis of estimate: For this estimate, CBO assumes that the bills will be enacted near the end of fiscal year 2023 and that the authorized and estimated amounts will be appropriated each year. Outlays for discretionary programs are estimated based on historical spending patterns for similar programs.

As discussed below, one bill would affect direct spending only and two bills would affect both direct spending and spending subject to appropriation. CBO estimates that the effects of each bill on direct spending would be insignificant over the 2023–2033 period. The other bills would affect spending subject to appropriation alone. None of the bills would affect revenues.

Bill that affects direct spending only: CBO estimates that just one bill would have an insignificant effect on direct spending and no effects on revenues or spending subject to appropriation.

H.R. 3317, the Rolling Stock Protection Act, would remove an exemption from current law that allows a small number of public transit agencies to procure rolling stock from entities owned, controlled, or associated with certain countries. CBO estimates that enacting the bill could change the pace of spending for amounts previously appropriated for the Federal Transit Administration's Capital Investment Grants, relative to current law. (Those amounts could include funds that were designated as an emergency requirement under the Infrastructure Investment and Jobs Act.) However, because few transit agencies would be affected, CBO expects that any changes in spending would total less than \$500,000 in any year and over the 2023–2033 period.

Bills that affect direct spending and spending subject to appropriation: CBO estimates that two bills could have insignificant effects on direct spending and spending subject to appropriation but would not affect revenues.

H.R. 3316, a bill to amend titles 46 and 49, United States Code, to streamline the environmental review process for major projects, and for other purposes, would require DOT to revise the permitting process for certain port, airport, and pipeline projects, with the aim of making the process more efficient. The bill also would require

DOT to maintain a database of projects and to update agency regulations.

Under current law, if an agency fails to meet certain permitting deadlines, specified amounts of funding would be rescinded from that agency's account. Because the bill would expand the number of projects subject to those conditions, enacting H.R. 3316 could reduce direct spending. CBO estimates that any effect would not be significant over the 2023–2033 period because of the small number of projects likely to be affected.

CBO estimates that implementing the bill would increase spending subject to appropriation by less than \$500,000 over the 2023–2028 period, mostly for administrative activities.

H.R. 3365, the Supply Chain Improvement Act, would direct DOT to prioritize consideration of grant applications for projects aimed at improving resiliency in the supply chain, unless those projects support the use of electric vehicles. In particular, the requirement would apply to grants under the Nationally Significant Multimodal Freight and Highway Projects program (known as the INFRA grant program) and the National Infrastructure Project Assistance program. The bill would increase the share of INFRA grants that could be used for intermodal freight rail projects.

The Infrastructure Investment and Jobs Act provided \$21 billion for those two programs over the 2022–2026 period. (The appropriated amounts were designated as an emergency requirement.) CBO estimates that H.R. 3365 could alter the spending patterns for those previously appropriated amounts, which would be recorded as changes in direct spending. CBO estimates that, on net, those changes would amount to less than \$500,000 in any year and over the 2023–2033 period.

H.R. 3365 also would direct the Government Accountability Office to report on the effects of electric vehicles in several areas, including infrastructure integrity and grid security. The bill also would prevent agencies from prioritizing any project seeking to use grants that would support electric vehicles until a subsequent act of Congress has been passed allowing such prioritization. Using information about similar reports, CBO estimates that the report would cost less than \$500,000 over the 2023–2028 period; such spending would be subject to the availability of appropriated amounts.

Bills that affect spending subject to appropriation by a significant amount: CBO estimates that two bills would affect spending subject to appropriation by more than \$500,000 over the 2023–2028 period. The costs for those two bills are shown in Table 1. Neither bill would affect direct spending or revenues.

H.R. 1500, the Intelligent Transportation Integration Act, would require DOT to purchase certain data from public and private entities to help improve the department's management of traffic and transportation infrastructure. DOT would be required to report to Congress annually on those activities. Using information from the agency about similar contracting activities, CBO estimates that implementing H.R. 1500 would cost \$30 million over the 2023–2028 period, assuming appropriation of the estimated amounts.

H.R. 1836, the Ocean Shipping Reform Implementation Act of 2023, would create additional administrative and reporting requirements for the Federal Maritime Commission, including a require-

ment to issue two new regulations and publish a study. The bill also would establish two advisory committees to assist the commission in creating policies to ensure competitiveness, reliability, and efficiency in international ocean shipping.

Using information on similar administrative requirements and accounting for anticipated inflation, CBO estimates that implementing H.R. 1836 would cost \$7 million over the 2023–2028 period; any spending would be subject to the availability of appropriated amounts.

Bills that affect spending subject to appropriation by an insignificant amount: CBO estimates that implementing the following seven bills would cost less than \$500,000 each over the 2023–2028 period. None of the bills would affect direct spending or revenues.

H.R. 915, the Motor Carrier Safety Selection Standard Act, would create new standards for certain motor carriers that transport goods, require DOT to update regulations to be consistent with those standards, and direct the department to stipulate the method for revoking a motor carrier’s registration.

H.R. 2948, the CARS Act, would require states to allow certain stinger-steered automobile transporters to operate on Interstate highways. (Such transporters have a fifth wheel located below the rear-most axle of the power unit.)

H.R. 3013, the LICENSE Act of 2023, would require DOT to issue regulations updating the qualifications to be a commercial driver’s license examiner. The bill also would allow states to administer those tests to out-of-state applicants.

H.R. 3318, a bill to amend title 23, United States Code, to establish an axle weight tolerance for certain commercial motor vehicles transporting dry bulk goods, and for other purposes, would increase the maximum weight per axle that a commercial vehicle transporting dry bulk goods can carry on an Interstate highway. The bill would not change the overall gross vehicle weight limits for such vehicles.

H.R. 3372, a bill to amend title 23, United States Code, to establish a safety data collection program for certain 6-axle vehicles, and for other purposes, would create a pilot program allowing certain six-axle vehicles to be operated on Interstate highways. Under the bill, participating states would issue permits by vehicle or by group of vehicles that would specify acceptable routes and require permit holders to report on accidents and other details. The program would be discontinued after five years, although DOT could extend the program for five years.

H.R. 3395, the U.S. Supply Chain Security Review Act of 2023, would require the Federal Maritime Commission to study the effects of foreign ownership of domestic marine terminals on U.S. economic security and report those findings to the Congress.

H.R. 3447, a bill to amend title 23, United States Code, to authorize a hydrogen powered vehicle to exceed certain weight limits on the Interstate Highway System, and for other purposes, would authorize hydrogen-powered vehicles to exceed certain weight limits specified under current law.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Over the

2023–2033 period, CBO estimates that none of the bills would increase direct spending by more than \$500,000.

Increase in long-term net direct spending and deficits: None.

Mandates: None.

Estimate prepared by: Federal costs: Aaron Krupkin (for Federal Maritime Commission); Robert Reese (for Department of Transportation). Mandates: Brandon Lever.

Estimate reviewed by: Susan Willie, Chief, Natural and Physical Resources Cost Estimates Unit; Kathleen FitzGerald, Chief, Public and Private Mandates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis.

Estimate approved by: Phillip L. Swagel, Director, Congressional Budget Office.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to prohibit the allocation of Federal funding assistance to transportation and transit agencies for the procurement of rolling stock manufactured, assembled or otherwise produced by any SOE or business affiliated with the CCP.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 3317 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the *Unfunded Mandates Reform Act* (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the *Congressional Budget Act of 1974* requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee finds that H.R. 3317 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the “Rolling Stock Protection Act”.

Section 2. Removal of lifetime exemption from prohibition on procurement of rolling stock for parties to executed contracts

This section amends section 5323(u)(5) of title 49, United States Code, by striking language that grants a procurement prohibition exemption for public transportation agencies that entered into a contract or subcontract with manufacturers identified in section 5323(u)(1), before December 20, 2019, for the procurement of rolling stock.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

* * * * *

SUBTITLE III—GENERAL AND INTERMODAL PROGRAMS

* * * * *

CHAPTER 53—PUBLIC TRANSPORTATION

* * * * *

§ 5323. General provisions

(a) INTERESTS IN PROPERTY.—

(1) IN GENERAL.—Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or to buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to operate a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if—

(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306;

(B) the Secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and

(C) just compensation under State or local law will be paid to the company for its franchise or property.

(2) LIMITATION.—A governmental authority may not use financial assistance of the United States Government to acquire land, equipment, or a facility used in public transportation from another governmental authority in the same geographic area.

(b) RELOCATION AND REAL PROPERTY REQUIREMENTS.—The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) shall apply to financial assistance for capital projects under this chapter.

(c) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

(1) COOPERATION AND CONSULTATION.—The Secretary shall cooperate and consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.

(2) COMPLIANCE WITH NEPA.—The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply to financial assistance for capital projects under this chapter.

(d) CONDITION ON CHARTER BUS TRANSPORTATION SERVICE.—

(1) AGREEMENTS.—Financial assistance under this chapter may be used to buy or operate a bus only if the applicant, governmental authority, or publicly owned operator that receives the assistance agrees that, except as provided in the agreement, the governmental authority or an operator of public transportation for the governmental authority will not provide charter bus transportation service outside the urban area in which it provides regularly scheduled public transportation service. An agreement shall provide for a fair arrangement the Secretary of Transportation considers appropriate to ensure that the assistance will not enable a governmental authority or an operator for a governmental authority to foreclose a private operator from providing intercity charter bus service if the private operator can provide the service.

(2) VIOLATIONS.—

(A) INVESTIGATIONS.—On receiving a complaint about a violation of the agreement required under paragraph (1), the Secretary shall investigate and decide whether a violation has occurred.

(B) ENFORCEMENT OF AGREEMENTS.—If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement.

(C) ADDITIONAL REMEDIES.—In addition to any remedy specified in the agreement, the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the agreement.

(e) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

(1) USE AS LOCAL MATCHING FUNDS.—Notwithstanding any other provision of law, a recipient of assistance under section 5307, 5309, or 5337 may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

(2) MAINTENANCE OF EFFORT.—The Secretary shall approve of the use of the proceeds from the issuance of revenue bonds for the remainder of the net project cost only if the Secretary finds that the aggregate amount of financial support for public transportation in the urbanized area provided by the State and affected local governmental authorities during the next 3 fiscal years, as programmed in the State transportation improvement program under section 5304, is not less than the aggregate amount provided by the State and affected local governmental authorities in the urbanized area during the preceding 3 fiscal years.

(3) DEBT SERVICE RESERVE.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient establishes pursuant to section 5302(4)(J) from amounts made available to the recipient under section 5309.

(f) SCHOOLBUS TRANSPORTATION.—

(1) AGREEMENTS.—Financial assistance under this chapter may be used for a capital project, or to operate public transportation equipment or a public transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator. This subsection does not apply—

(A) to an applicant that operates a school system in the area to be served and a separate and exclusive schoolbus program for the school system; and

(B) unless a private schoolbus operator can provide adequate transportation that complies with applicable safety standards at reasonable rates.

(2) VIOLATIONS.—If the Secretary finds that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate.

(g) **BUYING BUSES UNDER OTHER LAWS.**—Subsections (d) and (f) of this section apply to financial assistance to buy a bus under sections 133 and 142 of title 23.

(h) **GRANT AND LOAN PROHIBITIONS.**—A grant or loan may not be used to—

(1) pay ordinary governmental or nonproject operating expenses;

(2) pay incremental costs of incorporating art or non-functional landscaping into facilities, including the costs of an artist on the design team; or

(3) support a procurement that uses an exclusionary or discriminatory specification.

(i) **GOVERNMENT SHARE OF COSTS FOR CERTAIN PROJECTS.**—

(1) **ACQUIRING VEHICLES AND VEHICLE-RELATED EQUIPMENT OR FACILITIES.**—

(A) **VEHICLES.**—A grant for a project to be assisted under this chapter that involves acquiring vehicles for purposes of complying with or maintaining compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or the Clean Air Act is for 85 percent of the net project cost.

(B) **VEHICLE-RELATED EQUIPMENT OR FACILITIES.**—A grant for a project to be assisted under this chapter that involves acquiring vehicle-related equipment or facilities required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying with or maintaining compliance with the Clean Air Act, is for 90 percent of the net project cost of such equipment or facilities attributable to compliance with those Acts. The Secretary shall have discretion to determine, through practicable administrative procedures, the costs of such equipment or facilities attributable to compliance with those Acts.

(2) **COSTS INCURRED BY PROVIDERS OF PUBLIC TRANSPORTATION BY VANPOOL.**—

(A) **LOCAL MATCHING SHARE.**—The local matching share provided by a recipient of assistance for a capital project under this chapter may include any amounts expended by a provider of public transportation by vanpool for the acquisition of rolling stock to be used by such provider in the recipient's service area, excluding any amounts the provider may have received in Federal, State, or local government assistance for such acquisition.

(B) **USE OF REVENUES.**—A private provider of public transportation by vanpool may use revenues it receives in the provision of public transportation service in the service area of a recipient of assistance under this chapter that are in excess of the provider's operating costs for the purpose of acquiring rolling stock, if the private provider enters into a legally binding agreement with the recipient that requires the provider to use the rolling stock in the recipient's service area.

(C) DEFINITIONS.—In this paragraph, the following definitions apply:

(i) PRIVATE PROVIDER OF PUBLIC TRANSPORTATION BY VANPOOL.—The term “private provider of public transportation by vanpool” means a private entity providing vanpool services in the service area of a recipient of assistance under this chapter using a commuter highway vehicle or vanpool vehicle.

(ii) COMMUTER HIGHWAY VEHICLE; VANPOOL VEHICLE.—The term “commuter highway vehicle or vanpool vehicle” means any vehicle—

(I) the seating capacity of which is at least 6 adults (not including the driver); and

(II) at least 80 percent of the mileage use of which can be reasonably expected to be for the purposes of transporting commuters in connection with travel between their residences and their place of employment.

(j) BUY AMERICA.—

(1) IN GENERAL.—The Secretary 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) WAIVER.—The Secretary 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) when procuring rolling stock (including train control, communication, traction power equipment, and rolling stock prototypes) under this chapter—

(i) the cost of components and subcomponents produced in the United States—

(I) for fiscal years 2016 and 2017, is more than 60 percent of the cost of all components of the rolling stock;

(II) for fiscal years 2018 and 2019, is more than 65 percent of the cost of all components of the rolling stock; and

(III) for fiscal year 2020 and each fiscal year thereafter, is more than 70 percent of the cost of all components of the rolling stock; and

(ii) final assembly of the rolling stock has occurred in the United States; or

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

(3) WRITTEN WAIVER DETERMINATION AND ANNUAL REPORT.—

(A) WRITTEN DETERMINATION.—Before issuing a waiver under paragraph (2), the Secretary shall—

(i) publish in the Federal Register and make publicly available in an easily identifiable location on the website of the Department of Transportation a de-

tailed written explanation of the waiver determination; and

(ii) provide the public with a reasonable period of time for notice and comment.

(B) ANNUAL REPORT.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, and annually thereafter, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report listing any waiver issued under paragraph (2) during the preceding year.

(4) LABOR COSTS FOR FINAL ASSEMBLY.—In this subsection, labor costs involved in final assembly are not included in calculating the cost of components.

(5) ROLLING STOCK FRAMES OR CAR SHELLS.—In carrying out paragraph (2)(C) in the case of a rolling stock procurement receiving assistance under this chapter in which the average cost of a rolling stock vehicle in the procurement is more than \$300,000, if rolling stock frames or car shells are not produced in the United States, the Secretary shall include in the calculation of the domestic content of the rolling stock the cost of steel or iron that is produced in the United States and used in the rolling stock frames or car shells.

(6) CERTIFICATION OF DOMESTIC SUPPLY AND DISCLOSURE.—

(A) CERTIFICATION OF DOMESTIC SUPPLY.—If the Secretary denies an application for a waiver under paragraph (2), the Secretary shall provide to the applicant a written certification that—

(i) the steel, iron, or manufactured goods, as applicable, (referred to in this subparagraph as the “item”) is produced in the United States in a sufficient and reasonably available amount;

(ii) the item produced in the United States is of a satisfactory quality; and

(iii) includes a list of known manufacturers in the United States from which the item can be obtained.

(B) DISCLOSURE.—The Secretary shall disclose the waiver denial and the written certification to the public in an easily identifiable location on the website of the Department of Transportation.

(7) WAIVER PROHIBITED.—The Secretary 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.

(8) PENALTY FOR MISLABELING AND MISREPRESENTATION.—A person is ineligible under subpart 9.4 of the Federal Acquisition Regulation, or any successor thereto, to receive a contract

or subcontract made with amounts authorized under the Federal Public Transportation Act of 2015 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.

(9) STATE REQUIREMENTS.—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.

(10) OPPORTUNITY TO CORRECT INADVERTENT ERROR.—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.

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

(12) STEEL AND IRON.—For purposes of this subsection, steel and iron meeting the requirements of section 661.5(b) of title 49, Code of Federal Regulations may be considered produced in the United States.

(13) DEFINITION OF SMALL PURCHASE.—For purposes of determining whether a purchase qualifies for a general public interest waiver under paragraph (2)(A) of this subsection, including under any regulation promulgated under that paragraph, the term “small purchase” means a purchase of not more than \$150,000.

(k) PARTICIPATION OF GOVERNMENTAL AGENCIES IN DESIGN AND DELIVERY OF TRANSPORTATION SERVICES.—Governmental agencies and nonprofit organizations that receive assistance from Government sources (other than the Department of Transportation) for nonemergency transportation services shall—

(1) participate and coordinate with recipients of assistance under this chapter in the design and delivery of transportation services; and

(2) be included in the planning for those services.

(l) RELATIONSHIP TO OTHER LAWS.—

(1) FRAUD AND FALSE STATEMENTS.—Section 1001 of title 18 applies to a certificate, submission, or statement provided under this chapter. The Secretary may terminate financial as-

assistance under this chapter and seek reimbursement directly, or by offsetting amounts, available under this chapter if the Secretary determines that a recipient of such financial assistance has made a false or fraudulent statement or related act in connection with a Federal public transportation program.

(2) POLITICAL ACTIVITIES OF NONSUPERVISORY EMPLOYEES.—The provision of assistance under this chapter shall not be construed to require the application of chapter 15 of title 5 to any nonsupervisory employee of a public transportation system (or any other agency or entity performing related functions) to whom such chapter does not otherwise apply.

(m) PREAWARD AND POSTDELIVERY REVIEW OF ROLLING STOCK PURCHASES.—The Secretary shall prescribe regulations requiring a preaward and postdelivery review of a grant under this chapter to buy rolling stock to ensure compliance with Government motor vehicle safety requirements, subsection (j) of this section, and bid specifications requirements of grant recipients under this chapter. Under this subsection, independent inspections and review are required, and a manufacturer certification is not sufficient. Rolling stock procurements of 20 vehicles or fewer made for the purpose of serving rural areas and urbanized areas with populations of 200,000 or fewer shall be subject to the same requirements as established for procurements of 10 or fewer buses under the post-delivery purchaser's requirements certification process under section 663.37(c) of title 49, Code of Federal Regulations.

(n) SUBMISSION OF CERTIFICATIONS.—A certification required under this chapter and any additional certification or assurance required by law or regulation to be submitted to the Secretary may be consolidated into a single document to be submitted annually as part of a grant application under this chapter. The Secretary shall publish annually a list of all certifications required under this chapter with the publication required under section 5336(d)(2).

(o) GRANT REQUIREMENTS.—The grant requirements under sections 5307, 5309, and 5337 apply to any project under this chapter that receives any assistance or other financing under chapter 6 (other than section 609) of title 23.

(p) ALTERNATIVE FUELING FACILITIES.—A recipient of assistance under this chapter may allow the incidental use of federally funded alternative fueling facilities and equipment by nontransit public entities and private entities if—

(1) the incidental use does not interfere with the recipient's public transportation operations;

(2) all costs related to the incidental use are fully recaptured by the recipient from the nontransit public entity or private entity;

(3) the recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

(4) private entities pay all applicable excise taxes on fuel.

(q) CORRIDOR PRESERVATION.—

(1) IN GENERAL.—The Secretary may assist a recipient in acquiring right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law.

(2) ENVIRONMENTAL REVIEWS.—Right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

(r) REASONABLE ACCESS TO PUBLIC TRANSPORTATION FACILITIES.—A recipient of assistance under this chapter may not deny reasonable access for a private intercity or charter transportation operator to federally funded public transportation facilities, including intermodal facilities, park and ride lots, and bus-only highway lanes. In determining reasonable access, capacity requirements of the recipient of assistance and the extent to which access would be detrimental to existing public transportation services must be considered.

(s) VALUE CAPTURE REVENUE ELIGIBLE FOR LOCAL SHARE.—Notwithstanding any other provision of law, a recipient of assistance under this chapter may use the revenue generated from value capture financing mechanisms as local matching funds for capital projects and operating costs eligible under this chapter.

(t) SPECIAL CONDITION ON CHARTER BUS TRANSPORTATION SERVICE.—If, in a fiscal year, the Secretary is prohibited by law from enforcing regulations related to charter bus service under part 604 of title 49, Code of Federal Regulations, for any transit agency that during fiscal year 2008 was both initially granted a 60-day period to come into compliance with such part 604, and then was subsequently granted an exception from such part—

(1) the transit agency shall be precluded from receiving its allocation of urbanized area formula grant funds for such fiscal year; and

(2) any amounts withheld pursuant to paragraph (1) shall be added to the amount that the Secretary may apportion under section 5336 in the following fiscal year.

(u) LIMITATION ON CERTAIN ROLLING STOCK PROCUREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (5), financial assistance made available under this chapter shall not be used in awarding a contract or subcontract to an entity on or after the date of enactment of this subsection for the procurement of rolling stock for use in public transportation if the manufacturer of the rolling stock—

(A) is incorporated in or has manufacturing facilities in the United States; and

(B) is owned or controlled by, is a subsidiary of, or is otherwise related legally or financially to a corporation based in a country that—

(i) is identified as a nonmarket economy country (as defined in section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18))) as of the date of enactment of this subsection;

(ii) was identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a foreign country included on the priority watch list defined in subsection (g)(3) of that section; and

(iii) is subject to monitoring by the Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416).

(2) EXCEPTION.—For purposes of paragraph (1), the term “otherwise related legally or financially” does not include—

(A) a minority relationship or investment; or

(B) relationship with or investment in a subsidiary, joint venture, or other entity based in a country described in paragraph (1)(B) that does not export rolling stock or components of rolling stock for use in the United States.

(3) INTERNATIONAL AGREEMENTS.—This subsection shall be applied in a manner consistent with the obligations of the United States under international agreements.

(4) CERTIFICATION FOR RAIL ROLLING STOCK.—

(A) IN GENERAL.—Except as provided in paragraph (5), as a condition of financial assistance made available in a fiscal year under section 5337, a recipient that operates rail fixed guideway service shall certify in that fiscal year that the recipient will not award any contract or subcontract for the procurement of rail rolling stock for use in public transportation with a rail rolling stock manufacturer described in paragraph (1).

(B) SEPARATE CERTIFICATION.—The certification required under this paragraph shall be in addition to any certification the Secretary establishes to ensure compliance with the requirements of paragraph (1).

(5) SPECIAL RULES.—

[(A) PARTIES TO EXECUTED CONTRACTS.—This subsection, including the certification requirement under paragraph (4), shall not apply to the award of any contract or subcontract made by a public transportation agency with a rail rolling stock manufacturer described in paragraph (1) if the manufacturer and the public transportation agency have executed a contract for rail rolling stock before the date of enactment of this subsection.]

[(B)] (A) ROLLING STOCK.—[Except as provided in subparagraph (C) and for a contract or subcontract that is not described in subparagraph (A)] *Except as provided in subparagraph (B)*, this subsection, including the certification requirement under paragraph (4), shall not apply to the award of a contract or subcontract made by a public transportation agency with any rolling stock manufacturer for the 2-year period beginning on or after the date of enactment of this subsection.

[(C)] (B) EXCEPTION.—[Subparagraph (B)] *Subparagraph (A)* shall not apply to the award of a contract or subcontract made by the Washington Metropolitan Area Transit Authority.

(v) CYBERSECURITY CERTIFICATION FOR RAIL ROLLING STOCK AND OPERATIONS.—

(1) CERTIFICATION.—As a condition of financial assistance made available under this chapter, a recipient that operates a rail fixed guideway public transportation system shall certify that the recipient has established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks.

(2) COMPLIANCE.—For the process required under paragraph (1), a recipient of assistance under this chapter shall—

(A) utilize the approach described by the voluntary standards and best practices developed under section 2(c)(15) of the National Institute of Standards and Technology Act (15 U.S.C. 272(c)(15)), as applicable;

(B) identify hardware and software that the recipient determines should undergo third-party testing and analysis to mitigate cybersecurity risks, such as hardware or software for rail rolling stock under proposed procurements; and

(C) utilize the approach described in any voluntary standards and best practices for rail fixed guideway public transportation systems developed under the authority of the Secretary of Homeland Security, as applicable.

(3) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority of—

(A) the Secretary of Homeland Security to publish or ensure compliance with requirements or standards concerning cybersecurity for rail fixed guideway public transportation systems; or

(B) the Secretary of Transportation under section 5329 to address cybersecurity issues as those issues relate to the safety of rail fixed guideway public transportation systems.

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