

agement, and financial compliance reviews and audits of a recipient of amounts under paragraph (1).

(3) The Federal Government shall pay the entire cost of carrying out a contract under this subsection.

(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.)

**§ 24404. Use of capital grants to finance first-dollar liability of grant project**

Notwithstanding the requirements of section 24402 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.)

**§ 24405. 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 Trans-

portation 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 (43<sup>1</sup> 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 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<sup>2</sup> 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, 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 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.

<sup>1</sup> So in original. Probably should be "(45)".

<sup>2</sup> See References in Text note below.

(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(4)<sup>2</sup> of this title) operations of a State or local government<sup>3</sup> authority (as those terms are defined in section 5302(11)<sup>2</sup> and (6),<sup>2</sup> respectively, of this title) 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(4)<sup>2</sup> of this title.

(Added Pub. L. 110-432, div. B, title III, §301(a), Oct. 16, 2008, 122 Stat. 4942.)

#### 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.

Section 24102(4) of this title, referred to in subsecs. (e)(1) and (f), was redesignated section 24102(3) of this title by Pub. L. 110-432, div. B, title II, §201(a)(2), Oct. 16, 2008, 122 Stat. 4909.

Section 5302(11) of this title, referred to in subsec. (e)(1), probably means section 5302(a)(13) of this title, which defines "State".

Section 5302(6) of this title, referred to in subsec. (e)(1), probably means section 5302(a)(6), which defines "local governmental authority".

#### ASSISTANCE WITH BUY AMERICA WAIVER REQUESTS

Pub. L. 110-432, div. B, title III, §301(c), Oct. 16, 2008, 122 Stat. 4946, provided that: "In implementing section 24405(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."

#### § 24406. 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.)

#### [CHAPTER 245—REPEALED]

#### [[§ 24501 to 24506. Repealed. Pub. L. 105-134, title I, § 106(a), Dec. 2, 1997, 111 Stat. 2573]

Section 24501, Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 919; Pub. L. 103-429, §6(21), Oct. 31, 1994, 108 Stat. 4379; Pub. L. 104-88, title III, §308(h), Dec. 29, 1995, 109 Stat. 947, related to status of Amtrak Commuter and applicable laws.

Section 24502, Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 920, related to board of directors of Amtrak Commuter.

Section 24503, Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 921, related to appointment and service of officers of Amtrak Commuter.

Section 24504, Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 921, related to general authority of Amtrak Commuter.

Section 24505, Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 921, related to Amtrak's rights and responsibilities as relating to commuter rail passenger transportation.

Section 24506, Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 922, provided that certain powers and duties of Consolidated Rail Corporation were not affected by this chapter.

#### TRACKAGE RIGHTS NOT AFFECTED

Pub. L. 105-134, title I, §106(c), Dec. 2, 1997, 111 Stat. 2573, provided that: "The repeal of chapter 245 of title 49, United States Code, by subsection (a) of this section is without prejudice to the retention of trackage rights over property owned or leased by commuter authorities."

#### CHAPTER 247—AMTRAK ROUTE SYSTEM

Sec.	
24701.	National rail passenger transportation system.
24702.	Transportation requested by States, authorities, and other persons <sup>1</sup>

<sup>3</sup> So in original. Probably should be "governmental".

<sup>1</sup> So in original. Probably should be followed by a period.