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### Editorial Notes

#### AMENDMENTS

2021—Pub. L. 117–58, div. B, title II, §§22305(b), 22306(b), Nov. 15, 2021, 135 Stat. 723, 724, added items 22909 and 22910.

2019—Pub. L. 115–420, §7(a)(2), (3), (5), Jan. 3, 2019, 132 Stat. 5445, 5446, renumbered chapter 244 of this title as this chapter and amended analysis generally, substituting items 22901 to 22908 for former items 24401 to 24408, respectively.

### § 22901. Definitions

In this chapter:

(1) **APPLICANT.**—The term “applicant” means a State (including the District of Columbia), a group of States, an Interstate Compact, or a public agency established by one or more States and having responsibility for providing intercity passenger rail service.

(2) **CAPITAL PROJECT.**—The term “capital project” means a project or program in a State rail plan developed under chapter 227 of this title for—

(A) acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of intercity passenger rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, highway-rail grade crossing improvements related to intercity passenger rail service, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

(B) rehabilitating, remanufacturing or overhauling rail rolling stock and facilities used primarily in intercity passenger rail service;

(C) costs associated with developing State rail plans; and

(D) the first-dollar liability costs for insurance related to the provision of intercity passenger rail service under section 22904.

(3) **INTERCITY PASSENGER RAIL SERVICE.**—The term “intercity passenger rail service” means intercity rail passenger transportation, as defined in section 24102 of this title.

(Added Pub. L. 110–432, div. B, title III, §301(a), Oct. 16, 2008, 122 Stat. 4935, §24401; renumbered §22901 and amended Pub. L. 115–420, §7(a)(1), (b)(2)(A), Jan. 3, 2019, 132 Stat. 5445, 5446.)

### Editorial Notes

#### AMENDMENTS

2019—Pub. L. 115–420, §7(a)(1), renumbered section 24401 of this title as this section.

Par. (2)(D). Pub. L. 115–420, §7(b)(2)(A), substituted “22904” for “24404”.

### § 22902. Capital investment grants to support intercity passenger rail service

(a) **GENERAL AUTHORITY.**—

(1) The Secretary of Transportation may make grants under this section to an applicant to assist in financing the capital costs of facilities, infrastructure, and equipment necessary to provide or improve intercity passenger rail transportation.

(2) Consistent with the requirements of this chapter, the Secretary shall require that a grant under this section be subject to the terms, conditions, requirements, and provisions the Secretary decides are necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section and shall prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures and a record of decision on applicant eligibility. The Secretary shall issue a final rule establishing such procedures not later than 2 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008. For the period prior to the earlier of the issuance of such a rule or 2 years after the date of enactment of such Act, the Secretary shall issue interim guidance to applicants covering such procedures, and administer the grant program authorized under this section pursuant to such guidance.

(b) **PROJECT AS PART OF STATE RAIL PLAN.**—

(1) The Secretary may not approve a grant for a project under this section unless the Secretary finds that the project is part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008, and that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities.

(2) An applicant shall provide sufficient information upon which the Secretary can make the findings required by this subsection.

(3) If an applicant has not selected the proposed operator of its service competitively, the applicant shall provide written justification to the Secretary showing why the proposed operator is the best, taking into account price and other factors, and that use of the proposed operator will not unnecessarily increase the cost of the project.

(c) **PROJECT SELECTION CRITERIA.**—The Secretary, in selecting the recipients of financial assistance to be provided under subsection (a), shall—

(1) require—

(A) that the project be part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008;

(B) that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities;

(C) that the applicant provides sufficient information upon which the Secretary can make the findings required by this subsection;

(D) that if an applicant has selected the proposed operator of its service competitively, that the applicant provide written justification to the Secretary showing why the proposed operator is the best, taking into account costs and other factors;

(E) that each proposed project meet all safety and security requirements that are applicable to the project under law; and

(F) that each project be compatible with, and operated in conformance with—

(i) plans developed pursuant to the requirements of section 135 of title 23, United States Code; and

(ii) the national rail plan (if it is available);

(2) select projects—

(A) that are anticipated to result in significant improvements to intercity rail passenger service, including, but not limited to, consideration of—

(i) the project's levels of estimated ridership, increased on-time performance, reduced trip time, additional service frequency to meet anticipated or existing demand, or other significant service enhancements as measured against minimum standards developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008;

(ii) the project's anticipated favorable impact on air or highway traffic congestion, capacity, or safety; and

(iii) identification of the project by the Surface Transportation Board as necessary to improve the on-time performance and reliability of intercity passenger rail under section 24308(f);

(B) for which there is a high degree of confidence that the proposed project is feasible and will result in the anticipated benefits, as indicated by—

(i) the project's precommencement compliance with environmental protection requirements;

(ii) the readiness of the project to be commenced;

(iii) the timing and amount of the project's future noncommitted investments;

(iv) the commitment of any affected host rail carrier to ensure the realization of the anticipated benefits; and

(v) other relevant factors as determined by the Secretary; and

(C) for which the level of the anticipated benefits compares favorably to the amount of Federal funding requested under this chapter; and

(3) give greater consideration to projects—

(A) that are anticipated to result in benefits to other modes of transportation and to the public at large, including, but not limited to, consideration of the project's—

(i) encouragement of intermodal connectivity through provision of direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

(ii) anticipated improvement of freight or commuter rail operations;

(iii) encouragement of the use of positive train control technologies;

(iv) environmental benefits, including projects that involve the purchase of environmentally sensitive, fuel-efficient, and cost-effective passenger rail equipment;

(v) anticipated positive economic and employment impacts;

(vi) encouragement of State and private contributions toward station development, energy and environmental efficiency, and economic benefits; and

(vii) falling under the description in section 5302(a)(1)(G)<sup>1</sup> of this title as defined to support intercity passenger rail service; and

(B) that incorporate equitable financial participation in the project's financing, including, but not limited to, consideration of—

(i) donated property interests or services;

(ii) financial contributions by freight and commuter rail carriers commensurate with the benefit expected to their operations; and

(iii) financial commitments from host railroads, non-Federal governmental entities, nongovernmental entities, and others.

(d) STATE RAIL PLANS.—State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 that substantially meet the requirements of chapter 227 of this title, as determined by the Secretary pursuant to section 22506<sup>1</sup> of this title, shall be deemed by the Secretary to have met the requirements of subsection (c)(1)(A) of this section.

(e) AMTRAK ELIGIBILITY.—To receive a grant under this section, Amtrak may enter into a cooperative agreement with 1 or more States to carry out 1 or more projects on a State rail plan's ranked list of rail capital projects developed under section 22504(a)(5)<sup>1</sup> of this title. For such a grant, Amtrak may not use Federal funds authorized under section 101(a) or (c) of the Passenger Rail Investment and Improvement Act of 2008 to fulfill the non-Federal share requirements under subsection (g) of this section.

<sup>1</sup> See References in Text note below.

## (f) LETTERS OF INTENT AND EARLY SYSTEMS WORK AGREEMENTS.—

(1) The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a major capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project.

(2) At least 30 days before issuing a letter under paragraph (1) of this subsection, the Secretary shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the House and Senate Committees on Appropriations of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement, the criteria used in subsection (c) for selecting the project for a grant award, and a description of how the project meets such criteria.

(3) An obligation or administrative commitment may be made only when amounts are appropriated. The letter of intent shall state that the contingent commitment is not an obligation of the Federal Government, and is subject to the availability of appropriations under Federal law and to Federal laws in force or enacted after the date of the contingent commitment.

## (g) FEDERAL SHARE OF NET PROJECT COST.—

(1)(A) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost.

(B) A grant for the project shall not exceed 80 percent of the project net capital cost.

(C) The Secretary shall give priority in allocating future obligations and contingent commitments to incur obligations to grant requests seeking a lower Federal share of the project net capital cost.

(2) Up to an additional 20 percent of the required non-Federal funds may be funded from amounts appropriated to or made available to a department or agency of the Federal Government that are eligible to be expended for transportation.

(3) The following amounts, not to exceed \$15,000,000 per fiscal year, shall be available to each applicant as a credit toward an applicant's matching requirement for a grant awarded under this section—

(A) in each of fiscal years 2009, 2010, and 2011—

(i) 50 percent of the average of amounts expended in fiscal years 2002 through 2008 by an applicant for capital projects related to intercity passenger rail service; and

(ii) 50 percent of the average of amounts expended in fiscal years 2002 through 2008 by an applicant for operating costs of such service; and

(B) in each of fiscal years 2010, 2011 and 2012, 50 percent of the amount by which the amounts expended for capital projects and operating costs related to intercity pas-

senger rail service by an applicant in the prior fiscal year exceed the average capital and operating expenditures made for such service in fiscal years 2006, 2007, and 2008.

The Secretary may require such information as necessary to verify such expenditures. Credits made available to an applicant in a fiscal year under this paragraph may only be applied towards grants awarded in that fiscal year.

(4) The Federal share of expenditures for capital improvements under this chapter may not exceed 100 percent.

(h) 2-YEAR AVAILABILITY.—Funds appropriated under this section shall remain available until expended. If any amount provided as a grant under this section is not obligated or expended for the purposes described in subsection (a) within 2 years after the date on which the State received the grant, such sums shall be returned to the Secretary for other intercity passenger rail development projects under this section at the discretion of the Secretary.

## (i) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—A metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or non-profit entity to cooperatively implement any project funded with a grant under this chapter.

(2) FORMS OF PARTICIPATION.—Participation by an entity under paragraph (1) may consist of—

(A) ownership or operation of any land, facility, locomotive, rail car, vehicle, or other physical asset associated with the project;

(B) cost-sharing of any project expense;

(C) carrying out administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

(D) any other form of participation approved by the Secretary.

(3) SUBALLOCATION.—A State may allocate funds under this section to any entity described in paragraph (1).

## (j) LARGE CAPITAL PROJECT REQUIREMENTS.—

(1) IN GENERAL.—For a grant awarded under this chapter for an amount in excess of \$1,000,000,000, the following conditions shall apply:

(A) The Secretary may not obligate any funding unless the applicant demonstrates, to the satisfaction of the Secretary, that the applicant has committed, and will be able to fulfill, the non-Federal share required for the grant within the applicant's proposed project completion timetable.

(B) The Secretary may not obligate any funding for work activities that occur after the completion of final design unless—

(i) the applicant submits a financial plan to the Secretary that generally identifies the sources of the non-Federal funding required for any subsequent segments or phases of the corridor service development program covering the project for which the grant is awarded;

(ii) the grant will result in a useable segment, a transportation facility, or equipment, that has operational independence; and

(iii) the intercity passenger rail benefits anticipated to result from the grant, such as increased speed, improved on-time performance, reduced trip time, increased frequencies, new service, safety improvements, improved accessibility, or other significant enhancements, are detailed by the grantee and approved by the Secretary.

(C)(i) The Secretary shall ensure that the project is maintained to the level of utility that is necessary to support the benefits approved under subparagraph (B)(iii) for a period of 20 years from the date on which the useable segment, transportation facility, or equipment described in subparagraph (B)(ii) is placed in service.

(ii) If the project property is not maintained as required under clause (i) for a 12-month period, the grant recipient shall refund a pro-rata share of the Federal contribution, based upon the percentage remaining of the 20-year period that commenced when the project property was placed in service.

(2) EARLY WORK.—The Secretary may allow a grantee subject to this subsection to engage in at-risk work activities subsequent to the conclusion of final design if the Secretary determines that such work activities are reasonable and necessary.

(k) SMALL CAPITAL PROJECTS.—The Secretary shall make not less than 5 percent annually available from the amounts authorized under section 101(c) of the Passenger Rail Investment and Improvement Act of 2008 beginning in fiscal year 2009 for grants for capital projects eligible under this section not exceeding \$2,000,000, including costs eligible under section 209(d)<sup>1</sup> of that Act. For grants awarded under this subsection, the Secretary may waive requirements of this section, including State rail plan requirements, as appropriate.

(l) NONMOTORIZED TRANSPORTATION ACCESS AND STORAGE.—Grants under this chapter may be used to provide access to rolling stock for non-motorized transportation, including bicycles, and recreational equipment, and to provide storage capacity in trains for such transportation, equipment, and other luggage, to ensure passenger safety.

(Added Pub. L. 110-432, div. B, title III, § 301(a), Oct. 16, 2008, 122 Stat. 4936, § 24402; amended Pub. L. 114-94, div. A, title XI, §§ 11303(b)(1)(C), 11309, Dec. 4, 2015, 129 Stat. 1654, 1669; renumbered § 22902 and amended Pub. L. 115-420, § 7(a)(1), (b)(1)(A), Jan. 3, 2019, 132 Stat. 5445, 5446.)

### Editorial Notes

#### REFERENCES IN TEXT

The date of enactment of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsecs. (a)(2) and (d), is the date of enactment of div. B of Pub. L. 110-432, which was approved Oct. 16, 2008.

Section 211 of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsecs. (b)(1) and

(c)(1)(A), is section 211 of Pub. L. 110-432, which was set out as a note under section 24902 of this title, prior to repeal by Pub. L. 114-94, div. A, title XI, § 11306(b)(3), Dec. 4, 2015, 129 Stat. 1660.

Section 207 of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsec. (c)(2)(A)(i), is section 207 of Pub. L. 110-432, which is set out in a note under section 24101 of this title.

Section 5302 of this title, referred to in subsec. (c)(3)(A)(vii), was amended generally by Pub. L. 112-141, div. B, § 20004, July 6, 2012, 126 Stat. 623, and, as so amended, no longer contains a subsec. (a)(1)(G), which described a type of capital project. However, capital project is defined elsewhere in that section.

Section 22506 of this title, referred to in subsec. (d), probably should be a reference to section 22706 of this title, which requires the Secretary to prescribe procedures for submitting State rail plans for review. No section 22506 of this title has been enacted.

Section 22504(a)(5) of this title, referred to in subsec. (e), probably should be a reference to section 22705(a)(5) of this title, which requires each State rail plan to contain a long-range rail investment program that includes a list of any rail capital projects expected to be undertaken or supported in whole or in part by the State. Section 22504(a) of this title did not contain a par. (5), prior to repeal by Pub. L. 114-94, div. A, title XI, § 11301(c)(3), Dec. 4, 2015, 129 Stat. 1648.

Section 101 of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsecs. (e) and (k), is section 101 of title I of div. B of Pub. L. 110-432, Oct. 16, 2008, 122 Stat. 4908, which is not classified to the Code.

Section 209(d) of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsec. (k), is section 209(d) of Pub. L. 110-432, which was redesignated as section 209(c) of the Act by Pub. L. 114-94 and is set out in a note under section 24101 of this title.

#### AMENDMENTS

2019—Pub. L. 115-420, § 7(a)(1), renumbered section 24402 of this title as this section.

Subsec. (c)(3)(A). Pub. L. 115-420, § 7(b)(1)(A)(i)(I), inserted “of” after “other modes” in introductory provisions.

Subsec. (c)(3)(A)(vi). Pub. L. 115-420, § 7(b)(1)(A)(i)(II), substituted “environmental” for “environmentally”.

Subsec. (k). Pub. L. 115-420, § 7(b)(1)(A)(ii), substituted “State rail plan” for “state rail plan”.

2015—Subsec. (j). Pub. L. 114-94, § 11309, added subsec. (j).

Pub. L. 114-94, § 11303(b)(1)(C), struck out subsec. (j) which related to special transportation circumstances.

### Statutory Notes and Related Subsidiaries

#### 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—