

49 USC 20171: Requirements for railroad freight cars placed into service in the United States

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From Title 49-TRANSPORTATION

SUBTITLE V-RAIL PROGRAMS

PART A-SAFETY

CHAPTER 201-GENERAL

SUBCHAPTER II-PARTICULAR ASPECTS OF SAFETY

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§20171. Requirements for railroad freight cars placed into service in the United States

(a) DEFINITIONS.-In this section:

(1) COMPONENT.-The term "component" means a part or subassembly of a railroad freight car.

(2) CONTROL.-The term "control" means the power, whether direct or indirect and whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, representation on the board of directors of an entity, proxy voting on the board of directors of an entity, a special share in the entity, a contractual arrangement with the entity, a formal or informal arrangement to act in concert with an entity, or any other means, to determine, direct, make decisions, or cause decisions to be made for the entity.

(3) COST OF SENSITIVE TECHNOLOGY.-The term "cost of sensitive technology" means the aggregate cost of the sensitive technology located on a railroad freight car.

(4) COUNTRY OF CONCERN.-The term "country of concern" means a country that-

(A) is identified by the Department of Commerce 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 the Passenger Rail Expansion and Rail Safety Act of 2021;

(B) 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 (as defined in subsection (g)(3) of such section); and

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

(5) NET COST.-The term "net cost" has the meaning given such term in chapter 4 of the USMCA or any subsequent free trade agreement between the United States, Mexico, and Canada.

(6) QUALIFIED FACILITY.-The term "qualified facility" means a facility that is not owned or under the control of a state-owned enterprise.

(7) QUALIFIED MANUFACTURER.-The term "qualified manufacturer" means a railroad freight car manufacturer that is not owned or under the control of a state-owned enterprise.

(8) RAILROAD FREIGHT CAR.-The term "railroad freight car" means a car designed to carry freight or railroad personnel by rail, including-

(A) a box car;

(B) a refrigerator car;

(C) a ventilator car;

(D) an intermodal well car;

(E) a gondola car;

(F) a hopper car;

(G) an auto rack car;

(H) a flat car;

(I) a special car;

(J) a caboose car;

(K) a tank car; and

(L) a yard car.

(9) SENSITIVE TECHNOLOGY.-The term "sensitive technology" means any device embedded with electronics, software, sensors, or other connectivity, that enables the device to connect to, collect data from, or exchange data with another device, including-

(A) onboard telematics;

(B) remote monitoring software;

- (C) firmware;
- (D) analytics;
- (E) global positioning system satellite and cellular location tracking systems;
- (F) event status sensors;
- (G) predictive component condition and performance monitoring sensors; and
- (H) similar sensitive technologies embedded into freight railcar components and sub-assemblies.

(10) STATE-OWNED ENTERPRISE.-The term "state-owned enterprise" means-

- (A) an entity that is owned by, or under the control of, a national, provincial, or local government of a country of concern, or an agency of such government; or
- (B) an individual acting under the direction or influence of a government or agency described in subparagraph (A).

(11) SUBSTANTIALLY TRANSFORMED.-The term "substantially transformed" means a component of a railroad freight car that undergoes an applicable change in tariff classification as a result of the manufacturing process, as described in chapter 4 and related annexes of the USMCA or any subsequent free trade agreement between the United States, Mexico, and Canada.

(12) USMCA.-The term "USMCA" has the meaning given the term in section 3 of the United States-Mexico-Canada Agreement Implementation Act (19 U.S.C. 4502).

(b) REQUIREMENTS FOR RAILROAD FREIGHT CARS.-

(1) LIMITATION ON RAILROAD FREIGHT CARS.-A railroad freight car wholly manufactured on or after the date that is 1 year after the date of issuance of the regulations required under subsection (c)(1) may only operate on the United States general railroad system of transportation if-

- (A) the railroad freight car is manufactured, assembled, and substantially transformed, as applicable, by a qualified manufacturer in a qualified facility;
- (B) none of the sensitive technology located on the railroad freight car, including components necessary to the functionality of the sensitive technology, originates from a country of concern or is sourced from a state-owned enterprise; and
- (C) none of the content of the railroad freight car, excluding sensitive technology, originates from a country of concern or is sourced from a state-owned enterprise that has been determined by a recognized court or administrative agency of competent jurisdiction and legal authority to have violated or infringed valid United States intellectual property rights of another including such a finding by a Federal district court under title 35 or the U.S. International Trade Commission under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

(2) LIMITATION ON RAILROAD FREIGHT CAR CONTENT.-

(A) PERCENTAGE LIMITATION.-

(i) INITIAL LIMITATION.-Not later than 1 year after the date of issuance of the regulations required under subsection (c)(1), a railroad freight car described in paragraph (1) may operate on the United States general railroad system of transportation only if not more than 20 percent of the content of the railroad freight car, calculated by the net cost of all components of the car and excluding the cost of sensitive technology, originates from a country of concern or is sourced from a state-owned enterprise.

(ii) SUBSEQUENT LIMITATION.-Effective beginning on the date that is 3 years after the date of issuance of the regulations required under subsection (c)(1), a railroad freight car described in paragraph (1) may operate on the United States general railroad system of transportation only if not more than 15 percent of the content of the railroad freight car, calculated by the net cost of all components of the car and excluding the cost of sensitive technology, originates from a country of concern or is sourced from a state-owned enterprise.

(B) CONFLICT.-The percentages specified in clauses (i) and (ii) of subparagraph (A), as applicable, shall apply notwithstanding any apparent conflict with provisions of chapter 4 of the USMCA.

(c) REGULATIONS AND PENALTIES.-

(1) REGULATIONS REQUIRED.-Not later than 2 years after the date of enactment of the Passenger Rail Expansion and Rail Safety Act of 2021, the Secretary of Transportation shall issue such regulations as are necessary to carry out this section, including for the monitoring and sensitive technology requirements of this section.

(2) CERTIFICATION REQUIRED.-To be eligible to provide a railroad freight car for operation on the United States general railroad system of transportation, the manufacturer of such car shall annually certify to the Secretary of Transportation that any railroad freight cars to be so provided meet the requirements under this section.

(3) COMPLIANCE.-

(A) VALID CERTIFICATION REQUIRED.-At the time a railroad freight car begins operation on the United States general railroad system of transportation, the manufacturer of such railroad freight car shall have valid certification described in paragraph (2) for the year in which such car begins operation.

(B) REGISTRATION OF NONCOMPLIANT CARS PROHIBITED.-A railroad freight car manufacturer may not register, or cause to be registered, a railroad freight car that does not comply with the requirements under this section in the

Association of American Railroad's¹ Umler system.

(4) CIVIL PENALTIES.-

(A) IN GENERAL.-Pursuant to section 21301, the Secretary of Transportation may assess a civil penalty of not less than \$100,000, but not more than \$250,000, for each violation of this section for each railroad freight car.

(B) PROHIBITION ON OPERATION FOR VIOLATIONS.-The Secretary of Transportation may prohibit a railroad freight car manufacturer with respect to which the Secretary has assessed more than 3 violations under subparagraph (A) from providing additional railroad freight cars for operation on the United States general railroad system of transportation until the Secretary determines-

(i) such manufacturer is in compliance with this section; and

(ii) all civil penalties assessed to such manufacturer pursuant to subparagraph (A) have been paid in full.

(Added Pub. L. 117-58, div. B, title II, §22425(a), Nov. 15, 2021, 135 Stat. 753 .)

EDITORIAL NOTES

REFERENCES IN TEXT

The date of enactment of the Passenger Rail Expansion and Rail Safety Act of 2021, referred to in subsecs. (a)(4)(A) and (c)(1), is the date of enactment of title II of div. B of Pub. L. 117-58, which was approved Nov. 15, 2021.

¹ So in original. Probably should be "Association of American Railroads".