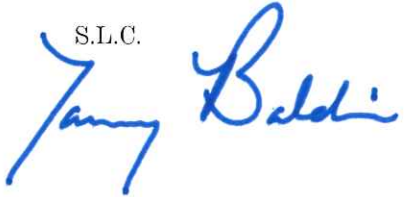


Baldwin \_ 1 as modified

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S.L.C.  


AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To establish requirements for railroad freight cars placed into service in the United States.

**IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.**

**S. 2016**

To authorize elements of the Department of Transportation, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Ms. BALDWIN (for herself and Mr. MORAN)

Viz:

1 At the end of subtitle D of title II, add the following:

2 **SEC. 24\_\_ . REQUIREMENTS FOR RAILROAD FREIGHT**

3 **CARS PLACED INTO SERVICE IN THE UNITED**

4 **STATES.**

5 (a) IN GENERAL.—Subchapter II of chapter 201 of

6 subtitle V of title 49, United States Code (as amended

7 by section 2416(a)), is amended by adding at the end the

8 following:

9 **“§ 20171. Requirements for railroad freight cars**

10 **placed into service in the United States**

11 **“(a) DEFINITIONS.—In this section:**

1           “(1) COMPONENT.—The term ‘component’  
2 means a part or subassembly of a railroad freight  
3 car.

4           “(2) CONTROL.—The term ‘control’ means the  
5 power, whether direct or indirect and whether or not  
6 exercised, through the ownership of a majority or a  
7 dominant minority of the total outstanding voting  
8 interest in an entity, representation on the board of  
9 directors of an entity, proxy voting on the board of  
10 directors of an entity, a special share in the entity,  
11 a contractual arrangement with the entity, a formal  
12 or informal arrangement to act in concert with an  
13 entity, or any other means, to determine, direct,  
14 make decisions, or cause decisions to be made for  
15 the entity.

16           “(3) COST OF SENSITIVE TECHNOLOGY.—The  
17 term ‘cost of sensitive technology’ means the aggre-  
18 gate cost of the sensitive technology located on a  
19 railroad freight car.

20           “(4) COUNTRY OF CONCERN.—The term ‘coun-  
21 try of concern’ means a country that—

22                   “(A) is identified by the Department of  
23 Commerce as a nonmarket economy country (as  
24 defined in section 771(18) of the Tariff Act of  
25 1930 (19 U.S.C. 1677(18))) as of the date of

1 enactment of the Passenger Rail Expansion and  
2 Rail Safety Act of 2021;

3 “(B) was identified by the United States  
4 Trade Representative in the most recent report  
5 required by section 182 of the Trade Act of  
6 1974 (19 U.S.C. 2242) as a foreign country in-  
7 cluded on the priority watch list (as defined in  
8 subsection (g)(3) of such section); and

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

12 “(5) NET COST.—The term ‘net cost’ has the  
13 meaning given such term in chapter 4 of the  
14 USMCA or any subsequent free trade agreement be-  
15 tween the United States, Mexico, and Canada.

16 “(6) QUALIFIED FACILITY.—The term ‘quali-  
17 fied facility’ means a facility that is not owned or  
18 under the control of a state-owned enterprise.

19 “(7) QUALIFIED MANUFACTURER.—The term  
20 ‘qualified manufacturer’ means a railroad freight car  
21 manufacturer that is not owned or under the control  
22 of a state-owned enterprise.

23 “(8) RAILROAD FREIGHT CAR.—The term ‘rail-  
24 road freight car’ means a car designed to carry  
25 freight or railroad personnel by rail, including—

- 1 “(A) a box car;  
2 “(B) a refrigerator car;  
3 “(C) a ventilator car;  
4 “(D) an intermodal well car;  
5 “(E) a gondola car;  
6 “(F) a hopper car;  
7 “(G) an auto rack car;  
8 “(H) a flat car;  
9 “(I) a special car;  
10 “(J) a caboose car;  
11 “(K) a tank car; and  
12 “(L) a yard car.

13 “(9) SENSITIVE TECHNOLOGY.—The term ‘sen-  
14 sitive technology’ means any device embedded with  
15 electronics, software, sensors, or other connectivity,  
16 that enables the device to connect to, collect data  
17 from, or exchange data with another device, includ-  
18 ing—

- 19 “(A) onboard telematics;  
20 “(B) remote monitoring software;  
21 “(C) firmware;  
22 “(D) analytics;  
23 “(E) global positioning system satellite and  
24 cellular location tracking systems;  
25 “(F) event status sensors;

1           “(G) predictive component condition and  
2 performance monitoring sensors; and

3           “(H) similar sensitive technologies embed-  
4 ded into freight railcar components and sub-as-  
5 semblies.

6           “(10) STATE-OWNED ENTERPRISE.—The term  
7 ‘state-owned enterprise’ means—

8           “(A) an entity that is owned by, or under  
9 the control of, a national, provincial, or local  
10 government of a country of concern, or an  
11 agency of such government; or

12           “(B) an individual acting under the direc-  
13 tion or influence of a government or agency de-  
14 scribed in subparagraph (A).

15           “(11) SUBSTANTIALLY TRANSFORMED.—The  
16 term ‘substantially transformed’ means a component  
17 of a railroad freight car that undergoes an applica-  
18 ble change in tariff classification as a result of the  
19 manufacturing process, as described in chapter 4  
20 and related annexes of the USMCA or any subse-  
21 quent free trade agreement between the United  
22 States, Mexico, and Canada.

23           “(12) USMCA.—The term ‘USMCA’ has the  
24 meaning given the term in section 3 of the United

1 States-Mexico-Canada Agreement Implementation  
2 Act (19 U.S.C. 4502).

3 “(b) REQUIREMENTS FOR RAILROAD FREIGHT  
4 CARS.—

5 “(1) LIMITATION ON RAILROAD FREIGHT  
6 CARS.—A railroad freight car wholly manufactured  
7 on or after the date that is 1 year after the date of  
8 issuance of the regulations required under sub-  
9 section (c)(1) may only operate on the United States  
10 general railroad system of transportation if—

11 “(A) the railroad freight car is manufac-  
12 tured, assembled, and substantially trans-  
13 formed, as applicable, by a qualified manufac-  
14 turer in a qualified facility;

15 “(B) none of the sensitive technology lo-  
16 cated on the railroad freight car, including com-  
17 ponents necessary to the functionality of the  
18 sensitive technology, originates from a country  
19 of concern or is sourced from a state-owned en-  
20 terprise; and

21 “(C) none of the content of the railroad  
22 freight car, excluding sensitive technology,  
23 originates from a country of concern or is  
24 sourced from a state-owned enterprise that has  
25 been determined by a recognized court or ad-

1           ministrative agency of competent jurisdiction  
2           and legal authority to have violated or infringed  
3           valid United States intellectual property rights  
4           of another including such a finding by a Fed-  
5           eral district court under title 35 or the U.S.  
6           International Trade Commission under section  
7           337 of the Tariff Act of 1930 (19 U.S.C.  
8           1337).

9           “(2) LIMITATION ON RAILROAD FREIGHT CAR  
10          CONTENT.—

11           “(A) PERCENTAGE LIMITATION.—

12           “(i) INITIAL LIMITATION.—Not later  
13           than 1 year after the date of issuance of  
14           the regulations required under subsection  
15           (c)(1), a railroad freight car described in  
16           paragraph (1) may operate on the United  
17           States general railroad system of transpor-  
18           tation only if not more than 20 percent of  
19           the content of the railroad freight car, cal-  
20           culated by the net cost of all components  
21           of the car and excluding the cost of sen-  
22           sitive technology, originates from a country  
23           of concern or is sourced from a state-  
24           owned enterprise.

1                   “(ii) SUBSEQUENT LIMITATION.—Ef-  
2                   fective beginning on the date that is 3  
3                   years after the date of issuance of the reg-  
4                   ulations required under subsection (c)(1), a  
5                   railroad freight car described in paragraph  
6                   (1) may operate on the United States gen-  
7                   eral railroad system of transportation only  
8                   if not more than 15 percent of the content  
9                   of the railroad freight car, calculated by  
10                  the net cost of all components of the car  
11                  and excluding the cost of sensitive tech-  
12                  nology, originates from a country of con-  
13                  cern or is sourced from a state-owned en-  
14                  terprise.

15                  “(B) CONFLICT.—The percentages speci-  
16                  fied in clauses (i) and (ii) of subparagraph (A),  
17                  as applicable, shall apply notwithstanding any  
18                  apparent conflict with provisions of chapter 4 of  
19                  the USMCA.

20                  “(c) REGULATIONS AND PENALTIES.—

21                  “(1) REGULATIONS REQUIRED.—Not later than  
22                  2 years after the date of enactment of the Passenger  
23                  Rail Expansion and Rail Safety Act of 2021, the  
24                  Secretary of Transportation shall issue such regula-  
25                  tions as are necessary to carry out this section, in-



1 including for the monitoring and sensitive technology  
2 requirements of this section.

3 “(2) CERTIFICATION REQUIRED.—To be eligible  
4 to provide a railroad freight car for operation on the  
5 United States general railroad system of transpor-  
6 tation, the manufacturer of such car shall annually  
7 certify to the Secretary of Transportation that any  
8 railroad freight cars to be so provided meet the re-  
9 quirements under this section.

10 “(3) COMPLIANCE.—

11 “(A) VALID CERTIFICATION REQUIRED.—  
12 At the time a railroad freight car begins oper-  
13 ation on the United States general railroad sys-  
14 tem of transportation, the manufacturer of such  
15 railroad freight car shall have valid certification  
16 described in paragraph (2) for the year in  
17 which such car begins operation.

18 “(B) REGISTRATION OF NONCOMPLIANT  
19 CARS PROHIBITED.—A railroad freight car  
20 manufacturer may not register, or cause to be  
21 registered, a railroad freight car that does not  
22 comply with the requirements under this section  
23 in the Association of American Railroad’s  
24 Umler system.

25 “(4) CIVIL PENALTIES.—

1           “(A) IN GENERAL.—Pursuant to section  
2           21301, the Secretary of Transportation may as-  
3           sess a civil penalty of not less than \$100,000,  
4           but not more than \$250,000, for each violation  
5           of this section for each railroad freight car.

6           “(B) PROHIBITION ON OPERATION FOR  
7           VIOLATIONS.—The Secretary of Transportation  
8           may prohibit a railroad freight car manufac-  
9           turer with respect to which the Secretary has  
10          assessed more than 3 violations under subpara-  
11          graph (A) from providing additional railroad  
12          freight cars for operation on the United States  
13          general railroad system of transportation until  
14          the Secretary determines—

15                   “(i) such manufacturer is in compli-  
16                   ance with this section; and

17                   “(ii) all civil penalties assessed to  
18                   such manufacturer pursuant to subpara-  
19                   graph (A) have been paid in full.”.

20          (b) CLERICAL AMENDMENT.—The analysis for chap-  
21          ter 201 of subtitle V of title 49, United States Code (as  
22          amended by section 2416(b)), is amended by adding at  
23          the end the following:

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