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DEVELOPING A RELIABLE AND INNOVATIVE VISION FOR THE ECONOMY (DRIVE) ACT

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Mr. INHOFE, from the Committee on Environment and Public
Works, submitted the following

R E P O R T

[To accompany S. 1647]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 1647) to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

PURPOSE OF THE LEGISLATION

S. 1647, as amended, authorizes Federal-aid highway and highway safety construction programs through Fiscal Year 2021.

GENERAL STATEMENT AND BACKGROUND

Legislation authorizing Federal investment in our nation's highways date back nearly 100 years, to the passage of the Federal Aid Road Act of 1916 and the Federal Highway Act of 1921. However, it was the enactment of the Federal-Aid Highway Act of 1956 which significantly increased Federal investment in America's highway system, directed considerable funding to the building of the Interstate System, and established the Highway Trust Fund as the mechanism for financing the highway program. In addition, passage of the Highway Revenue Act of that same year increased some of the existing highway-related taxes, established new taxes, and provided that most of the revenues from these taxes be deposited in the Highway Trust Fund as the means to finance the Federal-aid highway program. A number of multi-year authorization

bills have been passed in the decades following which authorized and modified the Federal-aid highway program, provided formula funding to States for the construction and maintenance of the nation's highway system, and extended the highway-related taxes deposited into the Highway Trust Fund.

Intermodal Surface Transportation Efficiency Act of 1991

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was signed into law by President George H.W. Bush on December 18, 1991, as Public Law 102-240. It authorized the Federal surface transportation programs for highways, highway safety, and transit for the 6-year period between 1992 and 1997. ISTEA was a milestone in the nation's transportation history, as it provided the transition from a Federal program based on completion of the Interstate system to a new Federal-State-local partnership focused on balancing national systems of transportation and State and local empowerment.

The three principal goals of ISTEA—intermodalism, flexibility, and efficiency—were intended to carry out the larger policy goal of developing a national intermodal transportation system that connected all forms of surface transportation in a unified and integrated manner. It was envisioned that such a system would include the National Highway System, consisting of the Interstate System and those principal arterial roads essential for national defense, along with connections to intermodal transfer facilities, international commerce and border crossings, ports, and airports. A primary purpose of ISTEA was the development of a transportation system that was economically efficient and environmentally sound, which provided the foundation for the nation to compete in a global economy and moved people and goods in an efficient manner.

National Highway System Designation Act of 1995

The National Highway System Designation Act (NHS Act) was signed into law by President Clinton on November 28, 1995, as Public Law 104-59. The purpose of the NHS Act was to designate the National Highway System, consisting of the Interstate System and those principal arterial routes that were essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities and trade.

With the substantial completion of the Interstate System, Congress recognized that the primary Federal responsibility to ensure adequate mobility on our transportation system for people and goods could be achieved on a larger network of roads. Today, the National Highway System contains interconnected routes that carried more than 55 percent of the nation's highway traffic and 97 percent of truck freight traffic and represents 5.5 percent of the nation's most heavily traveled miles of the four million miles of public roads. Americans depend on a well-maintained NHS that provides critical connections between urban and rural communities.

Transportation Equity Act for the 21st Century

The Transportation Equity Act for the 21st Century (TEA-21) was signed into law by President Clinton on June 9, 1998, as Public Law 105-178. It authorized Federal surface transportation programs for the 6-year period between 1998 and 2003. TEA-21 built

upon the initiatives established in ISTEA to meet the challenges of improving safety and enhancing communities while advancing America's economic growth and competitiveness domestically and internationally through efficient transportation. Flexibility in the use of funds, emphasis on measures to improve the environment, focus on a strong planning process for making investment decisions—all hallmarks of ISTEA—were continued and enhanced by TEA-21.

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into law by President George W. Bush on August 10, 2005, as Public Law 109-59. SAFETEA-LU provided increased transportation infrastructure investment, strengthened transportation safety and environmental programs, and continued core research activities. After the expiration of SAFETEA-LU on September 30, 2009, Federal surface transportation programs were continued through a series of short-term extensions until the enactment of the Moving Ahead for Progress in the 21st Century Act.

Moving Ahead for Progress in the 21st Century Act

The Moving Ahead for Progress in the 21st Century Act (MAP-21) reauthorized the Federal-aid highway program at the Congressional Budget Office's baseline funding level over fiscal years 2013 and 2014.

MAP-21 modernized and reformed the transportation system to help create jobs, accelerate economic recovery, and build the foundation for long-term prosperity. The main goals of MAP-21 were to improve safety, reduce congestion and its impacts, consolidate programs substantially to refocus the Federal-aid highway program, improve the efficiency of infrastructure project delivery, and establish funding and performance criteria. MAP-21 achieved many of those goals by significantly reforming and modernizing Federal surface transportation programs.

Developing a Reliable and Innovative Vision for the Economy Act

This bill, the Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act, builds on the success of the comprehensive reforms and performance-based approach to transportation investment included in MAP-21. It provides six years of increased funding, giving State and local governments the certainty and stability they need to improve and develop our nation's transportation infrastructure. These investments will create new jobs, provide a boost to our nation's economy, and keep us competitive in the global marketplace. Highlights of the legislation include:

- Long-term funding certainty for State and local governments to support multi-year transportation project investments;
- Increased funding for existing core transportation formula programs to provide States and local governments with a strong Federal partner;
- Creation of a new multi-billion dollar per year freight program to help States deliver projects that promote the safe, effi-

cient, and reliable transportation of consumer goods and products that is on top of the existing formula programs;

- Targeted funds for major projects of high importance to a community, a region, or the nation;
- Greater efficiency in the project delivery process through improved collaboration and reduced duplication;
- Increased funding priority on the Interstate System, the National Highway System, and bridges at risk of funding shortfalls;
- Greater transparency on the use of Federal funds to show taxpayers where their infrastructure dollars are being spent and reinforce public trust; and
- Support for innovative financing tools that allow State and local governments to leverage Federal funds for transportation projects and maximize investments, particularly in rural areas where such tools were previously unavailable.

Conclusion

The DRIVE Act will provide critical long-term stability and certainty which will allow State and local governments to invest immediately in much-needed projects to maintain and improve the nation’s surface transportation infrastructure. This will create jobs and stimulate economic activity immediately. Improving the nation’s surface transportation infrastructure and implementing the previously enacted reforms included in MAP–21 will provide long-term benefits to the United States by keeping the economy competitive, ensuring that funds are used more efficiently, and spurring innovation and technology deployment.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section designates the title of the bill as the “Developing a Reliable and Innovative Vision for the Economy Act”.

Section 2. Definitions; Table of contents

This section defines the terms “Department” as the Department of Transportation and “Secretary” as the Secretary of Transportation for the purposes of this Act and lists the table of contents.

TITLE I—FEDERAL-AID HIGHWAYS

SUBTITLE A—AUTHORIZATIONS AND PROGRAMS

Sec. 1001. Authorization of appropriations

This section provides contract authority funding amounts from the Highway Trust Fund for Federal-aid highways and highway safety construction programs for the length of the bill, fiscal years 2016–2021.

Sec. 1002. Obligation ceiling

This section sets the annual limitation on obligations for Federal-aid highways and highway safety construction programs for the length of the bill, fiscal years 2016–2021. This section identifies the programs that are exempt from the obligation limitation and pro-

vides the methodology for distributing the obligation authority between programs and among the States.

Sec. 1003. Apportionment

This section provides the administrative expense amounts for the Federal Highway Administration by fiscal year, includes the percentage division of Federal-aid highway program funding, and establishes funding amounts by fiscal year for the newly proposed National Freight Program.

Sec. 1004. Surface Transportation Program

This section modifies the percentage of Surface Transportation Program (STP) funds to be suballocated on the basis of population from 50 to 55 percent. This section increases the amount set-aside from STP funds for bridges and broadens the set-aside eligibility to include any bridge not located on the National Highway System (“off-NHS bridges”). This section provides that States may receive credit toward the non-Federal share of the cost of other bridge projects conducted with State and local sources for any bridge project not on a Federal-aid highway.

Sec. 1005. Metropolitan transportation planning

This section provides references encouraging Metropolitan Planning Organizations (MPOs) to consider ‘resiliency’ during the planning process. This section provides for consideration of intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities, in the long-range transportation plans and transportation improvement programs. This section provides that designation or selection of metropolitan planning organization officials or representatives shall be determined in accordance with the bylaws or enabling statute of the respective MPO. This section also provides that a representative of a provider of public transportation may also serve as a local elected official. In addition, officials of public agencies under paragraph (2)(B) shall be provided with commensurate authority with other such officials. This section clarifies that the Lake Tahoe Region is a metropolitan planning organization, a transportation management area, and an urbanized area, and clarifies the funding calculation for the region under the Surface Transportation Program and the Transportation Alternatives Program.

Sec. 1006. Statewide and nonmetropolitan transportation planning

This section provides for consideration of intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities, in the statewide transportation plans and transportation improvement programs. This section provides references encouraging States to consider “resiliency” during the planning process.

Sec. 1007. Highway use tax evasion projects

This section provides a reduced amount of funds (\$4,000,000) to be used in conjunction with the Internal Revenue Service for highway use tax evasion projects. This funding authorization is consistent with the actual expenditure by the Internal Revenue Service for such projects.

Sec. 1008. Bundling of bridge projects

This section provides affirmative authority to allow State and local governments with flexibility to bundle similar bridge projects eligible under the National Highway Performance Program (NHPP) or STP programs in order to increase efficiencies and accelerate the design and project approvals for such projects.

Sec. 1009. Flexibility for certain rural road and bridge projects

This section provides an opportunity to save time and money in delivering certain projects located in rural areas. This section directs the Secretary of Transportation to exercise any flexibilities available under existing legal authorities for eligible road and bridge projects in order to provide regulatory relief and flexibility to allow for expedited approval and construction of such projects. The provision does not authorize relief from statutory requirements, but does authorize the Secretary to provide relief from regulatory requirements provided that the project is not expected to have either a significant adverse impact on the environment or an adverse impact on safety. It is the intent of the Committee that the Secretary act promptly in response to requests for regulatory relief made pursuant to this section.

Sec. 1010. Construction of ferry boats and ferry terminal facilities

This section modifies the formula factor percentages for the Ferry Boat Program. This section provides for the redistribution of allocated funds for the program that remain unobligated after three fiscal years following the fiscal year the amounts were allocated. This section provides a minimum allocation to each State of \$100,000 in a fiscal year. This section requires funds to be allocated based on the most recent data available in the National Ferry Database. This section authorizes the program at \$75,000,000 for each of fiscal years 2016 through 2021.

Sec. 1011. Highway safety improvement program

This section restricts the use of the Highway Safety Improvement Program funds so that they may only be used on safety infrastructure projects, not behavioral safety projects. This section adds new eligibilities under the program including installation of vehicle-to-infrastructure communication equipment, pedestrian hybrid beacons, and median and pedestrian crossing islands. This section modifies the high-risk rural road safety special rule to specify that a State must actually show progress in reducing fatalities on such facilities. In achieving the purpose of the Highway Safety Improvement Program, States should consider cost-efficiency when evaluating which infrastructure-related highway safety improvements to utilize, without sacrificing the productivity of the improvement.

Sec. 1012. Data collection on unpaved public roads

This section provides States flexibility with respect to MAP-21 data collection requirements on unpaved public roads. The flexibility under this section is based on unpaved roads and fatality data. This section provides that a State may not use Highway Safety Improvement Program funds on any unpaved road for which data has not been collected.

Sec. 1013. Congestion mitigation and air quality improvement (CMAQ) program

Additionally, the section provides an exemption from the requirement that some CMAQ funds be set aside in cases of PM-2.5 nonattainment or maintenance status in an area in States with a population density of less than 80 persons per square mile. The Committee became aware of circumstances where rural counties or areas are in or could fall into nonattainment for PM-2.5 largely due to non-transportation sources, such as wood smoke from stoves used for heating, from road dust, or from dust or particulates at mines or energy facilities. The CMAQ funds set aside in these cases could not be used to address the non-transportation source of the PM-2.5 and could not be used for priority transportation purposes, either. This section improves the effectiveness of the Federal-aid highway program without undercutting the purpose of the PM-2.5 set aside, which is to address PM-2.5 nonattainment driven by motor vehicle emissions. Under this exemption, the PM-2.5 set aside would not apply with respect to a non-attainment or maintenance area in a low population density State when the regional motor vehicle emissions are an insignificant contributor to the PM-2.5 air quality problem in that nonattainment or maintenance area, and where the area in nonattainment or maintenance for PM-2.5 does not have projects in the applicable STIP that are part of the emissions analysis for a metropolitan transportation plan or improvement program. The absence of transportation control measures for a nonattainment or maintenance area specifically for PM-2.5 would be one way that the Secretary could find that motor vehicle emissions are an insignificant contributor to the PM-2.5 air quality problem. In such nonattainment or maintenance areas, States will receive a proportionate reduction in the amount of funds set aside for PM2.5 emissions reduction projects. The section also modifies the PM-2.5 set aside and priority use of funding for projects that reduce emissions of fine particulate matter to clarify that such funds must be utilized for cost-effective projects that reduce direct emissions of PM2.5. This is to ensure that States are maximizing the reduction of PM2.5 emissions and associated public health impacts, consistent with the priority set-aside established in MAP-21.

The section expands the eligibility to allow for the utilization of CMAQ funds for diesel retrofits for projects funded under both title 23 and chapter 53 of title 49, United States Code. The section also offers States flexibility to utilize funds set aside for the reduction of PM2.5 emissions for certain eligible port-related and other surface transportation projects.

Sec. 1014. National freight program

This section establishes dedicated funding for a new, focused freight program for States to fund projects that enhance regional and national freight movement. This section amends 23 U.S.C. 167 in the following ways.

Subsection (a) sets forth the policy of the United States to improve the national highway freight network, recognizing that it is the foundation for the nation's economy and the key to the nation's ability to compete in the global economy. This subsection also establishes the national freight program in accordance with the pol-

icy stipulated above and to achieve the goals articulated in subsection (b), below.

Subsection (b) outlines the goals of the national freight program.

Subsection (c) establishes the national highway freight network, which consists of the primary highway freight system, critical rural freight corridors, critical urban freight corridors, and all Interstate System routes (including future designated routes).

Subsection (d) articulates how the primary highway freight system is to be designated and redesignated. The initial designation of the primary highway freight system will be the network designated by the Secretary under section 167 of title 23, United States Code, as in existence the day before the date of enactment of the DRIVE Act, plus all NHS freight intermodal connectors. This subsection requires the Secretary to redesignate the primary highway freight system 1 year after enactment of this Act and every 5 years thereafter using particular factors, mileage limitations, and input from States and State freight advisory committees. This section provides that States may increase the number of miles on the primary highway freight system, but by no more than 10 percent of the miles already designated in that State and no later than 1 year after each redesignation conducted by the Secretary based on particular criteria provided in this section and that the State shall consider nominations from MPOs within the State of additional miles they would like to have designated. This subsection strikes the network connectivity requirement originally included in the designation factors for the primary freight network under section 167 of title 23, United States Code, as in existence the day before the date of enactment of the DRIVE Act, to indicate the intent of the Committee that the primary highway freight system does not need to represent a connected network, but should instead recognize those facilities that the best available data indicates are the most critical facilities to moving goods into, out of, and through the nation.

Subsection (e) provides that a State may designate certain routes as critical rural freight corridors if those routes meet certain criteria relating to truck volume, access to energy or agricultural facilities, connectivity to other freight facilities, or other facilities the State believes to be important to improving the efficient movement of goods. Subsection (f) is a parallel provision to subsection (e) and provides that States and large metropolitan planning organizations may designate certain routes as critical urban freight corridors. Subsection (g) provides that a State or metropolitan planning organization making a designation under subsections (e) or (f) may do so on a rolling basis and, if making such a designation, must certify that the facilities meet the requirements of the applicable subsections.

Subsections (h) and (i) pertain to the national freight strategic plan and the highway freight transportation conditions and performance reports enacted under MAP-21. Subsection (h) provides that the Secretary must develop and publish a National Freight Strategic Plan no later than 3 years after the date of enactment of the DRIVE Act. Subsection (i) requires the Secretary to submit a report to Congress no later than 2 years after the date of enactment of the DRIVE Act that describes the condition and performance of the national highway freight network.

Subsection (j) requires the Secretary to develop and implement freight related transportation investment data and planning tools no later than 1 year of the date of enactment of the DRIVE Act. In order for States and MPOs to carry out freight-related performance management analyses necessary to meet the performance-based planning and programming structure created under MAP-21, States and MPOs should use the latest, most advanced, reliable, and transparent national data set of average travel times.

Subsection (k) dictates how funds apportioned under this program shall be used. It provides that States with less than 3 percent in the ratio that the total mileage of the State on the primary highway freight system bears to the total mileage of the primary highway freight system in all States may use their freight formula funds for projects on any component of the national highway freight network. States with a ratio of 3 percent or greater may use their freight formula funds for projects on the primary highway freight system, critical rural freight corridors, or critical urban freight corridors. This subsection reinforces the requirement that a State establish freight advisory committees and develop State freight plans by providing that, if a State does not establish both within two years of enactment of the DRIVE Act, from that point a State may not obligate freight formula funds until the State has met those two requirements. This subsection also limits a State from spending more than 10 percent of their freight funds on intermodal freight projects.

Subsection (l) requires States to submit a freight performance improvement plan if the States has not met or made significant progress toward meeting freight performance targets under section 150 of title 23, United States Code.

Subsection (m) requires the Secretary to submit a report to Congress evaluating the effect of the 10 percent intermodal use limitation under subsection (k).

Subsections (n) and (o) codify the State freight advisory committee and State freight plan language in MAP-21 sections 1116 and 1117, respectively.

Subsection (p) defines intelligent freight transportation systems and describes the location and operating standards for such systems.

Sec. 1015. Assistance for major projects program

This section requires the Administrator of the Federal Highway Administration (“Administrator”) to establish a program to fund major surface transportation projects that will have a significant impact on a region or the nation. This section provides that eligible applicants under this program may be a State, local government, tribal government, a transit agency, a special purpose district or a public authority with a transportation function, a port authority, a political subdivision of a State or local government, a Federal land management agency, or multiple States or eligible entities. This section provides that projects eligible under this program may be projects eligible under title 23 or chapter 53 of title 49, United States Code, except that such projects must meet particular eligible project costs estimates. This section provides that a grant provided under this program must be at least \$50,000,000, except that projects selected in rural areas or rural States may receive smaller

grants. No less than 20 percent of the amount available to carry out the program in a given fiscal year must be awarded to rural areas or rural States. This section limits the percentage of funds in a fiscal year that may be used on multimodal freight projects or transit projects to 20 percent or less. This section limits the funds granted in a fiscal year to no more than 20 percent for a project in a single State. This section provides that the Administrator may use amounts awarded toward subsidy or administrative costs needed to provide a TIFIA loan for the same project for which the grant award was provided. This section requires project sponsors to evaluate system performance for projects awarded grants under this section at each of 5, 10, and 20 year intervals after the project is completed. This section requires the Administrator to conduct a national solicitation for eligible projects. This section provides that once the Administrator has received project applications, the Administrator must submit a list of projects that meet the requirements of this section by January 1 of each year to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, except that the submitted list must equal a total requested grant amount of at least 2 times, but not more than 4 times, the authorization level for the program in each fiscal year. This section provides that not later than 90 days after receiving the list of projects from the Administrator, each Committee must select projects to be funded by adopting a resolution. This section requires adoption of a congressional joint resolution to approve the award of projects selected by the committees. This section provides that if a congressional joint resolution is not adopted within 90 days after the date on which the first Committee adopts a resolution selecting projects, or if neither Committee acts, then the Administrator shall select projects and grant awards within 90 days.

The Assistance for Major Projects Program (AMPP) will facilitate the construction of infrastructure projects that are difficult to complete solely using existing Federal, State, local, and private funds. Among other purposes, projects supported by AMPP will reduce congestion and the impacts of congestion, generate national and regional economic benefits, facilitate the efficient movement of freight, and improve roadways that are vital to national energy security. With this new program, the Committee emphasizes the importance of addressing transportation impediments which significantly slow interstate commerce. Across the country there are significant bottlenecks that could benefit from this program, which would provide substantial grant funding for infrastructure projects. Examples of such mega-projects include the I-10 Mobile River Bridge Project in Alabama, the I-75/I-71 Brent Spence Bridge Corridor Project in Ohio and Kentucky, the Arlington Memorial Bridge between Virginia and the District of Columbia, the I-635E reconstruction in Texas, and the I-5 Columbia River Crossing between Washington State and Oregon.

Sec. 1016. Transportation alternatives

This section provides \$850,000,000 for the Transportation Alternatives program each fiscal year. This section provides that each State will receive a proportion of the funds authorized for the program in the ratio of the amount apportioned to the State for the

Transportation Enhancements program in fiscal year 2009 as it bears to the total amount of funds apportioned to all States for the Transportation Enhancements program in fiscal year 2009. This section provides that all of the funds provided to a State under this section must be suballocated to areas based on their relative share of the total State population. This section clarifies that a metropolitan planning organization may further suballocate funds within the boundaries of the metropolitan planning area if a competitive process is used to make the award. This section requires States or metropolitan planning organizations to submit an annual report to the Secretary describing the number of applications received in each fiscal year and the number of projects selected each fiscal year under this section. This section requires the Secretary to develop regulations or guidance regarding implementation of this section that encourages productive and timely expenditure for projects.

Sec. 1017. Consolidation of programs

This section continues funding through fiscal year 2021 for safety clearinghouses and public service programs that have received funding since SAFETEA-LU.

Sec. 1018. State flexibility for National Highway System modifications

This section requires the Secretary to issue guidance within 90 days of enactment of the DRIVE Act for States requesting assistance from the Federal Highway Administration to review roads classified as principal arterials of the National Highway System as of October 1, 2012, and identify any necessary functional classification changes to rural and urban principal arterials. This section requires the Department to act expeditiously in the review and reclassification of such arterials and assist with the removal of reclassified roads if the inclusion of the road on the National Highway System is not consistent with the needs and priorities of the community or region in which the reclassified road is located. This section requires the Secretary to review the National Highway System modification process and make any necessary regulatory changes to ensure that a State may modify or withdraw a road from the National Highway System. This section requires the Department to submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives within 1 year of enactment of the DRIVE Act, and every year thereafter, that provides the status of any requests made by a State for the reclassification of a road on the National Highway System. This section provides clarifications to section 103 of title 23, United States Code, regarding the withdrawal of a road on the National Highway System.

Sec. 1019. Toll roads, bridges, tunnels, and ferries

This section makes technical changes to clarify existing State tolling authorities related to the calculation of High Occupancy Vehicle (HOV) lanes with respect to tolled and toll-free lanes. The section also requires that private buses serving the public be given access to toll facilities on the same terms as public buses.

Sec. 1020. HOV facilities

This section makes modifications to consolidate and align authorities and requirements related to establishment and conversion of High Occupancy Vehicle (HOV) and High Occupancy Toll (HOT) lanes. It also updates and modernizes the definition of low-emission and energy-efficient vehicles that States may designate as exempt from tolls, eligible for reduced toll rates, or exempt from HOV requirements. Finally, the section institutes a more structured procedure that public entities must follow to address degraded performance of an HOV facility.

Sec. 1021. Interstate System Reconstruction and Rehabilitation Pilot Program

This section would continue the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP)—created in 1998 as part of the Transportation Equity Act for the 21st Century. The purpose of the ISRRPP is to provide a limited number of States with the ability to pursue tolling portions of their Interstate System highways for the purpose of reconstruction and rehabilitation of those assets.

In addition to continuing the program, This section makes modifications to the existing Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP) to streamline the application process, reduce Administrative discretion in approval of applications, and create greater certainty for States seeking to utilize the opportunities offered by the program for the reconstruction and rehabilitation of Interstate highways, consistent with the overall goal of expediting efforts to reconstruct or rehabilitate America’s Interstate highways. These modifications would streamline the process for approval and implementation of the pilot program—allowing States to move forward once they have met the requirements and are ready to do so.

There are currently three slots in the ISRRPP and this section maintains that number. At this time, the three slots are currently occupied. Missouri received conditional provisional approval from the U. S. Federal Highway Administration on July 26, 2005; Virginia on September 14, 2011; and North Carolina on February 17, 2012. In each case, various local factors have prevented the State from advancing its pilot past the point of receiving FHWA’s conditional provisional approval. Because the three slots are currently occupied and even though there has been no movement on their respective projects, no other State that may wish to participate can have access to the program.

The section requires that a State that wishes to participate in the program submit a detailed application that includes, among other things, including an analysis demonstrating that the facility has a significant age, condition, or intensity of use, and an analysis showing how the State plan for implementing tolls on the facility takes into account the interests and use of local, regional, and interstate travelers. The application process provides an opportunity for public input on pilot program proposals. In addition, the section creates a mechanism for the U. S. Transportation Secretary to cancel a State’s participation in the ISRRPP if the State has not made demonstrable progress within a specified period of time, as well as for a State to voluntarily withdraw from the pilot.

Sec. 1022. Emergency relief for Federally owned roads

This section clarifies that the Emergency Relief program may be utilized for eligible projects located on tribal transportation facilities, Federal lands transportation facilities, or other Federally owned roads open to public travel. This section provides a definition for roads open to public travel.

Sec. 1023. Bridges requiring closure or load restrictions

This section ensures continued safety of the traveling public by providing the Secretary authority for circumstances when a State, Federal agency, or tribal government fails to properly close or to restrict loads on a bridge that is open to public travel. Under this section, the Federal agency, or tribal government is responsible for ensuring proper closure or load restriction of bridges under its jurisdiction, and the State is responsible for all other bridges within its boundaries. This section provides that the Secretary must require a State, Federal agency, or tribal government to close such a bridge within 48 hours or restrict loads on it within 30 days. This section provides that failure of a State to do so could result in the Secretary withholding approval for Federal-aid projects in the State. This section provides that failure by a Federal agency or tribal government to close such a bridge or restrict loads could result in the Secretary withholding title 23 funding available to such Federal agency or Tribe.

Sec. 1024. National electric vehicle charging and natural gas fueling corridors

This section requires the Secretary to designate electric vehicle charging and natural gas fueling corridors across the nation to identify the needs and most vital locations for such fueling and charging infrastructure. This section requires the Secretary to solicit nominations for such corridors and involve stakeholders in the designation process. This section requires the Secretary to redesignate and update the designated corridors every 5 years. This section requires the Secretary to issue a report after each designation and redesignation of the corridors.

Sec. 1025. Asset management

This section modifies the term used to describe the condition of a bridge in need of repair from “structurally deficient” to “being in poor condition” for consistency with the performance management process.

Sec. 1026. Tribal transportation program amendment

This section decreases the program management and oversight and project-related administrative expenses related to the tribal transportation program from 6 percent to 5 percent. This section increases the set-aside for high-priority tribal bridges from 2 percent to 3 percent.

Sec. 1027. Nationally significant Federal lands and tribal projects program

This section requires the Secretary to establish a program to provide funding to construct, reconstruct, or rehabilitate nationally significant Federal lands and tribal transportation projects. This

section provides that eligible applicants for this program include entities eligible for funding under sections 201, 202, 203, and 204 of title 23, United States Code. This section provides that eligible projects under this program must be a single, continuous project on a Federal lands transportation facility, a Federal lands access transportation facility, or a tribal transportation facility. This section further provides that the National Environmental Policy Act process must have been completed for such projects and that those projects must meet certain estimated costs described in this section. This section provides that activities related to project design are not eligible under this program. This section provides that the Secretary must consider certain factors when selecting projects. This section provides that the Federal share for projects funded under this program is 95 percent.

Sec. 1028. Federal lands programmatic activities

This section provides technical changes regarding Federal lands programmatic activities. This section clarifies that the Indian Self-Determination and Education Assistance Act applies to data collection required to implement the tribal transportation program, rather than data collection required to implement the Federal Lands Transportation Program (FLTP) and Federal Lands Access Program (FLAP). This section adds a new eligibility for cooperative research and technology deployment between the Department and appropriate Federal land management agencies. This section clarifies that the 5 percent takedown from the FLTP and FLAP, data collection, bridge inspections, and asset management activities may only be used for Federal lands transportation facilities, Federal lands access transportation facilities, and other Federally-owned roads open to public travel. This section also allows such funds to be used for bridge inspections on any Federally-owned bridge, even if such bridge is not included on the FLTP inventory, and for transportation planning activities undertaken by any Federal land management agency eligible for funding under chapter 2 of title 23, United States Code.

Sec. 1029. Federal lands transportation program

This section makes technical changes to allow for effective implementation of the Federal lands transportation program. This section makes capital transit projects eligible for funds under this program. This section provides that before the Secretary provides funding to eligible agencies, the award should also be coordinated with the transportation plan of the Bureau of Reclamation and independent Federal agencies with natural resource and land management responsibilities.

Sec. 1030. Innovative project delivery

This section provides that the Federal share payable increase of up to 100 percent for innovative projects includes those projects that contain innovative engineering, design approaches, or project delivery methods. The intent of this is to incentivize the use of an innovative design for a facility such as an interchange, or an engineering method such as a newly developed pavement material that will extend the service life of a facility. This section also provides that examples of such projects include those that use innovative

procurement procedures such as alternative design or alternative bid, in which two or more designs or bid items are presented for the same project in order to foster competition, innovation, and cost savings.

SUBTITLE B—ACCELERATION OF PROJECT DELIVERY

Sec. 1101. Categorical exclusion for projects of limited Federal assistance

This section provides for an inflationary adjustment to the categorical exclusion for projects of limited Federal assistance, by amending MAP–21 section 1317 where this categorical exclusion was originally enacted. This section inflates the \$5 million and \$30 million figures from MAP–21 section 1317 by the Consumer Price Index between July 1, 2012 and October 1, 2015, and annually thereafter.

Sec. 1102. Programmatic agreement template

MAP–21 provided the Secretary the authority to enter into programmatic agreements with States under which a State can make categorical exclusion determinations on projects. This section modifies this new authority by directing the Secretary to create a standard template of a programmatic agreement that can voluntarily be used by States, in a manner that fits the unique needs and circumstances of that State.

Sec. 1103. Agency coordination

This section amends section 139(c)(6) of title 23, United States Code, to require that participating agencies engaging in the environmental review process provide comments, responses, studies, or methodologies on those areas within the special expertise or jurisdiction of the participating agency.

Sec. 1104. Initiation of environmental review process

This section amends section 139 of title 23, United States Code, to allow a project sponsor to initiate the environmental review process when innovative or nontraditional financing sources, such as a Transportation Infrastructure Finance and Innovation Act loan, are the potential funding source for the project. This section gives a project sponsor the statutory authority to request a specific operating administration or secretarial office within the Department to serve as the Federal lead agency for the project. This section encourages agencies to reduce duplication in the evaluation of alternatives during the National Environmental Policy Act and planning processes.

Sec. 1105. Improving collaboration for accelerated decision making

This section requires the lead agency to establish a schedule for completion of the environmental process when an Environmental Assessment or Environmental Impact Statement is required. This section amends section 139 of title 23, United States Code to relate the time period for application of financial penalty provision against a Federal agency back to the benchmarks in the schedule for completion established by the lead agency and agreed-to by the participating agencies. If the participating agencies never agreed to

the lead agency-established schedule, than the 180-day schedule in current law would still govern the assessment of financial penalties.

Sec. 1106. Accelerated decisionmaking in environmental reviews

MAP-21 section 1319 vested lead agencies with the authority to draft errata sheets providing minor technical edits to final environmental impact statements so that the lead agencies would not have to go through the procedural step of issuing a supplemental environmental impact statement to make such changes. MAP-21 section 1319 did not codify this authority within title 23, United States Code. This section codifies section 1319 of MAP-21 in title 23, United States Code.

Sec. 1107. Improving transparency in environmental reviews

This section requires the Secretary of Transportation to establish an online platform to report project level status of the reviews, approvals, and permits required for compliance with NEPA or other Federal laws.

Sec. 1108. Integration of planning and environmental review

This section reduces duplication between the transportation planning and the environmental review processes. This section will improve efficiency of project delivery by making it easier for documents prepared during the transportation planning process to be used during the environmental review process, consistent with National Environmental Policy Act.

Sec. 1109. Use of programmatic mitigation plans

This section requires a Federal agency responsible for environmental reviews, permits, or approvals for a transportation project to consider any programmatic mitigation plans developed by a State or Metropolitan Planning Organization to address environmental impacts of future transportation projects.

Sec. 1110. Adoption of Departmental environmental documents

This section allows an operating administration within the Department to adopt a draft Environmental Impact Statement, Final Environmental Impact Statement, Environmental Assessment or any other document issued under NEPA by another operating administration within the Department for a project if the project is substantially similar to the project for which the original document was developed.

Sec. 1111. Technical assistance for States

This section requires the Secretary of Transportation to provide technical assistance to a requesting State when the State is assuming responsibility for categorical exclusion determinations under title 23, United States Code. This section extends the period for corrective action during the termination process after a State has assumed such responsibility and requires that the State have an opportunity to rectify implementation issues prior to final termination.

Sec. 1112. Surface transportation project delivery program

This section extends the period for corrective action during the termination process after a State has assumed full National Environmental Policy Act responsibility from the Secretary. This section requires that the State have an opportunity to rectify implementation issues prior to final termination.

Sec. 1113. Categorical exclusions for multimodal projects

This section expands the application of categorical exclusions for multimodal projects to all Departmental actions rather than only those funded under title 23 or chapter 53 of title 49, United States Code.

Sec. 1114. Modernization of the environmental review process

This section requires the Secretary to examine ways to modernize, simplify, and improve implementation of the National Environmental Policy Act process through a report to be submitted to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives no later than 1 year after the date of enactment of the DRIVE Act.

Sec. 1115. Service club, charitable association, or religious service signs

This section provides States the option of grandfathering existing service club, charitable association, or religious service signs with a size of 32 square feet or less. All future signs must meet the 8 square feet requirement in the Highway Beautification Act.

Sec. 1116. Satisfaction of requirements for certain historic sites

This section aligns the section 4(f) and section 106 processes to achieve efficiency in reviews for historic sites while continuing to provide important protection for cultural resources including mitigating potential impacts. This section would require the Department of Transportation to work with the Department of the Interior and the Advisory Council on Historic Preservation on ways to effectively implement this section and align section 4(f) and section 106 requirements.

Sec. 1117. Bridge exemption from consideration under certain provisions

This section exempts a category of ordinary concrete and steel bridges constructed after 1945 from section 4(f) review.

Sec. 1118. Elimination of barriers to improve at-risk bridges

This section provides a temporary authorization for the taking of nesting swallows when conducting a construction project on a bridge in serious condition. The temporary authorization would expire upon the issuance of a final rule by the Secretary of Interior that provides a process for such takes.

Sec. 1119. At-risk project preagreement authority

This section allows a State or a subrecipient of Federal-aid funds to incur preliminary engineering expenses before the State or subrecipient receives a project authorization. Such expenses would

be at the risk of the State or subrecipient, but if the project is authorized, then the State or subrecipient could request reimbursement of such expenses from Federal funds.

SUBTITLE C—MISCELLANEOUS

Sec. 1201. Credits for untaxed transportation fuels

This section allows States that collect revenue on vehicles that operate on fuels not taxed at the Federal level to use this revenue as a “soft match” to increase the Federal share on projects. This section requires the Secretary in coordination with appropriate Federal agencies to submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House by September 30, 2023 that describes the most efficient and equitable means of taxing motor vehicle fuels not subject to a Federal tax.

Sec. 1202. Justification reports for access points on the Interstate System

This section amends section 111 of title 23, United States Code by providing a clarification regarding the type of projects covered by the justification report provision.

Sec. 1203. Exemptions

This section amends section 127 of title 23, United States Code by providing certain exemptions to truck weight laws for natural gas vehicles, emergency vehicles, and a small segment in the State of Arkansas. This section allows natural gas vehicles to exceed any vehicle weight limit of up to 82,000. This section allows emergency vehicles to receive an exemption of up to 86,000 pounds. This section designates U. S. Route 63 between the exits for highways 14 and 75 in Arkansas as part of the Interstate system.

Sec. 1204. High priority corridors on the national highway system

This section amends section 1105 of the Intermodal Surface Transportation Efficiency Act by adding three new future Interstate designations along the Raleigh-Norfolk Corridor, Washoe County Corridor, and Intermountain West Corridor.

Sec. 1205. Repeat intoxicated driver law

This section provides that State repeat intoxicated driver laws may be viewed in combination for purposes of meeting the requirements of section 164 of title 23, United States Code.

Sec. 1206. Vehicle-to-infrastructure equipment

This section amends sections 119(d) and 113(b) of title 23, United States Code, by adding funding eligibilities for vehicle-to-infrastructure communication equipment under the National Highway Performance Program and the Surface Transportation Program.

Sec. 1207. Designated projects

This section provides States the flexibility to repurpose earmarks older than 10 fiscal years that have been obligated less than 10 percent of the amount originally made available or with unexpended balances of funds for a project that has been closed. Con-

gressional earmarks administered by the Federal Highway Administration that meet such criteria may be used for any Surface Transportation Program eligible purpose within 50 miles of the original earmark designation, so long as it is within the State or territorial lines of the original earmark. The funds and associated obligation limitation shall remain available for obligation for 3 fiscal years. This section provides that the Federal share of the cost of the repurposed project shall be the same as that originally associated with the earmark.

Sec. 1208. Relinquishment

This section allows a State transportation agency to relinquish park-and-ride lot facilities to a local government agency for highway purposes.

Sec. 1209. Transfer and sale of toll credits

This section requires the Secretary to establish a pilot program to identify the feasibility of implementing toll credit marketplace. The Secretary may only select up to 10 States to participate in program, which allows States to transfer or sell toll credits pursuant to section 120(i) of title 23, United States Code. This section allows a recipient State to use a credit toward the non-Federal share requirement for any funds made available under title 23 or chapter 53 of title 49, United States Code. Under this section, an eligible State shall use the proceeds for any project eligible under STP. In addition, the Secretary is required to establish a nationwide toll credit monitoring and tracking system. This section requires that the Secretary submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives no later than 180 days after the date of establishment of the pilot program.

Sec. 1210. Regional infrastructure accelerator demonstration program

This section establishes a regional infrastructure demonstration program to improve infrastructure priorities and financing strategies for the accelerated development of a project eligible for funding under the Transportation Infrastructure Finance and Innovation Act program. This section establishes regional infrastructure accelerators and authorizes the appropriation of \$12 million from the general fund to support the program. This section requires the Secretary to submit an annual report to Congress on the effectiveness of the program.

TITLE II—TRANSPORTATION INNOVATION

SUBTITLE A—RESEARCH

Sec. 2001. Research, technology, and education

This section adds to the existing highway research and development eligibilities to include new and innovative bridge inspection technologies under the infrastructure integrity component of the program. The section also continues the emphasis established under MAP-21 regarding the deployment of new innovative transportation research activities. This section does so by establishing a more structured and transparent process under which the Depart-

ment makes grants and enters into cooperative agreements and contracts with eligible entities outside of the Department of Transportation in order to accelerate the deployment and adoption by stakeholders of innovative technologies under the Technology and Innovation Deployment Program. This section requires that at least 50 percent of the funds authorized to carry out the Technology and Innovation Deployment Program be distributed to such eligible entities. The section also extends the authorization for the Accelerated Implementation and Deployment of Pavement Technologies program.

Sec. 2002. Intelligent Transportation Systems

This section establishes a competitive grant component under the Intelligent Transportation Systems (ITS) program to accelerate the deployment, operation, systems management, intermodal integration, and interoperability of ITS. This component should enable grant recipients to deploy ITS strategies, such as integrated corridor management activities and autonomous vehicle, vehicle-to-vehicle, and vehicle-to-infrastructure communication technologies. The Federal share for grants awarded under this section shall not exceed 50 percent of the cost of the project, as the intent of the deployment program is to provide an incentive for State and local governments to invest in cost-effective ITS projects while ensuring that the grant recipient is invested in the project as well. This section provides that funding for the deployment program shall be not less than \$30 million per year, out of funds otherwise authorized for ITS activities under sections 512 through 518 of title 23, United States Code. The section also provides minor technical amendments to the goals and purposes of the ITS program and to more properly align the due date of the ITS Advisory Committee Report to Congress with the current cycle of Advisory Board meetings.

Sec. 2003. Future interstate study

This section provides funding for the Secretary to enter into an agreement with the Transportation Research Board of the National Academies to conduct a study on the actions needed to upgrade and restore the Interstate System in order to ensure that it meets the growing and shifting demands of the 21st century and the next 50 years. This section requires the Transportation Research Board to submit a report to the Secretary, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives no later than 3 years after the date of enactment of the DRIVE Act

Sec. 2004. Researching surface transportation system funding alternatives

This section provides funding for the research of user-based alternative revenue mechanisms that preserve a user fee structure to maintain the long-term solvency of the Highway Trust Fund. The funds authorized under this section shall be provided through grants to individual States, groups of States, or other appropriate entities such as local governments, to conduct research into user-based alternative revenue mechanisms. The intent of this section is to provide funding so that informative research can be generated through pilot programs or other research conducted across a broad

and diverse cross-section of the country to test such revenue mechanisms. This section requires the Secretaries of Transportation and Treasury, acting jointly, to submit a report to the Committee on Finance and the Committee on Environment and Public Works of the Senate and the Committee on Ways and Means and the Committee on Transportation and Infrastructure of the House of Representatives on competition of the research activities under this section.

SUBTITLE B—DATA

Sec. 2101. Tribal data collection

This section requires entities carrying out a project under the Tribal Transportation Program to collect and submit project level data to the Secretaries of Transportation and Interior. In order for tribes and Congress to more accurately assess future tribal transportation needs and policy, data collection on current and ongoing projects is needed. With more data, tribes and Congress can examine how tribal transportation funds are being used and more accurately assess future needs and priorities.

Sec. 2102. Performance management data support program

This section provides a funding source for the Federal Highway Administration to develop, use, and maintain data sets and data analysis tools to assist Metropolitan Planning Organizations (MPO) and States in carrying out performance management analyses. A national-level program would provide an advanced level of capacity for decision-making to guide investments and policy efforts. The ability to have such advanced capacity for decision-making could lead to significant cost savings to States, MPOs, and others by using data and analytics to define an optimal transportation system and assist in targeting operational and capital investments strategically, and implement policies effectively.

SUBTITLE C—TRANSPARENCY AND BEST PRACTICES

Sec. 2201. Every Day Counts initiative

This section establishes in Federal law the Federal Highway Administration's Every Day Counts initiative, which is a State-based model that utilizes innovative practices to shorten the project delivery process, enhance roadway safety, reduce congestion, and environmental sustainability.

Sec. 2202. Department of Transportation performance measures

This section requires the Secretary to measure and report to Congress on progress and achievements made by the Department with respect to the performance management requirements established under MAP-21. It also requires the Department's Inspector General to submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives no later than 3 years after the date of enactment of the DRIVE Act on the results of the evaluation conducted by the Department.

Sec. 2203. Grant program for achievement in transportation for performance and innovation

This section authorizes a grant program, funded with General Fund appropriations, to incentivize and award high-performing States, Metropolitan Planning Organizations, local governments, and tribal governments in the areas of performance management, innovation, and efficiencies in surface transportation. The program would reward such entities by providing grants which could be used for projects eligible under title 23 or chapter 53 of title 49, United States Code.

Sec. 2204. Highway trust fund transparency and accountability

This section will increase transparency regarding the way in which the Federal Highway Administration utilizes Federal-aid highway funding for administrative expenses by requiring the Federal Highway Administration to report elemental project level data by fiscal year.

Sec. 2205. Report on highway trust fund administrative expenditures

This section requires the Comptroller General to submit a report to Congress describing the use of administrative expenses by the Federal Highway Administration.

Sec. 2206. Availability of reports

This section requires all reports submitted to Congress by DOT to also be posted on the DOT's website in order to increase transparency and oversight by Congress and the public.

Sec. 2207. Performance period adjustment

This section will amend the timeframe for reporting by States and MPOs on the progress they have made to meet their performance targets. Under MAP-21, States and MPOs have two performance periods to meet the targets they set for themselves under each of the performance measures. This provision reduces these to one performance period.

Sec. 2208. Design standards

This section amends section 109 of title 23, United States Code, in regards to design criteria for the National Highway System. It also adds two manuals for consideration by the Secretary when establishing design standard criteria. The section also provides flexibility to local jurisdictions to use a different roadway design guide than the State when the local jurisdiction owns the roadways on which the project is being undertaken.

**TITLE III—TRANSPORTATION INFRASTRUCTURE FINANCE
AND INNOVATION ACT OF 1998 AMENDMENTS**

Sec. 3001. Transportation Infrastructure Finance and Innovation Act of 1998 Amendments

Enacted as part of the 1998 Transportation Equity Act for the 21st Century (TEA-21), the Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides Federal credit assistance to highway, transit and rail projects of national or regional

significance. The purpose of the program is to leverage Federal funds by attracting substantial private or other non-Federal investment in critical surface transportation improvements.

The TIFIA program provides direct loans, loan guarantees, and lines of credit to large and nationally or regionally significant highway, transit, railroad, intermodal freight and port access projects with a dedicated revenue stream at terms that are more favorable than those available in the private sector and that will leverage private and other non-Federal investment in transportation improvements. Eligible applicants include State departments of transportation, transit operators, special authorities, local governments, and private entities.

MAP-21 greatly expanded the TIFIA program to help communities leverage their transportation resources and stretch Federal dollars further than they have been stretched before by increasing the funding for the oversubscribed TIFIA program from \$122 million to \$1 billion per year. MAP-21 also increased the maximum share of project costs that can be covered by a TIFIA loan from 33 percent to 49 percent, allowed TIFIA to be used to support a related set of projects, allowed upfront commitments of future TIFIA program dollars through the use of master credit agreements, and set aside funding for projects in rural areas at more favorable terms.

The DRIVE Act continues to build upon the success of the TIFIA program by making additional modifications to improve access to the program and expand leveraging opportunities.

This section updates the TIFIA program to enable it to be better utilized by rural areas and more accessible for small projects. This is accomplished by using the leveraging ability of the program to support State infrastructure banks and allowing U. S. DOT to set-aside program funding for the explicit purpose of replacing the fees typically collected from TIFIA borrowers to pay for independent financial analysis and outside counsel for rural projects. This section also makes technical modifications to the TIFIA program and reinstates the ability of a State to capitalize their State infrastructure bank with their Federal-aid highway funds.

TITLE IV—TECHNICAL CORRECTIONS

Sec. 4001. Technical corrections

This section makes technical corrections to titles 23 and 49 of the United States Code, to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), and to Division E of MAP-21 (the Transportation Research and Innovative Technology Act of 2012). SAFETEA-LU established reciprocal easements in section 4407 between the United States Forest Service and the State of Alaska. The technical amendment to this section cures a perceived defect and now will allow the exchange of all remaining reciprocal easements to continue. As soon as possible, the Committee intends the Secretary of Agriculture (Secretary) to prepare and deliver to the State of Alaska an easement for the construction and operation of each highway located in a transportation and utility corridor identified on Map 92337 where the State of Alaska has already secured all necessary Federal and State permits for the construction of each highway facility. The

Secretary of Agriculture is encouraged to participate as a cooperating agency in the environmental analysis and permitting of the remaining State highways to be located in Map 92337's transportation and utility corridors linking the communities of Southeast Alaska. The Committee intends that the Secretary of Agriculture will not withhold or deny the issuance of an easement for a proposed transportation or utility project that otherwise has all necessary construction permits and authorizations from other State and Federal agencies.

TITLE V—MISCELLANEOUS

Sec. 5001. Appalachian development highway system

This section extends the authorization for the Appalachian Development Highway System (ADHS). MAP-21 expressed the Sense of the Senate that “the timely completion of the [ADHS] is a transportation priority in the national interest.” The Committee continues to support this viewpoint. MAP-21 also provided that the Federal share for the cost of constructing highways and access roads on the ADHS “shall be 100 percent” through fiscal year 2021. This was intended to provide an incentive to complete the ADHS by allowing States within the ADHS to use Federal funds on ADHS projects without an accompanying State contribution. This section amends this Federal share language from MAP-21 by providing that the Federal share for the use of funds on the ADHS may be up to 100 percent of the project cost, as determined by the State. This will allow a State to provide State and local funds to match Federal ADHS funding. The MAP-21 language prohibits a State from matching ADHS funds. As such, this revision was necessary in order to clarify that a State may, but is not required to, contribute State funds for ADHS projects. For a State that does not elect to contribute funds, the Federal share for the cost of constructing highways and access roads on the ADHS shall be 100 percent.

Sec. 5002. Appalachian regional development program

This section would authorize a high-speed broadband deployment initiative under which the Appalachian Regional Commission (ARC) may provide assistance to increase access to and support broadband adoption efforts in the Appalachian region. Funding for this new initiative would come from the annual funding authorization for the ARC. This section also reauthorizes funding for the ARC for each of fiscal years 2012 through 2021 at the fiscal year 2012 authorized funding level. This section also extends the termination date for the ARC until October 1, 2021.

Sec. 5003. Water infrastructure finance and innovation

This section strikes 33 USC 3907(a)(5), which limits any project receiving Federal credit assistance under the water infrastructure finance and innovation program from being financed with tax exempt bonds.

Sec. 5004. Administrative provisions to encourage pollinator habitat and forage on transportation rights-of-way

This section requires the Secretary to encourage States to use integrated vegetation management practices and to develop habitat for native pollinators in transportation rights-of-way.

Sec. 5005. Study on performance of bridges

This section requires the Administrator of the Federal Highway Administration to commission a report by the Transportation Research Board to study the performance of bridges that received funding under the innovative bridge research and construction program.

TITLE VI—EXTENSION OF FEDERAL-AID HIGHWAY PROGRAMS

Sec. 6001. Extension of Federal-aid highway programs

This section extends Federal-aid highway programs from August 1, 2015 to September 30, 2015.

Sec. 6002. Administrative expenses

This section provides an extension at current funding levels of administrative expenses for FHWA to September 30, 2015.

LEGISLATIVE HISTORY

On June 23, 2015, Senator Inhofe, chairman of the Committee on Environment and Public Works, introduced S. 1647, the DRIVE Act. Senators Boxer, Vitter, and Carper were original cosponsors of the legislation. The bill was referred to the Senate Committee on Environment and Public Works.

On June 24, 2015, the Senate Committee on Environment and Public Works conducted a business meeting to consider S. 1647. The bill, as amended, was favorably reported out of Committee by a unanimous vote of 20–0.

HEARINGS

Since the passage of MAP–21 in 2012, the Committee has held eight hearings to conduct oversight on the implementation of MAP–21 and hear from stakeholders what priorities should be addressed in the reauthorization of MAP–21.

- 7/24/2013 Full Committee Hearing: “Oversight Hearing on Implementation of MAP–21’s TIFIA Program Enhancements.”
- 9/18/2013 Full Committee Hearing: “Implementing MAP–21’s Provisions to Accelerate Project Delivery.”
- 9/25/2013 Full Committee Hearing: “The Need to Invest in America’s Infrastructure and Preserve Federal Transportation Funding.”
- 2/12/2014 Full Committee Hearing: “MAP–21 Reauthorization: The Economic Importance of Maintaining Federal Investments in Our Transportation Infrastructure.”
- 3/27/2014 Full Committee Hearing: “MAP–21 Reauthorization: State and Local Perspectives on Transportation Priorities and Funding.”

- 1/28/2015 Full Committee Hearing: “The Importance of MAP-21 Reauthorization: Federal and State Perspectives.”
- 2/25/2015 Full Committee Hearing: “The Importance of MAP-21 Reauthorization: Perspectives from Owners, Operators, and Users of the System.”
- 6/1/2015 Subcommittee Hearing: Need to Invest Federal Funding to Relieve Traffic Congestion and Improve Our Roads and Bridges at the State and Local Level.”

ROLLCALL VOTES

On June 24, 2015 the Committee on Environment and Public Works met and considered S. 1647. The Committee adopted by a single voice vote an amendment to the bill that made technical changes to the text, along with a group of amendments, including modifications, which made modifications to the bill and were considered en bloc. The Committee on Environment and Public Works ordered S. 1647, as amended, reported favorably to the Senate by voice vote with a quorum present.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds that the regulatory impact of S. 1647 is expected to be minimal. This will not directly regulate individuals or business and will not have any effect on the personal privacy of individuals.

Other than current regulations and those regulations affecting the eligibility and use of funds provided in this bill, the provision having a regulatory impact of significance is section 1118.

Section 1118 requires the Secretary of the Interior, in consultation with the Secretary of Transportation, to promulgate a regulation under the Migratory Bird Treaty Act (16 U.S.C. 704) authorizing the take of nesting swallows to facilitate bridge repair, maintenance, or construction without individual permit requirements and under terms and conditions determined to be consistent with treaties relating to migratory birds that protect swallow species occurring in the United States.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee notes that the Congressional Budget Office found, “S. 1647 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).”

JULY 14, 2015.

Hon. JIM INHOFE,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1647, the Developing a Reliable and Innovative Vision for the Economy Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

KEITH HALL.

Enclosure.

S. 1647—Developing a Reliable and Innovative Vision for the Economy Act

Summary: S. 1647 would extend the authority for the Department of Transportation (DOT) to operate the surface transportation programs administered by the Federal Highway Administration (FHWA) for six years and would authorize the appropriation of funds for certain other transportation programs. The legislation also would permit participants in a water infrastructure program administered by the Environmental Protection Agency (EPA) and the Army Corps of Engineers to issue tax-exempt bonds.

CBO estimates that enacting the bill would increase contract authority (the authority to incur obligations in advance of appropriation acts) relative to CBO's baseline by \$64 billion over the 2016–2025 period. Contract authority is a form of budget authority. S. 1647 would provide \$292 billion in contract authority over the 2015–2021 period. (About \$14 billion of that amount would be for the remainder of 2015, and is consistent with the rate contained in CBO's baseline.) Those amounts have traditionally been controlled by provisions in appropriation acts that limit the amount of contract authority that may be obligated. (Those provisions are known as obligation limitations.)

Enacting S. 1647 also would increase direct spending because it would authorize states to spend about \$1.9 billion on highways that would otherwise not be spent. In addition, the staff of the Joint Committee on Taxation (JCT) estimate that enacting provisions of the bill that would affect tax-exempt bond issuances also would reduce revenues by \$59 million over the 2016–2025 period. As a result, pay-as-you-go procedures apply.

For this estimate, CBO assumes that most spending for highway programs funded from the Highway Trust Fund will continue to be controlled by obligation limitations set in appropriation acts. The bill would authorize obligation limitations totaling \$274 billion over the 2016–2021 period. The bill also would authorize the appropriation of about \$2 billion for other programs administered by FHWA. Assuming appropriation of the estimated obligation limitations for 2016–2021 and the other amounts specified in the legislation, CBO estimates that implementing the bill would cost \$157 billion over the 2016–2020 period, and \$256 billion over the 2016–2025 period. Relative to the outlays for highway programs funded by the Highway Trust Fund currently projected in CBO's baseline, spending for those programs would be about \$15 billion higher over the 2016–2025 period under S. 1647.

CBO estimates that enacting the legislation would not increase on-budget deficits or net direct spending by at least \$5 billion in at least one of the four consecutive 10 year periods beginning in 2026.

S. 1647 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effects of S. 1647 are shown in the following table. The costs of this legislation fall within budget functions 400 (transportation) and 300 (natural resources and the environment).

Basis of estimate: For this estimate, CBO assumes that S. 1647 will be enacted before the current authorization for surface transportation programs expires on July 31, 2015, that the authorized and necessary amounts will be provided each year in appropriation acts, and that outlays will follow the historical rate of spending for transportation programs.

Changes in direct spending

Federal Aid Highways Contract Authority. S. 1647 would provide an increase in the amount of budget authority (in the form of contract authority) that is projected in CBO's baseline to be available for FHWA's programs over the 2016–2025 period. Only the cost of this incremental increase above the baseline is attributed to S. 1647. Because spending of the contract authority for FHWA programs is expected to be controlled by provisions in future appropriation acts, there would be no impact on direct spending expenditures from this provision.

	By fiscal year, in millions of dollars—											
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2016– 2020	2016– 2025
CHANGES IN DIRECT SPENDING												
Federal Aid Highways Contract Authority: ^a												
Budget Authority	2,820	3,741	4,726	5,778	6,902	8,052	8,052	8,052	8,052	8,052	23,967	64,227
Estimated Outlays	0	0	0	0	0	0	0	0	0	0	0	0
Designated Projects:												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	500	820	300	100	80	40	20	20	0	0	1,800	1,880
Total Changes:												
Estimated Budget Authority	2,820	3,741	4,726	5,778	6,902	8,052	8,052	8,052	8,052	8,052	23,967	64,227
Estimated Outlays	500	820	300	100	80	40	20	20	0	0	1,800	1,880
CHANGES IN REVENUES												
Estimated Revenues	*	*	-1	-2	-4	-6	-9	-11	-13	-15	-5	-59
NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Impact on Deficit	500	820	301	102	84	46	29	31	13	15	1,805	1,939
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Spending from the Highway Trust Fund:												
Obligation Limitation	43,077	43,997	44,982	46,034	47,157	48,308	0	0	0	0	225,247	273,555
Estimated Outlays	10,769	28,661	35,746	38,705	41,333	43,187	32,292	13,216	6,112	3,786	155,214	253,806
Water Infrastructure Finance and Innovation:												
Authorization Level	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	7	19	29	37	30	12	5	4	2	1	122	146
Other Authorized Programs:												
Authorization Level	422	410	410	410	410	410	0	0	0	0	2,062	2,472
Estimated Outlays	69	192	281	323	355	374	321	206	116	73	1,220	2,311
Total Changes:												
Estimated Budgetary Resources	43,499	44,407	45,392	46,444	47,568	48,718	0	0	0	0	227,310	276,028
Estimated Outlays	10,845	28,872	36,056	39,065	41,718	43,573	32,617	13,426	6,230	3,860	156,556	256,263

Note: * = Less than \$500,000.
^a S. 1647 also would provide about \$14 billion in contract authority for highway programs for the remainder of fiscal year 2015. The Highway and Transportation Funding Act of 2015 (Public Law 114-21) provided about \$27 billion in contract authority for programs funded by S. 1647 through July 31, 2015. Thus, under S. 1647 total contract authority for 2015 would be about \$41 billion. That amount is equal to the level of contract authority in CBO's baseline for 2015.

Over the 2016–2021 period, S. 1647 would provide \$278 billion in contract authority for programs administered by FHWA. S. 1647 also would provide about \$14 billion in contract authority for highway programs for the remainder of fiscal year 2015. The Highway and Transportation Funding Act of 2015 (Public Law 114–21) provided about \$27 billion in contract authority for programs funded by S. 1647 through July 31, 2015. Together, total contract authority for the year would be about \$41 billion. That amount is equal to the level in CBO’s baseline for 2015.

Consistent with the rules in the Balanced Budget and Emergency Deficit Control Act for constructing the baseline, CBO extends that contract authority provided by the bill for 2021 (\$49 billion), the last year of the authorization, at the same level in each of the following years. Using that assumption, CBO estimates that enacting the bill would result in baseline contract authority totaling about \$474 billion over the 2016–2025 period. That funding level represents an increase in budget authority of \$24 billion over the 2016–2020 period and \$64 billion over the 2016–2025 period above the amounts of contract authority for highway programs currently projected in CBO’s baseline.

Designated Projects. Section 1207 would permit states with Congressionally designated projects that are more than ten years old and that have had less than 10 percent of their funds obligated to use remaining amounts for certain other highway projects within the state. Under current law, states not spending those funds on such designated projects are prohibited from spending those amounts on any other project. S. 1647 would give states the authority to use those funds on projects other than the designated project. Based on information from DOT, CBO estimates that about \$2 billion of old contract authority would be used by states for other projects. CBO estimates that enacting the provision would cost \$1.9 billion over the 2016–2025 period.

Changes in revenues

Two provisions in S. 1647 would affect tax-exempt financing. JCT estimates that, in total, those provisions would reduce federal revenues by \$59 million over the 2016–2025 period.

JCT estimates that under section 5003, states would issue additional tax-exempt bonds for certain water projects. JCT estimates that the value of the additional tax-exempt bonds issued under S. 1647 would reduce federal revenues by \$17 million over the next 10 years.

The Transportation Infrastructure Finance and Innovation Program (TIFIA) within DOT makes loans and loan guarantees. The Moving Ahead for Progress in the 21st Century (MAP–21) the most recent authorization for highway programs and the Surface Transportation Funding Act of 2015 provided \$1 billion, annually, in budget authority for the program. However, MAP–21 provided for a redistribution of those funds to other programs if certain obligation levels were not met. Based on the FHWA’s notice of April 24, 2015, which redistributed \$640 million from the TIFIA program to states for other projects, the CBO baseline for the TIFIA program in 2015, on an annualized basis, is now \$360 million (\$1 billion minus \$640 million). Consistent with the rules in the Budget Control Act, CBO extends that program at the same level at which it

is when the authorization expires. As a result, enacting S. 1647 would increase the authorization for TIFIA above CBO's baseline projections by \$315 million, annually. Because TIFIA is designed to leverage new investments financed (at least in part) by additional tax-exempt debt, JCT estimates that increasing the funds authorized for TIFIA would increase the issuance of tax-exempt bonds and would decrease federal revenues by \$42 million over the next 10 years.

Changes in spending subject to appropriation

Assuming appropriation of the authorized and estimated amounts, CBO estimates that implementing S. 1647 would cost \$157 billion over the 2016–2020 period. That amount includes spending from the Highway Trust Fund, as well as spending on other transportation projects and on certain water infrastructure projects.

Highway Trust Fund Spending. For many years, the contract authority provided in transportation legislation has been controlled by limitations on obligations contained in annual appropriation acts. CBO expects that practice would continue over the 2016–2021 period under the provisions of S. 1647. The bill would authorize \$274 billion for the obligation limitations for highway programs over the 2016–2021 period.

CBO estimates that implementing the obligation limitations contained in S. 1647 would cost \$155 billion over the 2016–2020 period and \$254 billion over the 2016–2025 period. In CBO's March 2015 Status of the Highway Trust Fund report, CBO projects cumulative shortfalls in the highway account of \$52 billion at the end of 2020 and \$125 billion at the end of 2025.¹ Enacting the obligation limitations contained in S. 1647 would increase by about \$9 billion and \$15 billion, respectively, those cumulative shortfalls, based on the assumption that obligation limitations for other programs funded from the highway account remain consistent with the levels contained in CBO's baseline. Combined with the roughly \$2 billion in additional spending from the designated projects noted above, implementing S. 1647 would result in a cumulative shortfall in the Highway Trust Fund of about \$142 billion in 2025, about \$17 billion more than what CBO estimates in the March 2015 baseline. The bill would not affect revenues credited to the fund. However, under CBO's baseline scenario and consistent with the scoring conventions for all appropriated programs, CBO expects that the pace of spending under S. 1647 would not be affected because of the shortfall in the Highway Trust Fund.

Water Infrastructure Finance and Innovation. Under Title V of the Water Resources Reform and Development Act of 2014 (WRRDA), \$155 million is authorized to be appropriated over the 2016–2019 period for the EPA and the Army Corps of Engineers to provide federal credit assistance in the form of direct loans or loan guarantees for eligible water infrastructure projects. Enacting section 5003 of S. 1647 would eliminate a provision in WRRDA that precludes states and other entities from obtaining any additional project financing to complete such water infrastructure

¹ See Congressional Budget Office, Highway Trust Fund Accounts-Baseline Projections, March 2015 Baseline. <https://www.cbo.gov/publication/43884>

projects by issuing tax-exempt bonds. That change would increase the demand for federal credit under this program, resulting in additional spending stemming from the appropriation levels authorized under WRRDA. CBO expects that this credit program would operate much like TIFIA and that the Corps and EPA would mostly offer direct federal loans. Based on historical spending rates and the anticipated demand for infrastructure loans under the terms of this bill, CBO estimates that implementing the program would cost \$122 million over the 2016–2020 period.

Other Authorized Programs. S. 1647 would authorize appropriations for several grant programs for highways. Those programs include:

- \$150 million, annually, for grants to nationally significant projects on federal or tribal lands;
- \$150 million, annually, for grants to state and local governments to implement programs that improve the performance and efficiency of surface transportation networks;
- \$110 million, annually, for projects in Appalachia; and
- \$12 million for a program to assist entities in accelerating projects that are eligible for the TIFIA loan program within DOT.

In total, CBO estimates that implementing those provisions would cost \$1.2 billion over the 2016–2020 period.

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. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1647, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS ON JUNE 23, 2015

	By fiscal year, in millions of dollars—													2015–2020	2015–2025
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025				
	NET INCREASE OR DECREASE (–) IN THE DEFICIT														
Statutory Pay-As-You-Go Impact	0	500	820	301	102	84	46	29	31	13	15	1,805	1,939		
Memorandum:															
Changes in Outlays ..	0	500	820	300	100	80	40	20	20	0	0	1,800	1,880		
Changes in Revenues	0	0	0	–1	–2	–4	–6	–9	–11	–13	–15	–5	–59		

Increase in long term deficit and net direct spending: CBO estimates that enacting the legislation would not increase on-budget deficits or net direct spending by at least \$5 billion in any of the four consecutive 10-year periods beginning in 2026.

Intergovernmental and private-sector impact: S. 1647 contains no intergovernmental or private-sector mandates as defined in UMRA. Provisions in the bill that authorize assistance for transportation projects would benefit state, local, and tribal governments. Any costs to those entities would be incurred voluntarily as conditions of participating in voluntary federal programs.

Estimate prepared by: Federal costs: Sarah Puro (for Department of Transportation) and Susanne Mehlman (for Water Infrastruc-

ture); Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, 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:

* * * * *

CHAPTER 1 OF TITLE 23, UNITED STATES CODE

- Sec. 101. Definitions and declaration of policy.
- [151. Repealed.]
- 151. . *National Electric Vehicle Charging and Natural Gas Fueling Corridors.*
- * * * * *
- 166. HOV facilities.
- 167. *National freight program.*
- * * * * *
- 170. Funding flexibility for transportation emergencies.
- 171. *Assistance for major projects program.*
- * * * * *
- *

§ 101. Definitions and declaration of policy

(a) DEFINITIONS.—In this title, the following definitions apply:

(1) APPORTIONMENT.—* * *

* * * * *

(29) TRANSPORTATION ALTERNATIVES.—The term “transportation alternatives” means any of the following activities when carried out as part of any program or project authorized or funded under this title, or as an independent program or project related to surface transportation:

(A) Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(B) Construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities, to access daily needs.

(C) Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users.

* * * * *

(F) Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to—

(i) address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections **[133(b)(11)] 133(b)(14)**, 328(a), and 329; or

(ii) reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.

* * * * *

§ 104. Apportionment

(a) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to be made available to the Secretary for administrative expenses of the Federal Highway Administration—

[(A) \$454,180,326 for fiscal year 2013; and

[(B) \$440,000,000 for fiscal year 2014.]

(A) \$456,000,000 for fiscal year 2016;

(B) \$465,000,000 for fiscal year 2017;

(C) \$474,000,000 for fiscal year 2018;

(D) \$483,000,000 for fiscal year 2019;

(E) \$492,000,000 for fiscal year 2020; and

(F) \$501,000,000 for fiscal year 2021.

* * * * *

(b) DIVISION OF STATE APPORTIONMENTS AMONG PROGRAMS.—

The Secretary shall distribute the amount apportioned to a State for a fiscal year under subsection (c) among the national highway performance program, the surface transportation program, the highway safety improvement program, **[and the congestion mitigation and air quality improvement program]** *the congestion mitigation and air quality improvement program*, the national freight program, and to carry out section 134 as follows:

(1) NATIONAL HIGHWAY PERFORMANCE PROGRAM.—For the national highway performance program, **[63.7 percent]** *65 percent* of the amount remaining after distributing amounts under **[paragraphs (4) and (5)]** *paragraphs (4), (5), and (6), and section 213 (a)*.

(2) SURFACE TRANSPORTATION PROGRAM.—For the surface transportation program, **[29.3 percent]** *29 percent* of the amount remaining after distributing amounts under **[paragraphs (4) and (5)]**. *paragraphs (4), (5), and (6), and section 213 (a)*.

(3) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—For the highway safety improvement program, **[7 percent]** *6 percent* of the amount remaining after distributing amounts under **[paragraphs (4) and (5)]** *paragraphs (4), (5), and (6), and section 213 (a)*.

(4) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—For the congestion mitigation and air quality improvement program, an amount **[determined by multiplying**

the amount [determined for the State under subsection (c)] remaining under subsection (c) after making the set-asides in accordance with paragraph (5) and section 213 (a) by the proportion that—

(5) NATIONAL FREIGHT PROGRAM.—

(A) IN GENERAL.—For the national freight program under section 167, the Secretary shall set aside from the amount determined for a State under subsection (c) an amount determined for the State under subparagraphs (B) and (C).

(B) TOTAL AMOUNT.—The total amount set aside for the national freight program for all States shall be—

- (i) \$2,000,000,000 for fiscal year 2016;
- (ii) \$2,100,000,000 for fiscal year 2017;
- (iii) \$2,200,000,000 for fiscal year 2018;
- (iv) \$2,300,000,000 for fiscal year 2019;
- (v) \$2,400,000,000 for fiscal year 2020; and
- (vi) \$2,500,000,000 for fiscal year 2021.

(C) STATE SHARE.—The Secretary shall distribute among the States the total set-aside amount for the national freight program under subparagraph (B) so that each State receives an amount equal to the proportion that—

- (i) the total set-aside amount; bears to
- (ii) the State total apportionments determined under subsection (c).
- (i) the total apportionment determined under subsection (c) for a State; bears to
- (ii) the total apportionments for all States.

(D) METROPOLITAN PLANNING.—Of the amount set aside under this paragraph for a State, the Secretary shall use to carry out section 134 an amount determined by multiplying the set-aside amount by the proportion that—

- (i) the amount apportioned to the State to carry out section 134 for fiscal year 2009; bears to
- (ii) the total amount of funds apportioned to the State for that fiscal year for the programs referred to in section 105(a)(2), except for the high priority projects program referred to in section 105(a)(2)(H) (as in effect on the day before the date of enactment of MAP-21 (Public Law 112-141; 126 Stat. 405)).

[(5)] (6) METROPOLITAN PLANNING.—To carry out section 134, an amount determined by multiplying the amount [determined for the State under subsection (c)] remaining under subsection (c) after making the set-asides in accordance with paragraph (5) and section 213 (a) by the proportion that—

- (A) the amount apportioned to the State to carry out section 134 for fiscal year 2009; bears to
- (B) the total amount of funds apportioned to the State for that fiscal year for the programs referred to in section 105(a)(2) (except for the high priority projects program referred to in section 105(a)(2)(H)), as in effect on the day before the date of enactment of the MAP-21.

(c) CALCULATION OF STATE AMOUNTS.—

(1) FOR FISCAL YEAR 2013.—

(A) CALCULATION OF AMOUNT.—* * *

* * * * *

(3) FOR FISCAL YEARS 2016 THROUGH 2021.—

(A) STATE SHARE.—*For each of fiscal years 2016 through 2021, the amount for each State of combined apportionments for the national highway performance program under section 119, the surface transportation program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, the national freight program under section 167, the transportation alternatives program under section 213, and to carry out section 134, shall be determined as follows:*

(i) INITIAL AMOUNT.—*The initial amount for each State shall be determined by multiplying the total amount available for apportionment by the share for each State, which shall be equal to the proportion that—*

(I) the amount of apportionments that the State received for fiscal year 2014; bears to

(II) the amount of those apportionments received by all States for that fiscal year.

(ii) ADJUSTMENTS TO AMOUNTS.—*The initial amounts resulting from the calculation under clause (i) shall be adjusted to ensure that, for each State, the amount of combined apportionments for the programs shall not be less than 95 percent of the estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund (other than the Mass Transit Account) in the most recent fiscal year for which data are available.*

(B) STATE APPORTIONMENT.—*For each of fiscal years 2016 through 2021, on October 1, the Secretary shall apportion the sum authorized to be appropriated for expenditure on the national highway performance program under section 119, the surface transportation program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, the national freight program under section 167, the transportation alternatives program under section 213, and to carry out section 134 in accordance with subparagraph (A).*

* * * * *

(d) METROPOLITAN PLANNING.—

(1) USE OF AMOUNTS.—

(A) USE.—

(i) IN GENERAL.—*Except as provided in clause (ii), the amounts apportioned to a State under [subsection (b)(5)] paragraphs (5) (D) and (6) of subsection (b) shall be made available by the State to the metropolitan planning organizations responsible for carrying out section 134 in the State.*

(ii) STATES RECEIVING MINIMUM APPORTIONMENT.—*A State that received the minimum apportionment for use in carrying out section 134 for fiscal year 2009 may, subject to the approval of the Secretary, use the funds apportioned under [subsection (b)(5)] para-*

graphs (5) (D) and (6) of subsection (b) to fund transportation planning outside of urbanized areas.

(B) UNUSED FUNDS.—Any funds that are not used to carry out section 134 may be made available by a metropolitan planning organization to the State to fund activities under section 135.

* * * * *

§ 103. National Highway System

(a) IN GENERAL.—For the purposes of this title, the Federal-aid system is the National Highway System, which includes the Interstate System.

(b) NATIONAL HIGHWAY SYSTEM.—

(1) DESCRIPTION.—The National Highway System consists of the highway routes and connections to transportation facilities that shall—

(A) serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and other major travel destinations;

(B) meet national defense requirements; and

(C) serve interstate and interregional travel and commerce.

(2) COMPONENTS.—The National Highway System described in paragraph (1) consists of the following:

(A) The National Highway System depicted on the map submitted by the Secretary of Transportation to Congress with the report entitled “Pulling Together: The National Highway System and its Connections to Major Intermodal Terminals” and dated May 24, 1996, and modifications approved by the Secretary before the date of enactment of the MAP-21.

(B) Other urban and rural principal arterial routes, and border crossings on those routes, that were not included on the National Highway System before the date of enactment of the MAP-21.

(C) Other connector highways (including toll facilities) that were not included in the National Highway System before the date of enactment of the MAP-21 but that provide motor vehicle access between arterial routes on the National Highway System and a major intermodal transportation facility.

(D) A strategic highway network that—

(i) consists of a network of highways that are important to the United States strategic defense policy, that provide defense access, continuity, and emergency capabilities for the movement of personnel, materials, and equipment in both peacetime and wartime, and that were not included on the National Highway System before the date of enactment of the MAP-21;

(ii) may include highways on or off the Interstate System; and

(iii) shall be designated by the Secretary, in consultation with appropriate Federal agencies and the States.

- (E) Major strategic highway network connectors that—
 - (i) consist of highways that provide motor vehicle access between major military installations and highways that are part of the strategic highway network but were not included on the National Highway System before the date of enactment of the MAP-21; and
 - (ii) shall be designated by the Secretary, in consultation with appropriate Federal agencies and the States.

(3) MODIFICATIONS TO NHS.—

(A) IN GENERAL.—The Secretary may make any modification, including any modification consisting of a connector to a major intermodal terminal, to the National Highway System, including any modification consisting of a connector to a major intermodal terminal or the withdrawal of a road from that system, that is proposed by a State if the Secretary determines that the modification—

(i) meets the criteria established for the National Highway System under this title after the date of enactment of the MAP-21; and

[(ii) enhances] (ii)(I) enhances the national transportation characteristics of the National Highway System; or

(II) in the case of the withdrawal of a road, is reasonable and appropriate.

* * * * *

§ 104. Apportionment

(a) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—* * *

* * * * *

[(g) REPORT TO CONGRESS.—For each fiscal year, the Secretary shall make available to the public, in a user-friendly format via the Internet, a report that describes—

[(1) the amount obligated, by each State, for Federal-aid highways and highway safety construction programs during the preceding fiscal year;

[(2) the balance, as of the last day of the preceding fiscal year, of the unobligated apportionment of each State by fiscal year under this section;

[(3) the balance of unobligated sums available for expenditure at the discretion of the Secretary for such highways and programs for the fiscal year; and

[(4) the rates of obligation of funds apportioned or set aside under this section, according to—

[(A) program;

[(B) funding category of subcategory;

[(C) type of improvement;

[(D) State; and

[(E) sub-State geographical area, including urbanized and rural areas, on the basis of the population of each such area.]

(g) HIGHWAY TRUST FUND TRANSPARENCY AND ACCOUNTABILITY REPORT.—

(1) PUBLICLY AVAILABLE REPORT.—*Not later than 180 days after the date of enactment of the DRIVE Act and quarterly thereafter, the Secretary shall compile data in accordance with this subsection on the use of Federal-aid highway program funds made available under this title.*

(2) REQUIREMENTS.—*The Secretary shall ensure that the reports required under this subsection are made available in a user-friendly manner on the public website of the Department of Transportation and can be searched and downloaded by users of the website.*

(3) CONTENTS OF REPORT.—

(A) APPORTIONED AND ALLOCATED PROGRAMS.—*For each fiscal year, the report shall include comprehensive data for each program, organized by State, that includes—*

(i) the total amount of funds available for obligation, identifying the unobligated balance of funds available at the end of the preceding fiscal year and new funding available for the current fiscal year;

(ii) the total amount of funding obligated during the current fiscal year;

(iii) the remaining amount of funds available for obligation;

(iv) changes in the obligated, unexpended balance during the current fiscal year, including the obligated, unexpended balance at the end of the preceding fiscal year and current fiscal year expenditures; and

(v) the percentage of the total amount of obligations for the current fiscal year used for construction and the total amount obligated during the current fiscal year for rehabilitation.

(B) PROJECT DATA.—*To the maximum extent practicable, the report shall include project-specific data, including data describing—*

(i) the specific location of a project;

(ii) whether the project is located in an area of the State with a population of—

(I) less than 5,000 individuals;

(II) 5,000 or more individuals but less than 50,000 individuals; or

(III) 50,000 or more individuals;

(iii) the total cost of the project;

(iv) the amount of Federal funding being used on the project;

(v) the 1 or more programs from which Federal funds are obligated on the project;

(vi) the type of improvement being made, such as categorizing the project as—

(I) a road reconstruction project;

(II) a new road construction project;

(III) a new bridge construction project;

(IV) a bridge rehabilitation project; or

(V) a bridge replacement project; and

(vii) the ownership of the highway or bridge.

(C) TRANSFERS BETWEEN PROGRAMS.—*The report shall include a description of the amount of funds transferred between programs by each State under section 126.*

* * * * *

§ 109. Standards

(a) IN GENERAL.—The Secretary shall ensure that the plans and specifications for each proposed highway project under this chapter provide for a facility that will—

(1) adequately serve the existing and planned future traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance; and

(2) be designed and constructed in accordance with criteria best suited to accomplish the objectives described in paragraph (1) and to conform to the particular needs of each locality.

(b) The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State transportation departments. Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project. Such standards shall in all cases provide for at least four lanes of traffic. The right-of-way width of the Interstate System shall be adequate to permit construction of projects on the Interstate System to such standards. The Secretary shall apply such standards uniformly throughout all the States.

(c) DESIGN CRITERIA FOR NATIONAL HIGHWAY SYSTEM.—

(1) IN GENERAL.—A design for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway on the National Highway System (other than a highway also on the Interstate System) [may take into account] *shall consider*, in addition to the criteria described in subsection (a)—

(A) the constructed and natural environment of the area;

(B) the environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity; and

(C) [access for] *access and safety* for other modes of transportation.

(2) DEVELOPMENT OF CRITERIA.—The Secretary, in cooperation with State transportation departments, may develop criteria to implement paragraph (1). In developing criteria under this paragraph, the Secretary shall consider—

(A) the results of the committee process of the American Association of State Highway and Transportation Officials as used in adopting and publishing “A Policy on Geometric Design of Highways and Streets”, including comments submitted by interested parties as part of such process;

(B) the publication entitled “Flexibility in Highway Design” of the Federal Highway Administration;

(C) “Eight Characteristics of Process to Yield Excellence and the Seven Qualities of Excellence in Transportation Design” developed by the conference held during 1998 enti-

tled "Thinking Beyond the Pavement National Workshop on Integrating Highway Development with Communities and the Environment while Maintaining Safety and Performance"; [and]

(D) the publication entitled 'Highway Safety Manual' of the American Association of State Highway and Transportation Officials;

(E) the publication entitled 'Urban Street Design Guide' of the National Association of City Transportation Officials; and

[(D)] (F) any other material that the Secretary determines to be appropriate.

(f) The Secretary shall not, as a condition precedent to his approval under section 106 of this title, require any State to acquire title to, or control of, any marginal land along the proposed highway in addition to that reasonably necessary for road surfaces, median strips, bikeways, *pedestrian walkways*, gutters, ditches, and side slopes, and of sufficient width to provide service roads for adjacent property to permit safe access at controlled locations in order to expedite traffic, promote safety, and minimize roadside parking.

* * * * *

§ 111. Agreements relating to use of and access to rights-of-way-Interstate System

(a) IN GENERAL.—All agreements between the Secretary and the State transportation department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System and will not change the boundary of any right-of-way on the Interstate System to accommodate construction of, or afford access to, an automotive service station or other commercial establishment. Such agreements may, however, authorize a State or political subdivision thereof to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere in any way with the free flow of traffic on the Interstate System. Nothing in this section, or in any agreement entered into under this section, shall require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users on any highway which has been, or is hereafter, designated as a highway or route on the Interstate System (1) if such establishment (A) was in existence before January 1, 1960, (B) is owned by a State, and (C) is operated through concessionaries or otherwise, and (2) if all access to, and exits from, such establishment conform to the standards established for such a highway under this title.

(b) REST AREAS.—

(1) IN GENERAL.—* * *

* * * * *

(e) JUSTIFICATION REPORTS.—If the Secretary requests or requires a justification report for a project that would add a point of access to, or exit from, the Interstate System (*including new or modified freeway-to-crossroad interchanges inside a transportation management area*), the Secretary may permit a State transportation department to approve the report.

* * * * *

§ 119. National highway performance program

(a) ESTABLISHMENT.—The Secretary shall establish and implement a national highway performance program under this section.

(b) PURPOSES.—* * *

* * * * *

(d) ELIGIBLE PROJECTS.—Funds apportioned to a State to carry out the national highway performance program may be obligated only for a project on an eligible facility that is—

(1)(A) a project or part of a program of projects supporting progress toward the achievement of national performance goals for improving infrastructure condition, safety, **[mobility,]** *congestion reduction, system reliability*, or freight movement on the National Highway System; and

(B) consistent with sections 134 and 135; and

(2) for 1 or more of the following purposes:

(A) Construction, reconstruction, resurfacing, restoration, rehabilitation, preservation, or operational improvement of segments of the National Highway System.

(B) Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) of bridges on the National Highway System.

(C) Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including impact protection measures, security countermeasures, and protection against extreme events) of tunnels on the National Highway System.

(D) Inspection and evaluation, as described in section 144, of bridges and tunnels on the National Highway System, and inspection and evaluation of other highway infrastructure assets on the National Highway System, including signs and sign structures, earth retaining walls, and drainage structures.

(E) Training of bridge and tunnel inspectors, as described in section 144.

(F) Construction, rehabilitation, or replacement of existing ferry boats and ferry boat facilities, including approaches, that connect road segments of the National Highway System.

(G) Construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational

improvements for, a Federal-aid highway not on the National Highway System, and construction of a transit project eligible for assistance under chapter 53 of title 49, if—

(i) the highway project or transit project is in the same corridor as, and in proximity to, a fully access-controlled highway designated as a part of the National Highway System;

(ii) the construction or improvements will reduce delays or produce travel time savings on the fully access-controlled highway described in clause (i) and improve regional traffic flow; and

(iii) the construction or improvements are more cost-effective, as determined by benefit-cost analysis, than an improvement to the fully access-controlled highway described in clause (i).

(H) Bicycle transportation and pedestrian walkways in accordance with section 217.

(I) Highway safety improvements for segments of the National Highway System.

(J) Capital and operating costs for traffic and traveler information monitoring, management, and control facilities and programs.

(K) Development and implementation of a State asset management plan for the National Highway System in accordance with this section, including data collection, maintenance, and integration and the cost associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management.

(L) Infrastructure-based intelligent transportation systems capital improvements , *including the installation of vehicle-to-infrastructure communication equipment.*

* * * * *

(e) STATE PERFORMANCE MANAGEMENT.—

(1) IN GENERAL.—A State shall develop a risk-based asset management plan for the National Highway System to improve or preserve the condition of the assets and the performance of the system.

(2) PERFORMANCE DRIVEN PLAN.—* * *

* * * * *

(7) PERFORMANCE ACHIEVEMENT.—A State that does not achieve or make significant progress toward achieving the targets of the State for performance measures described in section 150(d) for the National Highway System [for 2 consecutive reports submitted] shall include as part of the performance target report under section 150(e) under this paragraph shall include in the next report submitted a description of the actions the State will undertake to achieve the targets.

* * * * *

(f) INTERSTATE SYSTEM AND NHS BRIDGE CONDITIONS.—

(1) CONDITION OF INTERSTATE SYSTEM.—

(A) PENALTY.—~~【If, during 2 consecutive reporting periods, the condition of the Interstate System, excluding bridges on the Interstate System, in a State falls】~~ *If a State reports that the condition of the Interstate System, excluding bridges on the Interstate System, has fallen* below the minimum condition level established by the Secretary under section 150(c)(3), the State shall be required, during the following fiscal year—

(i) to obligate, from the amounts apportioned to the State under section 104(b)(1), an amount that is not less than the amount of funds apportioned to the State for fiscal year 2009 under the Interstate maintenance program for the purposes described in this section (as in effect on the day before the date of enactment of the MAP-21), except that for each year after fiscal year 2013, the amount required to be obligated under this clause shall be increased by 2 percent over the amount required to be obligated in the previous fiscal year; and

(ii) to transfer, from the amounts apportioned to the State under section 104(b)(2) (other than amounts sub-allocated to metropolitan areas and other areas of the State under section 133(d)) to the apportionment of the State under section 104(b)(1), an amount equal to 10 percent of the amount of funds apportioned to the State for fiscal year 2009 under the Interstate maintenance program for the purposes described in this section (as in effect on the day before the date of enactment of the MAP-21).

(B) RESTORATION.—The obligation requirement for the Interstate System in a State required by subparagraph (A) for a fiscal year shall remain in effect for each subsequent fiscal year until such time as the condition of the Interstate System in the State exceeds the minimum condition level established by the Secretary.

(2) CONDITION OF NHS BRIDGES.—

(A) PENALTY.—If the Secretary determines that, for the 3-year-period preceding the date of the determination, more than 10 percent of the total deck area of bridges in the State on the National Highway System is located on bridges that have been classified as ~~【structurally deficient】~~ *being in poor condition*, an amount equal to 50 percent of funds apportioned to such State for fiscal year 2009 to carry out section 144 (as in effect the day before enactment of MAP-21) shall be set aside from amounts apportioned to a State for a fiscal year under section 104(b)(1) only for eligible projects on bridges on the National Highway System.

(B) RESTORATION.—The set-aside requirement for bridges on the National Highway System in a State under subparagraph (A) for a fiscal year shall remain in effect for each subsequent fiscal year until such time as less than 10 percent of the total deck area of bridges in the State on the National Highway System is located on bridges that have

been classified as **[structurally deficient]** *being in poor condition*, as determined by the Secretary.

* * * * *

§ 120. Federal share payable

(a) INTERSTATE SYSTEM PROJECTS.—

(1) IN GENERAL.—* * *

* * * * *

(c) INCREASED FEDERAL SHARE.—

(1) CERTAIN SAFETY PROJECTS.—The Federal share payable on account of any project for traffic control signalization, maintaining minimum levels of retroreflectivity of highway signs or pavement markings, traffic circles (also known as “roundabouts”), safety rest areas, pavement marking, shoulder and centerline rumble strips and stripes, commuter carpooling and vanpooling, rail-highway crossing closure, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier endtreatments, breakaway utility poles, or priority control systems for emergency vehicles or transit vehicles at signalized intersections may amount to 100 percent of the cost of construction of such projects; except that not more than 10 percent of all sums apportioned for all the Federal-aid programs for any fiscal year in accordance with section 104 of this title shall be used under this subsection. In this subsection, the term “safety rest area” means an area where motor vehicle operators can park their vehicles and rest, where food, fuel, and lodging services are not available, and that is located on a segment of highway with respect to which the Secretary determines there is a shortage of public and private areas at which motor vehicle operators can park their vehicles and rest.

(2) CMAQ PROJECTS.—The Federal share payable on account of a project or program carried out under section 149 with funds obligated in fiscal year 2008 or 2009, or both, shall be not less than 80 percent and, at the discretion of the State, may be up to 100 percent of the cost thereof.

(3) INNOVATIVE PROJECT DELIVERY.—

(A) IN GENERAL.—Except as provided in subparagraph (C), the Federal share payable on account of a project, program, or activity carried out with funds apportioned under paragraph (1), (2), **[or (5)] (5)(D), or (6)** of section 104(b) may, at the discretion of the State, be up to 100 percent for any such project, program, or activity that the Secretary determines—

(i) contains innovative project delivery methods that improve work zone safety for motorists or workers and the quality of the facility;

(ii) contains innovative technologies, *engineering, or design approaches*, manufacturing processes, financing, **[or contracting]** *or contracting or project delivery* methods that improve the quality of, extend the service life of, or decrease the long-term costs of maintaining highways and bridges;

(iii) accelerates project delivery while complying with other applicable Federal laws (including regula-

tions) and not causing any significant adverse environmental impact; or

(iv) reduces congestion related to highway construction.

(B) **EXAMPLES.**—Projects, programs, and activities described in subparagraph (A) may include the use of—

(i) prefabricated bridge elements and systems and other technologies to reduce bridge construction time;

(ii) innovative construction equipment, materials, or techniques, including the use of in-place recycling technology and digital 3-dimensional modeling technologies;

(iii) innovative contracting methods, including the design-build and the construction manager-general contractor contracting methods and [alternative design or alternative bid *alternative bidding*];

(iv) intelligent compaction equipment; or

(v) contractual provisions that offer a contractor an incentive payment for early completion of the project, program, or activity, subject to the condition that the incentives are accounted for in the financial plan of the project, when applicable.

(C) **LIMITATIONS.**—

(i) **IN GENERAL.**—In each fiscal year, a State may use the authority under subparagraph (A) for up to 10 percent of the combined apportionments of the State under paragraphs (1), (2), [and (5)] (5)(D), and (6) of section 104(b).

(ii) **FEDERAL SHARE INCREASE.**—The Federal share payable on account of a project, program, or activity described in subparagraph (A) may be increased by up to 5 percent of the total project cost.

* * * * *

§ 125. Emergency relief

(a) **IN GENERAL.**—Subject to this section and section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any area of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of—

(1) a natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or

(2) catastrophic failure from any external cause.

(b) **RESTRICTION ON ELIGIBILITY.**—

(1) **DEFINITION OF CONSTRUCTION PHASE.**—In this subsection, the term “construction phase” means the phase of physical construction of a highway or bridge facility that is separate from any other identified phases, such as planning, design, or right-of-way phases, in the State transportation improvement program.

(2) **RESTRICTION.**—In no case shall funds be used under this section for the repair or reconstruction of a bridge—

(A) that has been permanently closed to all vehicular traffic by the State or responsible local official because of

imminent danger of collapse due to a structural deficiency or physical deterioration; or

(B) if a construction phase of a replacement structure is included in the approved Statewide transportation improvement program at the time of an event described in subsection (a).

(c) FUNDING.—

(1) IN GENERAL.—Subject to the limitations described in paragraph (2), there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to establish the fund authorized by this section and to replenish that fund on an annual basis.

(2) LIMITATIONS.—The limitations referred to in paragraph (1) are that—

(A) not more than \$100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out this section, except that, if for any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated for the fiscal year, the unobligated balance of that amount shall—

(i) remain available until expended; and

(ii) be in addition to amounts otherwise available to carry out this section for each year; and

(B)(i) pending such appropriation or replenishment, the Secretary may obligate from any funds appropriated at any time for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as are necessary for the immediate prosecution of the work herein authorized; and

(ii) funds obligated under this subparagraph shall be reimbursed from the appropriation or replenishment.

(d) ELIGIBILITY.—

(1) IN GENERAL.—The Secretary may expend funds from the emergency fund authorized by this section only for the repair or reconstruction of highways on Federal-aid highways in accordance with this chapter, except that—

(A) no funds shall be so expended unless an emergency has been declared by the Governor of the State with concurrence by the Secretary, unless the President has declared the emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) for which concurrence of the Secretary is not required; and

(B) the Secretary has received an application from the State transportation department that includes a comprehensive list of all eligible project sites and repair costs by not later than 2 years after the natural disaster or catastrophic failure.

(2) COST LIMITATION.—

(A) DEFINITION OF COMPARABLE FACILITY.—In this paragraph, the term “comparable facility” means a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.

(B) LIMITATION.—The total cost of a project funded under this section may not exceed the cost of repair or reconstruction of a comparable facility.

(3) DEBRIS REMOVAL.—The costs of debris removal shall be an eligible expense under this section only for—

(A) an event not declared a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); **[or]**

(B) an event declared a major disaster or emergency by the President under that Act if the debris removal is not eligible for assistance under section 403, 407, or 502 of that Act (42 U.S.C. 5170b, 5173, 5192)**[.]**; or

(C) *projects eligible for assistance under this section located on tribal transportation facilities, Federal lands transportation facilities, or other federally owned roads that are open to public travel (as defined in subsection (e)(1)).*

* * * * *

(e) TRIBAL TRANSPORTATION FACILITIES, FEDERAL LANDS TRANSPORTATION FACILITIES, AND PUBLIC ROADS ON FEDERAL LANDS.—

[(1) DEFINITION OF OPEN TO PUBLIC TRAVEL.—In this subsection, the term “open to public travel” means, with respect to a road, that, except during scheduled periods, extreme weather conditions, or emergencies, the road is open to the general public for use with a standard passenger vehicle, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.]

(1) DEFINITIONS.—In this subsection:

(A) OPEN TO PUBLIC TRAVEL.—The term ‘open to public travel’ means, with respect to a road, that, except during scheduled periods, extreme weather conditions, or emergencies, the road—

(i) is maintained;

(ii) is open to the general public; and

(iii) can accommodate travel by a standard passenger vehicle, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

(B) STANDARD PASSENGER VEHICLE.—The term ‘standard passenger vehicle’ means a vehicle with 6 inches of clearance from the lowest point of the frame, body, suspension, or differential to the ground.

* * * * *

§ 126. Transferability of Federal-aid highway funds

(a) IN GENERAL.—Notwithstanding any other provision of law, subject to subsection (b), a State may transfer from an apportionment under section 104(b) not to exceed 50 percent of the amount apportioned for the fiscal year to any other apportionment of the State under that section.

(b) APPLICATION TO CERTAIN **[Set-asides.—**

(1) IN GENERAL.—Funds that] SET-ASIDES.—*Funds that* are subject to sections [104(d) and 133(d)] *sections 104(d), [133(d)] 133(d)(1)(A), and 213(c) SHALL NOT BE TRANSFERRED UNDER THIS SECTION.*

[(2) FUNDS TRANSFERRED BY STATES.—Funds transferred by a State under this section of the funding reserved for the State under section 213 for a fiscal year may only come from the portion of those funds that are available for obligation in any area of the State under section 213(c)(1)(B).]

* * * * *

§ 127. Vehicle weight limitations-Interstate System

(a) IN GENERAL.—

(1)* * *

* * * * *

(3) Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse if not released and obligated within the availability period specified in section [118(b)(2) of this title] *118(b).*

* * * * *

(m) NATURAL GAS VEHICLES.—*A vehicle, if operated by an engine fueled primarily by natural gas, may exceed any vehicle weight limit (up to a maximum gross vehicle weight of 82,000 pounds) under this section by an amount that is equal to the difference between—*

- (1) *the weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle; and*
- (2) *the weight of a comparable diesel tank and fueling system.*

(n) EMERGENCY VEHICLES.—

(1) DEFINITION OF EMERGENCY VEHICLE.—*In this subsection, the term ‘emergency vehicle’ means a vehicle designed to be used under emergency conditions—*

- (A) *to transport personnel and equipment; and*
- (B) *to support the suppression of fires and mitigation of other hazardous situations.*

(2) EMERGENCY VEHICLE WEIGHT LIMIT.—*Notwithstanding subsection (a), a State shall not enforce against an emergency vehicle a vehicle weight limit (up to a maximum gross vehicle weight of 86,000 pounds) of less than—*

- (A) *24,000 pounds on a single steering axle;*
- (B) *33,500 pounds on a single drive axle;*
- (C) *62,000 pounds on a tandem axle; or*
- (D) *52,000 pounds on a tandem rear drive steer axle.*

(o) OPERATION OF CERTAIN SPECIALIZED VEHICLES ON CERTAIN HIGHWAYS IN THE STATE OF ARKANSAS.—*If any segment of United States Route 63 between the exits for highways 14 and 75 in the State of Arkansas is designated as part of the Interstate System—*

- (1) *a vehicle that could legally operate on the segment before the date of the designation at the posted speed limit may continue to operate on that segment; and*
- (2) *a vehicle that can only travel below the posted speed limit on the segment that could otherwise legally operate on the seg-*

ment before the date of the designation may continue to operate on that segment during daylight hours.

* * * * *

§ 129. Toll roads, bridges, tunnels, and ferries

(a) BASIC PROGRAM.—

(1) AUTHORIZATION FOR FEDERAL PARTICIPATION.—Subject to the provisions of this section, Federal participation shall be permitted on the same basis and in the same manner as construction of toll-free highways is permitted under this chapter in the—

(A) initial construction of a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel;

(B) initial construction of 1 or more lanes or other improvements that increase capacity of a highway, bridge, or tunnel [(other than a highway on the Interstate System)] and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free *non-HOV* lanes, excluding auxiliary lanes, after the construction is not less than the number of toll-free *non-HOV* lanes, excluding auxiliary lanes, before the construction;

[(C) initial construction of 1 or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel on the Interstate System and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free *non-HOV* lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free *non-HOV* lanes, excluding auxiliary lanes, before such construction;]

[(D) (C) reconstruction, resurfacing, restoration, rehabilitation, or replacement of a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel;

[(E) (D) reconstruction or replacement of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility;

[(F) (E) reconstruction of a toll-free Federal-aid highway (other than a highway on the Interstate System) and conversion of the highway to a toll facility;

[(G) (F) reconstruction, restoration, or rehabilitation of a highway on the Interstate System if the number of toll-free *non-HOV* lanes, excluding auxiliary lanes, after reconstruction, restoration, or rehabilitation is not less than the number of toll-free *non-HOV* lanes, excluding auxiliary lanes, before reconstruction, restoration, or rehabilitation;

[(H) (G) conversion of a high occupancy vehicle lane on a highway, bridge, or tunnel to a toll facility; and

[(I) (H) preliminary studies to determine the feasibility of a toll facility for which Federal participation is authorized under this paragraph.

(2) OWNERSHIP.—Each highway, bridge, tunnel, or approach to the highway, bridge, or tunnel constructed under this subsection shall—

(A) be publicly owned; or

(B) be privately owned if the public authority with jurisdiction over the highway, bridge, tunnel, or approach has

entered into a contract with 1 or more private persons to design, finance, construct, and operate the facility and the public authority will be responsible for complying with all applicable requirements of this title with respect to the facility.

(3) LIMITATIONS ON USE OF REVENUES.—

(A) IN GENERAL.—A public authority with jurisdiction over a toll facility shall use all toll revenues received from operation of the toll facility only for—

(i) debt service with respect to the projects on or for which the tolls are authorized, including funding of reasonable reserves and debt service on refinancing;

(ii) a reasonable return on investment of any private person financing the project, as determined by the State or interstate compact of States concerned;

(iii) any costs necessary for the improvement and proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation;

(iv) if the toll facility is subject to a public-private partnership agreement, payments that the party holding the right to toll revenues owes to the other party under the public-private partnership agreement; and

(v) if the public authority certifies annually that the tolled facility is being adequately maintained, any other purpose for which Federal funds may be obligated by a State under this title.

(B) ANNUAL AUDIT.—

(i) IN GENERAL.—A public authority with jurisdiction over a toll facility shall conduct or have an independent auditor conduct an annual audit of toll facility records to verify adequate maintenance and compliance with subparagraph (A), and report the results of the audits to the Secretary.

(ii) RECORDS.—On reasonable notice, the public authority shall make all records of the public authority pertaining to the toll facility available for audit by the Secretary.

(C) NONCOMPLIANCE.—If the Secretary concludes that a public authority has not complied with the limitations on the use of revenues described in subparagraph (A), the Secretary may require the public authority to discontinue collecting tolls until an agreement with the Secretary is reached to achieve compliance with the limitation on the use of revenues described in subparagraph (A).

[(4) LIMITATIONS ON CONVERSION OF HIGH OCCUPANCY VEHICLE FACILITIES ON INTERSTATE SYSTEM.—

[(A) IN GENERAL.—A public authority with jurisdiction over a high occupancy vehicle facility on the Interstate System may undertake reconstruction, restoration, or rehabilitation under paragraph (1)(G) on the facility, and may levy tolls on vehicles, excluding high occupancy vehicles, using the reconstructed, restored, or rehabilitated facility, if the public authority—

[(i) in the case of a high occupancy vehicle facility that affects a metropolitan area, submits to the Secretary a written assurance that the metropolitan planning organization designated under section 5203⁴ of title 49 for the area has been consulted concerning the placement and amount of tolls on the converted facility;

[(ii) develops, manages, and maintains a system that will automatically collect the toll; and

[(iii) establishes policies and procedures—

[(I) to manage the demand to use the facility by varying the toll amount that is charged; and

[(II) to enforce sanctions for violations of use of the facility.

[(B) EXEMPTION FROM TOLLS.—In levying tolls on a facility under subparagraph (A), a public authority may designate classes of vehicles that are exempt from the tolls or charge different toll rates for different classes of vehicles.]

[(5)] (4) SPECIAL RULE FOR FUNDING.—

(A) IN GENERAL.—In the case of a toll facility under the jurisdiction of a public authority of a State (other than the State transportation department), on request of the State transportation department and subject to such terms and conditions as the department and public authority may agree, the Secretary, working through the State department of transportation, shall reimburse the public authority for the Federal share of the costs of construction of the project carried out on the toll facility under this subsection in the same manner and to the same extent as the department would be reimbursed if the project was being carried out by the department.

(B) SOURCE.—The reimbursement of funds under this paragraph shall be from sums apportioned to the State under this chapter and available for obligations on projects on [the Federal-aid system] *Federal-aid highways* in the State on which the project is being carried out.

[(6) LIMITATION ON FEDERAL SHARE.—The Federal share payable for a project described in paragraph (1) shall be a percentage determined by the State, but not to exceed 80 percent.]

[(7)] (5) MODIFICATIONS.—If a public authority (including a State transportation department) with jurisdiction over a toll facility subject to an agreement under this section or section 119(e), as in effect on the day before the effective date of title I of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1915), requests modification of the agreement, the Secretary shall modify the agreement to allow the continuation of tolls in accordance with paragraph (3) without repayment of Federal funds.

[(8)] (6) LOANS.—

(A) IN GENERAL.—

(i) LOANS.—Using amounts made available under this title, a State may loan to a public or private enti-

⁴ So in original. Probably should be “section 5303”.

ty constructing or proposing to construct under this section a toll facility or non-toll facility with a dedicated revenue source an amount equal to all or part of the Federal share of the cost of the project if the project has a revenue source specifically dedicated to the project.

(ii) DEDICATED REVENUE SOURCES.—Dedicated revenue sources for non-toll facilities include excise taxes, sales taxes, motor vehicle use fees, tax on real property, tax increment financing, and such other dedicated revenue sources as the Secretary determines appropriate.

(B) COMPLIANCE WITH FEDERAL LAWS.—As a condition of receiving a loan under this paragraph, the public or private entity that receives the loan shall ensure that the project will be carried out in accordance with this title and any other applicable Federal law, including any applicable provision of a Federal environmental law.

(C) SUBORDINATION OF DEBT.—The amount of any loan received for a project under this paragraph may be subordinated to any other debt financing for the project.

(D) OBLIGATION OF FUNDS LOANED.—Funds loaned under this paragraph may only be obligated for projects under this paragraph.

(E) REPAYMENT.—The repayment of a loan made under this paragraph shall commence not later than 5 years after date on which the facility that is the subject of the loan is open to traffic.

(F) TERM OF LOAN.—The term of a loan made under this paragraph shall not exceed 30 years from the date on which the loan funds are obligated.

(G) INTEREST.—A loan made under this paragraph shall bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible.

(H) REUSE OF FUNDS.—Amounts repaid to a State from a loan made under this paragraph may be obligated—

(i) for any purpose for which the loan funds were available under this title; and

(ii) for the purchase of insurance or for use as a capital reserve for other forms of credit enhancement for project debt in order to improve credit market access or to lower interest rates for projects eligible for assistance under this title.

(I) GUIDELINES.—The Secretary shall establish procedures and guidelines for making loans under this paragraph.

[(9)] (7) STATE LAW PERMITTING TOLLING.—If a State does not have a highway, bridge, or tunnel toll facility as of the date of enactment of the MAP-21, before commencing any activity authorized under this section, the State shall have in effect a law that permits tolling on a highway, bridge, or tunnel.

(8) EQUAL ACCESS FOR MOTORCOACHES.—A *private motorcoach that serves the public shall be provided access to a toll*

facility under the same rates, terms, and conditions as public transportation buses in the State.

【(10)】 (9) DEFINITIONS.—In this subsection, the following definitions apply:

(A) HIGH OCCUPANCY VEHICLE; HOV.—The term “high occupancy vehicle” or “HOV” means a vehicle with not fewer than 2 occupants.

(B) INITIAL CONSTRUCTION.—

(i) IN GENERAL.—The term “initial construction” means the construction of a highway, bridge, tunnel, or other facility at any time before it is open to traffic.

(ii) EXCLUSIONS.—The term “initial construction” does not include any improvement to a highway, bridge, tunnel, or other facility after it is open to traffic.

(C) PUBLIC AUTHORITY.—The term “public authority” means a State, interstate compact of States, or public entity designated by a State.

(D) TOLL FACILITY.—The term “toll facility” means a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel constructed under this subsection.

(b) Notwithstanding the provisions of section 301 of this title, the Secretary may permit Federal participation under this title in the construction of a project constituting an approach to a ferry, whether toll or free, the route of which is a public road and has not been designated as a route on the Interstate System. Such ferry may be either publicly or privately owned and operated, but the operating authority and the amount of fares charged for passage shall be under the control of a State agency or official, and all revenues derived from publicly owned or operated ferries shall be applied to payment of the cost of construction or acquisition thereof, including debt service, and to actual and necessary costs of operation, maintenance, repair, and replacement.

* * * * *

(c) Notwithstanding section 301 of this title, the Secretary may permit Federal participation under this title in the construction of ferry boats and ferry terminal facilities, whether toll or free, subject to the following conditions:

(1) It is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of the use of such ferry.

(2) The operation of the ferry shall be on a route classified as a public road within the State and which has not been designated as a route on the Interstate System, *or on a public transit ferry eligible under chapter 53 of title 49*. Projects under this subsection may be eligible for both ferry boats carrying cars and passengers and ferry boats carrying passengers only.

【(3) Such ferry】 (3)(A) *The ferry boat or ferry terminal facility shall be publicly owned or operated or majority publicly owned if the Secretary determines with respect to a majority publicly owned ferry or ferry terminal facility that such ferry boat or ferry terminal facility provides substantial public benefits.*

(B) *Any Federal participation shall not involve the construction or purchase, for private ownership, of a ferry boat,*

ferry terminal facility, or other eligible project under this section.

(4) The operating authority and the amount of fares charged for passage on such ferry shall be under the control of the State or other public entity, and all revenues derived therefrom shall be applied to actual and necessary costs of operation, maintenance, [and⁵ repair.] *repair*, debt service, negotiated management fees, and, in the case of a privately operated toll ferry, for a reasonable rate of return.

* * * * *

[(6) No such ferry shall be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from such a disposition shall be credited to the unprogramed balance of Federal-aid highway funds of the same class last apportioned to such State. Any amount so credited shall be in addition to all other funds then apportioned to such State and available for expenditure in accordance with the provisions of this title.]

(6) The ferry service shall be maintained in accordance with section 116.

(7)(A) No ferry boat or ferry terminal with Federal participation under this title may be sold, leased, or otherwise disposed of, except in accordance with part 18 of title 49, Code of Federal Regulations (as in effect on December 18, 2014).

(B) The Federal share of any proceeds from a disposition referred to in subparagraph (A) shall be used for eligible purposes under this title.

* * * * *

§ 133. Surface transportation program

(a) ESTABLISHMENT.—The Secretary shall establish a surface transportation program in accordance with this section.

(b) ELIGIBLE PROJECTS.—A State may obligate funds apportioned to it under section 104(b)(2) for the surface transportation program only for the following:

(1) * * *

* * * * *

(10) Surface transportation planning programs , *including emergency evacuation plans.*

(11) Transportation alternatives.

(12) Transportation control measures listed in section 108(f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)).

(13) Development and establishment of management systems.

* * * * *

(16) Infrastructure-based intelligent transportation systems capital improvements , *including the installation of vehicle-to-infrastructure communication equipment.*

* * * * *

⁵ So in original. The word “and” probably should not appear.

(c) LOCATION OF PROJECTS.—Surface transportation program projects may not be undertaken on roads functionally classified as local or rural minor collectors unless the roads were on a Federal-aid highway system on January 1, 1991, except—

(1) as provided in subsection (g) **【;】** or or projects described in paragraphs (2), (4), (6), (7), (11), (20), (25), and (26) of subsection (b)

【(2) for projects described in paragraphs (2), (4), (6), (7), (11), (20), (25), and (26) of subsection (b); and】

【(3)】 (2) as approved by the Secretary.

(d) ALLOCATIONS OF APPORTIONED FUNDS TO AREAS BASED ON POPULATION.—

(1) CALCULATION.—Of the funds apportioned to a State under section 104(b)(2)—

(A) **【50 percent】 55 percent** for a fiscal year shall be obligated under this section, in proportion to their relative shares of the population of the State—

(i) in urbanized areas of the State with an urbanized area population of over 200,000;

(ii) in areas of the State other than urban areas with a population **【greater than 5,000】 of 5,000 or more;** and

(iii) in other areas of the State; and

(B) **【50 percent】 45 percent** may be obligated in any area of the State.

(2) METROPOLITAN AREAS.—Funds attributed to an urbanized area under paragraph (1)(A)(i) may be obligated in the metropolitan area established under section 134 that encompasses the urbanized area.

(3) CONSULTATION WITH REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS.—For purposes of **【paragraph (1)(A)(ii) paragraph (1)(A)(iii), before obligating funding attributed to an area with a population 【greater than 5,000 and less than 200,000 of 5,000 to 200,000, a State shall consult with the regional transportation planning organizations that represent the area, if any.**

* * * * *

(f) OBLIGATION AUTHORITY.—

(1) IN GENERAL.—A State that is required to obligate in an urbanized area with an urbanized area population of over 200,000 individuals under subsection (d) funds apportioned to the State under section **【104(b)(3)】 104(b)(2)** shall make available during **【the period of fiscal years 2011 through 2014】 each fiscal year** an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction programs for use in the area that is equal to the amount obtained by multiplying—

【(g) BRIDGES NOT ON FEDERAL-AID HIGHWAYS.—

(1) DEFINITION OF OFF-SYSTEM BRIDGE.—In this subsection, the term “off-system bridge” means a highway bridge located on a public road, other than a bridge on a Federal-aid highway.**】**

(g) BRIDGES OFF THE NATIONAL HIGHWAY SYSTEM.—

(1) DEFINITION OF OFF-NHS BRIDGE.—*In this subsection, the term ‘off-NHS bridge’ means a highway bridge located on a*

public road, other than a bridge on the National Highway System.

(2) SPECIAL RULE.—

[(A) SET-ASIDE.]—Of the amounts apportioned to a State for fiscal year 2013 and each fiscal year thereafter under this section, the State shall obligate for activities described in subsection (b)(2) for off-system bridges an amount that is not less than 15 percent of the amount of funds apportioned to the State for the highway bridge program for fiscal year 2009, except that amounts allocated under subsection (d) shall not be obligated to carry out this subsection.]

(A) SET-ASIDE.—Each State shall obligate for replacement (including replacement with fill material), rehabilitation, preservation, and protection (including scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) for off-NHS bridges an amount equal to the greater of—

(i) 15 percent of the amount apportioned to the State under section 104(b)(2); and

(ii) an amount equal to at least 110 percent of the amount of funds [the State set aside for off-system bridges in fiscal year 2014] set aside for bridges not on Federal-aid highways in the State for fiscal year 2014.

[(B) REDUCTION OF EXPENDITURES.]—The Secretary, after consultation with State and local officials, may reduce the requirement for expenditures for [off-system] off-NHS bridges under subparagraph (A) with respect to the State if the Secretary determines that the State has inadequate needs to justify the expenditure.

[(3) (h) [Credit for bridges not on Federal-aid highways.—] Credit for Bridges Not on the National Highway System.—] Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway for [the replacement of a bridge or rehabilitation of] a bridge that is wholly funded from State and local sources, is eligible for Federal funds under this section, is noncontroversial, is certified by the State to have been carried out in accordance with all standards applicable to such projects under this section[, and is determined by the Secretary upon completion to be no longer a deficient bridge]—

[(A)] (1) any amount expended after the date of enactment of this subsection from State and local sources for the project in excess of 20 percent of the cost of construction of the project may be credited to the non-Federal share of the cost of other bridge projects in the State that are eligible for Federal funds under this section; and

[(B)] (2) that crediting shall be conducted in accordance with procedures established by the Secretary.

[(h) (i) SPECIAL RULE FOR AREAS OF LESS THAN 5,000 POPULATION.—]

(1) SPECIAL RULE.—Notwithstanding subsection (c), and except as provided in paragraph (2), up to 15 percent of the amounts required to be obligated by a State [under subsection

(d)(1)(A)(iii) for each of fiscal years 2013 through 2014] *under subsection (d)(1)(A)(ii) for each fiscal year* may be obligated on roads functionally classified as minor collectors.

(2) SUSPENSION.—The Secretary may suspend the application of paragraph (1) with respect to a State if the Secretary determines that the authority provided under paragraph (1) is being used excessively by the State.

§ 134. Metropolitan transportation planning

(a) POLICY.—It is in the national interest—

(1) to encourage and promote the safe and efficient management, operation, and development of *resilient* surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

(b) DEFINITIONS.—In this section and section 135, the following definitions apply:

(1) METROPOLITAN PLANNING AREA.—The term “metropolitan planning area” means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

(2) METROPOLITAN PLANNING ORGANIZATION.—The term “metropolitan planning organization” means the policy board of an organization established as a result of the designation process under subsection (d).

(3) NONMETROPOLITAN AREA.—The term “nonmetropolitan area” means a geographic area outside designated metropolitan planning areas.

(4) NONMETROPOLITAN LOCAL OFFICIAL.—The term “nonmetropolitan local official” means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

(5) REGIONAL TRANSPORTATION PLANNING ORGANIZATION.—The term “regional transportation planning organization” means a policy board of an organization established as the result of a designation under [section 135(m)] *section 135 (l)*.

* * * * *

(c) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF LONG-RANGE PLANS AND TIPS.—To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning for metropolitan areas of the State.

(2) CONTENTS.—The plans and TIPS for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways [and bicycle transportation facilities] , *bicycle transportation facilities, intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities, and commuter vanpool*

providers) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and TIPs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals—

(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as determined by the Bureau of the Census); or

(B) in accordance with procedures established by applicable State or local law.

(2) STRUCTURE.—Not later than 2 years after the date of enactment of MAP-21, each metropolitan planning organization that serves an area designated as a transportation management area shall consist of—

(A) local elected officials;

(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and

(C) appropriate State officials.

(3) REPRESENTATION.—

(A) IN GENERAL.—*Designation or selection of officials or representatives under paragraph (2) shall be determined by the metropolitan planning organization according to the bylaws or enabling statute of the organization.*

(B) PUBLIC TRANSPORTATION REPRESENTATIVE.—*Subject to the bylaws or enabling statute of the metropolitan planning organization, a representative of a provider of public transportation may also serve as a representative of a local municipality.*

(C) POWERS OF CERTAIN OFFICIALS.—*An official described in paragraph (2)(B) shall have responsibilities, actions, duties, voting rights, and any other authority commensurate with other officials described in paragraph (2)(B).*

[(3)] (4) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

(A) to develop the plans and TIPs for adoption by a metropolitan planning organization; and

(B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

~~[(4)]~~ (5) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under ~~[paragraph (5)]~~ *paragraph (6)*.

~~[(5)]~~ (6) REDESIGNATION PROCEDURES.—

(A) IN GENERAL.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as determined by the Bureau of the Census) as appropriate to carry out this section.

(B) RESTRUCTURING.—A metropolitan planning organization may be restructured to meet the requirements of paragraph (2) without undertaking a redesignation.

~~[(6)]~~ (7) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

* * * * *

(e) METROPOLITAN PLANNING AREA BOUNDARIES.—

(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

(2) INCLUDED AREA.—Each metropolitan planning area—

(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—

(A) IN GENERAL.—Notwithstanding paragraph (2), except as provided in subparagraph (B), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the SAFETEA-LU, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained.

(B) EXCEPTION.—The boundaries described in subparagraph (A) may be adjusted by agreement of the Governor

and affected metropolitan planning organizations in the manner described in ~~subsection (d)(5)~~ *subsection (d)(6)*.

* * * * *

(g) MPO CONSULTATION IN PLAN AND TIP COORDINATION.—

(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and TIPs required by this section.

(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE MPOS.—If a transportation improvement, funded from the Highway Trust Fund or authorized under chapter 53 of title 49, is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans and TIPs regarding the transportation improvement.

(3) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—

(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, *natural disaster risk reduction* airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities.

* * * * *

(h) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety of the transportation system for motorized and nonmotorized users;

(C) increase the security of the transportation system for motorized and nonmotorized users;

(D) increase the accessibility and mobility of people and for freight;

(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(G) promote efficient system management and operation;

[and]

(H) emphasize the preservation of the existing transportation system[.]; and

(I) improve the resilience and reliability of the transportation system.

(2) PERFORMANCE-BASED APPROACH.—

(A) IN GENERAL.—The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to support the national goals described in section 150(b) of this title [and in section 5301(c) of title 49] and the general purposes described in section 5301 of title 49.

* * * * *

(i) DEVELOPMENT OF TRANSPORTATION PLAN.—

(1) REQUIREMENTS.—

(A) IN GENERAL.—Each metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection.

(B) FREQUENCY.—

(i) IN GENERAL.—The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

(I) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

(II) Any area that was nonattainment and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a).

(ii) OTHER AREAS.—In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

(2) TRANSPORTATION PLAN.—A transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

(A) IDENTIFICATION OF TRANSPORTATION FACILITIES.—

(i) IN GENERAL.—An identification of transportation facilities (including major roadways, [transit] public transportation facilities, intercity bus facilities, multimodal and intermodal facilities, nonmotorized transportation facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions.

* * * * *

(G) CAPITAL INVESTMENT AND OTHER STRATEGIES.—Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure **【and provide】** , *provide* for multimodal capacity increases based on regional priorities and needs , *and reduce vulnerability due to natural disasters of the existing transportation infrastructure.*

(H) TRANSPORTATION AND TRANSIT ENHANCEMENT ACTIVITIES.—Proposed transportation and transit enhancement activities “ , *including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy consumption in a cost-effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated.*

(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—* * *

* * * * *

(6) PARTICIPATION BY INTERESTED PARTIES.—

(A) IN GENERAL.—Each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, *public ports*, freight shippers, providers of freight transportation services, private providers of transportation (*including intercity bus operators and commuter vanpool providers*), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan.

* * * * *

(8) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph **【(2)(C)】** (2)(E), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph **【(2)(C)】** (2)(E).

(j) METROPOLITAN TIP.—

(1) DEVELOPMENT.—

(A) * * *

* * * * *

(5) SELECTION OF PROJECTS.—

(A) IN GENERAL.—Except as otherwise provided in **【subsection (k)(4)】** *subsection (k)(3)* and in addition to the TIP development required under paragraph (1), the selection of Federally funded projects in metropolitan areas shall be carried out, from the approved TIP—I65 * * * * *

(k) TRANSPORTATION MANAGEMENT AREAS.—

(1) IDENTIFICATION AND DESIGNATION.—

(A) REQUIRED IDENTIFICATION.—The Secretary shall identify as a transportation management area each urbanized area (as defined by the Bureau of the Census) with a population of over 200,000 individuals.

(B) DESIGNATIONS ON REQUEST.—The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.

(2) TRANSPORTATION PLANS.—In a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and public transportation operators.

[(3) CONGESTION MANAGEMENT PROCESS.—

[(A) IN GENERAL.—Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this title and chapter 53 of title 49 through the use of travel demand reduction and operational management strategies.

[(B) SCHEDULE.—The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than 1 year after the identification of a transportation management area.]

[(4) (3) SELECTION OF PROJECTS.—

(A) IN GENERAL.—All Federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under this title (excluding projects carried out on the National Highway System) or under chapter 53 of title 49 shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on the National Highway System shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

[(5) (4) CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall—

(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with applicable provisions of Federal law; and

(ii) subject to subparagraph (B), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

(ii) there is a TIP for the metropolitan planning area that has been approved by the metropolitan planning organization and the Governor.

(C) EFFECT OF FAILURE TO CERTIFY.—

(i) WITHHOLDING OF PROJECT FUNDS.—If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this title and chapter 53 of title 49.

(ii) RESTORATION OF WITHHELD FUNDS.—The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan planning process is certified by the Secretary.

(D) REVIEW OF CERTIFICATION.—In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

(I) REPORT ON PERFORMANCE-BASED PLANNING PROCESSES.—

(1) IN GENERAL.—The Secretary shall submit to Congress a report on the effectiveness of the performance-based planning processes of metropolitan planning organizations under this section, taking into consideration the requirements of this subsection.⁹

(2) REPORT.—Not later than 5 years after the date of enactment of the MAP-21, the Secretary shall submit to Congress a report evaluating—

(A) the overall effectiveness of performance-based planning as a tool for guiding transportation investments;

(B) the effectiveness of the performance-based planning process of each metropolitan planning organization under this section;

(C) the extent to which metropolitan planning organizations have achieved, or are currently making substantial progress toward achieving, the performance targets specified under this section and whether metropolitan planning organizations are developing meaningful performance targets; and

(D) the technical capacity of metropolitan planning organizations that operate within a metropolitan planning area **[of less than 200,000]** *with a population of 200,000 or less* and their ability to carry out the requirements of this section.

* * * * *

[(n) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

⁹So in original. Probably should be followed by a period.

[(1) IN GENERAL.—Notwithstanding any other provisions of this title or chapter 53 of title,¹⁰ for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

[(2) APPLICABILITY.—This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (e).]

[(o) (n) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or chapter 53 of title 49.

[(p) (o) FUNDING.—Funds [set aside under section 104(f)] *apportioned under paragraphs (5)(D) and (6) of section 104(b)* of this title or section 5305(g) of title 49 shall be available to carry out this section.

[(q) (p) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and TIPs described in this section have not been reviewed under that Act as of January 1, 1997, any decision by the Secretary concerning a plan or TIP described in this section shall not be considered to be a Federal action subject to review under that Act.

(q) TREATMENT OF LAKE TAHOE REGION.—

(1) DEFINITION OF LAKE TAHOE REGION.—*In this subsection, the term ‘Lake Tahoe Region’ has the meaning given the term ‘region’ in subsection (a) of Article II of the Lake Tahoe Regional Planning Compact (Public Law 96–551; 94 Stat. 3234).*

(2) TREATMENT.—*For the purpose of this title, the Lake Tahoe Region shall be treated as—*

(A) *a metropolitan planning organization;*

(B) *a transportation management area under subsection (k); and*

(C) *an urbanized area, which is comprised of a population of 145,000 in the State of California and a population of 65,000 in the State of Nevada.*

(3) SUBALLOCATED FUNDING.—

(A) SECTION 133.—*When determining the amount under subparagraph (A) of section 133(d)(1) that shall be obligated for a fiscal year in the States of California and Nevada under clauses (i), (ii), and (iii) of that subparagraph, the Secretary shall, for each of those States—*

(i) *calculate the population under each of those clauses;*

(ii) *decrease the amount under section 133(d)(1)(A)(iii) by the population specified in para-*

¹⁰So in original. Probably should be “title 49.”

graph (2) of this subsection for the Lake Tahoe Region in that State; and

(iii) increase the amount under section 133(d)(1)(A)(i) by the population specified in paragraph (2) of this subsection for the Lake Tahoe Region in that State.

(B) SECTION 213.—*When determining the amount under paragraph (1) of section 213(c) that shall be obligated for a fiscal year in the States of California and Nevada under subparagraphs (A), (B), and (C) of that paragraph, the Secretary shall, for each of those States—*

(i) calculate the population under each of those subparagraphs;

(ii) decrease the amount under section 213(c)(1)(C) by the population specified in paragraph (2) of this subsection for the Lake Tahoe Region in that State; and

(iii) increase the amount under section 213(c)(1)(A) by the population specified in paragraph (2) of this subsection for the Lake Tahoe Region in that State.

§ 135. Statewide and nonmetropolitan transportation planning

(a) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF PLANS AND PROGRAMS.—* * *

* * * * *

(2) CONTENTS.—The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways [and bicycle transportation facilities] , *bicycle transportation facilities, intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities, and commuter vanpool providers*) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

* * * * *

(d) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will—

(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety of the transportation system for motorized and nonmotorized users;

(C) increase the security of the transportation system for motorized and nonmotorized users;

(D) increase the accessibility and mobility of people and freight;

(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and

State and local planned growth and economic development patterns;

(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(G) promote efficient system management and operation; **[and]**

(H) emphasize the preservation of the existing transportation system**[.]** ; *and*

(I) *improve the resilience and reliability of the transportation system.*

(2) PERFORMANCE-BASED APPROACH.—

(A) IN GENERAL.—The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to support the national goals described in section 150(b) of this title **[and in section 5301(c) of title 49]** *and the general purposes described in section 5301 of title 49.*

* * * * *

(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall, at a minimum—

(1) with respect to nonmetropolitan areas, cooperate with affected local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in **[subsection (m)]** *subsection (l)*;

* * * * *

(f) LONG-RANGE STATEWIDE TRANSPORTATION PLAN.—

(1) DEVELOPMENT.—Each State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.—The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

(B) NONMETROPOLITAN AREAS.—

(i) IN GENERAL.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in cooperation with affected nonmetropolitan officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in **[subsection (m)]** *subsection (l)*.

* * * * *

(3) PARTICIPATION BY INTERESTED PARTIES.—

(A) IN GENERAL.—In developing the statewide transportation plan, the State shall provide to—

(i) nonmetropolitan local elected officials or, if applicable, through regional transportation planning organizations described in **[subsection (m)]** *subsection (l)*,

an opportunity to participate in accordance with subparagraph (B)(i); and

(ii) citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation (*including intercity bus operators and comuter vanpool providers*), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties a reasonable opportunity to comment on the proposed plan.

* * * * *

(7) PERFORMANCE-BASED APPROACH.—The statewide transportation plan **[should]** *shall* include—

(A) a description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (d)(2); and

(B) a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (d)(2), including progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports;

(8) EXISTING SYSTEM.—The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system , *including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy consumption in a cost-effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated.*

* * * * *

(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

(1) DEVELOPMENT.—

(A) IN GENERAL.—Each State shall develop a statewide transportation improvement program for all areas of the State.

(B) DURATION AND UPDATING OF PROGRAM.—Each program developed under subparagraph (A) shall cover a period of 4 years and shall be updated every 4 years or more frequently if the Governor of the State elects to update more frequently.

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

(B) NONMETROPOLITAN AREAS.—

(i) IN GENERAL.—With respect to each nonmetropolitan area in the State, the program shall be developed

in consultation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in **subsection (m)** *subsection (l)*.

(ii) **ROLE OF SECRETARY.**—The Secretary shall not review or approve the specific consultation process in the State.

* * * * *

(3) **PARTICIPATION BY INTERESTED PARTIES.**—In developing the program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, *public sports* freight shippers, private providers of transportation (*including intercity bus operators*), providers of freight transportation services, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the proposed program.

* * * * *

(6) **PROJECT SELECTION FOR AREAS OF LESS THAN 50,000 POPULATION.**—

(A) **IN GENERAL.**—Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under this title or under sections 5310 and 5311 of title 49), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in **subsection (m)** *subsection (l)*.

* * * * *

(i) **FUNDING.**—Funds apportioned under **section 104(b)(5)** *paragraphs (5)(D) and (6) of section 104(b)* of this title and set aside under section 5305(g) of title 49 shall be available to carry out this section.

* * * * *

[(j) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT PROCESSES.—For purposes of this section and section 134, and sections 5303 and 5304 of title 49, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process under this section and section 134, and sections 5303 and 5304 of title 49, if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of this section and section 134 and sections 5303 and 5304 of title 49, as appropriate.]

[(k) (j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since the statewide transportation plan and the transportation improvement program described in this section are subject to a reasonable opportunity for public comment, since individual projects included

in the statewide transportation plans and the transportation improvement program are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the transportation improvement program described in this section have not been reviewed under that Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(l)] (k) SCHEDULE FOR IMPLEMENTATION.—The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States. The Secretary shall not require a State to deviate from its established planning update cycle to implement changes made by this section. States shall reflect changes made to their transportation plan or transportation improvement program updates not later than 2 years after the date of issuance of guidance by the Secretary under this subsection.

[(m)] (l) DESIGNATION OF REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS.—

(1) **IN GENERAL.**—To carry out the transportation planning process required by this section, a State may establish and designate regional transportation planning organizations to enhance the planning, coordination, and implementation of statewide strategic long-range transportation plans and transportation improvement programs, with an emphasis on addressing the needs of nonmetropolitan areas of the State.

(2) **STRUCTURE.**—A regional transportation planning organization shall be established as a multijurisdictional organization of nonmetropolitan local officials or their designees who volunteer for such organization and representatives of local transportation systems who volunteer for such organization.

(3) **REQUIREMENTS.**—A regional transportation planning organization shall establish, at a minimum—

(A) a policy committee, the majority of which shall consist of nonmetropolitan local officials, or their designees, and, as appropriate, additional representatives from the State, private business, transportation service providers, economic development practitioners, and the public in the region; and

(B) a fiscal and administrative agent, such as an existing regional planning and development organization, to provide professional planning, management, and administrative support.

(4) **DUTIES.**—The duties of a regional transportation planning organization shall include—

(A) developing and maintaining, in cooperation with the State, regional long-range multimodal transportation plans;

(B) developing a regional transportation improvement program for consideration by the State;

(C) fostering the coordination of local planning, land use, and economic development plans with State, regional, and local transportation plans and programs;

(D) providing technical assistance to local officials;

(E) participating in national, multistate, and State policy and planning development processes to ensure the regional and local input of nonmetropolitan areas;

(F) providing a forum for public participation in the statewide and regional transportation planning processes;

(G) considering and sharing plans and programs with neighboring regional transportation planning organizations, metropolitan planning organizations, and, where appropriate, tribal organizations; and

(H) conducting other duties, as necessary, to support and enhance the statewide planning process under subsection (d).

(5) STATES WITHOUT REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS.—If a State chooses not to establish or designate a regional transportation planning organization, the State shall consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

* * * * *

§ 136. Control of junkyards

(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 7 percent of the amounts which would otherwise be apportioned to such State under [paragraphs (1) through (5) of section 104(b)] *paragraphs (1) through (6) of section 104(b)*, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

* * * * *

§ 138. Preservation of parklands

(a) DECLARATION OF POLICY.—It is declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture,

and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a Federal lands transportation facility) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

(b) DE MINIMIS IMPACTS.—* * *

* * * * *

(c) SATISFACTION OF REQUIREMENTS FOR CERTAIN HISTORIC SITES.—

(1) IN GENERAL.—*The Secretary shall—*

(A) [ensure that the requirements of this section are consistent with] *align, to the maximum extent practicable, with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4231 et seq.) and section 306108 of title 54, including implementing regulations; and*

(B) *not later than 90 days after the date of enactment of this subsection, coordinate with the Secretary of the Interior and the Executive Director of the Advisory Council on Historic Preservation (referred to in this subsection as the 'Council') to establish procedures to satisfy the requirements described in subparagraph (A) (including regulations).*

(2) AVOIDANCE ALTERNATIVE ANALYSIS.—

(A) IN GENERAL.—*If, in an analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4231 et seq.), the Secretary determines that there is no feasible or prudent alternative to avoid use of an historic site, the Secretary may—*

(i) *include the determination of the Secretary in the analysis required under that Act;*

(ii) *provide a notice of the determination to—*

(I) *each applicable State historic preservation officer and tribal historic preservation officer;*

(II) *the Council, if the Council is participating in the consultation process under section 306108 of title 54; and*

(III) *the Secretary of the Interior; and*

(iii) *request from the applicable preservation officer, the Council, and the Secretary of the Interior a concur-*

rence that the determination is sufficient to satisfy the requirement of subsection (a)(1).

(B) CONCURRENCE.—*If the applicable preservation officer, the Council, and the Secretary of the Interior each provide a concurrence requested under [subparagraph (A)(iii)—*

[(i) no further analysis under subsection (a)(1) shall be required;

[(ii) the Secretary shall include in the record of decision or finding of no significant impact a notice of a determination and each relevant concurrence to the determination under subparagraph (A); and

[(iii) not later than 3 days after the receipt by the Secretary of all concurrences requested under subparagraph (A)(iii), the Secretary shall post on an appropriate Federal website the determination and each relevant concurrence described in clause (ii).] *subparagraph (A)(iii), no further analysis under subsection (a)(1) shall be required.*

(C) PUBLICATION.—*A notice of a determination, together with each relevant concurrence to that determination, under subparagraph (A) shall be—*

(i) *included in the record of decision or finding of no significant impact of the Secretary; and*

(ii) *posted on an appropriate Federal website by not later than 3 days after the date of receipt by the Secretary of all concurrences requested under subparagraph (A)(iii).*

(3) ALIGNING HISTORICAL REVIEWS.—

(A) IN GENERAL.—*If the Secretary, the applicable preservation officer, the Council, and the Secretary of the Interior concur [that there is no feasible and prudent alternative] that no feasible and prudent alternative exists as described in paragraph (2), the Secretary may provide to the applicable preservation officer, the Council, and the Secretary of the Interior notice of the intent of the Secretary to satisfy the requirements of subsection (a)(2) through the consultation requirements of section 306108 of title 54.*

(B) SATISFACTION OF CONDITIONS.—*To satisfy the requirements of subsection (a)(2), each individual described in paragraph (2)(A)(ii) shall concur in the treatment of the applicable historic site described in the memorandum of agreement or programmatic agreement developed under section 306108 of title 54.*

(d) BRIDGE EXEMPTION FROM CONSIDERATION.—*A common post-1945 concrete or steel bridge or culvert (as described in 77 Fed. Reg. 68790) that is exempt from individual review under section 306108 of title 54, United States Code, shall be exempt from consideration under this section.*

* * * * *

§ 139. Efficient environmental reviews for project decision-making

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) AGENCY.—The term “agency” means any agency, department, or other unit of Federal, State, local, or Indian tribal government.

(2) ENVIRONMENTAL IMPACT STATEMENT.—* * *

* * * * *

[(5) MULTIMODAL PROJECT.—The term “multimodal project” means a project funded, in whole or in part, under this title or chapter 53 of title 49 and involving the participation of more than one Department of Transportation administration or agency.]

(5) MULTIMODAL PROJECT.—*The term ‘multimodal project’ means a project that requires approval by more than 1 Department of Transportation operating administration or secretarial office.*

[(6) PROJECT.—The term “project” means any highway project, public transportation capital project, or multimodal project that requires the approval of the Secretary.]

(6) PROJECT.—

(A) IN GENERAL.—*The term ‘project’ means any highway project, public transportation capital project, or multimodal project that, if implemented as proposed by the project sponsor, would require approval by any operating administration or secretarial office within the Department.*

(B) CONSIDERATIONS.—*For purposes of this paragraph, the Secretary shall take into account, if known, any sources of Federal funding or financing identified by the project sponsor, including discretionary grant, loan, and loan guarantee programs administered by the Department.*

* * * * *

(c) LEAD AGENCIES.—

(1) FEDERAL LEAD AGENCY.—

(A) IN GENERAL.—The Department of Transportation shall be the Federal lead agency in the environmental review process for a project.

(B) MODAL ADMINISTRATION.—If the project requires approval from more than 1 modal administration within the Department, the Secretary may designate a single modal administration to serve as the Federal lead agency for the Department in the environmental review process for the project.

(2) JOINT LEAD AGENCIES.—Nothing in this section precludes another agency from being a joint lead agency in accordance with regulations under the National Environmental Policy Act of 1969.

(3) PROJECT SPONSOR AS JOINT LEAD AGENCY.—Any project sponsor that is a State or local governmental entity receiving funds under this title or chapter 53 of title 49 for the project shall serve as a joint lead agency with the Department for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 and may prepare any such environmental document required in support of any action or approval by the Secretary if the Federal lead agency furnishes guidance in such preparation and independently evaluates such document and the document is approved and

adopted by the Secretary prior to the Secretary taking any subsequent action or making any approval based on such document, whether or not the Secretary's action or approval results in Federal funding.

(4) ENSURING COMPLIANCE.—The Secretary shall ensure that the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection and that such document is appropriately supplemented if project changes become necessary.

(5) ADOPTION AND USE OF DOCUMENTS.—Any environmental document prepared in accordance with this subsection may be adopted or used by any Federal agency making any approval to the same extent that such Federal agency could adopt or use a document prepared by another Federal agency.

[(6) ROLES AND RESPONSIBILITY OF LEAD AGENCY.—With respect to the environmental review process for any project, the lead agency shall have authority and responsibility—

[(A) to take such actions as are necessary and proper, within the authority of the lead agency, to facilitate the expeditious resolution of the environmental review process for the project; [and]

(B) to prepare or ensure that any required environmental impact statement or other document required to be completed under the National Environmental Policy Act of 1969 is completed in accordance with this section and applicable Federal law[.]; and

(C) to consider and respond to comments received from participating agencies on matters within the special expertise or jurisdiction of the participating agencies.

(d) PARTICIPATING AGENCIES.—

(1) IN GENERAL.—The lead agency shall be responsible for inviting and designating participating agencies in accordance with this subsection.

(2) INVITATION.—* * *

* * * * *

(8) PARTICIPATING AGENCY RESPONSIBILITIES.—*An agency participating in the collaborative environmental review process under this section shall—*

(A) provide comments, responses, studies, or methodologies on those areas within the special expertise or jurisdiction of the Federal participating or cooperating agency; and

(B) use the process to address any environmental issues of concern to the participating or cooperating agency.

* * * * *

(e) PROJECT INITIATION.—

(1) IN GENERAL.—The project sponsor shall notify the Secretary of the type of work, termini, length and general location of the proposed project (*including any additional information that the project sponsor considers to be important to initiate the process for the proposed project*), together with a statement of any Federal approvals anticipated to be necessary for the pro-

posed project, for the purpose of informing the Secretary that the environmental review process should be initiated.

* * * * *

(3) REVIEW OF APPLICATION.—Not later than 45 days after the date on which an application is received by the Secretary under this subsection, the Secretary shall provide to the project sponsor a written response that, as applicable—

(A) describes the determination of the Secretary—

(i) to initiate the environmental review process, including a timeline and an expected date for the publication in the Federal Register of the relevant notice of intent; or

(ii) to decline the application, including an explanation of the reasons for that decision; or

(B) requests additional information, and provides to the project sponsor an accounting, regarding what is necessary to initiate the environmental review process.

(4) REQUEST TO DESIGNATE A LEAD AGENCY.—

(A) IN GENERAL.—Any project sponsor may submit a request to the Secretary to designate a specific operating administration or secretarial office within the Department of Transportation to serve as the Federal lead agency for a project.

(B) PROPOSED SCHEDULE.—A request under subparagraph (A) may include a proposed schedule for completing the environmental review process.

(C) SECRETARIAL ACTION.—

(i) IN GENERAL.—If a request under subparagraph (A) is received, the Secretary shall respond to the request not later than 45 days after the date of receipt.

(ii) REQUIREMENTS.—The response shall—

(I) approve the request;

(II) deny the request, with an explanation of the reasons; or

(III) require the submission of additional information.

(iii) ADDITIONAL INFORMATION.—If additional information is submitted in accordance with clause (ii)(III), the Secretary shall respond to that submission not later than 45 days after the date of receipt.

* * * * *

(f) PURPOSE AND NEED.—

(1) PARTICIPATION.—As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project.

(2) DEFINITION.—Following participation under paragraph (1), the lead agency shall define the project's purpose and need for purposes of any document which the lead agency is responsible for preparing for the project.

(3) OBJECTIVES.—The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include—

- (A) achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan;
- (B) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or tribal plans; and
- (C) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

(4) ALTERNATIVES ANALYSIS.—

(A) PARTICIPATION.—As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in determining the range of alternatives to be considered for a project.

(B) RANGE OF ALTERNATIVES.—Following participation under paragraph (1), the lead agency shall determine the range of alternatives for consideration in any document which the lead agency is responsible for preparing for the project.

(C) METHODOLOGIES.—The lead agency also shall determine, in collaboration with participating agencies at appropriate times during the study process, the methodologies to be used and the level of detail required in the analysis of each alternative for a project.

(D) PREFERRED ALTERNATIVE.—At the discretion of the lead agency, the preferred alternative for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or concurrent compliance with other applicable laws if the lead agency determines that the development of such higher level of detail will not prevent the lead agency from making an impartial decision as to whether to accept another alternative which is being considered in the environmental review process.

(E) REDUCTION OF DUPLICATION.—

(i) IN GENERAL.—*In carrying out this paragraph, the lead agency shall reduce duplication, to the maximum extent practicable, between—*

(I) the evaluation of alternatives under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(II) the evaluation of alternatives in the metropolitan transportation planning process under section 134 of title 23, United States Code, or an environmental review process carried out under State law (referred to in this subparagraph as a ‘State environmental review process’).

(ii) CONSIDERATION OF ALTERNATIVES.—*The lead agency may eliminate from detailed consideration an alternative proposed in an environmental impact statement regarding a project if, as determined by the lead agency—*

(I) the alternative was considered in a metropolitan planning process or a State environmental review process by a metropolitan planning organiza-

tion or a State or local transportation agency, as applicable;

(II) the lead agency provided guidance to the metropolitan planning organization or State or local transportation agency, as applicable, regarding analysis of alternatives in the metropolitan planning process or State environmental review process, including guidance on the requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other requirements of Federal law necessary for approval of the project;

(III) the applicable metropolitan planning process or State environmental review process included an opportunity for public review and comment;

(IV) the applicable metropolitan planning organization or State or local transportation agency rejected the alternative after considering public comments;

(V) the Federal lead agency independently reviewed the alternative evaluation approved by the applicable metropolitan planning organization or State or local transportation agency; and

(VI) the Federal lead agency has determined—

(aa) in consultation with Federal participating or cooperating agencies, that the alternative to be eliminated from consideration is not necessary for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(bb) with the concurrence of Federal agencies with jurisdiction over a permit or approval required for a project, that the alternative to be eliminated from consideration is not necessary for any permit or approval under any other Federal law.

* * * * *

(g) COORDINATION AND SCHEDULING.—

(1) COORDINATION PLAN.—

(A) IN GENERAL.—The lead agency shall establish a plan for coordinating public and agency participation in and comment on the environmental review process for a project or category of projects. The coordination plan may be incorporated into a memorandum of understanding.

(B) SCHEDULE.—

(i) IN GENERAL.—**[The lead agency]** *For a project requiring an environmental impact statement or environmental assessment, the lead agency [may] shall establish as part of the coordination plan, after consultation with and the concurrence of each participating agency for the project and with the State in which the project is located (and, if the State is not the project sponsor,*

with the project sponsor), a schedule for completion of the environmental review process for the project.

* * * * *

(h) ISSUE IDENTIFICATION AND RESOLUTION.—

(1) COOPERATION.—The lead agency and the participating agencies shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of the environmental review process or could result in denial of any approvals required for the project under applicable laws.

(2) LEAD AGENCY RESPONSIBILITIES.—The lead agency shall make information available to the participating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration. Such information may be based on existing data sources, including geographic information systems mapping.

(3) PARTICIPATING AGENCY RESPONSIBILITIES.—Based on information received from the lead agency, participating agencies shall identify, as early as practicable, any issues of concern regarding the project's potential environmental or socioeconomic impacts. In this paragraph, issues of concern include any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project.

(4) INTERIM DECISION ON ACHIEVING ACCELERATED DECISION-MAKING.—

(A) IN GENERAL.—Not later than 30 days after the close of the public comment period on a draft environmental impact statement, the Secretary may convene a meeting with the project sponsor, lead agency, resource agencies, and any relevant State agencies to ensure that all parties are on schedule to meet deadlines for decisions to be made regarding the project.

(B) DEADLINES.—The deadlines referred to in subparagraph (A) shall be those established under subsection (g), or any other deadlines established by the lead agency, in consultation with the project sponsor and other relevant agencies.

(C) FAILURE TO ASSURE.—If the relevant agencies cannot provide reasonable assurances that the deadlines described in subparagraph (B) will be met, the Secretary may initiate the issue resolution and referral process described under [paragraph (5) and] *paragraph (5)* before the completion of the record of decision.

(5) ACCELERATED ISSUE RESOLUTION AND REFERRAL.—

(A) AGENCY ISSUE RESOLUTION MEETING.—

(i) IN GENERAL.—A Federal agency of jurisdiction, project sponsor, or the Governor of a State in which a project is located may request an issue resolution meeting to be conducted by the lead agency.

(ii) ACTION BY LEAD AGENCY.—The lead agency shall convene an issue resolution meeting under clause (i) with the relevant participating agencies and the project sponsor, including the Governor only if the

meeting was requested by the Governor, to resolve issues that could—

(I) delay completion of the environmental review process, *including modifications to the project schedule*; or

(II) result in denial of any approvals required for the project under applicable laws.

(iii) DATE.—A meeting requested under this subparagraph shall be held by not later than 21 days after the date of receipt of the request for the meeting, unless the lead agency determines that there is good cause to extend the time for the meeting.

(iv) NOTIFICATION.—On receipt of a request for a meeting under this subparagraph, the lead agency shall notify all relevant participating agencies of the request, including the issue to be resolved, and the date for the meeting.

(v) DISPUTES.—If a relevant participating agency with jurisdiction over an approval required for a project under applicable law determines that the relevant information necessary to resolve the issue has not been obtained and could not have been obtained within a reasonable time, but the lead agency disagrees, the resolution of the dispute shall be forwarded to the heads of the relevant agencies for resolution.

(vi) CONVENTION BY LEAD AGENCY.—A lead agency may convene an issue resolution meeting under this subsection at any time without the request of the Federal agency of jurisdiction, project sponsor, or the Governor of a State.

(B) ELEVATION OF ISSUE RESOLUTION.—

(i) IN GENERAL.—If issue resolution is not achieved by not later than 30 days after the date of a relevant meeting under subparagraph (A), the Secretary shall notify the lead agency, the heads of the relevant participating agencies, and the project sponsor (including the Governor only if the initial issue resolution meeting request came from the Governor) that an issue resolution meeting will be convened.

(ii) REQUIREMENTS.—The Secretary shall identify the issues to be addressed at the meeting and convene the meeting not later than 30 days after the date of issuance of the notice.

(C) REFERRAL OF ISSUE RESOLUTION.—

(i) REFERRAL TO COUNCIL ON ENVIRONMENTAL QUALITY.—

(I) IN GENERAL.—If resolution is not achieved by not later than 30 days after the date of an issue resolution meeting under subparagraph (B), the Secretary shall refer the matter to the Council on Environmental Quality.

(II) MEETING.—Not later than 30 days after the date of receipt of a referral from the Secretary under subclause (I), the Council on Environmental

Quality shall hold an issue resolution meeting with the lead agency, the heads of relevant participating agencies, and the project sponsor (including the Governor only if an initial request for an issue resolution meeting came from the Governor).

(ii) REFERRAL TO THE PRESIDENT.—If a resolution is not achieved by not later than 30 days after the date of the meeting convened by the Council on Environmental Quality under clause (i)(II), the Secretary shall refer the matter directly to the President.

(6) FINANCIAL PENALTY PROVISIONS.—

(A) IN GENERAL.—A Federal agency of jurisdiction over an approval required for a project under applicable laws shall complete any required approval on an expeditious basis using the shortest existing applicable process.

(B) FAILURE TO DECIDE.—

(i) IN GENERAL.—If an agency described in subparagraph (A) fails to render a decision under any Federal law relating to a project that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, or other approval by the date described in clause (ii), an amount of funding equal to the amounts specified in subclause (I) or (II) shall be rescinded from the applicable office of the head of the agency, or equivalent office to which the authority for rendering the decision has been delegated by law by not later than 1 day after the applicable date under clause (ii), and once each week thereafter until a final decision is rendered, subject to subparagraph (C)—

(I) \$20,000 for any project for which an annual financial plan under section 106(i) is required; or

(II) \$10,000 for any other project requiring preparation of an environmental assessment or environmental impact statement.

[(ii) DESCRIPTION OF DATE.—The date referred to in clause (i) is the later of—

[(I) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and

[(II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).]

(ii) DESCRIPTION OF DATE.—*The date referred to in clause (i) is 1 of the following:*

(I) The date that is 30 days after the date for rendering a decision as described in the project schedule established pursuant to subsection (g)(1)(B).

(II) If no schedule exists, the later of—

(aa) the date that is 180 days after the date on which an application for the permit, license or approval is complete; or

(bb) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(III) A modified date consistent with subsection (g)(1)(D).

* * * * *

(n) ACCELERATED DECISIONMAKING IN ENVIRONMENTAL REVIEWS.—

(1) IN GENERAL.—*In preparing a final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if the lead agency modifies the statement in response to comments that are minor and are confined to factual corrections or explanations regarding why the comments do not warrant additional agency response, the lead agency may write on errata sheets attached to the statement instead of rewriting the draft statement, subject to the condition that the errata sheets shall—*

(A) *cite the sources, authorities, or reasons that support the position of the lead agency; and*

(B) *if appropriate, indicate the circumstances that would trigger agency reappraisal or further response.*

(2) INCORPORATION.—*To the maximum extent practicable, the lead agency shall expeditiously develop a single document that consists of a final environmental impact statement and a record of decision, unless—*

(A) *the final environmental impact statement makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or*

(B) *there are significant new circumstances or information that—*

(i) *are relevant to environmental concerns; and*

(ii) *bear on the proposed action or the impacts of the proposed action.*

* * * * *

(o) REVIEWS, APPROVALS, AND PERMITTING PLATFORM.—

(1) IN GENERAL.—*Not later than 2 years after the date of enactment of this subsection, the Secretary shall establish an online platform and, in coordination with agencies described in paragraph (2), issue reporting standards to make publicly available the status of reviews, approvals, and permits required for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or other applicable Federal laws for projects and activities requiring an environmental assessment or an environmental impact statement.*

(2) FEDERAL AGENCY PARTICIPATION.—*A Federal agency of jurisdiction over a review, approval, or permit described in paragraph (1) shall provide status information in accordance with the standards established by the Secretary under paragraph (1).*

(3) STATE RESPONSIBILITIES.—*A State that is assigned and assumes responsibilities under section 326 or 327 shall provide*

applicable status information in accordance with standards established by the Secretary under paragraph (1).

* * * * *

§ 141. Enforcement of requirements

(a) Each State shall certify to the Secretary before January 1 of each year that it is enforcing all State laws respecting maximum vehicle size and weights permitted on the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system, including the Interstate System in accordance with section 127 of this title. Each State shall also certify that it is enforcing and complying with the provisions of section 127(d) of this title and section 31112 of title 49.

(b)(1) Each State shall submit to the Secretary such information as the Secretary shall, by regulation, require as necessary, in his opinion, to verify the certification of such State under subsection (b) of this section.

(2) If a State fails to certify as required by subsection (b) of this section or if the Secretary determines that a State is not adequately enforcing all State laws respecting such maximum vehicle size and weights, notwithstanding such a certification, then Federal-aid highway funds apportioned to such State for such fiscal year shall be reduced by amounts equal to 7 percent of the amount which would otherwise be apportioned to such State under **[**paragraphs (1) through (5) of section 104(b)**]** *paragraphs (1) through (6) of section 104(b).*

* * * * *

§ 143. Highway use tax evasion projects

(a) STATE DEFINED.—In this section, the term “State” means the 50 States and the District of Columbia.

(b) PROJECTS.—

(1) IN GENERAL.—The Secretary shall carry out highway use tax evasion projects in accordance with this subsection.

[(2) FUNDING.—

[(A) IN GENERAL.—From administrative funds made available under section 104(a), the Secretary shall deduct such sums as are necessary, not to exceed 10,000,000 for each of fiscal years 2013 and 2014, to carry out this section.]

(A) IN GENERAL.—From administrative funds made available under section 104(a), the Secretary shall deduct such sums as are necessary, not to exceed \$4,000,000 for each fiscal year, to carry out this section.

* * * * *

§ 144. National bridge and tunnel inventory and inspection standards

(a) FINDINGS AND DECLARATIONS.—

(1) FINDINGS.—Congress finds that—

(A) the condition of the bridges of the United States has improved since the date of enactment of the Transportation Equity Act for the 21st Century (Public Law 105–

178; 112 Stat. 107), yet continued improvement to bridge conditions is essential to protect the safety of the traveling public and allow for the efficient movement of people and goods on which the economy of the United States relies; and

(B) the systematic preventative maintenance of bridges, and replacement and rehabilitation of [deficient] bridges, should be undertaken through an overall asset management approach to transportation investment.

(2) DECLARATIONS.—Congress declares that it is in the vital interest of the United States—

(A) to inventory, inspect, and improve the condition of the highway bridges and tunnels of the United States;

(B) to use a data-driven, risk-based approach and cost-effective strategy for systematic preventative maintenance, replacement, and rehabilitation of highway bridges and tunnels to ensure safety and extended service life;

(C) to use performance-based bridge management systems to assist States in making timely investments;

(D) to ensure accountability and link performance outcomes to investment decisions; and

(E) to ensure connectivity and access for residents of rural areas of the United States through strategic investments in National Highway System bridges and bridges on all public roads.

(b) NATIONAL BRIDGE AND TUNNEL INVENTORIES.—The Secretary, in consultation with the States and Federal agencies with jurisdiction over highway bridges and tunnels, shall—

(1) inventory all highway bridges on public roads, on and off Federal-aid highways, including tribally owned and Federally owned bridges, that are bridges over waterways, other topographical barriers, other highways, and railroads;

(2) inventory all tunnels on public roads, on and off Federal-aid highways, including tribally owned and Federally owned tunnels;

(3) classify the bridges according to serviceability, safety, and essentiality for public use, including the potential impacts to emergency evacuation routes and to regional and national freight and passenger mobility if the serviceability of the bridge is restricted or diminished;

(4) based on that classification, assign each a risk-based priority for systematic preventative maintenance, replacement, or rehabilitation; and

(5) determine the cost of replacing [each structurally deficient bridge] *each bridge in poor condition* identified under this subsection with a comparable facility or the cost of rehabilitating the bridge.

(c) GENERAL BRIDGE AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of law, the General Bridge Act of 1946 (33 U.S.C. 525 et seq.) shall apply to bridges authorized to be replaced, in whole or in part, by this title.

(2) EXCEPTION.—Section 502(b) of the General Bridge Act of 1946 (33 U.S.C. 525(b)) and section 9 of the Act of March 3, 1899 (33 U.S.C. 401), shall not apply to any bridge constructed,

reconstructed, rehabilitated, or replaced with assistance under this title, if the bridge is over waters that—

(A) are not used and are not susceptible to use in [the natural condition of the bridge] *the natural condition of the water* or by reasonable improvement as a means to transport interstate or foreign commerce; and

* * * * *

(h) NATIONAL BRIDGE AND TUNNEL INSPECTION STANDARDS.—

(1) REQUIREMENT.—

(A) IN GENERAL.—The Secretary shall establish and maintain inspection standards for the proper inspection and evaluation of all highway bridges and tunnels for safety and serviceability.

(B) UNIFORMITY.—The standards under this subsection shall be designed to ensure uniformity of the inspections and evaluations.

(2) MINIMUM REQUIREMENTS OF INSPECTION STANDARDS.—The standards established under paragraph (1) shall, at a minimum—

(A) specify, in detail, the method by which the inspections shall be carried out by the States, Federal agencies, and tribal governments;

(B) establish the maximum time period between inspections;

(C) establish the qualifications for those charged with carrying out the inspections;

(D) require each State, Federal agency, and tribal government to maintain and make available to the Secretary on request—

(i) written reports on the results of highway bridge and tunnel inspections and notations of any action taken pursuant to the findings of the inspections; and

(ii) current inventory data for all highway bridges and tunnels reflecting the findings of the most recent highway bridge and tunnel inspections conducted; and

(E) establish a procedure for national certification of highway bridge inspectors and tunnel inspectors.

(3) STATE COMPLIANCE WITH INSPECTION STANDARDS.—The Secretary shall, at a minimum—

(A) establish, in consultation with the States, Federal agencies, and interested and knowledgeable private organizations and individuals, procedures to conduct reviews of State compliance with—

(i) the standards established under this subsection; and

(ii) the calculation or reevaluation of bridge load ratings; and

(B) establish, in consultation with the States, Federal agencies, and interested and knowledgeable private organizations and individuals, procedures for States to follow in reporting to the Secretary—

(i) critical findings relating to structural or safety-related deficiencies of highway bridges and tunnels; and (ii) monitoring activities and corrective actions

taken in response to a critical finding described in clause (i).

(4) REVIEWS OF STATE COMPLIANCE.—

(A) IN GENERAL.—The Secretary shall annually review State compliance with the standards established under this section.

(B) NONCOMPLIANCE.—If an annual review in accordance with subparagraph (A) identifies noncompliance by a State, the Secretary shall—

(i) issue a report detailing the issues of the noncompliance by December 31 of the calendar year in which the review was made; and

(ii) provide the State an opportunity to address the noncompliance by—

(I) developing a corrective action plan to remedy the noncompliance; or

(II) resolving the issues of noncompliance not later than 45 days after the date of notification.

(5) PENALTY FOR NONCOMPLIANCE.—

(A) IN GENERAL.—If a State fails to satisfy the requirements of paragraph (4)(B) by August 1 of the calendar year following the year of a finding of noncompliance, the Secretary shall, on October 1 of that year, and each year thereafter as may be necessary, require the State to dedicate funds apportioned to the State under sections 119 and 133 after the date of enactment of the MAP-21 to correct the noncompliance with the minimum inspection standards established under this subsection.

(B) AMOUNT.—The amount of the funds to be directed to correcting noncompliance in accordance with subparagraph (A) shall—

(i) be determined by the State based on an analysis of the actions needed to address the noncompliance; and

(ii) require approval by the Secretary.

(6) BRIDGES REQUIRING CLOSURE OR LOAD RESTRICTIONS.—

(A) BRIDGES OWNED BY FEDERAL AGENCIES OR TRIBAL GOVERNMENTS.—*If a Federal agency or tribal government fails to ensure that any highway bridge that is open to public travel and located in the jurisdiction of the Federal agency or tribal government is properly closed or restricted to loads that the bridge can carry safely, the Secretary—*

(i) shall, on learning of the need to close or restrict loads on the bridge, require the Federal agency or tribal government to take action necessary—

(I) to close the bridge within 48 hours; or

(II) within 30 days, to restrict public travel on the bridge to loads that the bridge can carry safely; and

(ii) may, if the Federal agency or tribal government fails to take action required under clause (i), withhold all funding authorized under this title for the Federal agency or tribal government.

(B) OTHER BRIDGES.—*If a State fails to ensure that any highway bridge, other than a bridge described in subpara-*

graph (A), that is open to public travel and is located within the boundaries of the State is properly closed or restricted to loads the bridge can carry safely, the Secretary—

(i) shall, on learning of the need to close or restrict loads on the bridge, require the State to take action necessary—

(I) to close the bridge within 48 hours; or

(II) within 30 days, to restrict public travel on the bridge to loads that the bridge can carry safely; and

(ii) may, if the State fails to take action required under clause (i), withhold approval for Federal-aid projects in that State.

[(6)] (7) UPDATE OF STANDARDS.—Not later than 3 years after the date of enactment of the MAP-21, the Secretary shall update inspection standards to cover—

(A) the methodology, training, and qualifications for inspectors; and

(B) the frequency of inspection.

[(7)] (8) RISK-BASED APPROACH.—In carrying out the revisions required by paragraph[(6)] (7), the Secretary shall consider a risk-based approach to determining the frequency of bridge inspections.

(i) TRAINING PROGRAM FOR BRIDGE AND TUNNEL INSPECTORS.—

(1) IN GENERAL.—The Secretary, in cooperation with the State transportation departments, shall maintain a program designed to train appropriate personnel to carry out highway bridge and tunnel inspections.

(2) REVISIONS.—The training program shall be revised from time to time to take into account new and improved techniques.

(j) BUNDLING OF BRIDGE PROJECTS.—

(1) PURPOSE.—*The purpose of this subsection is to save costs and time by encouraging States to bundle multiple bridge projects as 1 project.*

(2) DEFINITION OF ELIGIBLE ENTITY.—*In this subsection, the term ‘eligible entity’ means an entity eligible to carry out a bridge project under section 119 or 133.*

(3) BUNDLING OF BRIDGE PROJECTS.—*An eligible entity may bundle 2 or more similar bridge projects that are—*

(A) *eligible projects under section 119 or 133;*

(B) *included as a bundled project in a transportation improvement program under section 134(j) or a statewide transportation improvement program under section 135, as applicable; and*

(C) *awarded to a single contractor or consultant pursuant to a contract for engineering and design or construction between the contractor and an eligible entity.*

(4) ITEMIZATION.—*Notwithstanding any other provision of law (including regulations), an eligible bridge project included in a bundle under this subsection may be listed as—*

(A) *1 project for purposes of sections 134 and 135; and*

(B) *a single project within the applicable bundle.*

(5) FINANCIAL CHARACTERISTICS.—*Projects bundled under this subsection shall have the same financial characteristics, including—*

- (A) *the same funding category or subcategory; and*
- (B) *the same Federal share.*

[(j)] (k) AVAILABILITY OF FUNDS.—In carrying out this section—

- (1) the Secretary may use funds made available to the Secretary under sections 104(a) and 503;
- (2) a State may use amounts apportioned to the State under section 104(b)(1) and [104(b)(3)] (104(b)(2));
- (3) an Indian tribe may use funds made available to the Indian tribe under section 202; and
- (4) a Federal agency may use funds made available to the agency under section 503.

* * * * *

§ 147. Construction of ferry boats and ferry terminal facilities

(a) [In General PROGRAM.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c).

* * * * *

[(d) FORMULA.—Of the amounts allocated pursuant to subsection (c)—

[(1) 20 percent shall be allocated among eligible entities in the proportion that—

- [(A) the number of ferry passengers carried by each ferry system in the most recent fiscal year; bears to
- [(B) the number of ferry passengers carried by all ferry systems in the most recent fiscal year;

[(2) 45 percent shall be allocated among eligible entities in the proportion that—

- [(A) the number of vehicles carried by each ferry system in the most recent fiscal year; bears to
- [(B) the number of vehicles carried by all ferry systems in the most recent fiscal year; and

[(3) 35 percent shall be allocated among eligible entities in the proportion that—

- [(A) the total route miles serviced by each ferry system; bears to
- [(B) the total route miles serviced by all ferry systems.

[(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$67,000,000 for each of fiscal years 2013 and 2014.

[(f) PERIOD OF AVAILABILITY.—Notwithstanding section 118(b), funds made available to carry out this section shall remain available until expended.

[(g) APPLICABILITY.—All provisions of this chapter that are applicable to the National Highway System, other than provisions relating to apportionment formula and Federal share, shall apply to funds made available to carry out this section, except as determined by the Secretary to be inconsistent with this section.]

(d) FORMULA.—*Of the amounts allocated under subsection (c)—*

(1) 35 percent shall be allocated among eligible entities in the proportion that—

(A) the number of ferry passengers, including passengers in vehicles, carried by each ferry system in the most recent calendar year for which data is available; bears to

(B) the number of ferry passengers, including passengers in vehicles, carried by all ferry systems in the most recent calendar year for which data is available;

(2) 35 percent shall be allocated among eligible entities in the proportion that—

(A) the number of vehicles carried by each ferry system in the most recent calendar year for which data is available; bears to

(B) the number of vehicles carried by all ferry systems in the most recent calendar year for which data is available; and

(3) 30 percent shall be allocated among eligible entities in the proportion that—

(A) the total route nautical miles serviced by each ferry system in the most recent calendar year for which data is available; bears to

(B) the total route nautical miles serviced by all ferry systems in the most recent calendar year for which data is available.

(e) REDISTRIBUTION OF UNOBLIGATED AMOUNTS.—The Secretary shall—

(1) withdraw amounts allocated to an eligible entity under subsection (c) that remain unobligated by the end of the third fiscal year following the fiscal year for which the amounts were allocated; and

(2) in the subsequent fiscal year, redistribute the funds referred to in paragraph (1) in accordance with the formula under subsection (d) among eligible entities for which no amounts were withdrawn under paragraph (1).

(f) MINIMUM AMOUNT.—Notwithstanding subsection (c), a State with an eligible entity that meets the requirements of this section shall receive not less than \$100,000 under this section for a fiscal year.

(g) IMPLEMENTATION.—

(1) DATA COLLECTION.—

(A) NATIONAL FERRY DATABASE.—Amounts made available for a fiscal year under this section shall be allocated using the most recent data available, as collected and imputed in accordance with the national ferry database established under section 1801(e) of SAFETEA-LU (23 U.S.C. 129 note; 119 Stat. 1456).

(B) ELIGIBILITY FOR FUNDING.—To be eligible to receive funds under subsection (c), data shall have been submitted in the most recent collection of data for the national ferry database under section 1801(e) of SAFETEA-LU (23 U.S.C. 129 note; 119 Stat. 1456) for at least 1 ferry service within the State.

(2) ADJUSTMENTS.—On review of the data submitted under paragraph (1)(B), the Secretary may make adjustments to the

data as the Secretary determines necessary to correct misreported or inconsistent data.

(h) AUTHORIZATION OF APPROPRIATIONS.—*There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$75,000,000 for each of fiscal years 2016 through 2021.*

(i) PERIOD OF AVAILABILITY.—*Notwithstanding section 118(b), funds made available to carry out this section shall remain available until expended.*

(j) APPLICABILITY.—*All provisions of this chapter that are applicable to the National Highway System, other than provisions relating to apportionment formula and Federal share, shall apply to funds made available to carry out this section, except as determined by the Secretary to be inconsistent with this section.*

§ 148. Highway safety improvement program

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) HIGH RISK RURAL ROAD.—The term “high risk rural road” means any roadway functionally classified as a rural major or minor collector or a rural local road with significant safety risks, as defined by a State in accordance with an updated State strategic highway safety plan.

(2) HIGHWAY BASEMAP.—The term “highway basemap” means a representation of all public roads that can be used to geolocate attribute data on a roadway.

(3) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term “highway safety improvement program” means projects, activities, plans, and reports carried out under this section.

(4) HIGHWAY SAFETY IMPROVEMENT PROJECT.—

(A) IN GENERAL.—The term “highway safety improvement project” means strategies, activities, and projects on a public road that are consistent with a State strategic highway safety plan and—

- (i) correct or improve a hazardous road location or feature; or
- (ii) address a highway safety problem.

(B) INCLUSIONS.—The term “highway safety improvement project” [includes, but is not limited to,] *only includes* a project for 1 or more of the following:

(i) An intersection safety improvement.

* * * * *

(xxv) *Installation of vehicle-to-infrastructure communication equipment.*

(xxvi) *Pedestrian hybrid beacons.*

(xxvii) *Roadway improvements that provide separation between pedestrians and motor vehicles, including medians and pedestrian crossing islands.*

(xxviii) *An infrastructure safety project not described in clauses (i) through (xxvii).*

* * * * *

[(10) SAFETY PROJECT UNDER ANY OTHER SECTION.—

[(A) IN GENERAL.—The term “safety project under any other section” means a project carried out for the purpose of safety under any other section of this title.

[(B) INCLUSION.—The term “safety project under any other section” includes—

[(i) a project consistent with the State strategic highway safety plan that promotes the awareness of the public and educates the public concerning highway safety matters (including motorcycle safety);

[(ii) a project to enforce highway safety laws; and

[(iii) a project to provide infrastructure and infrastructure-related equipment to support emergency services.]

[(11)] (10) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term “State highway safety improvement program” means a program of highway safety improvement projects, activities, plans and reports carried out as part of the Statewide transportation improvement program under section 135(g).

[(12)] (11) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term “State strategic highway safety plan” means a comprehensive plan, based on safety data, developed by a State transportation department that—

(A) is developed after consultation with—

(i) a highway safety representative of the Governor of the State;

(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

(iii) representatives of major modes of transportation;

(iv) State and local traffic enforcement officials;

(v) a highway-rail grade crossing safety representative of the Governor of the State;

(vi) representatives conducting a motor carrier safety program under section 31102, 31106, or 31309 of title 49;

(vii) motor vehicle administration agencies;

(viii) county transportation officials;

(ix) State representatives of nonmotorized users; and

(x) other major Federal, State, tribal, and local safety stakeholders;

(B) analyzes and makes effective use of State, regional, local, or tribal safety data;

(C) addresses engineering, management, operation, education, enforcement, and emergency services elements (including integrated, interoperable emergency communications) of highway safety as key factors in evaluating highway projects;

(D) considers safety needs of, and high-fatality segments of, all public roads, including non-State-owned public roads and roads on tribal land;

(E) considers the results of State, regional, or local transportation and highway safety planning processes;

(F) describes a program of strategies to reduce or eliminate safety hazards;

(G) is approved by the Governor of the State or a responsible State agency;

(H) is consistent with section 135(g); and

(I) is updated and submitted to the Secretary for approval as required under subsection (d)(2).

[(13)] (12) SYSTEMIC SAFETY IMPROVEMENT.—The term “systemic safety improvement” means an improvement that is widely implemented based on high-risk roadway features that are correlated with particular crash types, rather than crash frequency.

* * * * *

(c) ELIGIBILITY.—

(1) IN GENERAL.—To obligate funds apportioned under section 104(b)(3) to carry out this section, a State shall have in effect a State highway safety improvement program under which the State—

(A) develops, implements, and updates a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in [subsections (a)(12)] *subsection (a)(11)* and (d);

* * * * *

(d) UPDATES TO STRATEGIC HIGHWAY SAFETY PLANS.—

(1) ESTABLISHMENT OF REQUIREMENTS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of the MAP-21, the Secretary shall establish requirements for regularly recurring State updates of strategic highway safety plans.

(B) CONTENTS OF UPDATED STRATEGIC HIGHWAY SAFETY PLANS.—In establishing requirements under this subsection, the Secretary shall ensure that States take into consideration, with respect to updated strategic highway safety plans—

- (i) the findings of road safety audits;
- (ii) the locations of fatalities and serious injuries;
- (iii) the locations that do not have an empirical history of fatalities and serious injuries, but possess risk factors for potential crashes;
- (iv) rural roads, including all public roads, commensurate with fatality data;
- (v) motor vehicle crashes that include fatalities or serious injuries to pedestrians and bicyclists;
- (vi) the cost-effectiveness of improvements;
- (vii) improvements to rail-highway grade crossings; and
- (viii) safety on all public roads, including non-State-owned public roads and roads on tribal land.

(2) APPROVAL OF UPDATED STRATEGIC HIGHWAY SAFETY PLANS.—

(A) IN GENERAL.—Each State shall—

- (i) update the strategic highway safety plans of the State in accordance with the requirements established by the Secretary under this subsection; and
- (ii) submit the updated plans to the Secretary, along with a detailed description of the process used to update the plan.

(B) REQUIREMENTS FOR APPROVAL.—The Secretary shall not approve the process for an updated strategic highway safety plan unless—

(i) the updated strategic highway safety plan is consistent with the requirements of this subsection and **subsection (a)(12)** *subsection (a)(11)*; and

* * * * *

(g) SPECIAL RULES.—

(1) HIGH-RISK RURAL ROAD SAFETY.—If the fatality rate on rural roads in a State **increases** *does not decrease* over the most recent 2-year period for which data are available, *and exceeds the national fatality rate on rural roads*, that State shall be required to obligate in the next fiscal year for projects on high risk rural roads an amount equal to at least 200 percent of the amount of funds the State received for fiscal year 2009 for high risk rural roads under subsection (f) of this section, as in effect on the day before the date of enactment of the MAP-21.

* * * * *

(i) STATE PERFORMANCE TARGETS.—If the Secretary determines that a State has not met or made significant progress toward meeting the **performance targets of the State established under section 150(d) by the date that is 2 years after the date of the establishment of the performance targets** *safety performance targets of the State established under section 150(d)*, the State shall—

(1) use obligation authority equal to the apportionment of the State for the prior year under section 104(b)(3) only for highway safety improvement projects under this section until the Secretary determines that the State has met or made significant progress toward meeting the *safety*performance targets of the State; and

(2) submit annually to the Secretary, until the Secretary determines that the State has met or made significant progress toward meeting the *safety*performance targets of the State, an implementation plan that—

(A) identifies roadway features that constitute a hazard to road users;

(B) identifies highway safety improvement projects on the basis of crash experience, crash potential, or other data-supported means;

(C) describes how highway safety improvement program funds will be allocated, including projects, activities, and strategies to be implemented;

(D) describes how the proposed projects, activities, and strategies funded under the State highway safety improvement program will allow the State to make progress toward achieving the safety performance targets of the State; and

(E) describes the actions the State will undertake to meet the performance targets of the State.

* * * * *

(k) DATA COLLECTION ON UNPAVED PUBLIC ROADS.—

(1) IN GENERAL.—A State may elect not to collect fundamental data elements for the model inventory of roadway elements on public roads that are gravel roads or otherwise unpaved if—

(A)(i) more than 45 percent of the public roads in the State are gravel roads or otherwise unpaved; and

(ii) less than 10 percent of fatalities in the State occur on those unpaved public roads; or

(B)(i) more than 70 percent of the public roads in the State are gravel roads or otherwise unpaved; and

(ii) less than 25 percent of fatalities in the State occur on those unpaved public roads.

(2) CALCULATION.—The percentages described in paragraph (1) shall be based on the average for the 5 most recent years for which relevant data is available.

(3) USE OF FUNDS.—If a State elects not to collect data on a road described in paragraph (1), the State shall not use funds provided to carry out this section for a project on that road until the State completes a collection of the required model inventory of roadway elements for the road.

§ 149. Congestion mitigation and air quality improvement program

(a) ESTABLISHMENT.—The Secretary shall establish and implement a congestion mitigation and air quality improvement program in accordance with this section.

(b) ELIGIBLE PROJECTS.—Except as provided in subsection (d), a State may obligate funds apportioned to it under section 104(b)(4) for the congestion mitigation and air quality improvement program only for a transportation project or program if the project or program is for an area in the State that is or was designated as a nonattainment area for ozone, carbon monoxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a), 7513(a), or 7513(b)) or is or was designated as a nonattainment area under such section 107(d) after December 31, 1997, or is required to prepare, and file with the Administrator of the Environmental Protection Agency, maintenance plans under the Clean Air Act (42 U.S.C. 7401 et seq.) and—

(1)(A)(i) if the Secretary, after consultation with the Administrator determines, on the basis of information published by the Environmental Protection Agency pursuant to section 108(f)(1)(A) of the Clean Air Act (other than clause (xvi)) that the project or program is likely to contribute to—

(I) the attainment of a national ambient air quality standard in the designated nonattainment area; or

(II) the maintenance of a national ambient air quality standard in a maintenance area; and

(ii) a high level of effectiveness in reducing air pollution, in cases of projects or programs where sufficient information is available in the database established pursuant to subsection (h) to determine the relative effectiveness of such projects or programs; or,

(B) in any case in which such information is not available, if the Secretary, after such consultation, determines that the project or program is part of a program, method, or strategy described in such section 108(f)(1)(A);

(2) if the project or program is included in a State implementation plan that has been approved pursuant to the Clean Air Act and the project will have air quality benefits;

(3) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project or program is likely to contribute to the attainment *or maintenance* of a national ambient air quality standard, whether through reductions in vehicle miles traveled, fuel consumption, or through other factors;

(4) to establish or operate a traffic monitoring, management, and control facility or program if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the facility or program, including advanced truck stop electrification systems, is likely to contribute to the [attainment of] *attainment or maintenance of the area* of a national ambient air quality standard;

(5) if the program or project improves traffic flow, including projects to improve signalization, construct high occupancy vehicle lanes, improve intersections, add turning lanes, improve transportation systems management and operations that mitigate congestion and improve air quality, and implement intelligent transportation system strategies and such other projects that are eligible for assistance under this section on the day before the date of enactment of this paragraph, including programs or projects to improve incident and emergency response or improve mobility, such as through real-time traffic, transit, and multimodal traveler information;

(6) if the project or program involves the purchase of integrated, interoperable emergency communications equipment;

(7) if the project or program shifts traffic demand to nonpeak hours or other transportation modes, increases vehicle occupancy rates, or otherwise reduces demand for roads through such means as telecommuting, ridesharing, carsharing, alternative work hours, and pricing; or

(8) if the project or program is for—

(A) the purchase of diesel retrofits that are—

(i) for motor vehicles (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)); or

(ii) verified technologies (as defined in section 791 of the Energy Policy Act of 2005 (42 U.S.C. 16131)) for non-road vehicles and non-road engines (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)) that are used in construction projects *or port-related freight operations* that are—

(I) located in nonattainment or maintenance areas for ozone, PM₁₀, or PM_{2.5} (as defined under the Clean Air Act (42 U.S.C. 7401 et seq.)); and

(II) funded, in whole or in part, under this title *or chapter 53 of title 49*; or

(B) the conduct of outreach activities that are designed to provide information and technical assistance to the own-

ers and operators of diesel equipment and vehicles regarding the purchase and installation of diesel retrofits.

(c) SPECIAL RULES.—

(1) PROJECTS FOR PM-10 NONATTAINMENT AREAS.—A State may obligate funds apportioned to the State under section 104(b)(4) for a project or program for an area that is nonattainment for ozone or carbon monoxide, or both, and for PM-10 resulting from transportation activities, without regard to any limitation of the Department of Transportation relating to the type of ambient air quality standard such project or program addresses.

(2) ELECTRIC VEHICLE AND NATURAL GAS VEHICLE INFRASTRUCTURE.—A State may obligate funds apportioned under section 104(b)(4) for a project or program to establish electric vehicle charging stations or natural gas vehicle refueling stations for the use of battery powered or natural gas fueled trucks or other motor vehicles at any location in the State (*giving priority to corridors designated under section 151*) except that such stations may not be established or supported where commercial establishments serving motor vehicle users are prohibited by section 111 of title 23, United States Code.

(3) HOV FACILITIES.—No funds may be provided under this section for a project which will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times.

(d) STATES FLEXIBILITY.—

(1) STATES WITHOUT A NONATTAINMENT AREA.—If a State does not have, and never has had, a nonattainment area designated under the Clean Air Act (42 U.S.C. 7401 et seq.), the State may use funds apportioned to the State under section 104(b)(4) for any project in the State that—

(A) would otherwise be eligible under subsection (b) as if the project were carried out in a nonattainment or maintenance area; or

(B) is eligible under the surface transportation program under section 133.

(2) STATES WITH A NONATTAINMENT AREA.—

(A) IN GENERAL.—If a State has a nonattainment area or maintenance area and received funds in fiscal year 2009 under section 104(b)(2)(D), as in effect on the day before the date of enactment of the MAP-21, above the amount of funds that the State would have received based on the nonattainment and maintenance area population of the State under subparagraphs (B) and (C) of section 104(b)(2), as in effect on the day before the date of enactment of the MAP-21, the State may use for any project that *would otherwise be eligible under subsection (b) if the project were carried out in a nonattainment or maintenance area* or is eligible under the surface transportation program under section 133 an amount of funds apportioned to such State under section 104(b)(4) that is equal to the product obtained by multiplying—

(i) the amount apportioned to such State under section 104(b)(4) [(excluding the amount of funds reserved under paragraph (I))]; by

(ii) the ratio calculated under subparagraph (B).

(B) RATIO.—For purposes of this paragraph, the ratio shall be calculated as the proportion that—

(i) the amount for fiscal year 2009 such State was permitted by section 149(c)(2), as in effect on the day before the date of enactment of the MAP-21, to obligate in any area of the State for projects eligible under section 133, as in effect on the day before the date of enactment of the [MAP-21t] MAP-21;¹² bears to

(ii) the total apportionment to such State for fiscal year 2009 under section 104(b)(2), as in effect on the day before the date of enactment of the MAP-21.

(3) CHANGES IN DESIGNATION.—If a new nonattainment area is designated or a previously designated nonattainment area is redesignated as an attainment area in a State under the Clean Air Act (42 U.S.C. 7401 et seq.), the Secretary shall modify , *in a manner consistent with the approach that was in effect on the day before the date of enactment of MAP-21*, the amount such State is permitted to obligate in any area of the State for projects eligible under section 133.

* * * * *

(g) COST-EFFECTIVE EMISSION REDUCTION GUIDANCE.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(B) DIESEL RETROFIT.—The term “diesel retrofit” means a replacement, repowering, rebuilding, after treatment, or other technology, as determined by the Administrator.

(2) EMISSION REDUCTION GUIDANCE.—The Administrator, in consultation with the Secretary, shall publish a list of diesel retrofit technologies and supporting technical information for—

(A) diesel emission reduction technologies certified or verified by the Administrator, the California Air Resources Board, or any other entity recognized by the Administrator for the same purpose;

(B) diesel emission reduction technologies identified by the Administrator as having an application and approvable test plan for verification by the Administrator or the California Air Resources Board that is submitted [not later than] *not later than* 18 months of the date of enactment of this subsection;

(C) available information regarding the emission reduction effectiveness and cost effectiveness of technologies identified in this paragraph, taking into consideration air quality and health effects.

(3) PRIORITY CONSIDERATION.—[States and metropolitan]

(A) IN GENERAL.—*States and metropolitan*; planning organizations shall give priority in areas designated as non-

¹²So in original. Probably should be MAP-21;”.

attainment or maintenance for PM2.5 under the Clean Air Act (42 U.S.C. 7401 et seq.) in distributing funds received for congestion mitigation and air quality projects and programs from apportionments under section 104(b)(4) to projects that **[are proven to reduce]** *reduce directly emitted* PM2.5, including diesel retrofits.

(B) USE OF PRIORITY FUNDING.—*To the maximum extent practicable, PM2.5 priority funding shall be used on the most cost-effective projects and programs that are proven to reduce directly emitted fine particulate matter.*

* * * * *

(k) PRIORITY FOR USE OF FUNDS IN PM2.5 AREAS.—

(1) IN GENERAL.—For any State **[that has a nonattainment or maintenance area]** *that has 1 or more nonattainment or maintenance areas* for fine particulate matter, an amount equal to 25 percent of the funds apportioned to each State under section 104(b)(4) for a **[nonattainment or maintenance area that are]** *the nonattainment or maintenance areas that are* based all or in part on the weighted population of **[such area]** *such areas* in fine particulate matter nonattainment shall be obligated to projects that reduce **[such fine particulate]** *directly-emitted fine particulate* matter emissions in **[such area]** *such areas*, including diesel retrofits.

(2) CONSTRUCTION EQUIPMENT AND VEHICLES.—In order to meet the requirements of paragraph (1), a State or metropolitan planning organization may elect to obligate funds to install diesel emission control technology on nonroad diesel equipment or on-road diesel equipment that is operated on a **[highway construction]** *transportation construction* project within a PM2.5 nonattainment or maintenance area.

(3) PM2.5 NONATTAINMENT AND MAINTENANCE IN LOW POPULATION DENSITY STATES.—

(A) EXCEPTION.—*In any State with a population density of **[75]** 80 or fewer persons per square mile of land area, based on the most recent decennial census, the requirements under subsection (g)(3) and paragraphs (1) and (2) of this subsection shall not apply to a nonattainment or maintenance area in the State if—*

(i) the nonattainment or maintenance area does not have projects that are part of the emissions analysis of a metropolitan transportation plan or transportation improvement program; and

(ii) regional motor vehicle emissions are an insignificant contributor to the air quality problem for PM2.5 in the nonattainment or maintenance area.

(B) CALCULATION.—*If subparagraph (A) applies to a nonattainment or maintenance area in a State, the percentage of the PM2.5 set-aside under paragraph (1) shall be reduced for that State proportionately based on the weighted population of the area in fine particulate matter nonattainment.*

(4) PORT-RELATED EQUIPMENT AND VEHICLES.—*To meet the requirements under paragraph (1), a State or metropolitan planning organization may elect to obligate funds to the most cost-effective projects to reduce emissions from port-related*

landside nonroad or on-road equipment that is operated within the boundaries of a PM2.5 nonattainment or maintenance area.

(1) PERFORMANCE PLAN.—

(1) IN GENERAL.—Each metropolitan planning organization serving a transportation management area (as defined in section 134) with a population over 1,000,000 people representing a nonattainment or maintenance area shall develop a performance plan that—

(A) includes an area baseline level for traffic congestion and on-road mobile source emissions for which the area is in nonattainment or maintenance;

(B) describes progress made in achieving the *air quality and traffic congestion* performance targets described in section 150(d); and

(C) includes a description of projects identified for funding under this section and how such projects will contribute to achieving emission and traffic congestion reduction targets.

(2) UPDATED PLANS.—Performance plans shall be updated biennially and include a separate report that assesses the progress of the program of projects under the previous plan in achieving the air quality and traffic congestion targets of the previous plan.

(m) OPERATING ASSISTANCE.—A State may obligate funds apportioned under section ~~104(b)(2)~~ *section 104(b)(4)* in an area of such State that is otherwise eligible for obligations of such funds for operating costs under chapter 53 of title 49 or on a system for which CMAQ funding was made available, obligated or expended in fiscal year 2012, and shall have no imposed time limitation.

* * * * *

§ 150. National goals and performance management measures

(a) DECLARATION OF POLICY.—Performance management will transform the Federal-aid highway program and provide a means to the most efficient investment of Federal transportation funds by refocusing on national transportation goals, increasing the accountability and transparency of the Federal-aid highway program, and improving project decisionmaking through performance-based planning and programming.

(b) NATIONAL GOALS.—It is in the interest of the United States to focus the Federal-aid highway program on the following national goals:

(1) SAFETY.—* * *

* * * * *

(c) ESTABLISHMENT OF PERFORMANCE MEASURES.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of the MAP-21, the Secretary, in consultation with State departments of transportation, metropolitan planning organizations, and other stakeholders, shall promulgate a rulemaking that establishes performance measures and standards.

(2) ADMINISTRATION.—In carrying out paragraph (1), the Secretary shall—

(A) provide States, metropolitan planning organizations, and other stakeholders not less than 90 days to comment on any regulation proposed by the Secretary under that paragraph;

(B) take into consideration any comments relating to a proposed regulation received during that comment period; and

(C) limit performance measures only to those described in this subsection.

(3) NATIONAL HIGHWAY PERFORMANCE PROGRAM.—

(A) IN GENERAL.—Subject to subparagraph (B), for the purpose of carrying out section 119, the Secretary shall establish—

(i) minimum standards for States to use in developing and operating bridge and pavement management systems;

(ii) measures for States to use to assess—

(I) the condition of pavements on the Interstate system;

(II) the condition of pavements on the National Highway System (excluding the Interstate);

(III) the condition of bridges on the National Highway System;

(IV) the performance of the Interstate System; and

(V) the performance of the National Highway System (excluding the Interstate System);

(iii) minimum levels for the condition of pavement on the Interstate System, only for the purposes of carrying out section 119(f)(1); and

(iv) the data elements that are necessary to collect and maintain standardized data to carry out a performance-based approach.

(B) REGIONS.—In establishing minimum condition levels under subparagraph (A)(iii), if the Secretary determines that various geographic regions of the United States experience disparate factors contributing to the condition of pavement on the Interstate System in those regions, the Secretary may establish different minimum levels for each region[;] .

* * * * *

§ 151. National electric vehicle charging and natural gas fueling corridors

(a) IN GENERAL.—*Not later than 1 year after the date of enactment of the DRIVE Act, the Secretary shall designate national electric vehicle charging and natural gas fueling corridors that identify the near- and long-term need for, and location of, electric vehicle charging infrastructure and natural gas fueling infrastructure at strategic locations along major national highways to improve the mobility of passenger and commercial vehicles that employ electric and natural gas fueling technologies across the United States.*

(b) DESIGNATION OF CORRIDORS.—*In designating the corridors under subsection (a), the Secretary shall—*

- (1) solicit nominations from State and local officials for facilities to be included in the corridors;
 - (2) incorporate existing electric vehicle charging and natural gas fueling corridors designated by a State or group of States; and
 - (3) consider the demand for, and location of, existing electric vehicle charging and natural gas fueling infrastructure.
- (c) **STAKEHOLDERS.**—In designating corridors under subsection (a), the Secretary shall involve, on a voluntary basis, stakeholders that include—
- (1) the heads of other Federal agencies;
 - (2) State and local officials;
 - (3) representatives of—
 - (A) energy utilities;
 - (B) the electric and natural gas vehicle industries;
 - (C) the freight and shipping industry;
 - (D) clean technology firms;
 - (E) the hospitality industry;**
 - (F) the restaurant industry; and
 - (G) highway rest stop vendors; and
 - (4) such other stakeholders as the Secretary determines to be necessary.
- (d) **REDESIGNATION.**—Not later than 5 years after the date of establishment of the corridors under subsection (a), and every 5 years thereafter, the Secretary shall update and redesignate the corridors.
- (e) **REPORT.**—During designation and redesignation of the corridors under this section, the Secretary shall issue a report that—
- (1) identifies electric vehicle charging and natural gas fueling infrastructure and standardization needs for electricity providers, natural gas providers, infrastructure providers, vehicle manufacturers, electricity purchasers, and natural gas purchasers; and
 - (2) establishes an aspirational goal of achieving strategic deployment of electric vehicle charging and natural gas fueling infrastructure in those corridors by the end of fiscal year 2021.

* * * * *

§ 153. Use of safety belts and motorcycle helmets

(a) **AUTHORITY TO MAKE GRANTS.**—The Secretary may make grants to a State in a fiscal year in accordance with this section if the State has in effect in such fiscal year—

(1) * * *

* * * * *

(h) **PENALTY.**—

(1) **PRIOR TO FISCAL YEAR 2012.**—If, at any time in a fiscal year beginning after September 30, 1994, and before October 1, 2011, a State does not have in effect a law described in subsection (a)(2), the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under each of subsections (b)(1), (b)(2), and (b)(3) of section 104 of this title to the apportionment of the State under section 402 of this title.

(2) **FISCAL YEAR 2012 AND THEREAFTER.**—If, at any time in a fiscal year beginning after September 30, 2011, a State does

not have in effect a law described in subsection (a)(2), the Secretary shall transfer an amount equal to 2 percent of the funds apportioned to the State for the succeeding fiscal year under each of ~~paragraphs (1) through (3)~~ *paragraphs (1), (2), and (4)* of section 104(b) to the apportionment of the State under section 402.

* * * * *

§ 163. Safety incentives to prevent operation of motor vehicles by intoxicated persons

- (a) GENERAL AUTHORITY.—* * *
- (f) AUTHORIZATION OF APPROPRIATIONS.—
- (1) IN GENERAL.—* * *

* * * * *

(2) AVAILABILITY OF FUNDS.—Notwithstanding section ~~118(b)(2)~~ *118(b)*, the funds authorized by this subsection shall remain available until expended.

* * * * *

§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence

- (a) DEFINITIONS.—In this section, the following definitions apply:
 - (1) ALCOHOL CONCENTRATION.—The term “alcohol concentration” means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.
 - (2) DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.—The terms “driving while intoxicated” and “driving under the influence” mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.
 - (3) MOTOR VEHICLE.—The term “motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.
 - (4) REPEAT INTOXICATED DRIVER LAW.—The term “repeat intoxicated driver law” means a State law *or combination of laws* that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

* * * * *

§ 165. Territorial and Puerto Rico highway program

- (a) DIVISION OF FUNDS.—Of funds made available in a fiscal year for the territorial and Puerto Rico highway program—
 - (1)* * *
- (c) TERRITORIAL HIGHWAY PROGRAM.—
 - (1) TERRITORY DEFINED.—* * *
 - (7) LOCATION OF PROJECTS.—Territorial highway program projects (other than those described in ~~paragraphs (2), (4), (7)~~,

(8), (14), and (19)] paragraphs (2), (4), (6), (7), and (14) of section 133(b)) may not be undertaken on roads functionally classified as local.

* * * * *

§ 166. HOV facilities

(a) IN GENERAL.—

(1) AUTHORITY OF STATE AGENCIES.—A State agency that has jurisdiction over the operation of a HOV facility shall establish the occupancy requirements of vehicles operating on the facility.

(2) OCCUPANCY REQUIREMENT.—Except as otherwise provided by this section, no fewer than two occupants per vehicle may be required for use of a HOV facility.

(b) EXCEPTIONS.—

(1) IN GENERAL.—Notwithstanding the occupancy requirement of subsection (a)(2), the exceptions in paragraphs (2) through (5) shall apply with respect to a State agency operating a HOV facility.

(2) MOTORCYCLES AND BICYCLES.—

(A) IN GENERAL.—Subject to subparagraph (B), the State agency shall allow motorcycles and bicycles to use the HOV facility.

(B) SAFETY EXCEPTION.—

(i) IN GENERAL.—A State agency may restrict use of the HOV facility by motorcycles or bicycles (or both) if the agency certifies to the Secretary that such use would create a safety hazard and the Secretary accepts the certification.

(ii) ACCEPTANCE OF CERTIFICATION.—The Secretary may accept a certification under this subparagraph only after the Secretary publishes notice of the certification in the Federal Register and provides an opportunity for public comment.

(3) PUBLIC TRANSPORTATION VEHICLES.—The State agency may allow public transportation vehicles to use the HOV facility if the agency—

(A) establishes requirements for clearly identifying the vehicles; and

(B) establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

[(4) HIGH OCCUPANCY TOLL VEHICLES.—The State agency may allow vehicles not otherwise exempt pursuant to this subsection to use the HOV facility if the operators of the vehicles pay a toll charged by the agency for use of the facility and the agency—

[(A) establishes a program that addresses how motorists can enroll and participate in the toll program;

[(B) develops, manages, and maintains a system that will automatically collect the toll; and

[(C) establishes policies and procedures to—

[(i) manage the demand to use the facility by varying the toll amount that is charged; and

[(ii) enforce violations of use of the facility.]

(4) HIGH OCCUPANCY TOLL VEHICLES.—

(A) IN GENERAL.—*The State agency may allow vehicles not otherwise exempt under this subsection to use the HOV facility if the operators of the vehicles pay a toll charged by the agency for use of the facility and the agency—*

(i) establishes a program that addresses how motorists can enroll and participate in the toll program;

(ii) in the case of a high occupancy vehicle facility that affects a metropolitan area, submits to the Secretary a written statement that the metropolitan planning organization designated under section 134 for the area has been consulted concerning the placement and amount of tolls on the converted facility;

(iii) develops, manages, and maintains a system that will automatically collect the toll; and

(iv) establishes policies and procedures—

(I) to manage the demand to use the facility by varying the toll amount that is charged;

(II) to enforce violations of the use of the facility; and

(III) to ensure that private motorcoaches that serve the public are provided access to the facility under the same rates, terms, and conditions, as public transportation buses in the State.

(B) EXEMPTION FROM TOLLS.—*In levying a toll on a facility under subparagraph (A), a State agency may—*

(i) designate classes of vehicles that are exempt from the toll; and

(ii) charge different toll rates for different classes of vehicles.

(5) LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—

【(A) INHERENTLY LOW EMISSION VEHICLE.—Before September 30, 2017, the State agency may allow vehicles that are certified as inherently low-emission vehicles pursuant to section 88.311–93 of title 40, Code of Federal Regulations (or successor regulations), and are labeled in accordance with section 88.312–93 of such title (or successor regulations), to use the HOV facility if the agency establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.】

(A) INHERENTLY LOW EMISSION VEHICLE.—*If a State agency establishes procedures for enforcing the restrictions on the use of a HOV facility by vehicles described in clauses (i) and (ii), the State agency may allow the use of the HOV facility by—*

(i) alternative fuel vehicles; and

(ii) any motor vehicle described in section 30D(d)(1) of the Internal Revenue Code of 1986.

* * * * *

(c) REQUIREMENTS APPLICABLE TO TOLLS.—

(1) IN GENERAL.—【Tolls】 *Notwithstanding section 301, tolls may be charged under paragraphs (4) and (5) of subsection (b) [notwithstanding section 301 and, except as provided in paragraphs (2) and (3)], subject to the requirements of section 129.*

【(2) HOV FACILITIES ON THE INTERSTATE SYSTEM.—Notwithstanding section 129, tolls may be charged under paragraphs

(4) and (5) of subsection (b) on a HOV facility on the Interstate System.

[(3)] (2) TOLL REVENUE.—Toll revenue collected under this section is subject to the requirements of section 129(a)(3).**]**

(d) HOV FACILITY MANAGEMENT, OPERATION, MONITORING, AND ENFORCEMENT.—

(1) IN GENERAL.—A State agency that allows vehicles to use a HOV facility under paragraph (4) or (5) of subsection (b) shall submit to the Secretary a report demonstrating that the facility is not already degraded, and that the presence of the vehicles will not cause the facility to become degraded, and certify to the Secretary that the agency will carry out the following responsibilities with respect to the facility:

(A) Establishing, managing, and supporting a performance monitoring, evaluation, and reporting program for the facility that provides for continuous monitoring, assessment, and reporting on the impacts that the vehicles may have on the operation of the facility and adjacent highways and submitting to the Secretary annual reports of those impacts.

(B) Establishing, managing, and supporting an enforcement program that ensures that the facility is being operated in accordance with the requirements of this section.

(C) Limiting or discontinuing the use of the facility by the vehicles whenever the operation of the facility is degraded.

[(D) MAINTENANCE OF OPERATING PERFORMANCE.—Not later than 180 days after the date on which a facility is degraded pursuant to the standard specified in paragraph (2), the State agency with jurisdiction over the facility shall bring the facility into compliance with the minimum average operating speed performance standard through changes to operation of the facility, including—

[(i) increasing the occupancy requirement for HOV lanes;

[(ii) varying the toll charged to vehicles allowed under subsection (b) to reduce demand;

[(iii) discontinuing allowing non-HOV vehicles to use HOV lanes under subsection (b); or

[(iv) increasing the available capacity of the HOV facility.

[(E) COMPLIANCE.—If the State fails to bring a facility into compliance under subparagraph (D), the Secretary shall subject the State to appropriate program sanctions under section 1.36 of title 23, Code of Federal Regulations (or successor regulations), until the performance is no longer degraded.**]**

(D) MAINTENANCE OF OPERATING PERFORMANCE.—

(i) SUBMISSION OF PLAN.—*Not later than 180 days after the date on which a facility is degraded under paragraph (2), the State agency with jurisdiction over the facility shall submit to the Secretary for approval a plan that details the actions the State agency will take to bring the facility into compliance with the minimum average operating speed performance standard*

through changes to operation of the facility, including—

(I) increasing the occupancy requirement for HOV lanes;

(II) varying the toll charged to vehicles allowed under subsection (b) to reduce demand;

(III) discontinuing allowing non-HOV vehicles to use HOV lanes under subsection (b); or

(IV) increasing the available capacity of the HOV facility.

(ii) NOTICE OF APPROVAL OR DISAPPROVAL.—Not later than 60 days after the date of receipt of a plan under clause (i), the Secretary shall provide to the State agency a written notice indicating whether the Secretary has approved or disapproved the plan based on a determination of whether the implementation of the plan will bring the HOV facility into compliance.

(iii) BIENNIAL PROGRESS UPDATES.—Until the date on which the Secretary determines that the State agency has brought the HOV facility into compliance with this subsection, the State agency shall submit biennial updates that describe—

(I) the actions taken to bring the HOV facility into compliance; and

(II) the progress made by those actions.

(E) COMPLIANCE.—The Secretary shall subject the State to appropriate program sanctions under section 1.36 of title 23, Code of Federal Regulations (or successor regulations), until the performance is no longer degraded, if—

(i) the State agency fails to submit an approved action plan under subparagraph (D) to bring a degraded facility into compliance; or

(ii) after the State submits and the Secretary approves an action plan under subparagraph (D), the Secretary determines that, on a date that is not earlier than 1 year after the approval of the action plan, the State agency is not making significant progress toward bringing the HOV facility into compliance with the minimum average operating speed performance standard.

* * * * *

§ 167. National freight policy

[(a) IN GENERAL.—It is the policy of the United States to improve the condition and performance of the national freight network to ensure that the national freight network provides the foundation for the United States to compete in the global economy and achieve each goal described in subsection (b).

[(b) GOALS.—The goals of the national freight policy are—

[(1) to invest in infrastructure improvements and to implement operational improvements that—

(A) strengthen the contribution of the national freight network to the economic competitiveness of the United States;

(B) reduce congestion; and

- 【(C) increase productivity, particularly for domestic industries and businesses that create high-value jobs;
- 【(2) to improve the safety, security, and resilience of freight transportation;
- 【(3) to improve the state of good repair of the national freight network;
- 【(4) to use advanced technology to improve the safety and efficiency of the national freight network;
- 【(5) to incorporate concepts of performance, innovation, competition, and accountability into the operation and maintenance of the national freight network; and¹⁴
- 【(6) to improve the economic efficiency of the national freight network.¹⁴
- 【(7) to reduce the environmental impacts of freight movement on the national freight network;¹⁴
- 【(c) ESTABLISHMENT OF A NATIONAL FREIGHT NETWORK.—
 - 【(1) IN GENERAL.—The Secretary shall establish a national freight network in accordance with this section to assist States in strategically directing resources toward improved system performance for efficient movement of freight on highways, including national highway system, freight intermodal connectors and aerotropolis transportation systems.
 - 【(2) NETWORK COMPONENTS.—The national freight network shall consist of—
 - 【(A) the primary freight network, as designated by the Secretary under subsection (d) (referred to in this section as the “primary freight network”) as most critical to the movement of freight;
 - 【(B) the portions of the Interstate System not designated as part of the primary freight network; and
 - 【(C) critical rural freight corridors established under subsection (e).
- 【(d) DESIGNATION OF PRIMARY FREIGHT NETWORK.—
 - 【(1) INITIAL DESIGNATION OF PRIMARY FREIGHT NETWORK.—
 - 【(A) DESIGNATION.—Not later than 1 year after the date of enactment of this section, the Secretary shall designate a primary freight network—
 - 【(i) based on an inventory of national freight volume conducted by the Administrator of the Federal Highway Administration, in consultation with stakeholders, including system users, transport providers, and States; and
 - 【(ii) that shall be comprised of not more than 27,000 centerline miles of existing roadways that are most critical to the movement of freight.
 - 【(B) FACTORS FOR DESIGNATION.—In designating the primary freight network, the Secretary shall consider—
 - 【(i) the origins and destinations of freight movement in the United States;
 - 【(ii) the total freight tonnage and value of freight moved by highways;

¹⁴So in original.

[(iii) the percentage of annual average daily truck traffic in the annual average daily traffic on principal arterials;

[(iv) the annual average daily truck traffic on principal arterials;

[(v) land and maritime ports of entry;

[(vi) access to energy exploration, development, installation, or production areas;

[(vii) population centers; and

[(viii) network connectivity.

[(2) ADDITIONAL MILES ON PRIMARY FREIGHT NETWORK.—In addition to the miles initially designated under paragraph (1), the Secretary may increase the number of miles designated as part of the primary freight network by not more than 3,000 additional centerline miles of roadways (which may include existing or planned roads) critical to future efficient movement of goods on the primary freight network.

[(3) REDESIGNATION OF PRIMARY FREIGHT NETWORK.—Effective beginning 10 years after the designation of the primary freight network and every 10 years thereafter, using the designation factors described in paragraph (1), the Secretary shall redesignate the primary freight network (including additional mileage described in paragraph (2)).

[(e) CRITICAL RURAL FREIGHT CORRIDORS.—A State may designate a road within the borders of the State as a critical rural freight corridor if the road—

[(1) is a rural principal arterial roadway and has a minimum of 25 percent of the annual average daily traffic of the road measured in passenger vehicle equivalent units from trucks (FHWA vehicle class 8 to 13);

[(2) provides access to energy exploration, development, installation, or production areas;

[(3) connects the primary freight network, a roadway described in paragraph (1) or (2), or Interstate System to facilities that handle more than—

[(A) 50,000 20-foot equivalent units per year; or

[(B) 500,000 tons per year of bulk commodities.

[(f) NATIONAL FREIGHT STRATEGIC PLAN.—

[(1) INITIAL DEVELOPMENT OF NATIONAL FREIGHT STRATEGIC PLAN.—Not later than 3 years after the date of enactment of this section, the Secretary shall, in consultation with State departments of transportation and other appropriate public and private transportation stakeholders, develop and post on the Department of Transportation public website a national freight strategic plan that shall include—

[(A) an assessment of the condition and performance of the national freight network;

[(B) an identification of highway bottlenecks on the national freight network that create significant freight congestion problems, based on a quantitative methodology developed by the Secretary, which shall, at a minimum, include—

[(i) information from the Freight Analysis Network of the Federal Highway Administration; and

[(ii) to the maximum extent practicable, an estimate of the cost of addressing each bottleneck and any operational improvements that could be implemented;

[(C) forecasts of freight volumes for the 20-year period beginning in the year during which the plan is issued;

[(D) an identification of major trade gateways and national freight corridors that connect major population centers, trade gateways, and other major freight generators for current and forecasted traffic and freight volumes, the identification of which shall be revised, as appropriate, in subsequent plans;

[(E) an assessment of statutory, regulatory, technological, institutional, financial, and other barriers to improved freight transportation performance (including opportunities for overcoming the barriers);

[(F) an identification of routes providing access to energy exploration, development, installation, or production areas;

[(G) best practices for improving the performance of the national freight network;

[(H) best practices to mitigate the impacts of freight movement on communities;

[(I) a process for addressing multistate projects and encouraging jurisdictions to collaborate; and

[(J) strategies to improve freight intermodal connectivity.

[(2) UPDATES TO NATIONAL FREIGHT STRATEGIC PLAN.—Not later than 5 years after the date of completion of the first national freight strategic plan under paragraph (1), and every 5 years thereafter, the Secretary shall update and repost on the Department of Transportation public website a revised national freight strategic plan.

[(g) FREIGHT TRANSPORTATION CONDITIONS AND PERFORMANCE REPORTS.—Not later than 2 years after the date of enactment of this section, and biennially thereafter, the Secretary shall prepare a report that contains a description of the conditions and performance of the national freight network in the United States.

[(h) TRANSPORTATION INVESTMENT DATA AND PLANNING TOOLS.—

[(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall—

[(A) begin development of new tools and improvement of existing tools or improve existing tools to support an outcome-oriented, performance-based approach to evaluate proposed freight-related and other transportation projects, including—

[(i) methodologies for systematic analysis of benefits and costs;

[(ii) tools for ensuring that the evaluation of freight-related and other transportation projects could consider safety, economic competitiveness, environmental sustainability, and system condition in the project selection process; and

[(iii) other elements to assist in effective transportation planning;

[(B) identify transportation-related model data elements to support a broad range of evaluation methods and techniques to assist in making transportation investment decisions; and

[(C) at a minimum, in consultation with other relevant Federal agencies, consider any improvements to existing freight flow data collection efforts that could reduce identified freight data gaps and deficiencies and help improve forecasts of freight transportation demand.

[(2) CONSULTATION.—The Secretary shall consult with Federal, State, and other stakeholders to develop, improve, and implement the tools and collect the data in paragraph (1).

[(i) DEFINITION OF AEROTROPOLIS TRANSPORTATION SYSTEM.—In this section, the term “aerotropolis transportation system” means a planned and coordinated multimodal freight and passenger transportation network that, as determined by the Secretary, provides efficient, cost-effective, sustainable, and intermodal connectivity to a defined region of economic significance centered around a major airport.]

* * * * *

§ 167. National freight program

(a) ESTABLISHMENT.—

(1) IN GENERAL.—*It is the policy of the United States to improve the condition and performance of the national highway freight network to ensure that the national freight network provides the foundation for the United States to compete in the global economy and achieve each goal described in subsection (b).*

(2) ESTABLISHMENT.—*In support of the goals described in subsection (b), the Secretary shall establish a national freight program in accordance with this section to improve the efficient movement of freight on the national highway freight network.*

(b) GOALS.—*The goals of the national freight program are—*

(1) *to invest in infrastructure improvements and to implement operational improvements on the highways of the United States that—*

(A) *strengthen the contribution of the national highway freight network to the economic competitiveness of the United States;*

(B) *reduce congestion and relieve bottlenecks in the freight transportation system;*

(C) *reduce the cost of freight transportation;*

(D) *improve the reliability of freight transportation; and*

(E) *increase productivity, particularly for domestic industries and businesses that create high-value jobs;*

(2) *to improve the safety, security, efficiency, and resiliency of freight transportation in rural and urban areas;*

(3) *to improve the state of good repair of the national highway freight network;*

(4) *to use advanced technology to improve the safety and efficiency of the national highway freight network;*

(5) *to incorporate concepts of performance, innovation, competition, and accountability into the operation and maintenance of the national highway freight network;*

(6) to improve the efficiency and productivity of the national highway freight network; and

(7) to reduce the environmental impacts of freight movement.

(c) ESTABLISHMENT OF A NATIONAL HIGHWAY FREIGHT NETWORK.—

(1) IN GENERAL.—*The Secretary shall establish a national highway freight network in accordance with this section to assist States in strategically directing resources toward improved system performance for efficient movement of freight on highways.*

(2) NETWORK COMPONENTS.—*The national highway freight network shall consist of—*

(A) *the primary highway freight system, as designated under subsection (d);*

(B) *critical rural freight corridors established under subsection (e);*

(C) *critical urban freight corridors established under subsection (f); and*

(D) *the portions of the Interstate System not designated as part of the primary highway freight system, including designated future Interstate System routes as of the date of enactment of the DRIVE Act.*

(d) DESIGNATION AND REDESIGNATION OF THE PRIMARY HIGHWAY FREIGHT SYSTEM.—

(1) INITIAL DESIGNATION OF PRIMARY HIGHWAY FREIGHT SYSTEM.—*The initial designation of the primary highway freight system shall be—*

(A) *the network designated by the Secretary under section 167(d) of title 23, United States Code, as in effect on the day before the date of enactment of the DRIVE Act; and*

(B) *all National Highway System freight intermodal connectors.*

(2) REDESIGNATION OF PRIMARY HIGHWAY FREIGHT SYSTEM.—

(A) IN GENERAL.—*Beginning on the date that is 1 year after the date of enactment of the DRIVE Act and every 5 years thereafter, using the designation factors described in subparagraph (E), the Secretary shall redesignate the primary highway freight system (including any additional mileage added to the primary highway freight system under this paragraph as of the date on which the redesignation process is effective).*

(B) MILEAGE.—

(i) FIRST REDESIGNATION.—*In redesignating the primary highway freight system on the date that is 1 year after the date of enactment of the DRIVE Act, the Secretary shall limit the system to 30,000 centerline miles, without regard to the connectivity of the primary highway freight system.*

(ii) SUBSEQUENT REDESIGNATIONS.—*Each redesignation after the redesignation described in clause (i), the Secretary may increase the primary highway freight system by up to 5 percent of the total mileage of the system, without regard to the connectivity of the primary highway freight system.*

(C) CONSIDERATIONS.—

(i) *IN GENERAL.*—*In redesignating the primary highway freight system, to the maximum extent practicable, the Secretary shall use measurable data to assess the significance of goods movement, including consideration of points of origin, destination, and linking components of the United States global and domestic supply chains.*

(ii) *INTERMODAL CONNECTORS.*—*In redesignating the primary highway freight system, the Secretary shall include all National Highway System freight intermodal connectors.*

(D) *INPUT.*—*In addition to the process provided to State freight advisory committees under paragraph (3), in redesignating the primary highway freight system, the Secretary shall provide an opportunity for State freight advisory committees to submit additional miles for consideration.*

(E) *FACTORS FOR REDESIGNATION.*—*In redesignating the primary highway freight system, the Secretary shall consider—*

(i) *the origins and destinations of freight movement in, to, and from the United States;*

(ii) *land and water ports of entry;*

(iii) *access to energy exploration, development, installation, or production areas;*

(iv) *proximity of access to other freight intermodal facilities, including rail, air, water, and pipelines;*

(v) *the total freight tonnage and value moved via highways;*

(vi) *significant freight bottlenecks, as identified by the Secretary;*

(vii) *the annual average daily truck traffic on principal arterials; and*

(viii) *the significance of goods movement on principal arterials, including consideration of global and domestic supply chains.*

(3) *STATE FLEXIBILITY FOR ADDITIONAL MILES ON PRIMARY HIGHWAY FREIGHT SYSTEM.*—

(A) *IN GENERAL.*—*Not later than 1 year after each redesignation conducted by the Secretary under paragraph (2), each State, under the advisement of the State freight advisory committee, as established in accordance with subsection (n), may increase the number of miles designated as part of the primary highway freight system in that State by not more than 10 percent of the miles designated in that State under this subsection if the additional miles—*

(i) *close gaps between primary highway freight system segments;*

(ii) *establish connections of the primary highway freight system critical to the efficient movement of goods, including ports, international border crossings, airports, intermodal facilities, logistics centers, warehouses, and agricultural facilities; or*

(iii) *designate critical emerging freight routes.*

(B) CONSIDERATIONS.—*Each State, under the advisement of the State freight advisory committee that increases the number of miles on the primary highway freight system under subparagraph (A) shall—*

(i) *consider nominations for the additional miles from metropolitan planning organizations within the State;*

(ii) *ensure that the additional miles are consistent with the freight plan of the State; and*

(iii) *review the primary highway freight system of the State designated under paragraph (1) and redesignate miles in a manner that is consistent with paragraph (2).*

(C) SUBMISSION.—*Each State, under the advisement of the State freight advisory committee shall—*

(i) *submit to the Secretary a list of the additional miles added under this subsection; and*

(ii) *certify that—*

(I) *the additional miles meet the requirements of subparagraph (A); and*

(II) *the State, under the advisement of the State freight advisory committee has satisfied the requirements of subparagraph (B).*

(e) CRITICAL RURAL FREIGHT CORRIDORS.—*A State may designate a public road within the borders of the State as a critical rural freight corridor if the public road—*

(1) *is a rural principal arterial roadway and has a minimum of 25 percent of the annual average daily traffic of the road measured in passenger vehicle equivalent units from trucks (Federal Highway Administration vehicle class 8 to 13);*

(2) *provides access to energy exploration, development, installation, or production areas;*

(3) *connects the primary highway freight system, a roadway described in paragraph (1) or (2), or the Interstate System to facilities that handle more than—*

(A) *50,000 20-foot equivalent units per year; or*

(B) *500,000 tons per year of bulk commodities;*

(4) *provides access to—*

(A) *a grain elevator;*

(B) *an agricultural facility;*

(C) *a mining facility;*

(D) *a forestry facility; or*

(E) *an intermodal facility;*

(5) *connects to an international port of entry;*

(6) *provides access to significant air, rail, water, or other freight facilities in the State; or*

(7) *is, in the determination of the State, vital to improving the efficient movement of freight of importance to the economy of the State.*

(f) CRITICAL URBAN FREIGHT CORRIDORS.—

(1) URBANIZED AREA WITH POPULATION OF 500,000 OR MORE.—*In an urbanized area with a population of 500,000 or more individuals, the representative metropolitan planning organization, in consultation with the State, may designate a public*

road within the borders of that area of the State as a critical urban freight corridor.

(2) URBANIZED AREA WITH A POPULATION LESS THAN 500,000.—*In an urbanized area with a population of less than 500,000 individuals, the State, in consultation with the representative metropolitan planning organization, may designate a public road within the borders of that area of the State as a critical urban freight corridor.*

(3) REQUIREMENTS FOR DESIGNATION.—*A designation may be made under paragraphs (1) or (2) if the public road—*

(A) is in an urbanized area, regardless of population; and

(B)(i) connects an intermodal facility to—

(I) the primary highway freight network;

(II) the Interstate System; or

(III) an intermodal freight facility;

(ii) is located within a corridor of a route on the primary highway freight network and provides an alternative highway option important to goods movement;

(iii) serves a major freight generator, logistic center, or manufacturing and warehouse industrial land; or

(iv) is important to the movement of freight within the region, as determined by the metropolitan planning organization or the State.

(g) DESIGNATION AND CERTIFICATION.—

(1) DESIGNATION.—*States and metropolitan planning organizations may designate corridors under subsections (e) and (f) and submit the designated corridors to the Secretary on a rolling basis.*

(2) CERTIFICATION.—*Each State or metropolitan planning organization that designates a corridor under subsection (e) or (f) shall certify to the Secretary that the designated corridor meets the requirements of the applicable subsection.*

(h) NATIONAL FREIGHT STRATEGIC PLAN.—

(1) INITIAL DEVELOPMENT OF NATIONAL FREIGHT STRATEGIC PLAN.—*Not later than 3 years after the date of enactment of the DRIVE Act, the Secretary, in consultation with State departments of transportation, metropolitan planning organizations, and other appropriate public and private transportation stakeholders, shall develop and post on the public website of the Department of Transportation a national freight strategic plan that includes—*

(A) an assessment of the condition and performance of the national highway freight network;

(B) an identification of highway bottlenecks on the national highway freight network that create significant freight congestion (including congestion on other non-highway freight routes) based on a quantitative methodology developed by the Secretary, which shall, at a minimum, include—

(i) information from the Freight Analysis Framework of the Federal Highway Administration; and

(ii) to the maximum extent practicable, an estimate of the cost of addressing each bottleneck and any operational improvements that could be implemented;

(C) forecasts of freight volumes, based on the most recent data available, for the 10- and 20-year period beginning in the year during which the plan is issued;

(D) an identification of major trade gateways and national freight corridors, including nonhighway corridors, that connect major population centers, trade gateways, and other major freight generators for current and forecasted traffic and freight volumes, the identification of which shall be revised, as appropriate, in subsequent plans;

(E) an assessment of statutory, regulatory, technological, institutional, financial, and other barriers to improved freight transportation performance (including opportunities for overcoming the barriers);

(F) an identification of routes providing access to energy exploration, development, installation, or production areas;

(G) best practices for improving the performance of the national highway freight network;

(H) best practices to mitigate the impacts of freight movement on communities;

(I) a process for addressing multistate projects and encouraging jurisdictions to collaborate on multistate projects;

(J) identification of locations or areas with high crash rates or congestion involving freight traffic, and strategies to address those issues; and

(K) strategies to improve freight intermodal connectivity.

(2) UPDATES TO NATIONAL FREIGHT STRATEGIC PLAN.—Not later than 5 years after the date of completion of the first national freight strategic plan under paragraph (1) and every 5 years thereafter, the Secretary shall update and repost on the public website of the Department of Transportation a revised national freight strategic plan.

(i) HIGHWAY FREIGHT TRANSPORTATION CONDITIONS AND PERFORMANCE REPORTS.—Not later than 2 years after the date of enactment of the DRIVE Act and biennially thereafter, the Secretary shall prepare and submit to Congress a report that describes the conditions and performance of the national highway freight network in the United States.

(j) TRANSPORTATION INVESTMENT DATA AND PLANNING TOOLS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of the DRIVE Act, the Secretary shall—

(A) begin development of new tools and improvement of existing tools to support an outcome-oriented, performance-based approach to evaluate proposed freight-related and other transportation projects, including—

(i) methodologies for systematic analysis of benefits and costs on a national and regional basis;

(ii) tools for ensuring that the evaluation of freight-related and other transportation projects could consider safety, economic competitiveness, environmental sustainability, and system condition in the project selection process;

(iii) improved methods for data collection and trend analysis;

(iv) encouragement of public-private partnerships to carry out data sharing activities while maintaining the confidentiality of all proprietary data; and

(v) other tools to assist in effective transportation planning;

(B) identify transportation-related model data elements to support a broad range of evaluation methods and techniques to assist in making transportation investment decisions; and

(C) at a minimum, in consultation with other relevant Federal agencies, consider any improvements to existing freight flow data collection efforts that could reduce identified freight data gaps and deficiencies and help improve forecasts of freight transportation demand.

(2) CONSULTATION.—The Secretary shall consult with Federal, State, and other stakeholders to develop, improve, and implement the tools and collect the data described in paragraph (1).

(k) USE OF APPORTIONED FUNDS.—

(1) IN GENERAL.—A State shall obligate funds apportioned to the State under section 104(b)(5) to improve the movement of freight on the national highway freight network.

(2) FORMULA.—The Secretary shall calculate for each State the proportion that—

(A) the total mileage in the State designated as part of the primary highway freight system; bears to

(B) the total mileage of the primary highway freight system in all States.

(3) USE OF FUNDS.—

(A) STATES WITH HIGH PRIMARY HIGHWAY FREIGHT SYSTEM MILEAGE.—If the proportion of a State under paragraph (2) is greater than or equal to 3 percent, the State may obligate funds apportioned to the State under section 104(b)(5) for projects on—

(i) the primary highway freight system;

(ii) critical rural freight corridors; and

(iii) critical urban freight corridors.

(B) STATES WITH LOW PRIMARY HIGHWAY FREIGHT SYSTEM MILEAGE.—If the proportion of a State under paragraph (2) is less than 3 percent, the State may obligate funds apportioned to the State under section 104(b)(5) for projects on any component of the national highway freight network.

(4) FREIGHT PLANNING.—Notwithstanding any other provision of law, effective beginning 2 years after the date of enactment of the DRIVE Act, a State may not obligate funds apportioned to the State under section 104(b)(5) unless the State has—

(A) established a freight advisory committee in accordance with subsection (n); and

(B) developed a freight plan in accordance with subsection (o).

(5) ELIGIBILITY.—

(A) IN GENERAL.—Except as provided in this subsection, for a project to be eligible for funding under this section the project shall—

(i) contribute to the efficient movement of freight on the national highway freight network; and

(ii) be consistent with a freight investment plan included in a freight plan of the State that is in effect.

(B) OTHER PROJECTS.—A State may obligate not more than 10 percent of the total apportionment of the State under section 104(b)(5) for projects—

(i) within the boundaries of public and private freight rail, water facilities (including ports), and intermodal facilities; and

(ii) that provide surface transportation infrastructure necessary to facilitate direct intermodal interchange, transfer, and access into and out of the facility.

(C) ELIGIBLE PROJECTS.—Funds apportioned to the State under section 104(b)(5) for the national freight program may be obligated to carry out 1 or more of the following:

(i) Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities.

(ii) Construction, reconstruction, rehabilitation, acquisition of real property (including land relating to the project and improvements to land), construction contingencies, acquisition of equipment, and operational improvements directly relating to improving system performance.

(iii) Intelligent transportation systems and other technology to improve the flow of freight, including intelligent freight transportation systems.

(iv) Efforts to reduce the environmental impacts of freight movement.

(v) Environmental and community mitigation of freight movement.

(vi) Railway-highway grade separation.

(vii) Geometric improvements to interchanges and ramps.

(viii) Truck-only lanes.

(ix) Climbing and runaway truck lanes.

(x) Adding or widening of shoulders.

(xi) Truck parking facilities eligible for funding under section 1401 of MAP-21 (23 U.S.C. 137 note; Public Law 112-141).

(xii) Real-time traffic, truck parking, roadway condition, and multimodal transportation information systems.

(xiii) Electronic screening and credentialing systems for vehicles, including weigh-in-motion truck inspection technologies.

(xiv) Traffic signal optimization, including synchronized and adaptive signals.

(xv) Work zone management and information systems.

(xvi) Highway ramp metering.

(xvii) Electronic cargo and border security technologies that improve truck freight movement.

(xviii) *Intelligent transportation systems that would increase truck freight efficiencies inside the boundaries of intermodal facilities.*

(xix) *Additional road capacity to address highway freight bottlenecks.*

(xx) *A highway project, other than a project described in clauses (i) through (xix), to improve the flow of freight on the national highway freight network.*

(xxi) *Any other surface transportation project to improve the flow of freight into and out of a facility described in subparagraph (B).*

(6) **OTHER ELIGIBLE COSTS.**—*In addition to the eligible projects identified in paragraph (5), a State may use funds apportioned under section 104(b)(5) for—*

(A) *carrying out diesel retrofit or alternative fuel projects under section 149 for class 8 vehicles; and*

(B) *the necessary costs of—*

(i) *conducting analyses and data collection related to the national freight program;*

(ii) *developing and updating performance targets to carry out this section; and*

(iii) *reporting to the Secretary to comply with section 150.*

(7) **APPLICABILITY OF PLANNING REQUIREMENTS.**—*Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135.*

(l) **STATE PERFORMANCE TARGETS.**—*If the Secretary determines that a State has not met or made significant progress toward meeting the performance targets related to freight movement of the State established under section 150(d) by the date that is 2 years after the date of the establishment of the performance targets, until the date on which the Secretary determines that the State has met or has made significant progress towards meeting the performance targets, the State shall submit to the Secretary, on a biennial basis, a freight performance improvement plan that includes—*

(1) *an identification of significant freight system trends, needs, and issues within the State;*

(2) *a description of the freight policies and strategies that will guide the freight-related transportation investments of the State;*

(3) *an inventory of freight bottlenecks within the State and a description of the ways in which the State is allocating the national freight program funds to improve those bottlenecks; and*

(4) *a description of the actions the State will undertake to meet the performance targets of the State.*

(m) **STUDY OF MULTIMODAL PROJECTS.**—*Not later than 2 years after the date of enactment of the DRIVE Act, the Secretary shall submit to Congress a report that contains—*

(1) *a study of freight projects identified in State freight plans under subsection (o); and*

(2) *an evaluation of multimodal freight projects included in the State freight plans, or otherwise identified by States, that are subject to the limitation of funding for such projects under this section.*

(n) STATE FREIGHT ADVISORY COMMITTEES.—

(1) IN GENERAL.—*Each State shall establish a freight advisory committee consisting of a representative cross-section of public and private sector freight stakeholders, including representatives of ports, shippers, carriers, freight-related associations, the freight industry workforce, the transportation department of the State, and local governments.*

(2) ROLE OF COMMITTEE.—*A freight advisory committee of a State described in paragraph (1) shall—*

(A) *advise the State on freight-related priorities, issues, projects, and funding needs;*

(B) *serve as a forum for discussion for State transportation decisions affecting freight mobility;*

(C) *communicate and coordinate regional priorities with other organizations;*

(D) *promote the sharing of information between the private and public sectors on freight issues; and*

(E) *participate in the development of the freight plan of the State described in subsection (o).*

(o) STATE FREIGHT PLANS.—

(1) IN GENERAL.—*Each State shall develop a freight plan that provides a comprehensive plan for the immediate and long-range planning activities and investments of the State with respect to freight.*

(2) PLAN CONTENTS.—*A freight plan described in paragraph (1) shall include, at a minimum—*

(A) *an identification of significant freight system trends, needs, and issues with respect to the State;*

(B) *a description of the freight policies, strategies, and performance measures that will guide the freight-related transportation investment decisions of the State;*

(C) *when applicable, a listing of critical rural and urban freight corridors designated within the State under this section;*

(D) *a description of how the plan will improve the ability of the State to meet the national freight goals established under subsection (b);*

(E) *evidence of consideration of innovative technologies and operational strategies, including intelligent transportation systems, that improve the safety and efficiency of freight movement;*

(E) *a description of how innovative technologies and operational strategies, including intelligent transportation systems, that improve the safety and efficiency of freight movement, were considered;*

(F) *in the case of routes on which travel by heavy vehicles (including mining, agricultural, energy cargo or equipment, and timber vehicles) is projected to substantially deteriorate the condition of roadways, a description of improvements that may be required to reduce or impede the deterioration;*

(G) *an inventory of facilities with freight mobility issues, such as truck bottlenecks, within the State, and a description of the strategies the State is employing to address those freight mobility issues;*

(H) consideration of any significant congestion or delay caused by freight movements and any strategies to mitigate that congestion or delay; and

(I) a freight investment plan that, subject to paragraph (3)(B), includes a list of priority projects and describes how funds made available to carry out this section would be invested and matched.

(3) RELATIONSHIP TO LONG-RANGE PLAN.—

(A) INCORPORATION.—A freight plan described in paragraph (1) may be developed separately from or incorporated into the statewide strategic long-range transportation plan required by section 135.

(B) FISCAL CONSTRAINT.—The freight investment plan component of a freight plan shall include a project, or an identified phase of a project, only if funding for completion of the project can reasonably be anticipated to be available for the project within the time period identified in the freight investment plan.

(4) PLANNING PERIOD.—The freight plan shall address a 10-year forecast period.

(5) UPDATES.—

(A) IN GENERAL.—A State shall update the freight plan not less frequently than once every 5 years.

(B) FREIGHT INVESTMENT PLAN.—A State may update the freight investment plan more frequently than is required under subparagraph (A).

(p) INTELLIGENT FREIGHT TRANSPORTATION SYSTEM.—

(1) DEFINITION OF INTELLIGENT FREIGHT TRANSPORTATION SYSTEM.—*In this section, the term ‘intelligent freight transportation system’ means—*

(A) an innovative or intelligent technological transportation system, infrastructure, or facilities, including electronic roads, driverless trucks, elevated freight transportation facilities, and other intelligent freight transportation systems; and

(B) a communications or information processing system used singly or in combination for dedicated intelligent freight lanes and conveyances that improve the efficiency, security, or safety of freight on the Federal-aid highway system or that operate to convey freight or improve existing freight movements.

(2) LOCATION.—*An intelligent freight transportation system shall be located—*

(A)(i) along existing Federal-aid highways; or

(ii) in a manner that connects ports-of-entry to existing Federal-aid highways; and

(B) in proximity to, or within, an existing right-of-way on a Federal-aid highway.

(3) OPERATING STANDARDS.—*The Administrator of the Federal Highway Administration shall determine the need for establishing operating standards for intelligent freight transportation systems.*

* * * * *

§ 168. Integration of planning and environmental review

[(a) DEFINITIONS.—In this section, the following definitions apply:

[(1) ENVIRONMENTAL REVIEW PROCESS.—The term “environmental review process” means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(2) PLANNING PRODUCT.—The term “planning product” means a detailed and timely decision, analysis, study, or other documented information that—

[(A) is the result of an evaluation or decisionmaking process carried out during transportation planning, including a detailed corridor plan or a transportation plan developed under section 134 that fully analyzes impacts on mobility, adjacent communities, and the environment;

[(B) is intended to be carried into the transportation project development process; and

[(C) has been approved by the State, all local and tribal governments where the project is located, and by any relevant metropolitan planning organization.

[(3) PROJECT.—The term “project” has the meaning given the term in section 139(a).

[(4) PROJECT SPONSOR.—The term “project sponsor” has the meaning given the term in section 139(a).

[(b) ADOPTION OF PLANNING PRODUCTS FOR USE IN NEPA PROCEEDINGS.—

[(1) IN GENERAL.—Subject to the conditions set forth in subsection (d), the Federal lead agency for a project may adopt and use a planning product in proceedings relating to any class of action in the environmental review process of the project.

[(2) IDENTIFICATION.—When the Federal lead agency makes a determination to adopt and use a planning product, the Federal lead agency shall identify those agencies that participated in the development of the planning products.

[(3) PARTIAL ADOPTION OF PLANNING PRODUCTS.—The Federal lead agency may adopt a planning product under paragraph (1) in its entirety or may select portions for adoption.

[(4) TIMING.—A determination under paragraph (1) with respect to the adoption of a planning product may be made at the time the lead agencies decide the appropriate scope of environmental review for the project but may also occur later in the environmental review process, as appropriate.

[(c) APPLICABILITY.—

[(1) PLANNING DECISIONS.—Planning decisions that may be adopted pursuant to this section include—

[(A) whether tolling, private financial assistance, or other special financial measures are necessary to implement the project;

[(B) a decision with respect to modal choice, including a decision to implement corridor or subarea study recommendations to advance different modal solutions as separate projects with independent utility;

[(C) a basic description of the environmental setting;

[(D) a decision with respect to methodologies for analysis; and

[(E) an identification of programmatic level mitigation for potential impacts that the Federal lead agency, in consultation with Federal, State, local, and tribal resource agencies, determines are most effectively addressed at a regional or national program level, including—

[(i) system-level measures to avoid, minimize, or mitigate impacts of proposed transportation investments on environmental resources, including regional ecosystem and water resources; and

[(ii) potential mitigation activities, locations, and investments.

[(2) PLANNING ANALYSES.—Planning analyses that may be adopted pursuant to this section include studies with respect to—

[(A) travel demands;

[(B) regional development and growth;

[(C) local land use, growth management, and development;

[(D) population and employment;

[(E) natural and built environmental conditions;

[(F) environmental resources and environmentally sensitive areas;

[(G) potential environmental effects, including the identification of resources of concern and potential cumulative effects on those resources, identified as a result of a state-wide or regional cumulative effects assessment; and

[(H) mitigation needs for a proposed action, or for programmatic level mitigation, for potential effects that the Federal lead agency determines are most effectively addressed at a regional or national program level.

[(d) CONDITIONS.—Adoption and use of a planning product under this section is subject to a determination by the Federal lead agency, with the concurrence of other participating agencies with relevant expertise and project sponsors as appropriate, and with an opportunity for public notice and comment and consideration of those comments by the Federal lead agency, that the following conditions have been met:

[(1) The planning product was developed through a planning process conducted pursuant to applicable Federal law.

[(2) The planning product was developed by engaging in active consultation with appropriate Federal and State resource agencies and Indian tribes.

[(3) The planning process included broad multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential effects, including effects on the human and natural environment.

[(4) During the planning process, notice was provided through publication or other means to Federal, State, local, and tribal governments that might have an interest in the proposed project, and to members of the general public, of the planning products that the planning process might produce and that might be relied on during any subsequent environmental review process, and such entities have been provided

an appropriate opportunity to participate in the planning process leading to such planning product.

[(5) After initiation of the environmental review process, but prior to determining whether to rely on and use the planning product, the lead Federal agency has made documentation relating to the planning product available to Federal, State, local, and tribal governments that may have an interest in the proposed action, and to members of the general public, and has considered any resulting comments.

[(6) There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the planning product.

[(7) The planning product has a rational basis and is based on reliable and reasonably current data and reasonable and scientifically acceptable methodologies.

[(8) The planning product is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for use of the information in the environmental review process.

[(9) The planning product is appropriate for adoption and use in the environmental review process for the project.

[(10) The planning product was approved not later than 5 years prior to date on which the information is adopted pursuant to this section.

[(e) EFFECT OF ADOPTION.—Any planning product adopted by the Federal lead agency in accordance with this section may be incorporated directly into an environmental review process document or other environmental document and may be relied upon and used by other Federal agencies in carrying out reviews of the project.

[(f) RULES OF CONSTRUCTION.—

[(1) IN GENERAL.—This section shall not be construed to make the environmental review process applicable to the transportation planning process conducted under this title and chapter 53 of title 49.

[(2) TRANSPORTATION PLANNING ACTIVITIES.—Initiation of the environmental review process as a part of, or concurrently with, transportation planning activities does not subject transportation plans and programs to the environmental review process.

[(3) PLANNING PRODUCTS.—This section shall not be construed to affect the use of planning products in the environmental review process pursuant to other authorities under any other provision of law or to restrict the initiation of the environmental review process during planning.]

§ 168. *Integration of planning and environmental review*

(a) DEFINITIONS.—*In this section, the following definitions apply:*

(1) ENVIRONMENTAL REVIEW PROCESS.—*The term ‘environmental review process’ means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

(2) LEAD AGENCY.—*The term ‘lead agency’ has the meaning given the term in section 139(a).*

(3) **PLANNING PRODUCT.**—*The term ‘planning product’ means a decision, analysis, study, or other documented information that is the result of an evaluation or decisionmaking process carried out by a metropolitan planning organization or a State, as appropriate, during metropolitan or statewide transportation planning under section 134 or 135, respectively.*

(4) **PROJECT.**—*The term ‘project’ has the meaning given the term in section 139(a).*

(b) **ADOPTION OF PLANNING PRODUCTS FOR USE IN NEPA PROCEEDINGS.**—

(1) **IN GENERAL.**—*Subject to subsection (d), the Federal lead agency for a project may adopt and use a planning product in proceedings relating to any class of action in the environmental review process of the project.*

(2) **IDENTIFICATION.**—*If the Federal lead agency makes a determination to adopt and use a planning product, the Federal lead agency shall identify the agencies that participated in the development of the planning products.*

(3) **PARTIAL ADOPTION OF PLANNING PRODUCTS.**—*The Federal lead agency may—*

(A) *adopt an entire planning product under paragraph (1); or*

(B) *select portions of a planning project under paragraph (1) for adoption.*

(4) **TIMING.**—*A determination under paragraph (1) with respect to the adoption of a planning product may—*

(A) *be made at the time the lead agencies decide the appropriate scope of environmental review for the project; or*

(B) *occur later in the environmental review process, as appropriate.*

(c) **APPLICABILITY.**—

(1) **PLANNING DECISIONS.**—*The lead agency in the environmental review process may adopt decisions from a planning product, including—*

(A) *whether tolling, private financial assistance, or other special financial measures are necessary to implement the project;*

(B) *a decision with respect to general travel corridor or modal choice, including a decision to implement corridor or subarea study recommendations to advance different modal solutions as separate projects with independent utility;*

(C) *the purpose and the need for the proposed action;*

(D) *preliminary screening of alternatives and elimination of unreasonable alternatives;*

(E) *a basic description of the environmental setting;*

(F) *a decision with respect to methodologies for analysis; and*

(G) *an identification of programmatic level mitigation for potential impacts of transportation projects, including—*

(i) *measures to avoid, minimize, and mitigate impacts at a regional or national scale;*

(ii) *investments in regional ecosystem and water resources; and*

(iii) *a programmatic mitigation plan developed in accordance with section 169.*

(2) **PLANNING ANALYSES.**—*The lead agency in the environmental review process may adopt analyses from a planning product, including—*

- (A) *travel demands;*
- (B) *regional development and growth;*
- (C) *local land use, growth management, and development;*
- (D) *population and employment;*
- (E) *natural and built environmental conditions;*
- (F) *environmental resources and environmentally sensitive areas;*
- (G) *potential environmental effects, including the identification of resources of concern and potential indirect and cumulative effects on those resources; and*
- (H) *mitigation needs for a proposed action, or for programmatic level mitigation, for potential effects that the Federal lead agency determines are most effectively addressed at a regional or national program level.*

(d) **CONDITIONS.**—*The lead agency in the environmental review process may adopt and use a planning product under this section if the lead agency determines, with the concurrence of other participating agencies with relevant expertise and project sponsors, as appropriate, that the following conditions have been met:*

(1) *The planning product was developed through a planning process conducted pursuant to applicable Federal law.*

(2) *The planning product was developed in consultation with appropriate Federal and State resource agencies and Indian tribes.*

(3) *The planning process included broad multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential effects, including effects on the human and natural environment.*

(4) *The planning process included public notice that the planning products produced in the planning process may be adopted during a subsequent environmental review process in accordance with this section.*

(5) *During the environmental review process, the lead agency has—*

(A) *made the planning documents available for public review and comment;*

(B) *provided notice of the intention of the lead agency to adopt the planning product; and*

(C) *considered any resulting comments.*

(6) *There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the planning product.*

(7) *The planning product has a rational basis and is based on reliable and reasonably current data and reasonable and scientifically acceptable methodologies.*

(8) *The planning product is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for use of the information in the environmental review process.*

(9) *The planning product is appropriate for adoption and use in the environmental review process for the project and is incor-*

porated in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 1502.21 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the DRIVE Act).

(e) EFFECT OF ADOPTION.—Any planning product adopted by the Federal lead agency in accordance with this section may be—

(1) *incorporated directly into an environmental review process document or other environmental document; and*

(2) *relied on and used by other Federal agencies in carrying out reviews of the project.*

(f) RULES OF CONSTRUCTION.—

(1) IN GENERAL.—*This section does not make the environmental review process applicable to the transportation planning process conducted under this title and chapter 53 of title 49.*

(2) TRANSPORTATION PLANNING ACTIVITIES.—*Initiation of the environmental review process as a part of, or concurrently with, transportation planning activities does not subject transportation plans and programs to the environmental review process.*

(3) PLANNING PRODUCTS.—*This section does not affect the use of planning products in the environmental review process pursuant to other authorities under any other provision of law or restrict the initiation of the environmental review process during planning.*

* * * * *

§ 169. Development of programmatic mitigation plans

(a) IN GENERAL.—As part of the statewide or metropolitan transportation planning process, a State or metropolitan planning organization may develop 1 or more programmatic mitigation plans to address the potential environmental impacts of future transportation projects.

(b) SCOPE.—

(1) SCALE.—A programmatic mitigation plan may be developed on a regional, ecosystem, watershed, or statewide scale.

(2) RESOURCES.—The plan may encompass multiple environmental resources within a defined geographic area or may focus on a specific resource, such as aquatic resources, parkland, or wildlife habitat.

(3) PROJECT IMPACTS.—The plan may address impacts from all projects in a defined geographic area or may focus on a specific type of project.

(4) CONSULTATION.—The scope of the plan shall be determined by the State or metropolitan planning organization, as appropriate, in consultation with the agency or agencies with jurisdiction over the resources being addressed in the mitigation plan.

(c) CONTENTS.—A programmatic mitigation plan may include—

(1) an assessment of the condition of environmental resources in the geographic area covered by the plan, including an assessment of recent trends and any potential threats to those resources;

(2) an assessment of potential opportunities to improve the overall quality of environmental resources in the geographic area covered by the plan, through strategic mitigation for impacts of transportation projects;

- (3) standard measures for mitigating certain types of impacts;
 - (4) parameters for determining appropriate mitigation for certain types of impacts, such as mitigation ratios or criteria for determining appropriate mitigation sites;
 - (5) adaptive management procedures, such as protocols that involve monitoring predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring; and
 - (6) acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.
- (d) PROCESS.—Before adopting a programmatic mitigation plan, a State or metropolitan planning organization shall—
- (1) consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;
 - (2) make a draft of the plan available for review and comment by applicable environmental resource agencies and the public;
 - (3) consider any comments received from such agencies and the public on the draft plan; and
 - (4) address such comments in the final plan.
- (e) INTEGRATION WITH OTHER PLANS.—A programmatic mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, and land use plans.
- (f) CONSIDERATION IN PROJECT DEVELOPMENT AND PERMITTING.—If a programmatic mitigation plan has been developed pursuant to this section, any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project [may use] shall consider the recommendations in a programmatic mitigation plan when carrying out the responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or other Federal environment law.

* * * * *

§ 170. Funding flexibility for transportation emergencies

- (a) IN GENERAL.—Notwithstanding any other provision of law, a State may use up to 100 percent of any covered funds of the State to repair or replace a transportation facility that has suffered serious damage as a result of a natural disaster or catastrophic failure from an external cause.
- (b) DECLARATION OF EMERGENCY.—Funds may be used under this section only for a disaster or emergency declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).
- (c) REPAYMENT.—Funds used under subsection (a) shall be repaid to the program from which the funds were taken in the event that such repairs or replacement are subsequently covered by a supplemental appropriation of funds.
- (d) DEFINITIONS.—In this section, the following definitions apply:
- (1) COVERED FUNDS.—The term “covered funds” means any amounts apportioned to a State under section 104(b), other than amounts suballocated to metropolitan areas and other

areas of the State under section 133(d), but including any such amounts required to be set aside for a purpose other than the repair or replacement of a transportation facility under this section.

(2) **TRANSPORTATION FACILITY.**—The term “transportation facility” means any facility eligible for assistance under section 125.

§ 171. *Assistance for major projects program*

(a) **PURPOSE OF PROGRAM.**—*The purpose of the assistance for major projects program shall be to assist in funding critical high-cost surface transportation infrastructure projects that—*

(1) *are difficult to complete with existing Federal, State, local, and private funds; and*

(2) *will achieve 1 or more of—*

(A) *generation of national or regional economic benefits and an increase in the global economic competitiveness of the United States;*

(B) *reduction of congestion and the impacts of congestion;*

(C) *improvement of roadways vital to national energy security;*

(D) *improvement of the efficiency, reliability, and affordability of the movement of freight;*

(E) *improvement of transportation safety;*

(F) *improvement of existing and designated future Interstate System routes; or*

(G) *improvement of the movement of people through improving rural connectivity and metropolitan accessibility.*

(b) **DEFINITIONS.**—*In this section:*

(1) **ADMINISTRATOR.**—*The term ‘Administrator’ means the Administrator of the Federal Highway Administration.*

(2) **ELIGIBLE APPLICANT.**—*The term ‘eligible applicant’ means—*

(A) *a State (or a group of States);*

(B) *a local government;*

(C) *a tribal government (or a consortium of tribal governments);*

(D) *a transit agency;*

(E) *a special purpose district or a public authority with a transportation function;*

(F) *a port authority;*

(G) *a political subdivision of a State or local government;*

(H) *a Federal land management agency, jointly with the applicable State; or*

(I) *a multistate or multijurisdictional group of entities described in subparagraphs (A) through (H).*

(3) **ELIGIBLE PROJECT.**—

(A) **IN GENERAL.**—*The term ‘eligible project’ means a surface transportation project, or a program of integrated surface transportation projects closely related in the function the projects perform, that—*

(i) *is a capital project that is eligible for Federal financial assistance under—*

(I) *this title; or*

(II) *chapter 53 of title 49; and*

(ii) except as provided in subparagraph (B), has eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

(I) \$350,000,000; and

(II)(aa) for a project located in a single State, [30] 25 percent of the amount of Federal-aid highway funds apportioned to the State for the most recently completed fiscal year;

(III) for a project located in a single rural State with a population density of [75] 80 or fewer persons per square mile based on the most recent decennial census, 10 percent of the amount of Federal-aid highway funds apportioned to the State for the most recently completed fiscal year; or

(IV) for a project located in more than 1 State, 75 percent of the amount of Federal-aid highway funds apportioned to the participating State that has the largest apportionment for the most recently completed fiscal year.

(B) FEDERAL LAND TRANSPORTATION FACILITY.—In the case of a Federal land transportation facility, the term ‘eligible project’ means a Federal land transportation facility that has eligible project costs that are reasonably anticipated to equal or exceed \$150,000,000.

(4) ELIGIBLE PROJECT COSTS.—The term ‘eligible project costs’ means the costs of—

(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities; and

(B) construction, reconstruction, rehabilitation, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment directly related to improving system performance, and operational improvements.

(5) RURAL AREA.—The term ‘rural area’ means an area that is outside of an urbanized area with a population greater than 150,000 individuals, as determined by the Bureau of the Census.

(6) RURAL STATE.—The term ‘rural State’ means a State that has a population density of [75] 80 or fewer persons per square mile, based on the most recent decennial census.

(c) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program in accordance with this section to provide grants for projects that will have a significant impact on a region or the Nation.

(d) SOLICITATIONS AND APPLICATIONS.—

(1) GRANT SOLICITATIONS.—The Administrator shall conduct a transparent and competitive national solicitation process to review eligible projects for funding under this section.

(2) APPLICATIONS.—

(A) IN GENERAL.—An eligible applicant seeking a grant under this section shall submit to the Administrator an application in such form and containing such information as

the Administrator determines necessary, including the total amount of the grant requested.

(B) CONTENTS.—*Each application submitted under this paragraph shall include data on the most recent system performance and estimated system improvements that will result from completion of the eligible project, including projections for improvements 5, 10, and 20 years after completion of the project.*

(C) RESUBMISSION OF APPLICATIONS.—*An eligible applicant whose project is not selected under this section may resubmit an application in a subsequent solicitation.*

(e) CRITERIA FOR PROJECT EVALUATION AND SELECTION.—

(1) IN GENERAL.—*The Administrator may select a project for funding under this section only if the Administrator determines that the project—*

(A) *is consistent with the national goals described in section 150(b);*

(B) *will significantly improve the performance of the national surface transportation network, nationally or regionally;*

(C) *is based on the results of preliminary engineering;*

(D) *is consistent with the long-range statewide transportation plan;*

(E) *cannot be readily and efficiently completed without Federal financial assistance;*

(F) *is justified based on the ability of the project to achieve 1 or more of—*

(i) *generation of national economic benefits that reasonably exceed the costs of the project;*

(ii) *reduction of long-term congestion, including impacts on a national, regional, and statewide basis;*

(iii) *an increase in the speed, reliability, and accessibility of the movement of people or freight; or*

(iv) *improvement of transportation safety, including reducing transportation accident and serious injuries and fatalities; and*

(G) *is supported by a sufficient amount of non-Federal funding, including evidence of stable and dependable financing to construct, maintain, and operate the infrastructure facility.*

(2) ADDITIONAL CONSIDERATIONS.—*In evaluating a project under this section, in addition to the criteria described in paragraph (1), the Administrator shall consider the extent to which the project—*

(A) *leverages Federal investment by encouraging non-Federal contributions to the project, including contributions from public-private partnerships;*

(B) *is able to begin construction by the date that is not later than 18 months after the date on which the project is selected;*

(C) *incorporates innovative project delivery and financing to the maximum extent practicable;*

(D) *helps maintain or protect the environment;*

(E) *improves roadways vital to national energy security;*

- (F) improves or upgrades designated future Interstate System routes;
- (G) uses innovative technologies, including intelligent transportation systems, that enhance the efficiency of the project; and
- (H) helps to improve mobility and accessibility.
- (f) GEOGRAPHIC DISTRIBUTION.—*In awarding grants under this section, the Administrator shall take measures to ensure, to the maximum extent practicable—*
- (1) an equitable geographic distribution of amounts; and
 - (2) an appropriate balance in addressing the needs of rural and urban communities.
- (g) FUNDING REQUIREMENTS.—
- (1) IN GENERAL.—*Except in the case of projects described in paragraph (2), the amount of a grant under this section shall be at least \$50,000,000.*
 - (2) RURAL PROJECTS.—*The amounts made available for a fiscal year under this section for eligible projects located in rural areas or in rural States shall not be—*
 - (A) less than 20 percent of the amount made available for the fiscal year under this section; and
 - (B) subject to paragraph (1).
 - (3) LIMITATION OF FUNDS.—*Not more than 20 percent of the funds made available for a fiscal year to carry out this section shall be allocated for projects eligible under section 167(k)(5)(B) or chapter 53 of title 49.*
 - (4) STATE CAP.—
 - (A) IN GENERAL.—*Not more than 20 percent of the funds made available for a fiscal year to carry out this section may be awarded to projects in a single State.*
 - (B) EXCEPTION FOR MULTISTATE PROJECTS.—*For purposes of the limitation described in subparagraph (A), funds awarded for a multistate project shall be considered to be distributed evenly to each State.*
 - (5) TIFIA PROGRAM.—*On the request of an eligible applicant under this section, the Administrator may use amounts awarded to the entity to pay subsidy and administrative costs necessary to provide the entity Federal credit assistance under chapter 6 with respect to the project for which the grant was awarded.*
- (h) GRANT REQUIREMENTS.—
- (1) APPLICABILITY OF PLANNING REQUIREMENTS.—*The programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135.*
 - (2) DETERMINATION OF APPLICABLE MODAL REQUIREMENTS.—*If an eligible project that receives a grant under this section has a crossmodal component, the Administrator—*
 - (A) shall determine the predominant modal component of the project; and
 - (B) may apply the applicable requirements of that predominant modal component to the project.
- (i) REPORT TO THE ADMINISTRATOR.—*For each project funded under this section, the project sponsor shall evaluate system performance and submit to the Administrator a report not later than*

5, 10, and 20 years after completion of the project to assess whether the project outcomes have met preconstruction projections.

(j) CONGRESSIONAL APPROVAL.—

(1) SUBMISSION OF APPLICATION.—*Each eligible applicant shall submit to the Administrator an application in accordance with subsection (d)(2) at such time as the Administrator determines to meet the requirements of paragraph (2).*

(2) SUBMISSION TO CONGRESS OF PROPOSED PROJECTS.—

(A) IN GENERAL.—*By January 1 of each fiscal year, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a list of all of the projects that meet the requirements of this section.*

(B) LIMITATION.—*The list submitted under subparagraph (A) shall include a total requested grant amount at least 2 times, but not to exceed 4 times, the authorization level of the program in each fiscal year.*

(3) COMMITTEE REVIEW.—*Not later than 90 days after the date of the receipt of the submission under paragraph (2), each Committee described in subparagraph (A) of that paragraph shall—*

(A) *select projects and determine the amounts to be awarded to each project, not to exceed the total authorization level of the program for each fiscal year; and*

(B) *adopt a resolution making such determination.*

(4) CONGRESSIONAL APPROVAL.—*Projects shall be awarded on congressional adoption of a joint resolution based on the Committee action under paragraph (3).*

(5) ADMINISTRATIVE APPROVAL.—

(A) IN GENERAL.—*The Administrator shall award grants to eligible projects in a fiscal year—*

(i) *if Congress does not adopt a joint resolution under paragraph (4) by the date that is 90 days after the date on which the first Committee adopts a resolution under paragraph (3)(B); or*

(ii) *if neither Committee acts in accordance with paragraph (3).*

(B) TIMING.—*The Administrator shall award grants under subparagraph (A) not later than 90 days after the date on which the relevant event described in subparagraph (A) occurs.*

(k) REPORTS.—

(1) IN GENERAL.—*The Administrator shall make available on the website of the Federal Highway Administration at the end of each fiscal year an annual report that lists each project for which assistance has been provided under this section during that fiscal year.*

(2) COMPTROLLER GENERAL.—

(A) ASSESSMENT.—*The Comptroller General of the United States shall conduct an assessment of the establishment, solicitation, selection, and justification process with respect to the funding of projects under this section.*

(B) REPORT.—*Not later than 1 year after the initial awarding of funding under this section, the Comptroller*

General of the United States shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes—

- (i) the process by which each project was selected;*
- (ii) the criteria used for the selection of each project;*
- and*
- (iii) the justification for the selection of each project based on the criteria described in subsection (e).*

* * * * *

§ 201. Federal lands and tribal transportation programs

(a) PURPOSE.—Recognizing the need for all public Federal and tribal transportation facilities to be treated under uniform policies similar to the policies that apply to Federal-aid highways and other public transportation facilities, the Secretary of Transportation, in collaboration with the Secretaries of the appropriate Federal land management agencies, shall coordinate a uniform policy for all public Federal and tribal transportation facilities that shall apply to Federal lands transportation facilities, tribal transportation facilities, and Federal lands access transportation facilities.

(b) AVAILABILITY OF FUNDS.—

(1) AVAILABILITY.—* * *

* * * * *

(c) TRANSPORTATION PLANNING.—

(1) TRANSPORTATION PLANNING PROCEDURES.—In consultation with the Secretary of each appropriate Federal land management agency, the Secretary shall implement transportation planning procedures for Federal lands and tribal transportation facilities that are consistent with the planning processes required under sections 134 and 135.

(2) APPROVAL OF TRANSPORTATION IMPROVEMENT PROGRAM.—The transportation improvement program developed as a part of the transportation planning process under this section shall be approved by the Secretary.

(3) INCLUSION IN OTHER PLANS.—Each regionally significant tribal transportation program, Federal lands transportation program, and Federal lands access program project shall be—

(A) developed in cooperation with State and metropolitan planning organizations; and

(B) included in appropriate tribal transportation program plans, Federal lands transportation program plans, Federal lands access program plans, State and metropolitan plans, and transportation improvement programs.

(4) INCLUSION IN STATE PROGRAMS.—The approved tribal transportation program, Federal lands transportation program, and Federal lands access program transportation improvement programs shall be included in appropriate State and metropolitan planning organization plans and programs without further action on the transportation improvement program.

(5) ASSET MANAGEMENT.—The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, implement safety, bridge, pavement, and congestion management systems for facilities funded

under the tribal transportation program and the Federal lands transportation program in support of asset management.

(6) DATA COLLECTION.—

(A) DATA COLLECTION.—**【The Secretaries】**

(i) IN GENERAL.—*The Secretaries*; of the appropriate Federal land management agencies shall collect and report data necessary to implement the Federal lands transportation program, the Federal lands access program, and the tribal transportation program. **【in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), including—】**

(ii) REQUIREMENT.—*Data collected to implement the tribal transportation program shall be in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).*

(iii) INCLUSIONS.—*Data collected under this paragraph includes—”*

【(i) (I) inventory and condition information on Federal lands transportation facilities and tribal transportation facilities; and

【(ii) (II) bridge inspection and inventory information on any Federal bridge open to the public.

(B) STANDARDS.—The Secretary, in coordination with the Secretaries management agencies, shall define the collection and reporting data standards.

【(7) ADMINISTRATIVE EXPENSES.—To implement the activities described in this subsection, including direct support of transportation planning activities among Federal land management agencies, the Secretary may use not more than 5 percent for each fiscal year of the funds authorized for programs under sections 203 and 204.】

(7) COOPERATIVE RESEARCH AND TECHNOLOGY DEPLOYMENT.—The Secretary may conduct cooperative research and technology deployment in coordination with Federal land management agencies, as determined appropriate by the Secretary.

(8) FUNDING.—

(A) IN GENERAL.—*To carry out the activities described in this subsection for Federal lands transportation facilities, Federal lands access transportation facilities, and other federally owned roads open to public travel (as that term is defined in section 125(e)), the Secretary shall combine and use not greater than 5 percent for each fiscal year of the funds authorized for programs under sections 203 and 204.*

(B) OTHER ACTIVITIES.—*In addition to the activities described in subparagraph (A), funds described under that subparagraph may be used for—*

(i) *bridge inspections on any federally owned bridge even if that bridge is not included on the inventory described under section 203; and*

(ii) *transportation planning activities carried out by Federal land management agencies eligible for funding under this chapter.*

(C) TRIBAL DATA COLLECTION.—*In addition to the data to be collected under subparagraph (A), not later than 90 days after the end of each fiscal year, any entity carrying out a project under the tribal transportation program under section 202 shall submit to the Secretary and the Secretary of Interior, based on obligations and expenditures under the tribal transportation program during the preceding fiscal year, the following data:*

(i) *The names of projects or activities carried out by the entity under the tribal transportation program during the preceding fiscal year.*

(ii) *A description of the projects or activities identified under clause (i).*

(iii) *The current status of the projects or activities identified under clause (i).*

(iv) *An estimate of the number of jobs created and the number of jobs retained by the projects or activities identified under clause (i).*

* * * * *

§ 202. Tribal transportation program

(a) USE OF FUNDS.—

(1) IN GENERAL.—* * *

* * * * *

(6) ADMINISTRATIVE EXPENSES.—Of the funds authorized to be appropriated for the tribal transportation program, not more than **[6 percent]** *5 percent* may be used by the Secretary or the Secretary of the Interior for program management and oversight and project-related administrative expenses.

* * * * *

(b) FUNDS DISTRIBUTION.—

(1) NATIONAL TRIBAL TRANSPORTATION FACILITY INVENTORY.—

* * *

* * * * *

(3) BASIS FOR FUNDING FORMULA.—

(A) BASIS.—

(i) IN GENERAL.—After making the set asides authorized under subparagraph (C) and subsections (a)(6), (c), (d), and (e) on October 1 of each fiscal year, the Secretary shall distribute the remainder authorized to be appropriated for the tribal transportation program under this section among Indian tribes as follows:

* * * * *

(C) TRIBAL SUPPLEMENTAL FUNDING.—

(i) TRIBAL SUPPLEMENTAL FUNDING AMOUNT.—Of funds made available for each fiscal year for the tribal transportation program, the Secretary shall set aside the following amount for a tribal supplemental program:

(I) If the amount made available for the tribal transportation program is less than or equal to \$275,000,000, 30 percent of such amount.

(II) If the amount made available for the tribal transportation program exceeds \$275,000,000—

(aa) \$82,500,000; plus

(bb) 12.5 percent of the amount made available for the tribal transportation program in excess of \$275,000,000.

(ii) TRIBAL SUPPLEMENTAL ALLOCATION.—The Secretary shall distribute tribal supplemental funds as follows:

(I) DISTRIBUTION AMONG REGIONS.—Of the amounts set aside under clause (i), the Secretary shall distribute to each region of the Bureau of Indian Affairs a share of tribal supplemental funds in proportion to the regional total of tribal shares based on the cumulative tribal shares of all Indian tribes within such region under subparagraph (B).

(II) DISTRIBUTION WITHIN A REGION.—Of the amount that a region receives under subclause (I), the Secretary shall distribute tribal supplemental funding among Indian tribes within such region as follows:

(aa) TRIBAL SUPPLEMENTAL AMOUNTS.—The Secretary shall determine—

(AA) which such Indian tribes would be entitled under subparagraph (A) to receive in a fiscal year less funding than they would receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in subpart C of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP-21); and

(BB) the combined amount that such Indian tribes would be entitled to receive in fiscal year 2011 pursuant to such relative need distribution factor and population adjustment factor in excess of the amount that they would be entitled to receive in the fiscal year under subparagraph (B).

(bb) COMBINED AMOUNT.—Subject to subclause (III), the Secretary shall distribute to each Indian tribe that meets the criteria described in item (aa)(AA) a share of funding under this subparagraph in proportion to the share of the combined amount determined under item (aa)(BB) attributable to such Indian tribe.

(III) CEILING.—An Indian tribe may not receive under subclause (II) and based on its tribal share under subparagraph (A) a combined amount that exceeds the amount that such Indian tribe would be entitled to receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in subpart C of part 170 of title 25, Code of Federal Regula-

tions (as in effect on the date of enactment of the MAP-21).

(IV) OTHER AMOUNTS.—If the amount made available for a region under subclause (I) exceeds the amount distributed among Indian tribes within that region under subclause (II), the Secretary shall distribute the remainder of such region’s funding under such subclause among all Indian tribes in that region in proportion to the combined amount that each such Indian tribe received under subparagraph (A) and subclauses (I), (II), and [(III).] (III)²

* * * * *

(d) TRIBAL TRANSPORTATION FACILITY BRIDGES.—

(1) NATIONWIDE PRIORITY PROGRAM.—The Secretary shall maintain a nationwide priority program for improving [deficient] bridges eligible for the tribal transportation program.

(2) FUNDING.—Before making any distribution under subsection (b), the Secretary shall set aside not more than [2 percent] 3 percent of the funds made available under the tribal transportation program for each fiscal year to be allocated—

(A) to carry out any planning, design, engineering, preconstruction, construction, and inspection of a project to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or

(B) to implement any countermeasure for [deficient] tribal transportation facility bridges, including multiple-pipe culverts.

(3) ELIGIBLE BRIDGES.—To be eligible to receive funding under this subsection, a bridge described in paragraph (1) shall—

(A) have an opening of not less than 20 feet[;] ;and

(B) be classified as a tribal transportation facility[; and]

[(C) be structurally deficient or functionally obsolete.]

(4) APPROVAL REQUIREMENT.—The Secretary may make funds available under this subsection for preliminary engineering, construction, and construction engineering activities after approval of required documentation and verification of eligibility in accordance with this title.

* * * * *

§ 203. Federal lands transportation program

(a) USE OF FUNDS.—

(1) IN GENERAL.—Funds made available under the Federal lands transportation program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency to pay the costs of—

²So in original. The closing bracket probably should not appear.

(A) program administration, transportation planning, research, preventive maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of Federal lands transportation facilities, and—

- (i) adjacent vehicular parking areas;
- (ii) acquisition of necessary scenic easements and scenic or historic sites;
- (iii) provision for pedestrians and bicycles;
- (iv) environmental mitigation in or adjacent to Federal land open to the public—

(I) to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

(II) to mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

(v) construction and reconstruction of roadside rest areas, including sanitary and water facilities;

(vi) congestion mitigation; and

(vii) other appropriate public road facilities, as determined by the Secretary;

(B) **operation** *capital, operations*, and maintenance of transit facilities;

(C) any transportation project eligible for assistance under this title that is on a public road within or adjacent to, or that provides access to, Federal lands open to the public; and

(D) not more 10,000,000 of the amounts made available per fiscal year to carry out this section for activities eligible under **subparagraph (A)(iv)** *subparagrpg (A)(iv)(I)*.

(2) **CONTRACT**.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to the activity with—

(A) a State (including a political subdivision of a State);

or

(B) an Indian tribe.

(3) **ADMINISTRATION**.—All appropriations for the construction and improvement of Federal lands transportation facilities shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the appropriate Federal land managing agency.

(4) **COOPERATION**.—

(A) **IN GENERAL**.—The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

(B) **FUNDS RECEIVED**.—Any funds received from a State, county, or local subdivision shall be credited to appropriations available for the class of Federal lands transportation facilities to which the funds were contributed.

(5) **COMPETITIVE BIDDING**.—

(A) IN GENERAL.—Subject to subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

(B) EXCEPTION.—Subparagraph (A) shall not apply if the Secretary or the Secretary of the appropriate Federal land management agency affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

(b) AGENCY PROGRAM DISTRIBUTIONS.—

(1) IN GENERAL.—On October 1, 2011, and on October 1 of each fiscal year thereafter, the Secretary shall allocate the sums authorized to be appropriated for the fiscal year for the Federal lands transportation program on the basis of applications of need, as determined by the Secretary—

(A) in consultation with the Secretaries of the applicable Federal land management agencies; and

(B) in coordination with the transportation plans required under section 201 of the respective transportation systems of—

(i) the National Park Service;

(ii) the Forest Service;

(iii) the United States Fish and Wildlife Service;

(iv) the Corps of Engineers; **[and]**

(v) the Bureau of Land Management**[.]** ;

(vi) *the Bureau of Reclamation; and*

(vii) *independent Federal agencies with natural resource and land management responsibilities.*

(2) APPLICATIONS.—

(A) REQUIREMENTS.—Each application submitted by a Federal land management agency shall include proposed programs at various potential funding levels, as defined by the Secretary following collaborative discussions with applicable Federal land management agencies.

(B) CONSIDERATION BY SECRETARY.—In evaluating an application submitted under subparagraph (A), the Secretary shall consider the extent to which the programs support *performance management, including—*

(i) the transportation goals of—

(I) a state of good repair of transportation facilities;

(II) a reduction of bridge deficiencies, and ⁴

(III) an improvement of safety;

(ii) high-use Federal recreational sites or Federal economic generators; and

(iii) the resource and asset management goals of the Secretary of the respective Federal land management agency.

(C) PERMISSIVE CONTENTS.—Applications may include proposed programs the duration of which extend over a multiple-year period to support long-term transportation planning and resource management initiatives.

(c) NATIONAL FEDERAL LANDS TRANSPORTATION FACILITY INVENTORY.—

⁴ So in original. The comma probably should be a semicolon.

(1) IN GENERAL.—The Secretaries of the appropriate Federal land management agencies, in cooperation with the Secretary, shall maintain a comprehensive national inventory of public Federal lands transportation facilities.

(2) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORIES.—To identify the Federal lands transportation system and determine the relative transportation needs among Federal land management agencies, the inventories shall include, at a minimum, facilities that—

(A) provide access to high-use Federal recreation sites or Federal economic generators, as determined by the Secretary in coordination with the respective Secretaries of the appropriate Federal land management agencies; and

(B) are owned by 1 of the following agencies:

(vi) *The Bureau of Reclamation.*

* * * * *

§ [213. Transportation alternatives

[(a) RESERVATION OF FUNDS.—

[(1) IN GENERAL.—On October 1 of each of fiscal years 2013 and 2014, the Secretary shall proportionally reserve from the funds apportioned to a State under section 104(b) to carry out the requirements of this section an amount equal to the amount obtained by multiplying the amount determined under paragraph (2) by the ratio that—

[(A) the amount apportioned to the State for the transportation enhancements program for fiscal year 2009 under section 133(d)(2), as in effect on the day before the date of enactment of the MAP-21; bears to

[(B) the total amount of funds apportioned to all States for that fiscal year for the transportation enhancements program for fiscal year 2009.

[(2) CALCULATION OF NATIONAL AMOUNT.—The Secretary shall determine an amount for each fiscal year that is equal to 2 percent of the amounts authorized to be appropriated for such fiscal year from the Highway Trust Fund (other than the Mass Transit Account) to carry out chapters 1, 2, 5, and 6 of this title.]

(a) RESERVATION OF FUNDS.—

(1) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall set aside from the amount determined for a State under section 104(c) an amount determined for the State under paragraphs (2) and (3).

(2) TOTAL AMOUNT.—The total amount set aside for the program under this section shall be \$850,000,000 for each fiscal year.

(3) STATE SHARE.—The Secretary shall distribute among the States the total set-aside amount under paragraph (2) so that each State receives an amount equal to the proportion that—

(A) the amount apportioned to the State for the transportation enhancements program for fiscal year 2009 under section 133(d)(2), as in effect on the day before the date of enactment of MAP-21 (Public Law 112-141; 126 Stat. 405); bears to

(B) the total amount of funds apportioned to all States for that fiscal year for the transportation enhancements program for fiscal year 2009.

* * * * *

(c) ALLOCATIONS OF FUNDS.—

(1) CALCULATION.—**[Of the funds reserved in a State under this section—**

(A) 50 percent for a fiscal year shall be obligated under this section] Funds reserved in a State under this section shall be obligated to any eligible entity in proportion to their relative shares of the population of the State—

[(i)] (A) in urbanized areas of the State with an urbanized area population of over 200,000;

[(ii)] (B) in areas of the State other than urban areas with a population [greater than 5,000] of 5,000 or more; and

[(iii)] (C) in other areas of the State[; and] .

[(B) 50 percent shall be obligated in any area of the State.]

(2) METROPOLITAN AREAS.—Funds attributed to an urbanized area under **[paragraph (1)(A)(i)] paragraph (1)(A)** may be obligated in the metropolitan area established under section 134 that encompasses the urbanized area.

(3) DISTRIBUTION AMONG URBANIZED AREAS OF OVER 200,000 POPULATION.—

(A) IN GENERAL.—[Except as provided in paragraph (1)(B), the] The amount of funds that a State is required to obligate under [paragraph (1)(A)(i)] paragraph (1)(A) shall be obligated in urbanized areas described in [paragraph (1)(A)(i)] paragraph (1)(A) based on the relative population of the areas.

* * * * *

(4) ACCESS TO FUNDS.—

(A) IN GENERAL.—Each State or metropolitan planning organization required to obligate funds in accordance with paragraph (1) shall develop a competitive process to allow eligible entities to submit projects for funding that achieve the objectives of this subsection.

(B) DEFINITION OF ELIGIBLE ENTITY.—In this paragraph, the term “eligible entity” means—

- (i) a local government;**
- (ii) a regional transportation authority;**
- (iii) a transit agency;**
- (iv) a natural resource or public land agency;**
- (v) a school district, local education agency, or school;**

(vi) a tribal government; [and]

(vii) a nonprofit entity responsible for the administration of local transportation safety programs; and

[(vii)] (viii) any other local or regional governmental entity with responsibility for or oversight of transportation or recreational trails (other than a metropolitan planning organization or a State agency)

that the State determines to be eligible, consistent with the goals of this subsection.

(5) SELECTION OF PROJECTS.—~~For funds reserved~~

(A) IN GENERAL.—For funds reserved in a State under this section and suballocated to a metropolitan planning area under ~~paragraph (1)(A)(i)~~ *paragraph (1)(A)*, each such metropolitan planning organization shall select projects carried out within the boundaries of the applicable metropolitan planning area, in consultation with the relevant State.

(B) NO RESTRICTION ON SUBALLOCATION.—*Nothing in this section prevents a metropolitan planning organization from further suballocating funds within the boundaries of the metropolitan planning area if a competitive process is implemented for the award of the suballocated funds.*

* * * * *

(g) STATE FLEXIBILITY.—A State may opt out of the recreational trails program under subsection (f) if the Governor of the State notifies the Secretary not later than 30 days prior to apportionments being made for any fiscal year.

(h) ANNUAL REPORTS.—

(1) IN GENERAL.—*Each State or metropolitan planning organization responsible for carrying out the requirements of this section shall submit to the Secretary an annual report that describes—*

(A) *the number of project applications received for each fiscal year, including—*

(i) *the aggregate cost of the projects for which applications are received; and*

(ii) *the types of project to be carried out (as described in subsection (b)), expressed as percentages of the total apportionment of the State under subsection (a); and*

(B) *the number of projects selected for funding for each fiscal year, including the aggregate cost and location of projects selected.*

(2) PUBLIC AVAILABILITY.—*The Secretary shall make available to the public, in a user-friendly format on the website of the Department, a copy of each annual report submitted under paragraph (1).*

(i) EXPEDITING INFRASTRUCTURE PROJECTS.—

(1) IN GENERAL.—*Not later than 1 year after the date of enactment of this subsection, the Secretary shall develop regulations or guidance relating to the implementation of this section that encourages the use of the programmatic approaches to environmental reviews, expedited procurement techniques, and other best practices to facilitate productive and timely expenditure for projects that are small, low-impact, and constructed within an existing built environment.*

(2) STATE PROCESSES.—*The Secretary shall work with State departments of transportation to ensure that any regulation or guidance developed under paragraph (1) is consistently implemented by States and the Federal Highway Administration to*

avoid unnecessary delays in implementing projects and to ensure the effective use of Federal dollars.

* * * * *

§ 217. Bicycle transportation and pedestrian walkways

(a) USE OF STP AND CONGESTION MITIGATION PROGRAM FUNDS.—Subject to project approval by the Secretary, a State may obligate funds apportioned to it under sections 104(b)(2) and ~~104(b)(3)~~ 104(b)(4) of this title for construction of pedestrian walkways and bicycle transportation facilities and for carrying out nonconstruction projects related to safe bicycle use.

* * * * *

§ 319. Landscaping and scenic enhancement

(a) LANDSCAPE AND ROADSIDE DEVELOPMENT.—The Secretary may approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public, and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty (*including the enhancement of habitat and forage for pollinators*) adjacent to such highways.

(b) PLANTING OF WILDFLOWERS.—

(1) GENERAL RULE.—The Secretary shall require the planting of native wildflower seeds or seedlings, or both, as part of any landscaping project under this section. At least 1/4 of 1 percent of the funds expended for such landscaping project shall be used for such plantings.

(2) WAIVER.—The requirements of this subsection may be waived by the Secretary if a State certifies that native wildflowers or seedlings cannot be grown satisfactorily or planting areas are limited or otherwise used for agricultural purposes.

(3) GIFTS.—Nothing in this subsection shall be construed to prohibit the acceptance of native wildflower seeds or seedlings donated by civic organizations or other organizations and individuals to be used in landscaping projects.

(c) ENCOURAGEMENT OF POLLINATOR HABITAT AND FORAGE DEVELOPMENT AND PROTECTION ON TRANSPORTATION RIGHTS-OF-WAY.—*In carrying out any program administered by the Secretary under this title, the Secretary shall, in conjunction with willing States, as appropriate—*

(1) *encourage integrated vegetation management practices on roadsides and other transportation rights-of-way, including reduced mowing; and*

(2) *encourage the development of habitat and forage for Monarch butterflies, other native pollinators, and honey bees through plantings of native forbs and grasses, including noninvasive, native milkweed species that can serve as migra-*

tory way stations for butterflies and facilitate migrations of other pollinators.

* * * * *

§ 326. State assumption of responsibility for categorical exclusions

(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

(1) IN GENERAL.—The Secretary may assign, and a State may assume, responsibility for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

(2) SCOPE OF AUTHORITY.—A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary and only for types of activities specifically designated by the Secretary.

(3) CRITERIA.—The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) PRESERVATION OF FLEXIBILITY.—The Secretary shall not require a State, as a condition of assuming responsibility under this section, to forego project delivery methods that are otherwise permissible for highway projects.

(b) OTHER APPLICABLE FEDERAL LAWS.—

(1) IN GENERAL.—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, with the exception of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

(2) SOLE RESPONSIBILITY.—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

(c) MEMORANDA OF UNDERSTANDING.—

(1) IN GENERAL.—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

(2) ASSISTANCE TO STATES.—*On request of a Governor of a State, the Secretary shall provide to the State technical assistance, training, or other support relating to—*

- (A) *assuming responsibility under subsection (a);*
- (B) *developing a memorandum of understanding under this subsection; or*
- (C) *addressing a responsibility in need of corrective action under subsection (d)(1)(B).*

[(2)] (3) TERM.—A memorandum of understanding—

- (A) shall have a term of not more than 3 years; and
- (B) shall be renewable.

[(3)] (4) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

[(4)] (5) MONITORING.—The Secretary shall—

- (A) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and
- (B) take into account the performance by the State when considering renewal of the memorandum of understanding.

(d) TERMINATION.—

[(1) TERMINATION BY THE SECRETARY.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.]

(1) TERMINATION BY SECRETARY.—*The Secretary may terminate the participation of any State in the program, if—*

(A) *the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;*

(B) *the Secretary provides to the State—*

(i) a notification of the determination of noncompliance;

(ii) *a period of not less than 120 days to take such corrective action as the Secretary determines to be necessary to comply with the applicable agreement; and*

(iii) *on request of the Governor of the State, a detailed description of each responsibility in need of corrective action regarding an inadequacy identified under subparagraph (A); and*

(C) *the State, after the notification and period described in clauses (i) and (ii) of subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.*

* * * * *

§ 327. Surface transportation project delivery program

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall carry out a surface transportation project delivery program (referred to in this section as the “program”).

(2) ASSUMPTION OF RESPONSIBILITY.—

(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project;

(ii) at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more railroad, public transportation, or multimodal projects within the State under the National Environmental Policy Act of 1969 [(42 U.S.C. 4321 et seq.)] (42 U.S.C. 4321 et seq.);

(iii) in a State that has assumed the responsibilities of the Secretary under clause (ii), a recipient of assistance under chapter 53 of title 49 may request that the Secretary maintain the responsibilities of the Secretary with respect to 1 or more public transportation projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 13¹ 4321 et seq.); but

* * * * *

(j) TERMINATION.—

[(1) TERMINATION BY THE SECRETARY.—The Secretary may terminate the participation of any State in the program if—

[(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

[(B) the Secretary provides to the State—

[(i) notification of the determination of noncompliance; and

[(ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

[(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.]

(1) TERMINATION BY SECRETARY.—*The Secretary may terminate the participation of any State in the program if—*

(A) *the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;*

¹ So in original.

(B) the Secretary provides to the State—

(i) a notification of the determination of noncompliance;

(ii) a period of not less than 120 days to take such corrective action as the Secretary determines to be necessary to comply with the applicable agreement; and

(iii) on request of the Governor of the State, a detailed description of each responsibility in need of corrective action regarding an inadequacy identified under subparagraph (A); and

(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.

* * * * *

§ 329. Eligibility for control of noxious weeds and aquatic noxious weeds and establishment of native species

(a) IN GENERAL.—In accordance with all applicable Federal law (including regulations), funds made available to carry out this section may be used for the following activities if such activities are related to transportation projects funded under this title:

(1) Establishment of plants selected by State and local transportation authorities to perform one or more of the following functions: abatement of stormwater runoff, stabilization of soil, provision of habitat, forage, and migratory way stations for Monarch butterflies, other native pollinators, and honey bees, and aesthetic enhancement.

* * * * *

§ 503. Research and technology development and deployment

(a) IN GENERAL.—The Secretary shall—

(1) carry out research, development, and deployment activities that encompass the entire innovation lifecycle; and

(2) ensure that all research carried out under this section aligns with the transportation research and development strategic plan of the Secretary under section 508.

(b) HIGHWAY RESEARCH AND DEVELOPMENT PROGRAM.—

(1) OBJECTIVES.—* * *

* * * * *

(3) IMPROVING INFRASTRUCTURE INTEGRITY.—

(A) IN GENERAL.—The Secretary shall carry out and facilitate highway and bridge infrastructure research and development activities—

(i) to maintain infrastructure integrity;

(ii) to meet user needs; and

(iii) to link Federal transportation investments to improvements in system performance.

(B) OBJECTIVES.—In carrying out this paragraph, the Secretary shall carry out research and development activities—

(i) to reduce the number of fatalities attributable to infrastructure design characteristics and work zones;

(ii) to improve the safety and security of highway infrastructure;

(iii) to increase the reliability of lifecycle performance predictions used in infrastructure design, construction, and management;

(iv) to improve the ability of transportation agencies to deliver projects that meet expectations for timeliness, quality, and cost;

(v) to reduce user delay attributable to infrastructure system performance, maintenance, rehabilitation, and construction;

(vi) to improve highway condition and performance through increased use of design, materials, construction, and maintenance innovations;

(vii) to reduce the environmental impacts of highway infrastructure through innovations in design, construction, operation, preservation, and maintenance; and

(viii) to study vulnerabilities of the transportation system to seismic activities and extreme events and methods to reduce those vulnerabilities.

(C) CONTENTS.—Research and technology activities carried out under this paragraph may include—

(i) long-term infrastructure performance programs addressing pavements, bridges, tunnels, and other structures;

(ii) short-term and accelerated studies of infrastructure performance;

(iii) research to develop more durable infrastructure materials and systems;

(iv) advanced infrastructure design methods;

(v) accelerated highway and bridge construction;

(vi) performance-based specifications;

(vii) construction and materials quality assurance;

(viii) comprehensive and integrated infrastructure asset management;

(ix) infrastructure safety assurance;

(x) sustainable infrastructure design and construction;

(xi) infrastructure rehabilitation and preservation techniques, including techniques to rehabilitate and preserve historic infrastructure;

(xii) hydraulic, geotechnical, and aerodynamic aspects of infrastructure;

(xiii) improved highway construction technologies and practices;

(xiv) improved tools, technologies, and models for infrastructure management, including assessment and monitoring of infrastructure condition;

(xv) studies to improve flexibility and resiliency of infrastructure systems to withstand climate variability;

(xvi) studies on the effectiveness of fiber-based additives to improve the durability of surface transportation materials in various geographic regions;

(xvii) studies of infrastructure resilience and other adaptation measures;

(xviii) maintenance of seismic research activities, including research carried out in conjunction with other Federal agencies to study the vulnerability of the transportation system to seismic activity and methods to reduce that vulnerability; **[and]**

(xix) technology transfer and adoption of permeable, pervious, or porous paving materials, practices, and systems that are designed to minimize environmental impacts, stormwater runoff, and flooding and to treat or remove pollutants by allowing stormwater to infiltrate through the pavement in a manner similar to predevelopment hydrologic conditions~~].~~ **[and]**

(xx) *accelerated mobile, highway-speed, bridge inspection methods that provide quantitative data-driven decisionmaking capabilities without requiring lane closures.*

(D) LIFECYCLE COSTS ANALYSIS STUDY.—

(i) **IN GENERAL.—**In this subparagraph *and section 119(e)*, the term “lifecycle costs analysis” means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

* * * * *

(c) TECHNOLOGY AND INNOVATION DEPLOYMENT PROGRAM.—

(1) **IN GENERAL.—**The Secretary shall **[carry out]** *establish and implement* a technology and innovation deployment program relating to all aspects of highway transportation, including planning, financing, operation, structures, materials, pavements, environment, construction, and the duration of time between project planning and project delivery, with the goals of—

(A) significantly accelerating the adoption of innovative technologies by the surface transportation community;

(B) providing leadership and incentives to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in highway construction processes that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction;

* * * * *

(2) IMPLEMENTATION.—

(A) **IN GENERAL.—**The Secretary shall promote, facilitate, and carry out the program established under paragraph (1) * * *

* * * * *

(B) **ACCELERATED INNOVATION DEPLOYMENT.—**In carrying out the program established under paragraph (1), the Secretary shall—

[(i) establish and carry out demonstration programs;]

(i) use not less than 50 percent of the funds authorized to carry out this subsection to make grants to, and enter into cooperative agreements and contracts with, States, other Federal agencies, local governments, metropolitan planning organizations, institutions of higher education, private sector entities, and nonprofit organizations to carry out demonstration programs that will accelerate the deployment and adoption of transportation research activities;

(ii) provide technical assistance, and training to researchers and developers; and

(iii) develop improved tools and methods to accelerate the adoption of proven innovative practices and technologies as standard practices.

(C) INNOVATION GRANTS.—

(i) **IN GENERAL.**—*In carrying out the program established under subparagraph (B)(i), the Secretary shall establish a transparent competitive process in which entities described in subparagraph (B)(i) may submit an application to receive a grant under this subsection.*

(ii) **PUBLICATION OF APPLICATION PROCESS.**—*A description of the application process established by the Secretary shall—*

(I) be posted on a public website;

(II) identify the information required to be included in the application; and

(III) identify the criteria by which the Secretary shall select grant recipients.

(iii) **SUBMISSION OF APPLICATION.**—*To receive a grant under this paragraph, an entity described in subparagraph (B)(i) shall submit an application to the Secretary.*

(iv) **SELECTION AND APPROVAL.**—*The Secretary shall select and approve an application submitted under clause (iii) based on whether the project described in the application meets the goals of the program described in paragraph (1).*

[(C)] (D) IMPLEMENTATION OF FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM FINDINGS AND RESULTS.—

(i) **IN GENERAL.**—*The Secretary, in consultation with the American Association of State Highway and Transportation Officials and the Transportation Research Board of the National Academy of Sciences, shall promote research results and products developed under the future strategic highway research program administered by the Transportation Research Board of the National Academy of Sciences.*

(ii) **BASIS FOR FINDINGS.**—*The activities carried out under this subparagraph shall be based on the report submitted to Congress by the Transportation Research Board of the National Academy of Sciences under section 510(e).*

(iii) PERSONNEL.—The Secretary may use funds made available to carry out this subsection for administrative costs under this subparagraph.

* * * * *

(3) ACCELERATED IMPLEMENTATION AND DEPLOYMENT OF PAVEMENT TECHNOLOGIES.—

(A) IN GENERAL.—The Secretary shall establish and implement a program under the technology and innovation deployment program to promote, implement, deploy, demonstrate, showcase, support, and document the application of innovative pavement technologies, practices, performance, and benefits.

(B) GOALS.—The goals of the accelerated implementation and deployment of pavement technologies program shall include—

(i) the deployment of new, cost-effective designs, materials, recycled materials, and practices to extend the pavement life and performance and to improve user satisfaction;

(ii) the reduction of initial costs and lifecycle costs of pavements, including the costs of new construction, replacement, maintenance, and rehabilitation;

(iii) the deployment of accelerated construction techniques to increase safety and reduce construction time and traffic disruption and congestion;

(iv) the deployment of engineering design criteria and specifications for new and efficient practices, products, and materials for use in highway pavements;

(v) the deployment of new nondestructive and real-time pavement evaluation technologies and construction techniques; and

(vi) effective technology transfer and information dissemination to accelerate implementation of new technologies and to improve life, performance, cost effectiveness, safety, and user satisfaction.

(C) FUNDING.—The Secretary shall obligate for [each of fiscal years 2013 through 2014] *each fiscal year* from funds made available to carry out this subsection \$12,000,000 to accelerate the deployment and implementation of pavement technology.

* * * * *

§ 504. Training and education

(a) NATIONAL HIGHWAY INSTITUTE.—

(1) IN GENERAL.—The Secretary shall operate in the Federal Highway Administration a National Highway Institute (in this subsection referred to as the “Institute”). The Secretary shall administer, through the Institute, the authority vested in the Secretary by this title or by any other law for the development and conduct of education and training programs relating to highways.

(2) DUTIES OF THE INSTITUTE.—In cooperation with State transportation departments, United States industry, and any national or international entity, the Institute shall develop and

administer education and training programs of instruction for—

(A) Federal Highway Administration, State, and local transportation agency employees and the employees of any other applicable Federal agency;

(B) regional, State, and metropolitan planning organizations;

(C) State and local police, public safety, and motor vehicle employees; and

(D) United States citizens and foreign nationals engaged or to be engaged in surface transportation work of interest to the United States.

(3) COURSES.—

(A) IN GENERAL.—The Institute shall—

(i) develop or update existing courses in asset management, including courses that include such components as—

(I) the determination of life-cycle costs;

(II) the valuation of assets;

(III) benefit-to-cost ratio calculations; and

(IV) objective decisionmaking processes for project selection; and

(ii) continually develop courses relating to the application of emerging technologies for—

(I) transportation infrastructure applications and asset management;

(II) intelligent transportation systems;

(III) operations (including security operations);

(IV) the collection and archiving of data;

(V) reducing the amount of time required for the planning and development of transportation projects; and

(VI) the intermodal movement of individuals and freight.

(B) ADDITIONAL COURSES.—In addition to the courses developed under subparagraph (A), the Institute, in consultation with State transportation departments, metropolitan planning organizations, and the American Association of State Highway and Transportation Officials, may develop courses relating to technology, methods, techniques, engineering, construction, safety, maintenance, environmental mitigation and compliance, regulations, management, inspection, and finance.

(C) REVISION OF COURSES OFFERED.—The Institute shall periodically—

(i) review the course inventory of the Institute; and

(ii) revise or cease to offer courses based on course content, applicability, and need.

(4) SET-ASIDE; FEDERAL SHARE.—Not to exceed 1/2 of 1 percent of the funds apportioned to a State under section ~~104(b)(3)~~ 104(b)(2) for the surface transportation program shall be available for expenditure by the State transportation department for the payment of not to exceed 80 percent of the cost of tuition and direct educational expenses (excluding salaries) in connection with the education and training of employ-

ees of State and local transportation agencies in accordance with this subsection.

* * * * *

§ 505. State planning and research

(a) GENERAL RULE.—Two percent of the sums apportioned to a State for fiscal year 1998 and each fiscal year thereafter under paragraphs (1) ~~through (4)~~ *through (5)* of section 104(b) shall be available for expenditure by the State, in consultation with the Secretary, only for the following purposes:

* * * * *

(c) IMPLEMENTATION OF FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM FINDINGS AND RESULTS.—

(1) FUNDS.—A State shall make available to the Secretary to carry out ~~section 503(c)(2)(C)~~ *section 503(c)(2)(D)* a percentage of funds subject to subsection (a) that are apportioned to that State, that is agreed to by ³/₄ of States for each of fiscal years 2013 and 2014.

* * * * *

§ 513. Use of funds for ITS activities

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) ELIGIBLE ENTITY.—The term “eligible entity” means a State or local government, tribal government, transit agency, public toll authority, metropolitan planning organization, other political subdivision of a State or local government, or a multistate or multijurisdictional group applying through a single lead applicant.

(2) MULTIJURISDICTIONAL GROUP.—The term “multijurisdictional group” means a combination of State governments, local governments, metropolitan planning agencies, transit agencies, or other political subdivisions of a State that—

(A) * * *

* * * * *

(d) SYSTEM OPERATIONS AND ITS DEPLOYMENT GRANT PROGRAM.—

(1) ESTABLISHMENT.—*The Secretary shall establish a competitive grant program to accelerate the deployment, operation, systems management, intermodal integration, and interoperability of the ITS program and ITS-enabled operational strategies—*

(A) to measure and improve the performance of the surface transportation system;

(B) to reduce traffic congestion and the economic and environmental impacts of traffic congestion;

(C) to minimize fatalities and injuries;

(D) to enhance mobility of people and goods;

(E) to improve traveler information and services; and

(F) to optimize existing roadway capacity.

(2) APPLICATION.—*To be eligible for a grant under this subsection, an eligible entity shall submit an application to the Secretary that includes—*

- (A) a plan to deploy and provide for the long-term operation and maintenance of intelligent transportation systems to improve safety, efficiency, system performance, and return on investment, such as—
- (i) autonomous vehicle, vehicle-to-vehicle, and vehicle-to-infrastructure communication technologies;
 - (ii) real-time integrated traffic, transit, and multimodal transportation information;
 - (iii) advanced traffic, freight, parking, and incident management systems;
 - (iv) advanced technologies to improve transit and commercial vehicle operations;
 - (v) synchronized, adaptive, and transit preferential traffic signals;
 - (vi) advanced infrastructure condition assessment technologies; and
 - (vii) other technologies to improve system operations, including ITS applications necessary for multimodal systems integration and for achieving performance goals;
- (B) quantifiable system performance improvements, including—
- (i) reductions in traffic-related crashes, congestion, and costs;
 - (ii) optimization of system efficiency; and
 - (iii) improvement of access to transportation services;
- (C) quantifiable safety, mobility, and environmental benefit projections, including data-driven estimates of the manner in which the project will improve the efficiency of the transportation system and reduce traffic congestion in the region;
- (D) a plan for partnering with the private sector, including telecommunications industries and public service utilities, public agencies (including multimodal and multijurisdictional entities), research institutions, organizations representing transportation and technology leaders, and other transportation stakeholders;
- (E) a plan to leverage and optimize existing local and regional ITS investments; and
- (F) a plan to ensure interoperability of deployed technologies with other tolling, traffic management, and intelligent transportation systems.

(3) SELECTION.—

(A) IN GENERAL.—Effective beginning not later than 1 year after the date of enactment of the DRIVE Act, the Secretary may provide grants to eligible entities under this subsection.

(B) GEOGRAPHIC DIVERSITY.—In awarding a grant under this subsection, the Secretary shall ensure, to the maximum extent practicable, that grant recipients represent diverse geographical areas of the United States, including urban, suburban, and rural areas.

(C) NON-FEDERAL SHARE.—In awarding a grant under the subsection, the Secretary shall give priority to grant recipients that demonstrate an ability to contribute a signifi-

cant non-Federal share to the cost of carrying out the project for which the grant is received.

(4) **ELIGIBLE USES.**—*Projects for which grants awarded under this subsection may be used include—*

(A) *the deployment of autonomous vehicle, vehicle-to-vehicle, and vehicle-to-infrastructure communication technologies;*

(B) *the establishment and implementation of ITS and ITS-enabled operations strategies that improve performance in the areas of—*

(i) *traffic operations;*

(ii) *emergency response to surface transportation incidents;*

(iii) *incident management;*

(iv) *transit and commercial vehicle operations improvements;*

(v) *weather event response management by State and local authorities;*

(vi) *surface transportation network and facility management;*

(vii) *construction and work zone management;*

(viii) *traffic flow information;*

(ix) *freight management; and*

(x) *congestion management;*

(C) *carrying out activities that support the creation of networks that link metropolitan and rural surface transportation systems into an integrated data network, capable of collecting, sharing, and archiving transportation system traffic condition and performance information;*

(D) *the implementation of intelligent transportation systems and technologies that improve highway safety through information and communications systems linking vehicles, infrastructure, mobile devices, transportation users, and emergency responders;*

(E) *the provision of services necessary to ensure the efficient operation and management of ITS infrastructure, including costs associated with communications, utilities, rent, hardware, software, labor, administrative costs, training, and technical services;*

(F) *the provision of support for the establishment and maintenance of institutional relationships between transportation agencies, police, emergency medical services, private emergency operators, freight operators, shippers, public service utilities, and telecommunications providers;*

(G) *carrying out multimodal and cross-jurisdictional planning and deployment of regional transportation systems operations and management approaches; and*

(H) *performing project evaluations to determine the costs, benefits, lessons learned, and future deployment strategies associated with the deployment of intelligent transportation systems.*

(5) **REPORT TO SECRETARY.**—*For each fiscal year that an eligible entity receives a grant under this subsection, not later than 1 year after receiving the grant, each recipient shall submit to the Secretary a report that describes how the project*

has met the expectations projected in the deployment plan submitted with the application, including information on—

(A) *how the program has helped reduce traffic crashes, congestion, costs, and other benefits of the deployed systems;*

(B) *the effect of measuring and improving transportation system performance through the deployment of advanced technologies;*

(C) *the effectiveness of providing real-time integrated traffic, transit, and multimodal transportation information to the public that allows the public to make informed travel decisions; and*

(D) *lessons learned and recommendations for future deployment strategies to optimize transportation efficiency and multimodal system performance.*

(6) REPORT TO CONGRESS.—Not later than 2 years after the date on which the first grant is awarded under this subsection and annually thereafter for each fiscal year for which grants are awarded under this subsection, the Secretary shall submit to Congress a report that describes the effectiveness of the grant recipients in meeting the projected deployment plan goals, including data on how the grant program has—

(A) *reduced traffic-related fatalities and injuries;*

(B) *reduced traffic congestion and improved travel-time reliability;*

(C) *reduced transportation-related emissions;*

(D) *optimized multimodal system performance;*

(E) *improved access to transportation alternatives;*

(F) *provided the public with access to real-time integrated traffic, transit, and multimodal transportation information to make informed travel decisions;*

(G) *provided cost savings to transportation agencies, businesses, and the traveling public; and*

(H) *provided other benefits to transportation users and the general public.*

(7) ADDITIONAL GRANTS.—*If the Secretary determines, based on a report submitted under paragraph (5), that a grant recipient is not complying with the established grant criteria, the Secretary may—*

(A) *cease payment to the recipient of any remaining grant amounts; and*

(B) *redistribute any remaining amounts to other eligible entities under this section.*

(8) NON-FEDERAL SHARE.—The Federal share of the cost of a project for which a grant is provided under this subsection shall not exceed 50 percent of the cost of the project.

(9) FUNDING.—*Of the funds made available each fiscal year to carry out the intelligent transportation system program under sections 512 through 518, not less than \$30,000,000 shall be used to carry out this subsection.*

* * * * *

§ 514. Goals and purposes

(a) GOALS.—The goals of the intelligent transportation system program include—

(1) enhancement of surface transportation efficiency and facilitation of intermodalism and international trade to enable existing facilities to meet a significant portion of future transportation needs, including public access to employment, goods, and services and to reduce regulatory, financial, and other transaction costs to public agencies and system users;

(2) achievement of national transportation safety goals, including enhancement of safe operation of motor vehicles and nonmotorized vehicles and improved emergency response to collisions, with particular emphasis on decreasing the number and severity of collisions;

(3) protection and enhancement of the natural environment and communities affected by surface transportation, with particular emphasis on assisting State and local governments to achieve national environmental goals;

(4) accommodation of the needs of all users of surface transportation systems, including operators of commercial motor vehicles, passenger motor vehicles, motorcycles, bicycles, and pedestrians (including individuals with disabilities); **[and]**

[(5) enhancement of national defense mobility and improvement of the ability of the United States to respond to security-related or other manmade emergencies and natural disasters.

[(b) PURPOSES.—The Secretary shall implement activities under the intelligent transportation system program, at a minimum—

[(1) to expedite, in both metropolitan and rural areas, deployment and integration of intelligent transportation systems for consumers of passenger and freight transportation;

[(2) to ensure that Federal, State, and local transportation officials have adequate knowledge of intelligent transportation systems for consideration in the transportation planning process;

[(3) to improve regional cooperation and operations planning for effective intelligent transportation system deployment;

[(4) to promote the innovative use of private resources in support of intelligent transportation system development;

[(5) to facilitate, in cooperation with the motor vehicle industry, the introduction of vehicle-based safety enhancing systems;

[(6) to support the application of intelligent transportation systems that increase the safety and efficiency of commercial motor vehicle operations;

[(7) to develop a workforce capable of developing, operating, and maintaining intelligent transportation systems;

[(8) to provide continuing support for operations and maintenance of intelligent transportation systems; and

[(9) to ensure a systems approach that includes cooperation among vehicles, infrastructure, and users.]

(5) improvement of the ability of the United States to respond to security-related or other manmade emergencies and natural disasters; and

(6) enhancement of the freight system of the United States and support to freight policy goals by conducting heavy duty vehicle demonstration activities and accelerating adoption of ITS applications in freight operations.

* * * * *

§ 515. General authorities and requirements

(a) SCOPE.—Subject to the provisions of [this chapter] *sections 512 through 518*, the Secretary shall conduct an ongoing intelligent transportation system program—

(1) to research, develop, and operationally test intelligent transportation systems; and

(2) to provide technical assistance in the nationwide application of those systems as a component of the surface transportation systems of the United States.

(b) POLICY.—Intelligent transportation system research projects and operational tests funded pursuant to [this chapter] *sections 512 through 518* shall encourage and not displace public-private partnerships or private sector investment in those tests and projects.

(c) COOPERATION WITH GOVERNMENTAL, PRIVATE, AND EDUCATIONAL ENTITIES.—The Secretary shall carry out the intelligent transportation system program in cooperation with State and local governments and other public entities, the private sector firms of the United States, the Federal laboratories, and institutions of higher education, including historically Black colleges and universities and other minority institutions of higher education.

(d) CONSULTATION WITH FEDERAL OFFICIALS.—In carrying out the intelligent transportation system program, the Secretary shall consult with the heads of other Federal agencies, as appropriate.

(e) TECHNICAL ASSISTANCE, TRAINING, AND INFORMATION.—The Secretary may provide technical assistance, training, and information to State and local governments seeking to implement, operate, maintain, or evaluate intelligent transportation system technologies and services.

(f) TRANSPORTATION PLANNING.—The Secretary may provide funding to support adequate consideration of transportation systems management and operations, including intelligent transportation systems, within metropolitan and statewide transportation planning processes.

(g) INFORMATION CLEARINGHOUSE.—

(1) IN GENERAL.—The Secretary shall—

(A) maintain a repository for technical and safety data collected as a result of federally sponsored projects carried out under [this chapter] *sections 512 through 518*; and

(B) make, on request, that information (except for proprietary information and data) readily available to all users of the repository at an appropriate cost.

(2) AGREEMENT.—

(A) IN GENERAL.—The Secretary may enter into an agreement with a third party for the maintenance of the repository for technical and safety data under paragraph (1)(A).

(B) FEDERAL FINANCIAL ASSISTANCE.—If the Secretary enters into an agreement with an entity for the maintenance of the repository, the entity shall be eligible for Federal financial assistance under [this section] *sections 512 through 518*.

(3) AVAILABILITY OF INFORMATION.—Information in the repository shall not be subject to sections 552 and 555 of title 5, United States Code.

(h) ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Secretary shall establish an Advisory Committee to advise the Secretary on carrying out **【this chapter】** *sections 512 through 518*.

(2) MEMBERSHIP.—The Advisory Committee shall have no more than 20 members, be balanced between metropolitan and rural interests, and include, at a minimum—

(A) a representative from a State highway department;

(B) a representative from a local highway department who is not from a metropolitan planning organization;

(C) a representative from a State, local, or regional transit agency;

(D) a representative from a metropolitan planning organization;

(E) a private sector user of intelligent transportation system technologies;

(F) an academic researcher with expertise in computer science or another information science field related to intelligent transportation systems, and who is not an expert on transportation issues;

(G) an academic researcher who is a civil engineer;

(H) an academic researcher who is a social scientist with expertise in transportation issues;

(I) a representative from a nonprofit group representing the intelligent transportation system industry;

(J) a representative from a public interest group concerned with safety;

(K) a representative from a public interest group concerned with the impact of the transportation system on land use and residential patterns; and

(L) members with expertise in planning, safety, telecommunications, utilities, and operations.

(3) DUTIES.—The Advisory Committee shall, at a minimum, perform the following duties:

(A) Provide input into the development of the intelligent transportation system aspects of the strategic plan under section 508.

(B) Review, at least annually, areas of intelligent transportation systems research being considered for funding by the Department, to determine—

(i) whether these activities are likely to advance either the state-of-the-practice or state-of-the-art in intelligent transportation systems;

(ii) whether the intelligent transportation system technologies are likely to be deployed by users, and if not, to determine the barriers to deployment; and

(iii) the appropriate roles for government and the private sector in investing in the research and technologies being considered.

(4) REPORT.—Not later than **【February 1 of each year after the date of enactment of the Transportation Research and Innovative Technology Act of 2012】** *May 1 of each year*, the Secretary shall submit to Congress a report that includes—

(A) all recommendations made by the Advisory Committee during the preceding calendar year;

- (B) an explanation of the manner in which the Secretary has implemented those recommendations; and
- (C) for recommendations not implemented, the reasons for rejecting the recommendations.

(5) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Advisory Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(i) REPORTING.—

(1) GUIDELINES AND REQUIREMENTS.—

(A) IN GENERAL.—The Secretary shall issue guidelines and requirements for the reporting and evaluation of operational tests and deployment projects carried out under [this chapter] sections 512 through 518.

(B) OBJECTIVITY AND INDEPENDENCE.—The guidelines and requirements issued under subparagraph (A) shall include provisions to ensure the objectivity and independence of the reporting entity so as to avoid any real or apparent conflict of interest or potential influence on the outcome by parties to any such test or deployment project or by any other formal evaluation carried out under [this chapter] sections 512 through 518.

(C) FUNDING.—The guidelines and requirements issued under subparagraph (A) shall establish reporting funding levels based on the size and scope of each test or project that ensure adequate reporting of the results of the test or project.

(2) SPECIAL RULE.—Any survey, questionnaire, or interview that the Secretary considers necessary to carry out the reporting of any test, deployment project, or program assessment activity under [this chapter] sections 512 through 518 shall not be subject to chapter 35 of title 44, United States Code.

* * * * *

§ 518. Vehicle-to-vehicle and vehicle-to-infrastructure communications systems deployment

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this section, the Secretary shall submit to the Committees on Commerce, Science, and Transportation and Environment and Public Works of the Senate and the Committees on Transportation and Infrastructure, Energy and Commerce, and Science, Space, and Technology of the House of Representatives a report that—

* * * * *

§ 601. Generally applicable provisions

(a) DEFINITIONS.—[In this chapter, the] *The* following definitions apply to sections 601 through 609:

(1) CONTINGENT COMMITMENT.—The term “contingent commitment” means a commitment to obligate an amount from future available budget authority that is—

(A) contingent on those funds being made available in law at a future date; and

(B) not an obligation of the Federal Government.

(2) ELIGIBLE PROJECT COSTS.—The term “eligible project costs” means amounts substantially all of which are paid by,

or for the account of, an obligor in connection with a project, including the cost of—

(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(B) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land relating to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; **[and]**

(C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction**[.]**; *and*

(D) *capitalizing a rural projects fund using the proceeds of a secured loan made to a State infrastructure bank in accordance with sections 602 and 603, for the purpose of making loans to sponsors of rural infrastructure projects in accordance with section 610.*

(3) **FEDERAL CREDIT INSTRUMENT.**—The term “Federal credit instrument” means a secured loan, loan guarantee, or line of credit authorized to be made available under **[this chapter]** *the TIFIA program* with respect to a project.

* * * * *

(10) **MASTER CREDIT AGREEMENT.**—The term “master credit agreement” means an agreement to extend credit assistance for a program of *related* projects secured by a common security pledge **[(which shall receive an investment grade rating from a rating agency)]**, or for a single project covered under section 602(b)(2) that would—

(A) make contingent commitments of 1 or more secured loans or other Federal credit instruments at future dates, **[subject to the availability of future funds being made available to carry out this chapter;]** *subject to—*

(i) *the availability of future funds being made available to carry out the TIFIA program; and*

(ii) *the satisfaction of all of the conditions for the provision of credit assistance under the TIFIA program, including section 603(b)(1);*

(B) establish the maximum amounts and general terms and conditions of the secured loans or other Federal credit instruments;

* * * * *

(D) provide for the obligation of funds for the secured loans or secured Federal credit instruments after all requirements have been met for the projects subject to the master credit agreement, including—

(i) completion of an environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(ii) *receiving an investment grade rating from a rating agency;*

- [(ii)] (iii) compliance with such other requirements as are specified in section [602(c)] *including sections 602(c) and 603(b)(1); and*
- [(iii)] (iv) the availability of funds to carry out [this chapter] *the TIFIA program; and*

* * * * *

(12) PROJECT.—The term “project” means—

- (A) any surface transportation project eligible for Federal assistance under this title or chapter 53 of title 49;
- (B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;
- (C) a project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; and
- (D) a project that—
 - (i) is a project—
 - (I) for a public freight rail facility or a private facility providing public benefit for highway users by way of direct freight interchange between highway and rail carriers;
 - (II) for an intermodal freight transfer facility;
 - (III) for a means of access to a facility described in subclause (I) or (II);
 - (IV) for a service improvement for a facility described in subclause (I) or (II) (including a capital investment for an intelligent transportation system); or
 - (V) that comprises a series of projects described in subclauses (I) through (IV) with the common objective of improving the flow of goods;
 - (ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements;
 - (iii) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port; and
 - (iv) is composed of related highway, surface transportation, transit, rail, or intermodal capital improvement projects eligible for assistance under this section in order to meet the eligible project cost threshold under section 602, by grouping related projects together for that purpose, subject to the condition that the credit assistance for the projects is secured by a common pledge[.]; *and*
- (E) *a project to improve or construct public infrastructure that is located within walking distance of, and accessible to, a fixed guideway transit facility, passenger rail station, intercity bus station, or intermodal facility, including a transportation, public utility, and capital project described in section 5302(3)(G)(v) of title 49, and related infrastructure;*

(F) a project for the acquisition of plant and wildlife habitat pursuant to a conservation plan that—

(i) has been approved by the Secretary of the Interior pursuant to section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539); and

(ii) as determined by the Secretary of the Interior, would mitigate the environmental impacts of transportation infrastructure projects otherwise eligible for assistance under the TIFIA program; and

(G) the capitalization of a rural projects fund by a State infrastructure bank with the proceeds of a secured loan made in accordance with sections 602 and 603, for the purpose of making loans to sponsors of rural infrastructure projects in accordance with section 610.

* * * * *

(15) RURAL INFRASTRUCTURE PROJECT.—The term “rural infrastructure project” [means a surface transportation infrastructure project located in any area other than a city with a population of more than 250,000 inhabitants within the city limits.] means a surface transportation infrastructure project located in an area that is outside of an urbanized area with a population greater than 150,000 individuals, as determined by the Bureau of the Census.

(16) RURAL PROJECTS FUND.—The term ‘rural projects fund’ means a fund—

(A) established by a State infrastructure bank in accordance with section 610(d)(4);

(B) capitalized with the proceeds of a secured loan made to the bank in accordance with sections 602 and 603; and

(C) for the purpose of making loans to sponsors of rural infrastructure projects in accordance with section 610.

[(16)] (17) SECURED LOAN.—The term “secured loan” means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 603.

[(17)] (18) STATE.—The term “State” has the meaning given the term in section 101.

(19) STATE INFRASTRUCTURE BANK.—The term ‘State infrastructure bank’ means an infrastructure bank established under section 610.

[(18)] (20) SUBSIDY AMOUNT.—The term “subsidy amount” means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument—

(A) calculated on a net present value basis; and

(B) excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

[(19)] (21) SUBSTANTIAL COMPLETION.—The term “substantial completion” means—

(A) the opening of a project to vehicular or passenger traffic; or

(B) a comparable event, as determined by the Secretary and specified in the credit agreement.

[(20)] (22)TIFIA PROGRAM.—The term “TIFIA program” means the transportation infrastructure finance and innovation program of the Department *established under sections 602 through 609.*

(b) **TREATMENT OF CHAPTER.**—For purposes of this title, this chapter shall be treated as being part of chapter 1.

§ 602. Determination of eligibility and project selection

(a) **ELIGIBILITY.**—

(1) **IN GENERAL.**—A project shall be eligible to receive credit assistance under **[this chapter] the TIFIA program** if—

(A) the entity proposing to carry out the project submits a letter of interest prior to submission of a formal application for the project; and

(B) the project meets the criteria described in this subsection.

(2) **CREDITWORTHINESS.**—

(A) **IN GENERAL.**—To be eligible for assistance under **[this chapter] the TIFIA program**, a project shall satisfy applicable creditworthiness standards, which, at a minimum, shall include—

* * * * *

(3) **INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.**—A project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under **[this chapter] the TIFIA program.**

* * * * *

(5) **[Eligible project costs.—] ELIGIBLE PROJECT COST PARAMETERS.**—

(A) **IN GENERAL.**—Except as provided in **[subparagraph (B), to be eligible for assistance under this chapter, a project] subparagraphs (B) and (C), a project under the TIFIA program** shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

[(i)(I) \$50,000,000; or

(II) in the case of a rural infrastructure project, \$25,000,000; and]

(i) \$50,000,000; and

(ii) 33½ percent of the amount of Federal highway [assistance] funds apportioned for the most recently completed fiscal year to the State in which the project is located.

[(B) INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.— In the case]

(B) EXCEPTIONS.—

(i) INTELLIGENT TRANSPORTATION SYSTEMS.—In the case of a project principally involving the installation of an intelligent transportation system, eligible project costs shall be reasonably anticipated to equal or exceed \$15,000,000.

(ii) TRANSIT-ORIENTED DEVELOPMENT PROJECTS.—*In the case of a project described in section 601(a)(12)(E),*

eligible project costs shall be reasonably anticipated to equal or exceed \$10,000,000.

(iii) RURAL PROJECTS.—*In the case of a rural infrastructure project or a project capitalizing a rural projects fund, eligible project costs shall be reasonably anticipated to equal or exceed \$10,000,000, but not to exceed \$100,000,000.*

(iv) LOCAL INFRASTRUCTURE PROJECTS.—*Eligible project costs shall be reasonably anticipated to equal or exceed \$10,000,000 in the case of projects or programs of projects—*

(I) in which the applicant is a local government, public authority, or instrumentality of local government;

(II) located on a facility owned by a local government; or

(III) for which the Secretary determines that a local government is substantially involved in the development of the project.

* * * * *

(9) BENEFICIAL EFFECTS.—The Secretary shall determine that financial assistance for the project under **[this chapter]** *the TIFIA program* will—

* * * * *

(10) PROJECT READINESS.—**[To be eligible]**

(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible;for assistance under **[this chapter]** *the TIFIA program*, the applicant shall demonstrate a reasonable expectation that the contracting process for construction of the project can commence by **[not later than]** *no later than 90 days* after the date on which a Federal credit instrument is obligated for the project under **[this chapter]** *the TIFLA program*.

(B) RURAL PROJECTS FUND.—*In the case of a project capitalizing a rural projects fund, the State infrastructure bank shall demonstrate, not later than 2 years after the date on which a secured loan is obligated for the project under the TIFIA program, that the bank has executed a loan agreement with a borrower for a rural infrastructure project in accordance with section 610. After the demonstration is made, the bank may draw upon the secured loan. At the end of the 2-year period, to the extent the bank has not used the loan commitment, the Secretary may extend the term of the loan or withdraw the loan commitment.*

(b) SELECTION AMONG ELIGIBLE PROJECTS.—

(1) ESTABLISHMENT.—The Secretary shall establish a rolling application process under which projects that are eligible to receive credit assistance under subsection (a) shall receive credit assistance on terms acceptable to the Secretary, if adequate funds are available to cover the subsidy costs associated with the Federal credit instrument.

[(2) ADEQUATE FUNDING NOT AVAILABLE.—If the Secretary fully obligates funding to eligible projects in a fiscal year, and adequate funding is not available to fund a credit instrument,

a project sponsor of an eligible project may elect to enter into a master credit agreement and wait until the earlier of—

[(A) the following fiscal year; and

[(B) the fiscal year during which additional funds are available to receive credit assistance.]

(2) MASTER CREDIT AGREEMENTS.—

(A) PROGRAM OF RELATED PROJECTS.—*The Secretary may enter into a master credit agreement for a program of related projects secured by a common security pledge on terms acceptable to the Secretary.*

(B) ADEQUATE FUNDING NOT AVAILABLE.—*If the Secretary fully obligates funding to eligible projects for a fiscal year and adequate funding is not available to fund a credit instrument, a project sponsor of an eligible project may elect to enter into a master credit agreement and wait to execute a credit instrument until the fiscal year for which additional funds are available to receive credit assistance.*

* * * * *

(c) FEDERAL REQUIREMENTS.—

(1) IN GENERAL.—In addition to the requirements of this title for highway projects, the requirements of chapter 53 of title 49 for transit projects, and the requirements of section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under [this chapter] *the TIFIA program* and projects assisted with those funds:

* * * * *

(e) DEVELOPMENT PHASE ACTIVITIES.—Any credit instrument secured under [this chapter] *the TIFIA program* may be used to finance up to 100 percent of the cost of development phase activities as described in section 601(a)(1)(A).

§ 603. Secured loans

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) and (3), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) * * *

* * * * *

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.

(2) MAXIMUM AMOUNT.—[The amount of]

(A) IN GENERAL.—*Except as provided in subparagraph (B), the amount of a secured loan under this section shall not exceed the lesser of 49 percent of the reasonably anticipated eligible project costs or if the secured loan does not receive an investment grade rating, the amount of the senior project obligations.*

(B) RURAL PROJECTS FUND.—*In the case of a project capitalizing a rural projects fund, the maximum amount of a*

secured loan made to a State infrastructure bank shall be determined in accordance with section 602(a)(5)(B)(iii).

(3) PAYMENT.—A secured loan under this section—

(A) shall—

(i) be payable, in whole or in part, from—

(I) tolls;

(II) user fees;

(III) payments owing to the obligor under a public-private partnership; **[or]**

(IV) other dedicated revenue sources that also secure the senior project obligations **[and]** ; and

(V) *in the case of a secured loan for a project capitalizing a rural projects fund, any other dedicated revenue sources available to a State infrastructure bank, including repayments from loans made by the bank for rural infrastructure projects; and*

* * * * *

(4) INTEREST RATE.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the interest rate on a secured loan under this section shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

(B) RURAL INFRASTRUCTURE PROJECTS.—

(i) IN GENERAL.—The interest rate of a loan offered to a rural infrastructure project **[under this chapter]** or a rural projects fund under the TIFIA program shall be at ½ of the Treasury Rate in effect on the date of execution of the loan agreement.

(ii) APPLICATION.—The rate described in clause (i) shall only apply to any portion of a loan the subsidy cost of which is funded by amounts set aside for rural infrastructure projects and rural project funds under section 608(a)(3)(A).

* * * * *

(5) MATURITY DATE.—**[The final]**

(A) IN GENERAL.—*Except as provided in subparagraph (B), the final maturity date of the secured loan shall be the lesser of—*

[(A)] (i) 35 years after the date of substantial completion of the project; and

[(B)] (ii) if the useful life of the capital asset being financed is of a lesser period, the useful life of the asset.

(B) RURAL PROJECTS FUND.—*In the case of a project capitalizing a rural projects fund, the final maturity date of the secured loan shall not exceed 35 years after the date on which the secured loan is obligated.*

* * * * *

(8) NON-FEDERAL SHARE.—The proceeds of a secured loan under **[this chapter]** the TIFIA program may be used for any non-Federal share of project costs required under this title or

chapter 53 of title 49, if the loan is repayable from non-Federal funds.

(9) MAXIMUM FEDERAL INVOLVEMENT.—**[The total Federal assistance provided on a project receiving a loan under this chapter]**

(A) IN GENERAL.—*The total Federal assistance provided for a project receiving a loan under the TIFIA program shall not exceed 80 percent of the total project cost.*

(B) RURAL PROJECTS FUND.—*A project capitalizing a rural projects fund shall satisfy clause (i) through compliance with the Federal share requirement described in section 610(e)(3)(B).*

* * * * *

§ 605. Program administration

(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instruments made available under **[this chapter]** *the TIFIA program.*

(b) FEES.—The Secretary may collect and spend fees, contingent on authority being provided in appropriations Acts, at a level that is sufficient to cover—

(1) the costs of services of expert firms retained pursuant to subsection (d); and

(2) all or a portion of the costs to the Federal Government of servicing the Federal credit instruments.

(c) SERVICER.—

(1) IN GENERAL.—The Secretary may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments.

(2) DUTIES.—A servicer appointed under paragraph (1) shall act as the agent for the Secretary.

(3) FEE.—A servicer appointed under paragraph (1) shall receive a servicing fee, subject to approval by the Secretary.

(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.

(e) EXPEDITED PROCESSING.—The Secretary shall implement procedures and measures to economize the time and cost involved in obtaining approval and the issuance of credit assistance under **[this chapter]** *the TIFIA program.*

(1) RESERVATION OF FUNDS.—*Of the funds made available to carry out the TIFIA program for each fiscal year, and after the set-aside under section 608(a)(6), not less than \$2,000,000 shall be made available for the Secretary to use in lieu of fees collected under subsection (b) for projects under the TIFIA program having eligible project costs that are reasonably anticipated not to equal or exceed \$75,000,000.*

(2) RELEASE OF FUNDS.—*Any funds not used under paragraph (1) shall be made available on October 1 of the following fiscal year to provide credit assistance to any project under the TIFIA program.*

§ 606. State and local permits

The provision of credit assistance under [this chapter] *the TIFIA program* with respect to a project shall not—

- (1) relieve any recipient of the assistance of any obligation to obtain any required State or local permit or approval with respect to the project;
- (2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or
- (3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

§ 607. Regulations

The Secretary may promulgate such regulations as the Secretary determines to be appropriate to carry out [this chapter] *the TIFIA program*

§ 608. Funding

(a) FUNDING.—

(1) SPENDING AND BORROWING AUTHORITY.—Spending and borrowing authority for a fiscal year to enter into Federal credit instruments shall be promptly apportioned to the Secretary on a fiscal-year basis.

(2) REESTIMATES.—If the subsidy cost of a Federal credit instrument is reestimated, the cost increase or decrease of the reestimate shall be borne by, or benefit, the general fund of the Treasury, consistent with section 504(f) of the Congressional Budget Act of 1974 (2 U.S.C. 661c(f)).

(3) RURAL SET-ASIDE.—

(A) IN GENERAL.—Of the total amount of funds made available to carry out [this chapter] *the TIFIA program* for each fiscal year, not more than 10 percent shall be set aside for rural infrastructure projects or rural projects funds.

(B) REOBLIGATION.—Any amounts set aside under subparagraph (A) that remain unobligated by June 1 of the fiscal year for which the amounts were set aside shall be available for obligation by the Secretary on projects other than rural infrastructure projects or rural projects funds.

(4) REDISTRIBUTION OF AUTHORIZED FUNDING.—

(A) IN GENERAL.—Beginning in fiscal year 2014, on April 1 of each fiscal year, if the cumulative unobligated and uncommitted balance of funding available exceeds 75 percent of the amount made available to carry out [this chapter] *the TIFIA program* for that fiscal year, the Secretary shall distribute to the States the amount of funds and associated obligation authority in excess of that amount.

(B) DISTRIBUTION.—The amounts and obligation authority distributed under this paragraph shall be distributed, in the same manner as obligation authority is distributed to the States for the fiscal year, based on the proportion that—

- (i) the relative share of each State of obligation authority for the fiscal year; bears to

(ii) the total amount of obligation authority distributed to all States for the fiscal year.

(C) PURPOSE.—Funds distributed under subparagraph (B) shall be available for any purpose described in section 133(b).

(5) AVAILABILITY.—Amounts made available to carry out this chapter shall remain available until expended.

(6) ADMINISTRATIVE COSTS.—Of the amounts made available to carry out **[this chapter]** *the TIFIA program*, the Secretary may use not more than **[0.50 percent]** *0.75 percent* for each fiscal year for the administration of **[this chapter]** *the TIFIA program*.

(b) CONTRACT AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, execution of a term sheet by the Secretary of a Federal credit instrument that uses amounts made available under **[this chapter]** *the TIFIA program* shall impose on the United States a contractual obligation to fund the Federal credit investment.

(2) AVAILABILITY.—Amounts made available to carry out **[this chapter]** *the TIFIA program* for a fiscal year shall be available for obligation on October 1 of the fiscal year.

§ 609. Reports to Congress

(a) IN GENERAL.—On June 1, 2012, and every 2 years thereafter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under **[this chapter (other than section 610)]** *the TIFIA program*, including a recommendation as to whether the objectives of this chapter (other than section 610) are best served by—

(1) continuing the program under the authority of the Secretary;

(2) establishing a Federal corporation or federally sponsored enterprise to administer the program; or

(3) phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by **[this chapter (other than section 610)]** *the TIFIA program* without Federal participation.

(b) APPLICATION PROCESS REPORT.—

(1) IN GENERAL.—Not later than December 1, 2012, and annually thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that includes a list of all of the letters of interest and applications received from project sponsors for assistance under **[this chapter (other than section 610)]** *the TIFIA program* during the preceding fiscal year.

(2) INCLUSIONS.—

(A) IN GENERAL.—Each report under paragraph (1) shall include, at a minimum, a description of, with respect to each letter of interest and application included in the report—

(i) the date on which the letter of interest or application was received;

(ii) the date on which a notification was provided to the project sponsor regarding whether the application was complete or incomplete;

(iii) the date on which a revised and completed application was submitted (if applicable);

(iv) the date on which a notification was provided to the project sponsor regarding whether the project was approved or disapproved; and

(v) if the project was not approved, the reason for the disapproval.

(B) CORRESPONDENCE.—Each report under paragraph (1) shall include copies of any correspondence provided to the project sponsor in accordance with section 602(d).

§ 610. State infrastructure bank program

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) CAPITAL PROJECT.—The term “capital project” has the meaning such term has under section 5302 of title 49.

(2) OTHER FORMS OF CREDIT ASSISTANCE.—The term “other forms of credit assistance” includes any use of funds in an infrastructure bank—

(A) to provide credit enhancements;

(B) to serve as a capital reserve for bond or debt instrument financing;

(C) to subsidize interest rates;

(D) to insure or guarantee letters of credit and credit instruments against credit risk of loss;

(E) to finance purchase and lease agreements with respect to transit projects;

(F) to provide bond or debt financing instrument security; and

(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which such assistance is being provided.

(3) STATE.—The term “State” has the meaning such term has under section 401.

(4) CAPITALIZATION.—The term “capitalization” means the process used for depositing funds as initial capital into a State infrastructure bank to establish the infrastructure bank.

(5) COOPERATIVE AGREEMENT.—The term “cooperative agreement” means written consent between a State and the Secretary which sets forth the manner in which the infrastructure bank established by the State in accordance with this section will be administered.

(6) LOAN.—The term “loan” means any form of direct financial assistance from a State infrastructure bank that is required to be repaid over a period of time and that is provided to a project sponsor for all or part of the costs of the project.

(7) GUARANTEE.—The term “guarantee” means a contract entered into by a State infrastructure bank in which the bank agrees to take responsibility for all or a portion of a project sponsor’s financial obligations for a project under specified conditions.

(8) INITIAL ASSISTANCE.—The term “initial assistance” means the first round of funds that are loaned or used for credit enhancement by a State infrastructure bank for projects eligible for assistance under this section.

(9) LEVERAGE.—The term “leverage” means a financial structure used to increase funds in a State infrastructure bank through the issuance of debt instruments.

(10) LEVERAGED.—The term “leveraged”, as used with respect to a State infrastructure bank, means that the bank has total potential liabilities that exceed the capital of the bank.

(11) RURAL INFRASTRUCTURE PROJECT.—*The term ‘rural infrastructure project’ has the meaning given the term in section 601.*

(12) RURAL PROJECTS FUND.—The term ‘rural projects fund’ has the meaning given the term in section 601.

* * * * *

(d) FUNDING.—

(1) HIGHWAY ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank to deposit into the highway account of the bank not to exceed—

(A) 10 percent of the funds apportioned to the State for [each of fiscal years 2005 through 2009 under each of sections 104(b)(1), 104(b)(3), 104(b)(4), and 144; and] *each fiscal year under each of paragraphs (1), (2), and (5) of section 104(b); and*

(B) 10 percent of the funds allocated to the State for each of such fiscal years.

(2) TRANSIT ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under section 5307, 5309, or 5311 of title 49, to deposit into the transit account of the bank not to exceed 10 percent of the funds made available to the State or other recipient [in each of fiscal years 2005 through 2009] *in each fiscal year* for capital projects under each of such sections.

(3) RAIL ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under subtitle V of title 49, to deposit into the rail account of the bank funds made available to the State or other recipient [in each of fiscal years 2005 through 2009] *in each fiscal year* for capital projects under such subtitle.

(4) RURAL PROJECTS FUND.—*Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank to deposit into the rural projects fund of the bank the proceeds of a secured loan made to the bank in accordance with section 602 and 603.*

[(4)] (5) CAPITAL GRANTS.—

(A) HIGHWAY ACCOUNT.—Federal funds deposited into a highway account of a State infrastructure bank under

paragraph (1) shall constitute for purposes of this section a capitalization grant for the highway account of the bank.

(B) TRANSIT ACCOUNT.—Federal funds deposited into a transit account of a State infrastructure bank under paragraph (2) shall constitute for purposes of this section a capitalization grant for the transit account of the bank.

(C) RAIL ACCOUNT.—Federal funds deposited into a rail account of a State infrastructure bank under paragraph 3 shall constitute for purposes of this section a capitalization grant for the rail account of the bank.

[(5)] (6) SPECIAL RULE FOR URBANIZED AREAS OF OVER 200,000.—Funds in a State infrastructure bank that are attributed to urbanized areas of a State with urbanized populations of over 200,000 under [section 133(d)(3)] *section 133(d)(1)(A)(i)* may be used to provide assistance with respect to a project only if the metropolitan planning organization designated for such area concurs, in writing, with the provision of such assistance.

[(6)] (7) DISCONTINUANCE OF FUNDING.—If the Secretary determines that a State is not implementing the State's infrastructure bank in accordance with a cooperative agreement entered into under subsection (b), the Secretary may prohibit the State from contributing additional Federal funds to the bank.

[(e)] FORMS OF ASSISTANCE FROM INFRASTRUCTURE BANKS.—An infrastructure bank established under this section may make loans or provide other forms of credit assistance to a public or private entity in an amount equal to all or a part of the cost of carrying out a project eligible for assistance under this section. The amount of any loan or other form of credit assistance provided for the project may be subordinated to any other debt financing for the project. Initial assistance provided with respect to a project from Federal funds deposited into an infrastructure bank under this section may not be made in the form of a grant.]

(e) FORMS OF ASSISTANCE FROM STATE INFRASTRUCTURE BANKS.—

(1) IN GENERAL.—*A State infrastructure bank established under this section may—*

(A) with funds deposited into the highway account, transit account, or rail account of the bank, make loans or provide other forms of credit assistance to a public or private entity to carry out a project eligible for assistance under this section; and

(B) with funds deposited into the rural projects fund, make loans to a public or private entity to carry out a rural infrastructure project.

(2) SUBORDINATION OF LOAN.—*The amount of a loan or other form of credit assistance provided for a project described in paragraph (1) may be subordinated to any other debt financing for the project.*

(3) MAXIMUM AMOUNT OF ASSISTANCE.—*A State infrastructure bank established under this section may—*

(A) with funds deposited into the highway account, transit account, or rail account, make loans or provide other forms of credit assistance to a public or private entity in an

amount up to 100 percent of the cost of carrying out a project eligible for assistance under this section; and

(B) with funds deposited into the rural projects fund, make loans to a public or private entity in an amount not to exceed 80 percent of the cost of carrying out a rural infrastructure project.

(4) INITIAL ASSISTANCE.—*Initial assistance provided with respect to a project from Federal funds deposited into a State infrastructure bank under this section may not be made in the form of a grant.*

* * * * *

(g) INFRASTRUCTURE BANK REQUIREMENTS.—In order to establish an infrastructure bank under this section, the State establishing the bank shall—

(1) deposit in cash, at a minimum, into [each account] *the highway account, the transit account, and the rail account* of the bank from non-Federal sources an amount equal to 25 percent of the amount of each capitalization grant made to the State and deposited into such account; except that, if the deposit is into the highway account of the bank and the State has a non-Federal share under section 120(b) that is less than 25 percent, the percentage to be deposited from non-Federal sources shall be the lower percentage of such grant;

* * * * *

(4) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible, *except that any loan funded from the rural projects fund of the bank shall bear interest at or below the interest rate charged for the TIFIA loan provided to the bank under section 603*

* * * * *

(k) PROGRAM ADMINISTRATION.—[For each of fiscal years 2005 through 2009] *For each fiscal year*, a State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this section to pay the reasonable costs of administering the bank.

* * * * *

TITLE 33-NAVIGATION AND NAVIGABLE WATERS

CHAPTER 52-WATER INFRASTRUCTURE FINANCE AND INNOVATION

§ 3907. Determination of eligibility and project selection

(a) Eligibility requirementsTo be eligible to receive financial assistance under this chapter, a project shall meet the following criteria, as determined by the Secretary or Administrator, as applicable:

(1) CREDITWORTHINESS
(A) IN GENERAL* * *

* * * * *

[(5) LIMITATION

【No project receiving Federal credit assistance under this chapter may be financed (directly or indirectly), in whole or in part, with proceeds of any obligation-

【(A) the interest on which is exempt from the tax imposed under chapter 1 of title 26; or

【(B) with respect to which credit is allowable under subpart I or J of part IV of subchapter A of chapter 1 of title 26.】

【(6)】 (5) *USE OF EXISTING FINANCING MECHANISMS*

(A) Notification

For each eligible project for which the Administrator has authority under paragraph (2) or (3) of section 3902(b) of this title and for which the Administrator has received an application for financial assistance under this chapter, the Administrator shall notify, not later than 30 days after the date on which the Administrator receives a complete application, the applicable State infrastructure financing authority of the State in which the project is located that such application has been submitted.

(B) G4DETERMINATION

If, not later than 60 days after the date of receipt of a notification under subparagraph (A), a State infrastructure financing authority notifies the Administrator that the State infrastructure financing authority intends to commit funds to the project in an amount that is equal to or greater than the amount requested under the application, the Administrator may not provide any financial assistance for that project under this chapter unless-

(i) by the date that is 180 days after the date of receipt of a notification under subparagraph (A), the State infrastructure financing authority fails to enter into an assistance agreement to provide funds for the project; or

(ii) the financial assistance to be provided by the State infrastructure financing authority will be at rates and terms that are less favorable than the rates and terms for financial assistance provided under this chapter.

【(7)】 (6) *G4OPERATION AND MAINTENANCE PLAN*

(A) G4IN GENERAL

The Secretary or the Administrator, as applicable, shall determine whether an applicant for assistance under this chapter has developed, and identified adequate revenues to implement, a plan for operating, maintaining, and repairing the project over the useful life of the project.

(B) G4SPECIAL RULE

An eligible project described in section 3905(1) of this title that has not been specifically authorized by Congress shall not be eligible for Federal assistance for operations and maintenance.

* * * * *

40 USC CHAPTER 145—REGULATORY MEASUREMENT

SUBCHAPTER I—GENERAL

Sec.

14501. Application.

* * * * *

14509. *High-speed broadband deployment initiative.*

* * * * *

§ 14504. Remeasurement

(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

- (1) the Secretary or the owner alleges an error in its measurement;
- (2) the vessel or the use of its space is changed in a way that substantially affects its tonnage;
- (3) after being measured under subchapter III of this chapter, the vessel becomes subject to subchapter II of this chapter because the vessel or its use is changed; or
- (4) although not required to be measured under subchapter II of this chapter, the vessel was measured under subchapter II and the owner requests that the vessel be measured under subchapter III of this chapter.

(b) Except as provided in this section and chapter 143 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

* * * * *

§ 14509. High-speed broadband deployment initiative

(a) *IN GENERAL.—The Appalachian Regional Commission may provide technical assistance, make grants, enter into contracts, or otherwise provide amounts to individuals or entities in the Appalachian region for projects and activities—*

- (1) to increase affordable access to broadband networks throughout the Appalachian region;*
- (2) to conduct research, analysis, and training to increase broadband adoption efforts in the Appalachian region;*
- (3) to provide technology assets, including computers, smartboards, and video projectors to educational systems throughout the Appalachian region;*
- (4) to increase distance learning opportunities throughout the Appalachian region;*
- (5) to increase the use of telehealth technologies in the Appalachian region; and*
- (6) to promote e-commerce applications in the Appalachian region.*

(b) *LIMITATION ON AVAILABLE AMOUNTS.—Of the cost of any activity eligible for a grant under this section—*

- (1) not more than 50 percent may be provided from amounts appropriated to carry out this section; and*
- (2) notwithstanding paragraph (1)—*
 - (A) in the case of a project to be carried out in a county for which a distressed county designation is in effect under section 14526, not more than 80 percent may be provided from amounts appropriated to carry out this section; and*
 - (B) in the case of a project to be carried out in a county for which an at-risk designation is in effect under section*

14526, not more than 70 percent may be provided from amounts appropriated to carry out this section.

(c) SOURCES OF ASSISTANCE.—Subject to subsection (b), a grant provided under this section may be provided from amounts made available to carry out this section in combination with amounts made available—

- (1) under any other Federal program; or
- (2) from any other source.

(d) FEDERAL SHARE.—Notwithstanding any provision of law limiting the Federal share under any other Federal program, amounts made available to carry out this section may be used to increase that Federal share, as the Appalachian Regional Commission determines to be appropriate.

* * * * *

40 USC SUBTITLE IV: APPALACHIAN REGIONAL DEVELOPMENT

§ 14703. Authorization of appropriations

(a) In General.—In addition to amounts made available under section 14501, there is authorized to be appropriated to the Appalachian Regional Commission to carry out this subtitle—

- (1) \$87,000,000 for fiscal year 2008;
- (2) \$100,000,000 for fiscal year 2009;
- (3) \$105,000,000 for fiscal year 2010;
- (4) \$108,000,000 for fiscal year 2011; and
- (5) \$110,000,000 for [fiscal year 2012] each of fiscal years 2012 through 2021.

(b) Economic and Energy Development Initiative.—Of the amounts made available under subsection (a), the following amounts may be used to carry out section 14508—

- (1) \$12,000,000 for fiscal year 2008;
- (2) \$12,500,000 for fiscal year 2009;
- (3) \$13,000,000 for fiscal year 2010;
- (4) \$13,500,000 for fiscal year 2011; and
- (5) \$14,000,000 for fiscal year 2012.

(c) HIGH-SPEED BROADBAND DEPLOYMENT INITIATIVE.—Of the amounts made available under subsection (a), \$10,000,000 shall be used to carry out section 14509 for each of fiscal years 2016 through 2021.

[(c)] (d) Availability.—Amounts made available under subsection (a) remain available until expended.

[(d)] (e) Allocation of Funds.—Funds approved by the Appalachian Regional Commission for a project in a State in the Appalachian region pursuant to a congressional directive shall be derived from the total amount allocated to the State by the Appalachian Regional Commission from amounts appropriated to carry out this subtitle.

14704. Termination.—This subtitle, except sections 14102(a)(1) and (b) and 14501, ceases to be in effect on October 1, [2012] 2021.

* * * * *

SEC. 1528. [40 U.S.C. 14501 note] APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM.

(a) SENSE OF THE SENATE.—It is the Sense of the Senate that the timely completion of the Appalachian development highway system is a transportation priority in the national interest.

(b) MODIFIED FEDERAL SHARE FOR PROJECTS ON ADHS.—For fiscal years 2012 through [2021] 2050, the Federal share payable for the cost of constructing highways and access roads on the Appalachian development highway system under section 14501 of title 40, United States Code, with funds made available to a State for fiscal year 2012 or a previous fiscal year for the Appalachian development highway system program, or with funds made available for fiscal year 2012 or a previous fiscal year for a specific project, route, or corridor on that system, [shall be 100 percent] *shall be up to 100 percent, as determined by the State.*

(c) FEDERAL SHARE FOR OTHER FUNDS USED ON ADHS.—For fiscal years 2012 through [2021] 2050, the Federal share payable for the cost of constructing highways and access roads on the Appalachian development highway system under section 14501 of title 40, United States Code, with Federal funds apportioned to a State for a program other than the Appalachian development highway system program [shall be 100 percent] *shall be up to 100 percent, as determined by the State.*

(d) COMPLETION PLAN.—

* * * * *

CHAPTER 3 OF TITLE 49, UNITED STATES CODE

Sec.

301. Leadership, consultation, and cooperation.

* * * * *

306. Prohibited discrimination.

[307. Repealed.]

307. *Adoption of Departmental environmental documents.*

* * * * *

§ 303. Policy on lands, wildlife and waterfowl refuges, and historic sites

(a) It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

(b) The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities.

(c) APPROVAL OF PROGRAMS AND PROJECTS.—Subject to [subsection (d)] *subsections (d) and (e)*, the Secretary may approve a transportation program or project (other than any project for a park road or parkway under section 204 of title 23) requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local signifi-

cance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—

* * * * *

(e) SATISFACTION OF REQUIREMENTS FOR CERTAIN HISTORIC SITES.—

(1) IN GENERAL.—*The Secretary shall—*

(A) **ensure that the requirements of this section are consistent with** *align, to the maximum extent practicable, the requirements of this section with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4231 et seq.) and section 306108 of title 54, including implementing regulations; and*

(B) *not later than 90 days after the date of enactment of this subsection, coordinate with the Secretary of the Interior and the Executive Director of the Advisory Council on Historic Preservation (referred to in this subsection as the ‘Council’) to establish procedures to satisfy the requirements described in subparagraph (A) (including regulations).*

(2) AVOIDANCE ALTERNATIVE ANALYSIS.—

(A) IN GENERAL.—*If, in an analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4231 et seq.), the Secretary determines that there is no feasible or prudent alternative to avoid use of an historic site, the Secretary may—*

(i) *include the determination of the Secretary in the analysis required under that Act;*

(ii) *provide a notice of the determination to—*

(I) *each applicable State historic preservation officer and tribal historic preservation officer;*

(II) *the Council, if the Council is participating in the consultation process under section 306108 of title 54; and*

(III) *the Secretary of the Interior; and*

(iii) *request from the applicable preservation officer, the Council, and the Secretary of the Interior a concurrence that the determination is sufficient to satisfy the requirement of subsection (c)(1).*

(B) CONCURRENCE.—*If the applicable preservation officer, the Council, and the Secretary of the Interior each provide a concurrence requested under* **subparagraph (A)(iii)—**

[(i) no further analysis under subsection (c)(1) shall be required;

[(ii) the Secretary shall include in the record of decision or finding of no significant impact a notice of a determination and each relevant concurrence to the determination under subparagraph (A); and

[(iii) not later than 3 days after the receipt by the Secretary of all concurrences requested under subparagraph (A)(iii), the Secretary shall post on an appropriate Federal website the determination and each relevant concurrence described in clause (ii).] subparagraph (A)(iii), no further analysis under subsection (a)(1) shall be required.

(C) PUBLICATION.—A notice of a determination, together with each relevant concurrence to that determination, under subparagraph (A) shall be—

(i) included in the record of decision or finding of no significant impact of the Secretary; and

(ii) posted on an appropriate Federal website by not later than 3 days after the date of receipt by the Secretary of all concurrences requested under subparagraph (A)(iii).

(3) ALIGNING HISTORICAL REVIEWS.—

(A) IN GENERAL.—If the Secretary, the applicable preservation officer, the Council, and the Secretary of the Interior concur **█** that there is no feasible and prudent alternative **█** that no feasible and prudent alternative exists as described in paragraph (2), the Secretary may provide to the applicable preservation officer, the Council, and the Secretary of the Interior notice of the intent of the Secretary to satisfy the requirements of subsection (c)(2) through the consultation requirements of section 306108 of title 54.

(B) SATISFACTION OF CONDITIONS.—To satisfy the requirements of subsection (c)(2), the applicable preservation officer, the Council, and the Secretary of the Interior shall concur in the treatment of the applicable historic site described in the memorandum of agreement or programmatic agreement developed under section 306108 of title 54.

(f) BRIDGE EXEMPTION FROM CONSIDERATION.—A common post-1945 concrete or steel bridge or culvert (as described in 77 Fed. Reg. 68790) that is exempt from individual review under section 306108 of title 54, United States Code, shall be exempt from consideration under this section.

* * * * *

§ 304. Application of categorical exclusions for multimodal projects

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) COOPERATING AUTHORITY.—The term “cooperating authority” means a Department of Transportation **█**operating authority that is not the lead authority with respect to a project **█** operating administration or secretarial office that has expertise but is not the lead authority with respect to a proposed multimodal project.

█(2) LEAD AUTHORITY.—The term “lead authority” means a Department of Transportation operating administration or secretarial office that—

█(A) is the lead authority over a proposed multimodal project; and

█(B) has determined that the components of the project that fall under the modal expertise of the lead authority—

█(i) satisfy the conditions for a categorical exclusion under implementing regulations or procedures of the lead authority under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) do not require the preparation of an environmental assessment or environmental impact statement under that Act.]

(2) LEAD AUTHORITY.—*The term 'lead authority' means a Department of Transportation operating administration or secretarial office that has the lead responsibility for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a proposed multimodal project.*

* * * * *

(b) EXERCISE OF AUTHORITIES.—The authorities granted in this section may be exercised for a multimodal project, class of projects, or program of projects that are carried out **under this title** by the Secretary of Transportation.

(c) APPLICATION OF CATEGORICAL EXCLUSIONS FOR MULTIMODAL PROJECTS.—In considering the environmental impacts of a proposed multimodal project, a lead authority may apply **a categorical exclusion designated under the implementing regulations or** a categorical exclusion designated under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) implementing regulations or procedures of a cooperating authority for **other components of the** a proposed multimodal project, subject to the conditions that—

[(1) the multimodal project is funded under 1 grant agreement administered by the lead authority;

[(2) the multimodal project has components that require the expertise of a cooperating authority to assess the environmental impacts of the components;

[(3) the component of the project to be covered by the categorical exclusion of the cooperating authority has independent utility;

[(4) the cooperating authority, in consultation with the lead authority—

[(A) follows implementing regulations or procedures under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

[(B) determines that a categorical exclusion under that Act applies to the components; and

[(5) the lead authority has determined that—

[(A) the project, using the categorical exclusions of the lead authority and each applicable cooperating authority, does not individually or cumulatively have a significant impact on the environment; and

[(B) extraordinary circumstances do not exist that merit additional analysis and documentation in an environmental impact statement or environmental assessment required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).]

(1) the lead authority makes a determination, in consultation with the cooperating authority, on the applicability of a categorical exclusion to a proposed multimodal project;

(2) the cooperating authority does not object to the determination of the lead authority of the applicability of a categorical exclusion;

(3) the lead authority determines that the component of the proposed multimodal project to be covered by the categorical exclusion of the cooperating authority has independent utility; and

(4) the lead authority determines that—

(A) the proposed multimodal project does not individually or cumulatively have a significant impact on the environment; and

(B) extraordinary circumstances do not exist that merit additional analysis and documentation in an environmental impact statement or environmental assessment required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(d) MODAL COOPERATION.—

[(1) IN GENERAL.—A cooperating authority shall provide modal expertise to the lead authority on such aspects of the multimodal project in which the cooperating authority has expertise.

[(2) USE OF CATEGORICAL EXCLUSION.—In a case described in paragraph (1), the 1 or more categorical exclusions of a cooperating authority may be applied by the lead authority once the cooperating authority reviews the project on behalf of the lead authority and determines the project satisfies the conditions for a categorical exclusion under the implementing regulations or procedures of the cooperating authority under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section.]

(d) COOPERATIVE AUTHORITY EXPERTISE.—A cooperating authority shall provide expertise to the lead authority on aspects of the multimodal project in which the cooperating authority has expertise.

* * * * *

§ 306. Prohibited discrimination

(a) In this section, “financial assistance” includes obligation guarantees.

(b) A person in the United States may not be excluded from participating in, be denied the benefits of, or be subject to discrimination under, a project, program, or activity because of race, color, national origin, or sex when any part of the project, program, or activity is financed through financial assistance under section 332 or 333 or chapter 221 or 249 of this title, section 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721, 726), or title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.).

(c) When the Secretary of Transportation decides that a person receiving financial assistance under a law referred to in subsection (b) of this section has not complied with that subsection, a Federal civil rights law, or an order or regulation issued under a Federal civil rights law, the Secretary shall notify the person of the decision and require the person to take necessary action to ensure compliance with that subsection.

(d) If a person does not comply with subsection (b) of this section within a reasonable time after receiving a notice under subsection (c) of this section, the Secretary shall take at least one of the following actions:

(1) direct that no more Federal financial assistance be provided the person.

(2) refer the matter to the Attorney General with a recommendation that a civil action be brought against the person.

(3) carry out the duties and powers provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(4) take other action provided by law.

(e) When a matter is referred to the Attorney General under subsection (d)(2) of this section, or when the Attorney General has reason to believe that a person is engaged in a pattern or practice violating this section, the Attorney General may begin a civil action in a district court of the United States for appropriate relief.

§ 307. *Adoption of Departmental environmental documents*

(a) IN GENERAL.—*An operating administration or secretarial office within the Department may adopt any draft environmental impact statement, final environmental impact statement, environmental assessment, or any other document issued under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by another operating administration or secretarial office within the Department—*

(1) without recirculating the document (except that a final environmental impact statement shall be recirculated prior to adoption); and

(2) if the operating administration or secretarial office adopting the document certifies that the project is substantially the same as the project reviewed under the document to be adopted.

(b) COOPERATING AGENCY.—*An adopting operating administration or secretarial office that was a cooperating agency and certifies that the project is substantially the same as the project reviewed under the document to be adopted and that [the comments and suggestions in the document]its comments and suggestions have been addressed may adopt a document described in subsection (a) without recirculating the document*

* * * * *

§ 6302. Bureau of Transportation Statistics

(a) ESTABLISHMENT.—There is established in the Office of the Assistant Secretary for Research and Technology of the Department of Transportation the Bureau of Transportation Statistics.

(b) DIRECTOR.—

(1) APPOINTMENT.—The Bureau shall be headed by a Director, who shall be appointed in the competitive service by the Secretary.

(2) QUALIFICATIONS.—The Director shall be appointed from among individuals who are qualified to serve as the Director by virtue of their training and experience in the collection, analysis, and use of transportation statistics.

(3) DUTIES.—

(A) IN GENERAL.—The Director shall—

- (i) serve as the senior advisor to the Secretary on data and statistics; and
- (ii) be responsible for carrying out the duties described in subparagraph (B).

(B) DUTIES.—The Director shall—

- (i) ensure that the statistics compiled under clause (vi) are designed to support transportation decision-making by—

- (I) the Federal Government;
- (II) State and local governments;
- (III) metropolitan planning organizations;
- (IV) transportation-related associations;
- (V) the private sector, including the freight community; and
- (VI) the public;
- (ii) establish on behalf of the Secretary a program—
 - (I) to effectively integrate safety data across modes; and
 - (II) to address gaps in existing safety data programs of the Department;
- (iii) work with the operating administrations of the Department—
 - (I) to establish and implement the data programs of the Bureau; and
 - (II) to improve the coordination of information collection efforts with other Federal agencies;
- (iv) continually improve surveys and data collection methods of the Department to improve the accuracy and utility of transportation statistics;
- (v) encourage the standardization of data, data collection methods, and data management and storage technologies for data collected by—
 - (I) the Bureau;
 - (II) the operating administrations of the Department;
 - (III) State and local governments;
 - (IV) metropolitan planning organizations; and
 - (V) private sector entities;
- (vi) collect, compile, analyze, and publish a comprehensive set of transportation statistics on the performance and impacts of the national transportation system, including statistics on—
 - (I) transportation safety across all modes and intermodally;
 - (II) the state of good repair of United States transportation infrastructure;
 - (III) the extent, connectivity, and condition of the transportation system, building on the national transportation atlas database developed under section [6310] 6309;¹

* * * * *

**SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT
TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS**

SEC. 1301. [23 U.S.C. 101 note] PROJECTS OF NATIONAL AND REGIONAL SIGNIFICANCE.

(a) FINDINGS.—Congress finds the following:
(1) * * *

* * * * *

(1) REPORT.—

¹So in original. Probably should be “section 6309;”.

(1) IN GENERAL.—Not later than 2 years after the date of enactment of the MAP-21, the Secretary shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate regarding projects of national and regional significance.

(2) PURPOSE.—The purpose of the report issued under this subsection shall be to identify projects of national and regional significance that—

(A) will significantly improve the performance of the Federal-aid highway system, nationally or regionally;

(B) is able to—

(i) generate national economic benefits that reasonably exceed the costs of the projects, including increased access to jobs, labor, and other critical economic inputs;

(ii) reduce long-term congestion, including impacts in the State, region, and the United States, and increase speed, reliability, and accessibility of the movement of people or freight; and

(iii) improve transportation safety, including reducing transportation accidents, and serious injuries and fatalities; and

(C) can be supported by an acceptable degree of non-Federal financial commitments.

(3) CONTENTS.—The report issued under this subsection shall include—

(A) a comprehensive list of each project of national and regional significance that—

(i) has been [complied] through a survey of State departments of transportation; and

(ii) has been classified by the Secretary as a project of regional or national significance in accordance with this section;

(B) an analysis of the information collected under [paragraph (1)] subparagraph (A), including a discussion of the factors supporting each classification of a project as a project of regional or national significance; and

(C) recommendations on financing for eligible project costs.

* * * * *

SEC. 1801. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.

* * * * *

(d) [23 U.S.C. 147 note] AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts made available to carry out section 147 of title 23, United States Code, by section 1101 of this Act, there are authorized to be appropriated such sums as may be necessary to carry out such section 147 for fiscal year 2006 and each fiscal year thereafter. Such funds shall remain available until expended.

(e) [23 U.S.C. 129 note] NATIONAL FERRY DATABASE.—

(1) ESTABLISHMENT.—The Secretary, acting through the Bureau of Transportation Statistics, shall establish and maintain a national ferry database.

(2) CONTENTS.—The database shall contain current information regarding ferry systems, including information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful.

(3) UPDATE REPORT.—Using information collected through the database, the Secretary shall periodically modify as appropriate the report submitted under section 1207(c) of the Transportation Equity Act for the 21st Century (23 U.S.C. 129 note; 112 Stat. 185–186).

(4) REQUIREMENTS.—The Secretary shall—

(A) compile the database not later than 1 year after the date of enactment of this Act and update the database every 2 years thereafter;

(B) ensure that the database is easily accessible to the public; and

(C) make available, from the amounts made available for the Bureau of Transportation Statistics by section 5101 of this Act, not more than \$500,000 for each of fiscal years 2006 through 2009 to establish and maintain the database.

* * * * *

(e) **[23 U.S.C. 129 note] NATIONAL FERRY DATABASE.—**

(1) ESTABLISHMENT.—The Secretary, acting through the Bureau of Transportation Statistics, shall establish and maintain a national ferry database.

(2) CONTENTS.—The database shall contain current information regarding ferry systems, including information regarding routes, vessels, passengers and vehicles carried, funding sources, including any Federal, State, and local government funding sources, and such other information as the Secretary considers useful.

(3) UPDATE REPORT.—Using information collected through the database, the Secretary shall periodically modify as appropriate the report submitted under section 1207(c) of the Transportation Equity Act for the 21st Century (23 U.S.C. 129 note; 112 Stat. 185–186).

(4) REQUIREMENTS.—The Secretary shall—

(A) compile the database not later than 1 year after the date of enactment of this Act and update the database every 2 years thereafter;

(B) ensure that the database is easily accessible to the public;

(C) ensure that the database is consistent with the national transit database maintained by the Federal Transit Administration; and

[(D) make available, from the amounts made available for the Bureau of Transportation Statistics by section 5101 of this Act, not more than \$500,000 for each of fiscal years 2006 through 2014 to establish and maintain the database.]

(D) make available, from the amounts made available for each fiscal year to carry out chapter 63 of title 49, not more than \$500,000 to maintain the database.

SEC. 4407. RIGHTS-OF-WAY.

Notwithstanding any other provision of law, the reciprocal rights-of-way and easements identified on the map numbered 92337 and dated June 15, 2005, are [hereby enacted into law] *granted*.

* * * * *

MAP-21

[Public Law 112–141]

SECTION 1. SHORT TITLE; ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) [23 U.S.C. 101 note] **SHORT TITLE.**—This Act may be cited as the “Moving Ahead for Progress in the 21st Century Act” or the “MAP-21”.

DIVISION A—FEDERAL-AID HIGHWAYS AND HIGHWAY SAFETY CONSTRUCTION PROGRAMS

TITLE I—FEDERAL-AID HIGHWAYS

SEC. 1101. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) **FEDERAL-AID HIGHWAY PROGRAM.**—For the national highway performance program under section 119 of title 23, United States Code, the surface transportation program under section 133 of that title, the highway safety improvement program under section 148 of that title, the congestion mitigation and air quality improvement program under section 149 of that title, and to carry out section 134 of that title—

(A) * * *

* * * * *

SEC. 1102. [23 U.S.C. 104 note] OBLIGATION CEILING.

(a) **GENERAL LIMITATION.**—Subject to subsection (e), and notwithstanding any other provision of law, the obligations for Federal-aid highway and highway safety construction programs shall not exceed—

- (1) \$39,699,000,000 for fiscal year 2013;
- (2) \$40,256,000,000 for fiscal year 2014; and
- (3) [\$33,528,284,932] \$40,256,000,000 for the period beginning on October 1, 2014, and ending on [July 31, 2015] September 30, 2015.

(b) **EXCEPTIONS.**—The limitations under subsection (a) shall not apply to obligations under or for—

- (1) section 125 of title 23, United States Code;
- (2) section 147 of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 144 note; 92 Stat. 2714);
- (3) section 9 of the Federal-Aid Highway Act of 1981 (95 Stat. 1701);

(4) subsections (b) and (j) of section 131 of the Surface Transportation Assistance Act of 1982 (96 Stat. 2119);

(5) subsections (b) and (c) of section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 198);

(6) sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027);

(7) section 157 of title 23, United States Code (as in effect on June 8, 1998);

(8) section 105 of title 23, United States Code (as in effect for fiscal years 1998 through 2004, but only in an amount equal to \$639,000,000 for each of those fiscal years);

(9) Federal-aid highway programs for which obligation authority was made available under the Transportation Equity Act for the 21st Century (112 Stat. 107) or subsequent Acts for multiple years or to remain available until expended, but only to the extent that the obligation authority has not lapsed or been used;

(10) section 105 of title 23, United States Code (but, for each of fiscal years 2005 through 2012, only in an amount equal to \$639,000,000 for each of those fiscal years);

(11) section 1603 of SAFETEA-LU (23 U.S.C. 118 note; 119 Stat. 1248), to the extent that funds obligated in accordance with that section were not subject to a limitation on obligations at the time at which the funds were initially made available for obligation; and

(12) section 119 of title 23, United States Code (but, for each of fiscal years 2013 through 2014, only in an amount equal to \$639,000,000 for each of those fiscal years, and for the period beginning on October 1, 2014, and ending on **July 31, 2015** *September 30, 2015*, only in an amount equal to \$639,000,000, less any reductions that would have otherwise been required for that year by section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901a), then multiplied by **[^{304/365}]** ^{365/365} for that period).

(c) DISTRIBUTION OF OBLIGATION AUTHORITY.—For each of fiscal years 2013 through 2014 and for the period beginning on October 1, 2014, and ending on **July 31, 2015** *September 30, 2015*, the Secretary—

(1) shall not distribute obligation authority provided by subsection (a) for the fiscal year or period for—

(A) amounts provided for administrative expenses and programs; and

(B) amounts authorized for the Bureau of Transportation Statistics;

(2) shall not distribute an amount of obligation authority provided by subsection (a) that is equal to the unobligated balance of amounts or, for the period beginning on October 1, 2014, and ending on **July 31, 2015** *September 30, 2015*, that is equal to **[^{304/365}]** ^{365/365} of such unobligated balance—

(A) made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highway and highway safety construction programs for previous fiscal years the funds for which are allocated by the Sec-

retary (or apportioned by the Secretary under sections 202 or 204 of title 23, United States Code); and

(B) for which obligation authority was provided in a previous fiscal year;

(3) shall determine the proportion that—

(A) the obligation authority provided by subsection (a) for the fiscal year or period, less the aggregate of amounts not distributed under paragraphs (1) and (2) of this subsection; bears to

(B) the total of the sums authorized to be appropriated for the Federal-aid highway and highway safety construction programs (other than sums authorized to be appropriated for provisions of law described in paragraphs (1) through (11) of subsection (b) and sums authorized to be appropriated for section 119 of title 23, United States Code, equal to the amount referred to in subsection (b)(12) for the fiscal year or period), less the aggregate of the amounts not distributed under paragraphs (1) and (2) of this subsection;

(4) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2), for each of the programs (other than programs to which paragraph (1) applies) that are allocated by the Secretary under this Act and title 23, United States Code, or apportioned by the Secretary under sections 202 or 204 of that title, by multiplying—

(A) the proportion determined under paragraph (3); by

(B) the amounts authorized to be appropriated for each such program for the fiscal year or period; and

(5) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2) and the amounts distributed under paragraph (4), for Federal-aid highway and highway safety construction programs that are apportioned by the Secretary under title 23, United States Code (other than the amounts apportioned for the national highway performance program in section 119 of title 23, United States Code, that are exempt from the limitation under subsection (b)(12) and the amounts apportioned under sections 202 and 204 of that title) in the proportion that—

(A) amounts authorized to be appropriated for the programs that are apportioned under title 23, United States Code, to each State for the fiscal year or period; bears to

(B) the total of the amounts authorized to be appropriated for the programs that are apportioned under title 23, United States Code, to all States for the fiscal year or period.

(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsection (c), the Secretary shall, after August 1 of each of fiscal years 2013 through 2015—

(1) revise a distribution of the obligation authority made available under subsection (c) if an amount distributed cannot be obligated during that fiscal year; and

(2) redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed dur-

ing that fiscal year, giving priority to those States having large unobligated balances of funds apportioned under sections 144 (as in effect on the day before the date of enactment of this Act) and 104 of title 23, United States Code.

(e) APPLICABILITY OF OBLIGATION LIMITATIONS TO TRANSPORTATION RESEARCH PROGRAMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), obligation limitations imposed by subsection (a) shall apply to contract authority for transportation research programs carried out under—

- (A) chapter 5 of title 23, United States Code; and
- (B) division E of this Act.

(2) EXCEPTION.—Obligation authority made available under paragraph (1) shall—

- (A) remain available for a period of 4 fiscal years; and
- (B) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(f) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—

(1) IN GENERAL.—Not later than 30 days after the date of distribution of obligation authority under subsection (c) for each of fiscal years 2013 through 2014 and for the period beginning on October 1, 2014, and ending on **July 31, 2015** *September 30, 2015*, the Secretary shall distribute to the States any funds (excluding funds authorized for the program under section 202 of title 23, United States Code) that—

- (A) are authorized to be appropriated for the fiscal year or period for Federal-aid highway programs; and
- (B) the Secretary determines will not be allocated to the States (or will not be apportioned to the States under section 204 of title 23, United States Code), and will not be available for obligation, for the fiscal year or period because of the imposition of any obligation limitation for the fiscal year or period.

(2) RATIO.—Funds shall be distributed under paragraph (1) in the same proportion as the distribution of obligation authority under subsection (c)(5).

(3) AVAILABILITY.—Funds distributed to each State under paragraph (1) shall be available for any purpose described in section 133(b) of title 23, United States Code.

* * * * *

[SEC. 1116. [23 U.S.C. 167 note] PRIORITIZATION OF PROJECTS TO IMPROVE FREIGHT MOVEMENT.

[(a) IN GENERAL.—Notwithstanding section 120 of title 23, United States Code, the Secretary may increase the Federal share payable for any project to 95 percent for projects on the Interstate System and 90 percent for any other project if the Secretary certifies that the project meets the requirements of this section.

[(b) INCREASED FUNDING.—To be eligible for the increased Federal funding share under this section, a project shall—

- [(1) demonstrate the improvement made by the project to the efficient movement of freight, including making progress towards meeting performance targets for freight movement es-**

published under section 150(d) of title 23, United States Code; and

[(2) be identified in a State freight plan developed pursuant to section 1118.

[(c) ELIGIBLE PROJECTS.—Eligible projects to improve the movement of freight under this section may include, but are not limited to—

[(1) construction, reconstruction, rehabilitation, and operational improvements directly relating to improving freight movement;

[(2) intelligent transportation systems and other technology to improve the flow of freight;

[(3) efforts to reduce the environmental impacts of freight movement on the primary freight network;

[(4) railway-highway grade separation;

[(5) geometric improvements to interchanges and ramps.

[(6) truck-only lanes;

[(7) climbing and runaway truck lanes;

[(8) truck parking facilities eligible for funding under section 1401;

[(9) real-time traffic, truck parking, roadway condition, and multimodal transportation information systems;

[(10) improvements to freight intermodal connectors; and

[(11) improvements to truck bottlenecks.

[SEC. 1117. [23 U.S.C. 167 note] STATE FREIGHT ADVISORY COMMITTEES.

[(a) IN GENERAL.—The Secretary shall encourage each State to establish a freight advisory committee consisting of a representative cross-section of public and private sector freight stakeholders, including representatives of ports, shippers, carriers, freight-related associations, the freight industry workforce, the transportation department of the State, and local governments.

[(b) ROLE OF COMMITTEE.—A freight advisory committee of a State described in subsection (a) shall—

[(1) advise the State on freight-related priorities, issues, projects, and funding needs;

[(2) serve as a forum for discussion for State transportation decisions affecting freight mobility;

[(3) communicate and coordinate regional priorities with other organizations;

[(4) promote the sharing of information between the private and public sectors on freight issues; and

[(5) participate in the development of the freight plan of the State described in section 1118.

[SEC. 1118. [23 U.S.C. 167 note] STATE FREIGHT PLANS.

[(a) IN GENERAL.—The Secretary shall encourage each State to develop a freight plan that provides a comprehensive plan for the immediate and long-range planning activities and investments of the State with respect to freight.

[(b) PLAN CONTENTS.—A freight plan described in subsection (a) shall include, at a minimum—

[(1) an identification of significant freight system trends, needs, and issues with respect to the State;

[(2) a description of the freight policies, strategies, and performance measures that will guide the freight-related transportation investment decisions of the State;

[(3) a description of how the plan will improve the ability of the State to meet the national freight goals established under section 167 of title 23, United States Code;

[(4) evidence of consideration of innovative technologies and operational strategies, including intelligent transportation systems, that improve the safety and efficiency of freight movement;

[(5) in the case of routes on which travel by heavy vehicles (including mining, agricultural, energy cargo or equipment, and timber vehicles) is projected to substantially deteriorate the condition of roadways, a description of improvements that may be required to reduce or impede the deterioration; and

[(6) an inventory of facilities with freight mobility issues, such as truck bottlenecks, within the State, and a description of the strategies the State is employing to address those freight mobility issues.

[(c) RELATIONSHIP TO LONG-RANGE PLAN.—A freight plan described in subsection (a) may be developed separate from or incorporated into the statewide strategic long-range transportation plan required by section 135 of title 23, United States Code.]

* * * * *

SEC. 1123. [23 U.S.C. 202 note] TRIBAL HIGH PRIORITY PROJECTS PROGRAM.

(a) DEFINITIONS.—In this section:

(1)* * *

* * * * *

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated \$30,000,000 out of the general fund of the Treasury to carry out the program for each of fiscal years 2013 and 2014 and **[\$24,986,301]** \$30,000,000 out of the general fund of the Treasury to carry out the program for the period beginning on October 1, 2014, and ending on July 31, 2015.

* * * * *

SEC. 1317. [23 U.S.C. 109 note] CATEGORICAL EXCLUSION FOR PROJECTS OF LIMITED FEDERAL ASSISTANCE.

[Not later than]

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(b) INFLATIONARY ADJUSTMENT.—*The dollar amounts described in subsection (a) shall be adjusted for inflation—*

(1) *effective October 1, 2015, to reflect changes since July 1, 2012, in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor; and*

(2) *effective October 1, 2016, and each succeeding October 1, to reflect changes for the preceding 12-month period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.*

* * * * *

SEC. 1318. [23 U.S.C. 109 note] PROGRAMMATIC AGREEMENTS AND ADDITIONAL CATEGORICAL EXCLUSIONS.

(a) IN GENERAL.—

* * * * *

(e) PROGRAMMATIC AGREEMENT TEMPLATE.—

(1) IN GENERAL.—*The Secretary shall develop a template programmatic agreement described in subsection (d) that provides for efficient and adequate procedures for evaluating Federal actions described in section 771.117(c) of title 23, Code of Federal Regulations (as in effect on the date of enactment of this subsection).*

(2) USE OF TEMPLATE.—*The Secretary—*

(A) on receipt of a request from a State, shall use the template programmatic agreement developed under paragraph (1) in carrying out this section; and

(B) on consent of the applicable State, may modify the template as necessary to address the unique needs and characteristics of the State.

(3) OUTCOME MEASUREMENTS.—*The Secretary shall establish a method to verify that actions described in section 771.117(c) of title 23, Code of Federal Regulations (as in effect on the date of enactment of this subsection), are evaluated and documented in a consistent manner by the State that uses the template programmatic agreement under this subsection.*

* * * * *

[SEC. 1319. [42 U.S.C. 4332a note] ACCELERATED DECISIONMAKING IN ENVIRONMENTAL REVIEWS.

[(a) IN GENERAL.—In preparing a final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if the lead agency modifies the statement in response to comments that are minor and are confined to factual corrections or explanations of why the comments do not warrant additional agency response, the lead agency may write on errata sheets attached to the statement instead of rewriting the draft statement, subject to the condition that the errata sheets—

[(1) cite the sources, authorities, or reasons that support the position of the agency; and

[(2) if appropriate, indicate the circumstances that would trigger agency reappraisal or further response.

[(b) INCORPORATION.—To the maximum extent practicable, the lead agency shall expeditiously develop a single document that consists of a final environmental impact statement and a record of decision, unless—

[(1) the final environmental impact statement makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or

[(2) there are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action.]

* * * * *

SEC. 1503. PROJECT APPROVAL AND OVERSIGHT.

(a) IN GENERAL.—

* * * * *

[(c) [23 U.S.C. 104 note] TRANSPARENCY AND ACCOUNTABILITY.—

[(1) DATA COLLECTION.—The Secretary shall compile and make available on the public website of the Department of Transportation the annual expenditure data for funds made available under title 23 and chapter 53 of title 49, United States Code.

[(2) REQUIREMENTS.—In carrying out paragraph (1), the Secretary shall ensure that the data made available on the public website of the Department of Transportation—

[(A) is organized by project and State;

[(B) to the maximum extent practicable, is updated regularly to reflect the current status of obligations, expenditures, and Federal-aid projects; and

[(C) can be searched and downloaded by users of the website.

[(3) REPORT TO CONGRESS.—The Secretary shall annually submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing a summary of the data described in paragraph (1) for the 1-year period ending on the date on which the report is submitted.]

* * * * *

SEC. 1519. CONSOLIDATION OF PROGRAMS; REPEAL OF OBSOLETE PROVISIONS.

(a) **CONSOLIDATION OF PROGRAMS.—**From administrative funds made available under section 104(a) of title 23, United States Code, not less than \$3,000,000 for each of **[(fiscal years 2013 and 2014)]** *fiscal years 2013 through 2021* shall be made available—

* * * * *

SEC. 50001. [23 U.S.C. 101 note] SHORT TITLE.

This division may be cited as the “Transportation Research and Innovative Technology Act of 2012”.

TITLE I—FUNDING

SEC. 51001. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.—**The following amounts are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) **HIGHWAY RESEARCH AND DEVELOPMENT PROGRAM.—**To carry out sections **[(503(b), 503(d), and 509)]** *section 503(b)* of title 23, United States Code, \$115,000,000 for each of fiscal years 2013 and 2014.

* * * * *

TRANSPORTATION EQUITY ACT FOR THE 21st CENTURY

[Public Law 105–178]

SEC. 1216. INNOVATIVE SURFACE TRANSPORTATION FINANCING METHODS.

* * * * *

(b) INTERSTATE SYSTEM RECONSTRUCTION AND REHABILITATION PILOT PROGRAM.—

(1) **ESTABLISHMENT.**—The Secretary shall establish and implement an Interstate System reconstruction and rehabilitation pilot program under which the Secretary, notwithstanding sections 129 and 301 of title 23, United States Code, may permit a State to collect tolls on a highway, bridge, or tunnel on the Interstate System for the purpose of reconstructing and rehabilitating Interstate highway corridors that could not otherwise be adequately maintained or functionally improved without the collection of tolls.

(2) **LIMITATION ON NUMBER OF FACILITIES.**—The Secretary may permit the collection of tolls under this subsection on 3 facilities on the Interstate System. Each of such facilities shall be located in a different State.

(3) **ELIGIBILITY.**—To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that contains, at a minimum, the following:

(A) An identification of the facility on the Interstate System proposed to be a toll facility, including [the age, condition, and intensity of use of the facility] *an analysis demonstrating that the facility has a significant age, condition, or intensity of use to require expedited reconstruction or rehabilitation* .

(B) In the case of a facility that affects a metropolitan area, an assurance that the metropolitan planning organization established under section 134 of title 23, United States Code, for the area has been consulted concerning the placement and amount of tolls on the facility.

(C) An analysis demonstrating that the facility could not be maintained or improved to meet current or future needs from the State's apportionments and allocations made available by this Act (including amendments made by this Act) and from revenues for highways from any other source without toll revenues.

(D) A facility management plan that includes—

(i) a plan for implementing the imposition of tolls on the facility;

(ii) a schedule and finance plan for the reconstruction or rehabilitation of the facility using toll revenues;

(iii) a description of the public transportation agency that will be responsible for implementation and administration of the pilot program , *and that demonstrates the capability of that agency to perform or oversee the building, operation, and maintenance of a toll expressway system meeting criteria for the Interstate System;*

(iv) a description of whether consideration will be given to privatizing the maintenance and operational aspects of the facility, while retaining legal and administrative control of the portion of the Interstate route; and

(v) such other information as the Secretary may require.

(E) *An analysis showing how the State plan for implementing tolls on the facility takes into account the interests and use of local, regional, and interstate travelers.*

(F) *An explanation of how the State will collect tolls using electronic toll collection, including at highway speeds, if practicable.*

(G) *A plan describing the proposed location for the collection of tolls on the facility, including any locations in proximity to a State border.*

(H) *Approved documentation that the project—*

(i) has received a categorical exclusion, a finding of no significant impact, or a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

[(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under paragraph (3) only if the Secretary determines that—

[(A) the State is unable to reconstruct or rehabilitate the proposed toll facility using existing apportionments;

[(B) the facility has a sufficient intensity of use, age, or condition to warrant the collection of tolls;

[(C) the State plan for implementing tolls on the facility takes into account the interests of local, regional, and interstate travelers;

[(D) the State plan for reconstruction or rehabilitation of the facility using toll revenues is reasonable; and

[(E) the State has given preference to the use of a public toll agency with demonstrated capability to build, operate, and maintain a toll expressway system meeting criteria for the Interstate System.]

[(5) (4) LIMITATIONS ON USE OF REVENUES; AUDITS.—**[(Before the Secretary may permit] As a condition of permitting** a State to participate in the pilot program, the State must enter into an agreement with the Secretary that provides that—

(A) all toll revenues received from operation of the toll facility will be used only **[(for—)] for permissible uses described in section 129(a)(3) of title 23, United States Code; and**

[(i) debt service;

[(ii) reasonable return on investment of any private person financing the project; and

[(iii) any costs necessary for the improvement of and the proper operation and maintenance of the toll facil-

ity, including reconstruction, resurfacing, restoration, and rehabilitation of the toll facility; and

(B) regular audits will be conducted to ensure compliance with subparagraph (A) and the results of such audits will be transmitted to the Secretary.

【(6) LIMITATION ON USE OF INTERSTATE MAINTENANCE FUNDS.—During the term of the pilot program, funds apportioned for Interstate maintenance under section 104(b)(4) of title 23, United States Code, may not be used on a facility for which tolls are being collected under the program.】

(5) APPLICATION PROCESSING PROCEDURE.—

(A) IN GENERAL.—*Not later than 60 days after receipt of an application under this subsection, the Secretary shall provide to the applicant a written notice informing the applicant whether—*

(i) the application is complete and meets all requirements under this subsection; or

(ii) additional information or materials are needed—

(I) to complete the application; or

(II) to meet the eligibility requirements under paragraph (3).

(B) ADDITIONAL INFORMATION OR MATERIALS.—

(i) IN GENERAL.—Not later than 60 days after receipt of an application, the Secretary shall—

(I) identify any additional information or materials that are needed under subparagraph (A)(ii); and

(II) provide to the applicant written notice specifying the details of the additional required information or materials.

(ii) AMENDED APPLICATION.—Not later than 60 days after receipt of the additional information under clause (i), the Secretary shall determine if the amended application is complete and meets all requirements under this subsection.

(C) TECHNICAL ASSISTANCE.—*On the request of a State, the Secretary shall provide technical assistance to facilitate the development of a complete application under this paragraph that is likely to satisfy the eligibility criteria under paragraph (3).*

(D) APPROVAL OF APPLICATION.—*On written notice by the Secretary that the application is complete and meets all requirements of this subsection, the project is considered approved and shall be permitted to participate in the program under this subsection.*

(E) LIMITATION ON APPROVED APPLICATION.—

(i) IN GENERAL.—For an application received under this subsection on or after the date of enactment of the DRIVE Act for the reconstruction or rehabilitation of a facility, a State shall—

(I) not later than 1 year after the date on which the application is approved, issue a solicitation for a contract to provide for the reconstruction or rehabilitation of the facility; and

(II) not later than 2 years after the date on which the application is approved, execute a contract for the reconstruction or rehabilitation of the facility.

(ii) PRIOR APPLICATIONS.—For an application that received a conditional provisional approval under this subsection before the date of enactment of the DRIVE Act, for the reconstruction or rehabilitation of a facility, a State shall—

(I) not later than 1 year after the date of enactment of the DRIVE Act, issue a solicitation for a contract to provide for the reconstruction or rehabilitation of the facility; and

(II) not later than 2 years after the date of enactment of the DRIVE Act, execute a contract for the reconstruction or rehabilitation of the facility.

(iii) CANCELLATION OR EXTENSION.—If an applicable deadline under clause (i) or (ii) is not met, the Secretary shall—

(I) cancel the application approval; or

(II) grant an extension of not more than 1 year for the applicable deadline, on the condition that—

(aa) there has been demonstrable progress toward meeting the applicable requirements; and

(bb) the requirements are likely to be met within 1 year.

(6) LIMITATION ON THE USE OF NATIONAL HIGHWAY PERFORMANCE PROGRAM FUNDS.—During the term of the pilot program, funds apportioned for the national highway performance program under section 104(b)(1) of title 23, United States Code, may not be used for a facility for which tolls are being collected under the pilot program unless the funds are used for a maintenance purpose, as defined in section 101(a) of title 23, United States Code.

(7) WITHDRAWAL.—A State may elect to withdraw participation of the State in the pilot program at any time.

[(7)] (8) PROGRAM TERM.—The Secretary shall conduct the pilot program under this subsection for a term to be determined by the Secretary, but not less than 10 years after the date of enactment of the DRIVE Act.

[(8)] (9) INTERSTATE SYSTEM DEFINED.—In this subsection, the term “Interstate System” has the meaning such term has under section 101 of title 23, United States Code.

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INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

* * * * *

SEC. 1001. COMPLETION OF INTERSTATE SYSTEM.

(a) DECLARATION.—Congress declares that the authorizations of appropriations and apportionments for construction of the Dwight D. Eisenhower National System of Interstate and Defense Highways made by this section (including the amendments made by this

section) are the final authorizations of appropriations and apportionments for completion of construction of such System.

(b) APPROVAL OF INTERSTATE COST ESTIMATE FOR FISCAL YEAR 1993.—The Secretary shall apportion for all States (other than Massachusetts) for fiscal year 1993 the sums authorized to be appropriated for such year by section 108(b) of the Federal-Aid Highway Act of 1956 for expenditure on the Dwight D. Eisenhower National System of Interstate and Defense Highways, using the apportionment factors contained in revised table 5 of the Committee Print Numbered 102-24 of the Committee on Public Works and Transportation of the House of Representatives.

* * * * *

SEC. 1105. HIGH PRIORITY CORRIDORS ON NATIONAL HIGHWAY SYSTEM.

(a) FINDINGS.—The Congress finds that—

(1) the construction of the Interstate Highway System connected the major population centers of the Nation and greatly enhanced economic growth in the United States;

(2) many regions of the Nation are not now adequately served by the Interstate System or comparable highways and require further highway development in order to serve the travel and economic development needs of the region; and

(3) the development of transportation corridors is the most efficient and effective way of integrating regions and improving efficiency and safety of commerce and travel and further promoting economic development.

(b) PURPOSE.—It is the purpose of this section to identify highway corridors and evacuation routes of national significance; to include those corridors on the National Highway System; to allow the Secretary, in cooperation with the States, to prepare long-range plans and feasibility studies for these corridors; to allow the States to give priority to funding the construction of these corridors; and to provide increased funding for segments of these corridors that have been identified for construction.

(c) IDENTIFICATION OF HIGH PRIORITY CORRIDORS ON NATIONAL HIGHWAY SYSTEM.—The following are high priority corridors on the National Highway System:

(1) * * *

* * * * *

[(13) Raleigh-Norfolk Corridor, Raleigh, North Carolina, to Norfolk, Virginia.]

(13) Raleigh-Norfolk Corridor from Raleigh, North Carolina, through Rocky Mount, Williamston and Elizabeth City, North Carolina, to Norfolk, Virginia.

* * * * *

[(68) The Washoe County corridor, along Interstate Route 580/United States Route 95/United States Route 95A, from Reno, Nevada, to Las Vegas, Nevada.]

(68) The Washoe County Corridor and the Intermountain West Corridor shall generally follow:

(A) in the case of the Washoe County Corridor, along Interstate Route 580/United States Route 95/United States Route 95A, from Reno, Nevada, to Las Vegas, Nevada; and

(B) in the case of the Intermountain West Corridor, from the vicinity of Las Vegas extending north along United States Route 95, terminating at Interstate Route 80.

* * * * *

(81) United States Route 117/Interstate Route 795 from United States Route 70 in Goldsboro, Wayne County, North Carolina, to Interstate Route 40 west of Faison, Sampson County, North Carolina.

(82) United States Route 70 from its intersection with Interstate Route 40 in Garner, Wake County, North Carolina, to the Port at Morehead City, Carteret County, North Carolina.

* * * * *

(e) PROVISIONS APPLICABLE TO CORRIDORS.—

(1) LONG-RANGE PLAN.—The Secretary, in cooperation with the affected State or States, may prepare a long-range plan for the upgrading of each corridor to the appropriate standard for highways on the National Highway System. Each such plan may include a plan for developing the corridor and a plan for financing the development.

(2) FEASIBILITY STUDIES.—The Secretary, in cooperation with the affected State or States, may prepare feasibility and design studies, as necessary, for those corridors for which such studies have not been prepared. A feasibility study may be conducted under this subsection with respect to the corridor described in subsection (c)(2), relating to Avenue of the Saints, to determine the feasibility of an adjunct to the Avenue of the Saints serving the southern St. Louis metropolitan area and connecting with I-55 in the vicinity of Route A in Jefferson County, Missouri. A study may be conducted under this subsection to determine the feasibility of constructing a more direct limited access highway between Peoria and Chicago, Illinois. A feasibility study may be conducted under this paragraph to identify routes that will expedite future emergency evacuations of coastal areas of Louisiana.

(3) CERTIFICATION ACCEPTANCE.—The Secretary may discharge any of his responsibilities under title 23, United States Code, relative to projects on a corridor identified under subsection (c), upon the request of a State, by accepting a certification by the State in accordance with section 117 of such title.

(4) ACCELERATION OF PROJECTS.—To the maximum extent feasible, the Secretary may use procedures for acceleration of projects in carrying out projects on corridors identified in subsection (c).

(5) INCLUSION OF CERTAIN ROUTE SEGMENTS ON INTERSTATE SYSTEM.—

(A) IN GENERAL.—The portions of the routes referred to in subsection (c)(1), subsection (c)(3) (relating solely to the Kentucky Corridor), clauses (i), (ii), and (except with respect to Georgetown County) (iii) of subsection (c)(5)(B), subsection (c)(9), *subsection (c)(13)*, [subsections (c)(18) and (c)(20)¹, subsection (c)(36)] *subsection (c)(18), subsection (c)(20), subparagraphs (A) and (B)(i) of subsection (c)(26), subsection (c)(36), subsection (c)(37), subsection (c)(40), subsection (c)(42), subsection (c)(45), subsection*

(c)(54), [and subsection (c)(57)] *subsection (c)(57), subsection (c)(68)(B), subsection (c)(81), and subsection (c)(82)* that are not a part of the Interstate System are designated as future parts of the Interstate System. Any segment of such routes shall become a part of the Interstate System at such time as the Secretary determines that the segment meets the Interstate System design standards approved by the Secretary under section 109(b) of title 23, United States Code, and is planned to connect to an existing Interstate System segment by the date that is 25 years after the date of enactment of the MAP-21.

* * * * *

(C) ROUTES.—

(i) DESIGNATION.—The portion of the route referred to in subsection (c)(9) is designated as Interstate Route I-99. The routes referred to in subsections (c)(18) and (c)(20) shall be designated as Interstate Route I-69. A State having jurisdiction over any segment of routes referred to in subsections (c)(18) and (c)(20) shall erect signs identifying such segment that is consistent with the criteria set forth in subsections (e)(5)(A)(i) and (e)(5)(A)(ii) as Interstate Route I-69, including segments of United States Route 59 in the State of Texas. The segment identified in subsection (c)(18)(D)(i) shall be designated as Interstate Route I-69 East, and the segment identified in subsection (c)(18)(D)(ii) shall be designated as Interstate Route I-69 Central. The State of Texas shall erect signs identifying such routes as segments of future Interstate Route I-69. The portion of the route referred to in subsection (c)(36) is designated as Interstate Route I-86. The Louie B. Nunn Parkway corridor referred to in subsection (c)(3) shall be designated as Interstate Route 66. A State having jurisdiction over any segment of routes and/or corridors referred to in subsections (c)(3) shall erect signs identifying such segment that is consistent with the criteria set forth in subsections (e)(5)(A)(i) and (e)(5)(A)(ii) as Interstate Route 66. Notwithstanding the provisions of subsections (e)(5)(A)(i) and (e)(5)(A)(ii), or any other provisions of this Act, the Commonwealth of Kentucky shall erect signs, as approved by the Secretary, identifying the routes and/or corridors described in subsection (c)(3) for the Commonwealth, as segments of future Interstate Route 66. The Purchase Parkway corridor referred to in subsection (c)(18)(E) shall be designated as Interstate Route 69. A State having jurisdiction over any segment of routes and/or corridors referred to in subsections (c)(18) shall erect signs identifying such segment that is consistent with the criteria set forth in subsections (e)(5)(A)(i) and (e)(5)(A)(ii) as Interstate Route 69. Notwithstanding the provisions of subsections (e)(5)(A)(i) and (e)(5)(A)(ii), or any other provisions of this Act, the Commonwealth of Kentucky shall erect signs, as approved by the Secretary, identifying

the routes and/or corridors described in subsection (c)(18) for the Commonwealth, as segments of future Interstate Route 69. The route referred to in subsection (c)(45) is designated as Interstate Route I-22. **【**The routes referred to subparagraphs (A)(iii) and (B)(i) of subsection (c)(26) are designated as Interstate Route I-11.**】** *The routes referred to in subparagraphs (A) and (B)(i) of subsection (c)(26) and in subsection (c)(68)(B) are designated as Interstate Route I-11.*

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Highway and Transportation Funding Act of 2014

* * * * *

SEC. 1001. EXTENSION OF FEDERAL-AID HIGHWAY PROGRAMS.

(a) IN GENERAL.—Except as provided in this subtitle, requirements, authorities, conditions, eligibilities, limitations, and other provisions authorized under divisions A and E of MAP-21 (Public Law 112-141), the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244), titles I, V, and VI of SAFETEA-LU (Public Law 109-59), titles I and V of the Transportation Equity Act for the 21st Century (Public Law 105-178), the National Highway System Designation Act of 1995 (104-59), titles I and VI of the Intermodal Surface Transportation Act of 1991 (Public Law 102-240), and title 23, United States Code (excluding chapter 4 of that title), which would otherwise expire on or cease to apply after September 30, 2014, are incorporated by reference and shall continue in effect until **【**July 31, 2015**】** *September 30, 2015*.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) HIGHWAY TRUST FUND.—Except as provided in section 1002, there is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for the period beginning on October 1, 2014, and ending on **【**July 31, 2015**】** *September 30, 2015*, a sum equal to **【**^{304/365}**】** ^{365/365} *of the total amount authorized to be appropriated out of the Highway Trust Fund for programs, projects, and activities for fiscal year 2014 under divisions A and E of MAP-21 (Public Law 112-141) and title 23, United States Code (excluding chapter 4 of that title).*

(2) GENERAL FUND.—Section 1123(h)(1) of MAP-21 (23 U.S.C. 202 note) is amended by inserting “and \$19,972,603 out of the general fund of the Treasury to carry out the program for the period beginning on October 1, 2014, and ending on May 31, 2015” before the period at the end.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Except as otherwise expressly provided in this subtitle, funds authorized to be appropriated under subsection (b)(1) for the period beginning on October 1, 2014, and ending on **【**July 31, 2015**】** *September 30, 2015*, shall be distributed, administered, limited, and made available for obligation in the same manner and at the same levels as **【**^{304/365}**】** ^{365/365} *of the amounts of funds authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for fiscal year 2014 to carry out programs, projects, activities, eligibilities, and requirements under MAP-21 (Public Law 112-141),*

the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244), SAFETEA-LU (Public Law 109-59), titles I and V of the Transportation Equity Act for the 21st Century (Public Law 105-178), the National Highway System Designation Act of 1995 (104-59), titles I and VI of the Intermodal Surface Transportation Act of 1991 (Public Law 102-240), and title 23, United States Code (excluding chapter 4 of that title).

(2) CONTRACT AUTHORITY.—Funds authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) under this section shall be—

(A) available for obligation and shall be administered in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; and

(B) subject to section 1102 of MAP-21 (23 U.S.C. 104 note), as amended [by this subsection].

* * * * *

SEC. 1002. ADMINISTRATIVE EXPENSES.

(a) AUTHORIZATION OF CONTRACT AUTHORITY.—Notwithstanding any other provision of this Act or any other law, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account), from amounts provided under section 1001, for administrative expenses of the Federal-aid highway program **[\$366,465,753]** *\$440,000,000* for the period beginning on October 1, 2014, and ending on **[July 31, 2015]** *September 30, 2015*.

(b) CONTRACT AUTHORITY.—Funds authorized to be appropriated by this section shall be—

(1) available for obligation, and shall be administered, in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, except that such funds shall remain available until expended; and

(2) for the period beginning on October 1, 2014, and ending on **[July 31, 2015]** *September 30, 2015*, subject to the limitations on administrative expenses under the heading “Federal Highway Administration” in appropriations Acts that apply to that period.

* * * * *