

I remain concerned about ongoing attempts to raise the minimum guarantee rate in this bill to 95 percent. Raising the minimum guarantee not only destroys the concept of needs-based aid, it does so at a time when assistance is most urgently needed.

Mr. Chairman, as this legislation moves to conference, it is critical that we remain committed to providing funding to the States that require improvements the most. That is how this body can serve the Nation best, and that is what this bill should aspire to.

Mr. RAHALL. Mr. Chairman, I rise today to quote the words of President Dwight Eisenhower, the father of our Highway Trust Fund, who rightly said "A network of modern roads is as necessary to defense as it is to our national economy and personal safety." President Eisenhower's words ring as true now as they did then.

Traditionally, the Transportation bill has been free from partisan differences. We have an old saying on the Transportation Committee, "There are no Republican bridges, no Democratic bridges, just America's bridges."

Unfortunately, Mr. Chairman, this year, the bill has fallen victim to political differences—within the divided Republican Party. Even though we've had enough support to pass the bill since last year, the divided Republican Party has held up passage of this bill for months. The President opposes Congressional Republicans from both the House and the Senate. House Republicans are divided against each other. The President has even gone against his own Department of Transportation.

House Republicans go along with the President on tax cuts, a Medicare bill with an uncertain price tag, and funding infrastructure in Iraq. And, then he publicly belittles their transportation spending efforts by calling the highway bill an "entitlement."

The division within the Republican Party also extends to their traditional allies in the business community. The President opposes the bill because he claims it spends too much. The U.S. Chamber of Commerce says it might oppose the bill because it doesn't spend enough.

I hope that when we get to conference with the Senate, we increase the level of funding—as the majority of Members from both parties want. When we get to conference we also need to maintain several key protections that are in this bill.

To ensure that adequate funding is available across our National network, this bill guarantees each State a minimum rate of return equaling 90.5 percent of each dollar invested in the Highway Trust Fund. Each State is also guaranteed a minimum apportionment in funds.

But now, some States want to turn back the clock to some sort of Articles of Confederation, and keep the gas tax money for themselves. Doing so would rip apart the very fabric that binds our Nation together: our surface transportation system.

Many of those same States also want to alter the proposed scope of the minimum guarantee program, which will penalize States whose needs are regional, or even national, in scope. An error in the Fiscal Year 2004 Appropriations is already costing my State \$20 million in badly needed highway funds. Altering the proposed scope of the Minimum Guarantee program, now, would only worsen this situation.

I supported H.R. 3550 months ago, with its equitable minimum guarantee program. I don't support making dramatic changes in the bill, now, after supporting the underlying bill for months.

It is important to bear in mind what President Eisenhower understood: that our transportation system is an integrated, coordinated, national network. It seamlessly crosses State borders regardless of the differences within those States, as the business community clearly understands. To be truly national, it must address measurable needs nationwide—taking into account the greater difficulty some States have at roadbuilding, or the greater needs some States have for transit.

Mr. Chairman, I come from West Virginia—one of the most difficult States for constructing highways. Transportation in—and through—my State is critical not just to West Virginians, but also to trucks, tourists, and commuters from other States.

And, if you cut equitable funding for highways this time, what will prevent cuts next time to the mass transit funding that States such as Illinois, New Jersey and California depend upon?

Just like other national programs where West Virginians' tax dollars go to help other States—such as the location of defense bases, or the Farm program—some contribute more than they get back.

That is appropriate. You can't drive across Mickey Mouse roads when you're traveling crosscountry to see Mickey, himself.

Mr. FALEOMAVAEGA. Mr. Chairman, I rise today in support of H.R. 3550, the Transportation Act—A Legacy for Users (TEA-LU). I am pleased that my good friends Chairman DON YOUNG and Ranking Member JIM OBERSTAR of the House Transportation Committee have agreed to increase transportation funding for the Territories.

Congresswoman MADELEINE BORDALLO, Congresswoman DONNA CHRISTENSEN and I have worked on this issue for the past year and Congressman NICK RAHALL, ranking member of the House Resources Committee, has supported our efforts.

As a result of our work, the Territorial Highway Program (which includes American Samoa, Guam, the U.S. Virgin Islands and CNMI) will be increased from \$33 million to \$40 million for FY04, FY05 and FY06. For FY07, FY08 and FY09, funding will increase to \$50 million. Despite the Transportation Act (now known as TEA-LU) being \$100 billion less than what was originally proposed, the Territorial set aside will increase by 23.6 percent.

Moreover, I have worked closely with Chairman YOUNG and Ranking Member OBERSTAR to include \$14 million for high priority projects in American Samoa. This funding is in addition to American Samoa's annual Federal highway funds and will be used for village road improvements, drainage mitigation, shoreline protection and upgrades and repairs of the Ta'u ferry terminal facility.

In consultation with the Honorable Togiola Tulafono, Governor of American Samoa, I have asked the Committee to set aside \$9.4 million for village road improvements in the Eastern, Western, Central and Manu'a districts of American Samoa.

In further consultation with Senator Tuaoilo Fruean and High Paramount Chief Mauga and members of the Pago Pago council of chiefs,

we have also set aside \$1 million for drainage mitigation for Pago Pago village roads.

In consultation with Senator Tago Suilefaiga, Representative Fagasoia Lealaitafea and Representative Mary Taufete'e and members of the Nuuli council of chiefs, we have set aside \$1 million for shoreline protection and drainage mitigation for Nuuli village roads.

In consultation with Senator Faamausili Pola and members of the Ta'u village council of chiefs, we have set aside \$1.6 million to upgrade and repair the Ta'u harbor facility.

Finally, in consultation with Senator Faivae Galea'i, Senator Lualemaga Faoa and members of the Leone and Malaeloa councils of chiefs, we have set aside \$1 million for drainage mitigation for Malaeloa-Leone village roads.

Again, I thank my colleagues, both Democrat and Republican, and I also thank the local leaders of American Samoa, including Governor Togiola, for working closely with me to make sure that American Samoa's needs are addressed in this historic and important initiative.

I urge passage of this bill and I again commend Chairman YOUNG and Ranking Member OBERSTAR for their leadership and support.

Mr. YOUNG of Alaska. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. LAHOOD). Pursuant to the order of the House of Tuesday, March 30, 2004, all time for initial general debate has expired, and under that order, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PETRI) having assumed the chair, Mr. LAHOOD, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3550) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes, had come to no resolution thereon.

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 3550, TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

Mr. DREIER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 593 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 593

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved in the Committee of the Whole House on the state of the Union for further consideration of the bill (H.R. 3550) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes. No further general debate (except for the final period contemplated in the order of the House of March 30, 2004) shall be in order. The amendment in the nature of a substitute recommended by the Committee on Transportation and Infrastructure now printed in the bill, modified by the amendments printed in

part A of the report of the Committee on Rules accompanying this resolution, shall be considered as adopted in the House and in the Committee of the Whole. The bill, as amended, shall be considered as the original bill for the purpose of further amendment under the five-minute rule and shall be considered as read. All points of order against provisions in the bill, as amended, are waived. No further amendment shall be in order except those printed in part B of the report of the Committee on Rules. Each further amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment or demand for division of the question. All points of order against such further amendments are waived. At the conclusion of consideration of the bill, as amended, the Committee shall rise and report the bill, as amended, to the House with such further amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. The amendment considered as adopted under the first section of this resolution shall be considered an amendment offered under section 411 of House Concurrent Resolution 95.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from California (Mr. DREIER) is recognized for 1 hour.

Mr. DREIER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, I rise today in strong support of both the rule we are considering now as well as the underlying legislation. Before I get into the legislation itself, I would like to briefly speak about the rule. Mr. Speaker, this is a very fair and balanced rule. The Committee on Rules received a total of 59 amendments for our consideration, and this rule makes in order 23 of those 59 amendments that were submitted to us. It includes 14 amendments offered by Republicans, eight amendments offered by Democrats, and one bipartisan amendment. The rule also makes in order a very bipartisan manager's amendment, which addresses a significant number of concerns that have been raised by many Members.

The rule also includes an important provision from the Committee on Ways and Means to ensure fiscal solvency of the Highway Trust Fund, as well as a provision relating to the mass transit guarantee.

Mr. Speaker, this provision is necessary to ensure that current flexibilities and authorities of Congress to set appropriate annual spending levels for basic salaries and administrative expenses for the Federal Transit Administration are maintained.

Under current law, the Committee on Appropriations can adjust spending in

this account so long as those savings are rolled into other mass transit programs and the full transit guarantees are preserved. The underlying bill, as reported by the Committee on Transportation and Infrastructure, restricted the ability of the Committee on Appropriations to adjust spending on an account-by-account basis. The amendment to the bill included in this rule simply provides guidance in interpreting existing rules of the House to ensure that the status quo is maintained. This is not intended to provide any new authority whatsoever.

Mr. Speaker, I want to note that I will continue to work with the committees to perfect language to ensure that the provisions achieve the intended purpose. Legislating House rules in this manner is not my preferred way to proceed.

Regrettably, however, when TEA 21 was enacted, changes to the House rules were legislated within the authorizing statute and were not implemented through the regular order of the House.

□ 1315

Instead, they were and are continuing to be legislated by a committee that does not have any jurisdiction over this matter.

I want to make it very clear, Mr. Speaker, that the Committee on Rules has and will retain its jurisdiction over the rules of the House. As part of our review of budget enforcement procedures, this and other budgetary enforcement mechanisms will be further scrutinized. It is my hope that the affected committees will continue to work with the Committee on Rules to ensure that all changes to the rules of the House are thoughtful and reasoned. But, Mr. Speaker, despite my reservations over some portions of the legislation, I want to reiterate my strong support for the underlying legislation.

Mr. Speaker, the Transportation Equity Act: A Legacy For Users, reauthorizes our Nation's surface transportation programs for the next 6 years. The very core of this bill is safety and congestion relief.

Investing in transportation infrastructure has fundamental impacts on our quality of life, our Nation's economic growth and, as was just said by the distinguished chairman of the Committee on Transportation and Infrastructure, our competitiveness in the world. Our highways, transit systems, pipelines, airports, harbors and waterways serve as the backbone of our economy by moving people and goods, employing millions of workers, and generating a significant share of total economic output.

Transportation-related goods and services generate 10 percent of our total gross domestic product. In making our infrastructure backbone stronger, TEA LU provides safety improvements that will save lives. Many of the more than 42,000 highway fatalities each year can be prevented by

building better roads and improving the safety features of existing roads. Commercial motor vehicles are involved in 12 percent of all crashes resulting in a fatality. Carriers transporting extremely hazardous materials must ensure that sufficient safety and security measures are in place to accomplish that transportation without loss of life, injury or property damage.

Improvements in safety include the movement of freight from ship to shore, which must be conducted in a safe, efficient, secure manner in order to improve air quality and decrease congestion.

Congestion relief is imperative. American families do not need books of statistics to know that traffic congestion has increased. We all know that rush hour starts earlier in the day and ends later at night, creating more travel time than ever before. Congestion also negatively impacts our environment by increasing emissions and wasting fuel. Vehicles in stop-and-go traffic not only emit more pollutants than they do when operating without frequent breaking and acceleration, but obviously they decrease fuel efficiency as well.

In my home State of California, improving safety while reducing congestion has never been more critical. As California is considered the Gateway to the Pacific Rim, 40 percent of the Nation's goods are imported through the ports of Los Angeles and Long Beach. The infrastructure supporting the movement of goods from ship to shore through Los Angeles and Long Beach will distribute an estimated \$314 billion worth of trade by the year 2020.

Facilitating growth in trade is directly connected to the overall economic vitality of the entire Nation. Ninety-five percent of U.S. international cargo by volume is transported by ocean. According to the United States Trade Representative's Office, nearly 20 percent of all U.S. jobs are directly associated with international trade.

In the Southern California region alone, improvements to our infrastructure will reduce a projected 300 percent increase by 2020 in auto-truck traffic delays in points where freight moving on railroads impedes vehicle and pedestrian traffic. This is just one example of how TEA LU strengthens our transportation infrastructure into the next decade.

During this debate, you will hear the challenges we must still address in improving our surface transportation programs. Nobody can deny that the need is great and our resources are limited.

In addition, I look forward toward working that States receive their fair share. However, our critical task here is to ensure the safety of American families and to move people and goods throughout this country faster and more efficiently. This bill accomplishes that goal.

I would like to congratulate the gentleman from Alaska (Chairman

YOUNG), the gentleman from Wisconsin (Chairman PETRI), the gentleman from Minnesota (Mr. OBERSTAR) and the gentleman from Pennsylvania (Mr. LIPINSKI) on their leadership in crafting this important legislation.

To that end, Mr. Speaker, I urge my colleagues to support this rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

(Mr. FROST asked and was given permission to revise and extend his remarks.)

Mr. FROST. Mr. Speaker, throughout my 25 years of service in this House, I have always worked hard to ensure a bright economic future and a good quality of life for the people I represent. That is why I have consistently made transportation priorities of North Texas my own priorities here in Congress. I have always supported the Federal highway and transit bills that have come before the House, because I knew they would directly benefit the people of my area.

In 1998, for example, I voted in favor of TEA 21, the last transportation reauthorization bill passed by Congress. That bill widened a major thoroughfare in North Texas, Interstate 30, from six to eight and ten lanes, easing congestion in Dallas-Fort Worth and the surrounding areas.

TEA 21 also included important funding to expand DART, the Dallas Area Rapid Transit System. As one of DART's original supporters, I knew that by reducing motor vehicle traffic on our already-overcrowded roads, the system would significantly reduce air pollution and ease the commute of thousands of Dallas residents. An important byproduct of both these projects were the many, many good jobs created for our community.

So for me it has always been an easy decision to vote for the transportation bills in this House, and that is why today I am proud to rise in strong support of this year's transportation authorization bill, TEA LU.

TEA LU will be one of the most important bills we pass in Congress this year, and the reason is simple: Transportation projects stimulate economic activity in our home communities. Quite simply, this bill is good for our Nation's economy. In fact, the Federal Highway Administration reports that for every \$1 billion in Federal funds invested in highway infrastructure, it creates 47,500 new jobs and \$6.2 billion in economic activity.

So whenever Congress passes its transportation reauthorization bill, we do not simply reduce congestion and air pollution, we create jobs, good jobs that cannot be shipped overseas, and we create huge opportunities for our constituents by bringing the government, the private sector and the general public together to help grow the economy so that those good jobs stay here at home in our own communities.

There is no doubt that for far too many Americans, the U.S. economy is in bad shape. Over 8 million people are currently unemployed, the average length of unemployment has risen to 20.3 weeks, the longest duration since 1984, and no new private sector jobs were created last month. So, as you can see, Mr. Speaker, it is especially critical that we pass the transportation bill today.

The bill before us today continues to provide benefits for North Texas. It is my understanding that the bill contains \$35 million in funding that I requested from the committee to replace Interstate 30 and Interstate 35 Trinity River bridges in Dallas and for the improvements to I-635 in Dallas. The bill also authorizes four new rail lines to expand DART in Dallas, including construction of a Northwest/Southeast extension that will add 60,000 daily riders to the rail system.

So, by passing TEA LU, we will not only be reducing air pollution and easing congestion throughout the metropolitan area, we will be creating new jobs and a brighter economic future for North Texas.

Mr. Speaker, highway and transportation funding must never be subject to partisan politics. There is too much at stake for the American people, and there is too much at stake for the economy. I know that my colleagues all want the same thing for their constituents as I want for mine: clean air, better roads and good jobs. The bill before us today can set us on that path. I hope that today Members will set aside politics as usual and vote to pass TEA LU for the good of our communities and our entire Nation.

Mr. Speaker, I urge a yeas vote on the rule and on the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, I am very happy to yield 3 minutes to the gentleman from Atlanta, Georgia (Mr. LINDER), the distinguished chairman of the Committee on Rules' Subcommittee on Technology.

Mr. LINDER. Mr. Speaker, I thank my friend from California, the chairman of the Committee on Rules, for yielding me time.

Mr. Speaker, I rise in support of House Resolution 593 and urge the House to approve this rule so we can move on to consideration of the underlying legislation, H.R. 3550, the highway funding bill.

As the gentleman from California (Chairman DREIER) described, this is a fair, structured rule that makes in order a total of 23 amendments, 14 Republican and 8 Democrat, and one very important bipartisan amendment. Thus, the Committee on Rules has crafted a rule that will allow the House to have a lively debate and work its will on a number of key issues that these amendments raise. H. Res. 593 should receive bipartisan support for doing so.

With respect to H.R. 3550, this legislation reauthorizes our Nation's high-

way and transit programs for the next 6 years and covers a variety of important transportation needs. While I am pleased that the House is moving forward with its consideration of the highway bill, there is one outstanding issue that concerns me, the issue of minimum guaranteed funding.

Georgia has, unfortunately, been a highway funding donor State for far too long. The two previous highway bills in 1991 and 1998 made good progress toward improving donor States' rates of return, but more still needs to be done in order to treat Georgia and other donor States more fairly.

In the 1998 Transportation Equity Act For the 21st Century, TEA 21, I worked hard, along with other key members of the Georgia delegation, to achieve the present rate of return of 90.5 percent. With these efforts, Georgia was able to raise its average rate of return from 76 percent to approximately 86 percent of their share of contributions over the 6-year life of the bill.

Unfortunately, H.R. 3550 in its current form is not a step forward toward the current goal of 95 percent. It does not even maintain the current level of minimum guaranteed funding provided under TEA 21. Although H.R. 3550 maintains the TEA 21 rate of return of 90.5 percent, the bill would mandate that only 84 percent is available for minimum guaranteed funding, unlike TEA 21, which sets aside approximately 93 percent of the Highway Trust Fund for minimum guaranteed needs.

As such, the issue of minimum guaranteed funding under H.R. 3550 must be addressed more satisfactorily. In this respect, I am very pleased that the rule we crafted in the Committee on Rules will provide Members the opportunity to consider amendments offered by the gentleman from Georgia (Mr. ISAKSON) and the gentleman from Georgia (Mr. BURNS) and others which is designed to address this very concern.

Mr. Speaker, this is a good rule. It provides all Members the opportunity to debate a wide variety of transportation related issues facing our Nation. I urge my colleagues to support the rule, so we may proceed to debate the underlying legislation.

Mr. FROST. Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts (Mr. MCGOVERN).

Mr. MCGOVERN. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, while the Committee on Rules this morning reported out of committee an unnecessarily restrictive rule, and, as a result I will not support the rule, I do want to commend the chairman of the Committee on Transportation and Infrastructure, the gentleman from Alaska (Mr. YOUNG), and the ranking member, the gentleman from Minnesota (Mr. OBERSTAR), as well as the subcommittee chair, the gentleman from Wisconsin (Mr. PETRI), and the ranking member, the gentleman from Pennsylvania (Mr. LIPINSKI), for all their hard, bipartisan work

on this highway reauthorization bill. They recognized the importance of adequately meeting our Nation's transportation needs and of creating good-paying jobs for the American people at a time when we desperately need new jobs.

I only wish that the leadership of this House and the White House would follow their lead and the lead of the entire membership of the Committee on Transportation and Infrastructure. There are lots of good things in this bill, but I continue to believe that the overall funding level is not enough to meet our needs.

In States all across this country, including Massachusetts, roads and bridges are crumbling under the burden of age and heavy use. Adequate infrastructure is essential for economic development. We can do better, and I am hopeful that in the very near future we will have the opportunity to return to transportation policy to finish the work that this bill begins. I was glad to hear the distinguished Committee on Transportation and Infrastructure Chair say that he would be back fighting for more money, and I will certainly stand with him in that effort.

Mr. Speaker, I am also concerned about efforts by some Members to decrease highway safety and quality by increasing truck size and truck weight. This rule makes in order two amendments that are particularly troublesome.

The first, offered by my colleague, the gentleman from New Hampshire (Mr. BRADLEY), would create an exemption from existing Federal truck size and weight limits for certain roads in his home State. The exemption for New Hampshire would damage the highway infrastructure, especially bridges, and cost taxpayers a great deal of money.

The U.S. Department of Transportation calculated that if the exemptions the Bradley amendment would create were applied nationwide, it would result in additional bridge costs to taxpayers of \$329 billion.

Further, heavier trucks are more dangerous. As truck weights increase, fatal accident rates will go up, according to the University of Michigan Transportation Research Institute. In fact, the Institute says, "Gross combination weight is the only vehicle characteristic showing a clear association with the overall fatal accident rate."

I also urge my colleagues to oppose the amendment offered by the gentleman from Indiana (Mr. CHOCOLA). This amendment would allow truck operators who use "idle reduction technology" to operate at 400 pounds above the Federal legal weight limits.

□ 1330

Although this seems to be only a minor increase in weight, it would actually cost Americans hundreds of millions of tax dollars each year because of the increased pavement damage this additional weight would cause.

According to the EPA, there is an inexpensive alternative to the idle reduction technology proposed in this amendment that would still reduce emissions and save fuel without adding additional weight. The alternative is stand-alone truck stop electrification systems, which are permanent structures located at various truck stops that have HVAC systems attached. The driver purchases a one-time \$10 adapter and pays an hourly rate to use the system.

The Chocola amendment also runs counter to the recent agreement between the American Trucking Association, and the Association of American Railroads that calls for no national truck weight increases in the transportation reauthorization bill. While a 400-pound weight increase may seem innocuous, it is not as simple as it seems, and it is best left out of this highway reauthorization bill.

Proposals to increase truck sizes and weights have been opposed by a broad range of national organizations because of their negative impact on the highway infrastructure and their danger to other motorists. Organizations opposing bigger trucks include the American Automobile Association, the International Brotherhood of Police Officers, the National Association of Emergency Medical Technicians, the National Association of Police Organizations, and the National Troopers Coalition.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman's time has expired.

Mr. DREIER. Mr. Speaker, I yield 1 minute to my friend, the gentleman from Massachusetts (Mr. MCGOVERN); and when he has completed his statement, if he would yield to me for 1 comment, I would appreciate it.

Mr. MCGOVERN. Mr. Speaker, I appreciate the gentleman's courtesy.

The National Troopers Coalition, the Society of Trauma Nurses, these groups know firsthand the danger caused by bigger and heavier trucks on our roadways.

So I urge my colleagues to oppose both the Bradley and the Chocola amendments.

Again, Mr. Speaker, I commend the gentleman from Alaska (Chairman YOUNG) and the gentleman from Minnesota (Ranking Member OBERSTAR) and all of the members of the Committee on Transportation and Infrastructure for their hard work.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. MCGOVERN. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I did not want to interrupt my colleague when he was going through his prepared statement, but I did want to clarify one issue that the gentleman raised.

He said in his opening that this was an unusually restrictive rule, and I would just like to state for the Record that when the ISTEA legislation was considered, there were a total of 12

amendments made in order. That was in the 102nd Congress when the Democrats were in charge. When TEA 21 was considered, there were a total of six amendments made in order, Mr. Speaker; and then in this legislation we have provided for consideration of a total of 23 amendments.

So that is why I asked the gentleman to yield.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts (Mr. MCGOVERN).

Mr. MCGOVERN. Mr. Speaker, I think what I said was this was an unnecessarily restrictive rule, and what I meant to say is that, as usual, this is a restrictive rule that we have come to expect of the Committee on Rules.

There were a number of good amendments that were not made in order, and I think that, as a result, I will oppose the rule.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. MCGOVERN. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, all I was saying is that if you go and look at the pattern of consideration of transportation measures, when the gentleman's party was in control, half the number of amendments were made in order.

Mr. MCGOVERN. Mr. Speaker, reclaiming my time, I would simply say that there were a lot of good amendments dealing with truck sizes and truck weights but also dealing with issues like outsourcing that the Committee on Rules chose not to make in order, which I think is unfortunate.

Mr. DREIER. Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from Tennessee (Mr. DAVIS).

Mr. DAVIS of Tennessee. Mr. Speaker, I appreciate the opportunity to make a few presentations about TEA LU. Living in a rural area, it is obvious to me that as we see infrastructure and dollars that are being spent on roads, it is the fertilizer that drives economic development for many of the areas, especially rural areas throughout this country. I applaud this House in their effort to pass legislation that will provide funding for infrastructure that will eventually provide economic development for this Nation.

There are many who look at this bill and say, look at the jobs that will be created as we start building infrastructure. Well, it is more than just the jobs that will be provided as we build the infrastructure. It will be the jobs 50 years from now that my grandchildren or my unborn great grandchildren will have an opportunity for a job as well. Because, as I have observed, the interstate systems in Tennessee and throughout this Nation, as we build a system that provides transportation from coast to coast and border to border, we have seen economic development unsurpassed by any other country as a result of those dollars spent.

Now, as we look at this particular bill, certainly \$275 billion sounds like a lot of money for 6 years. Unfortunately, I believe, and I think most of the folks that I represent believe, that that is too short, that it does not go far enough. As a result of that, I, along with three other Members of the House, introduced an amendment that would enhance the dollars to at least the amount that the Senate approved, being \$318 billion.

Some folks say, well, we can spend the money some other place. But there are no sections of our economy that produces the jobs at the same rate for the same dollars spent as infrastructure and development on our road systems and infrastructure of this country. As a result of that, I think that enhancing the dollars, increasing the amount, is a wise thing for those of us in Congress to do.

Because, Mr. Speaker, as we build infrastructure we provide the tools that will drive the economic engines of the future generations for now or decades from now. What we are doing, unfortunately, what we are doing today is not passing on an engine or the fertilizer for economic development; and, unfortunately, what my grandchildren will be receiving is huge debts, a \$500 billion deficit in trade and a \$500 billion deficit in our budget. At least this way, this Congress can do something for generations down the road, instead of taking away from them.

Mr. DREIER. Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I appreciate the gentleman's courtesy in yielding me this time and permitting me to speak on this bill.

There are two things I wanted to say, that we have seen our committee leadership that has been appropriately exalted for the hard work that they have done, and we have some terrific men and women who have been laboring in the field. The majority party has recognized some of theirs, and I would like to acknowledge Ward McCarragher, David Heymsfield, Ken House, Clyde Woodle, Jonathan Upchurch, Art Chan, Sheila Lockwood, who stayed with the committee for another 4 months before retiring, and Jason Tai. On the Majority side we have had extraordinary cooperation from Joyce Rose. These people have worked with the committee leadership, the staff to put together a really artfully crafted piece of legislation.

The problem is that we are today not able to deal with what I think is the most important issue and that is how to rightsize it. The gentleman from California (Mr. DREIER), my good friend, talked about the number of amendments that have been offered up and balanced with what happened with the original TEA 21 or ISTEA. I do not know about the number, but the significance of the amendment is what should be debated, not the number.

We have had a meltdown with some of our friends on the Republican side of the equation because they are not being able to correlate their needs. They are concerned about adequate money dealing with a donor or donee.

Well, our amendment which was not made in order would have just simply rightsized it to the Senate number and would have provided \$3 billion more for California, \$2.5 billion for Texas, \$1.6 billion for New York, \$1.5 billion for Florida. It would have given the committee leadership an opportunity to deal with the balance that is so important.

I hope that we will, in a moment, support an effort by the gentleman from Texas (Mr. FROST) to be able to make in order an amendment to deal with at least voting on whether we are going to have the same level of funding as the Senate. I think it is important for the House to establish that marker. It would make it a lot easier for everybody. It is fully funded. It does not require a tax increase, and I sincerely hope that we will, in our wisdom, be able to consider it.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. MENENDEZ).

(Mr. MENENDEZ asked and was given permission to revise and extend his remarks.)

Mr. MENENDEZ. Mr. Speaker, I want to also commend the leadership of the committee in producing a bill within the constraints that they had and in keeping so many items that are of great, important policy intact.

But I oppose the rule because the committee does not allow the House to work its will on a higher funding level that the committee, on a bipartisan basis, recognize is needed for the Nation's infrastructure. Also, because of a critical issue on this bill that is also about jobs, the committee did also not accept my amendment which was a sense of the Congress that none of these jobs in transportation should be outsourced.

Now, it is very difficult to see billions of dollars going to Iraq for infrastructure funding and to leave America short of where we need to be. I believe, as does I think a majority, if they were given the opportunity, that the Senate bill of \$318 billion is a fiscally responsible bill. I also believe that it is responsible national economic development policy, and I also believe it is responsible national security policy.

That is why I was pleased to have joined my colleagues in offering an amendment in the Committee on Rules that would have increased the funding of this bill to that Senate level of \$318 billion and let the House work its will. We did not get that chance in this rule.

Now, transportation is about a lot more than simply moving goods and people from one place to another. It is about economic development in both the short and the long term. It is about good-paying jobs at a time that we desperately need those jobs. Having lost

several million jobs during this administration, it would be great if we could have the resources to meet the infrastructure needs and create more good-paying jobs here in America.

It is about improving the environment by creating a transportation system that pollutes less and helps us achieve Clean Air Act requirements. It is about spending less time in traffic and more time with our family or on our work, being productive, and it is about security.

On September 11, my district, right across from mid-town, if it was not for the multiplicity of transportation modes, the people who were trapped in downtown Manhattan would have not gotten out but for a ferry system. When all the tunnels, all the bridges, all the trains were closed, security on that day came in the vehicle of a ferry system.

That is why this bill in this modern age is so important. That is why we should be having a higher funding, and that is why we should have the ability for the House to work its will on economic development, on jobs, on making sure those jobs are not outsourced and on the Nation's security in the context of transportation. That is why I oppose the rule; and, hopefully, we will be given the opportunity to have a vote on these issues and, in doing so, strengthen America financially, economically, jobs and security.

FEDERAL HIGHWAY FORMULA PROGRAMS

[6-year comparison of funding levels, H.R. 3550 vs. Davis amendment, March 30, 2004]

State	H.R. 3550	Davis amendment	Increase
Alabama	3,677,518,555	4,319,449,206	641,930,651
Alaska	2,161,805,396	2,539,160,160	377,354,764
Arizona	3,132,889,645	3,679,752,390	546,862,745
Arkansas	2,397,490,265	2,815,985,091	418,494,826
California	17,090,057,720	20,073,219,252	2,983,161,532
Colorado	2,599,044,285	3,052,721,449	453,677,165
Connecticut	2,755,281,305	3,236,230,482	480,949,177
Delaware	802,671,177	942,781,750	140,110,573
Dist. of Col.	717,759,307	843,048,057	125,288,749
Florida	8,572,806,425	10,069,235,914	1,496,429,489
Georgia	6,369,115,958	7,480,879,419	1,111,763,461
Hawaii	939,292,198	1,103,250,705	163,958,507
Idaho	1,400,320,105	1,644,753,514	244,433,409
Illinois	7,126,178,352	8,370,091,127	1,243,912,775
Indiana	4,648,807,879	5,460,282,309	811,474,429
Iowa	2,239,473,448	2,630,385,588	390,912,140
Kansas	2,125,881,144	2,496,965,136	371,083,992
Kentucky	3,150,629,518	3,700,588,853	549,959,335
Louisiana	2,884,826,337	3,388,388,296	503,561,959
Maine	954,895,661	1,121,577,837	166,682,176
Maryland	2,915,353,992	3,424,244,718	508,890,726
Massachusetts	3,381,597,061	3,971,873,023	590,275,962
Michigan	5,923,386,287	6,957,345,236	1,033,958,948
Minnesota	3,594,336,603	4,222,452,130	627,515,527
Mississippi	2,210,974,449	2,596,911,936	385,937,487
Missouri	4,284,602,135	5,032,502,492	747,900,357
Montana	1,801,474,258	2,115,931,283	314,457,025
Nebraska	1,409,391,886	1,655,408,823	246,016,937
Nevada	1,315,045,364	1,544,593,608	229,548,244
New Hampshire	936,752,099	1,100,267,219	163,515,119
New Jersey	4,778,585,240	5,612,713,006	834,127,766
New Mexico	1,793,309,655	2,106,341,504	313,031,850
New York	9,367,158,121	11,002,245,973	1,635,087,852
North Carolina	5,211,624,631	6,121,341,752	909,717,121
North Dakota	1,188,947,609	1,396,484,812	207,537,203
Ohio	7,168,776,245	8,420,124,712	1,251,348,467
Oklahoma	2,797,555,804	3,285,884,223	488,328,418
Oregon	2,210,430,142	2,596,272,617	385,842,475
Pennsylvania	9,051,278,709	10,631,228,110	1,579,949,401
Rhode Island	1,080,993,416	1,269,686,633	188,693,217
South Carolina	2,951,639,076	3,466,863,559	515,224,483
South Dakota	1,297,083,238	1,523,496,096	226,412,858
Tennessee	4,108,791,020	4,826,002,601	717,211,581
Texas	14,365,474,761	16,873,045,677	2,507,570,916
Utah	1,420,822,330	1,668,834,513	248,012,183
Vermont	829,705,084	974,534,571	144,829,487
Virginia	4,684,441,786	5,502,136,305	817,694,519
Washington	3,261,461,121	3,830,766,708	569,305,588
West Virginia	2,053,669,768	2,412,148,876	358,479,108
Wisconsin	3,613,471,781	4,244,222,724	630,750,942
Wyoming	1,261,158,985	1,481,301,072	220,142,087

FEDERAL HIGHWAY FORMULA PROGRAMS—Continued
[6-year comparison of funding levels, H.R. 3550 vs. Davis amendment, March 30, 2004]

State	H.R. 3550	Davis amendment	Increase
All states ...	188,016,637,337	220,835,953,046	32,819,315,709

Total funding levels calculated by Federal Highway Administration, U.S. Department of Transportation.

FEDERAL TRANSIT FORMULA PROGRAMS

[6-year comparison of funding levels H.R. 3550 vs. Davis Amendment, March 30, 2004]

State	H.R. 3550	Davis Amendment	Increase
Alabama	198,869,641	231,156,144	32,266,503
Alaska	133,060,259	140,513,693	7,453,434
Arizona	403,911,758	470,227,686	66,315,929
Arkansas	116,150,368	135,270,375	19,120,008
California	5,552,597,250	6,343,415,048	790,817,798
Colorado	403,479,756	471,766,156	68,286,399
Connecticut ...	647,204,763	709,330,655	62,125,892
Delaware	54,248,356	63,622,106	9,373,749
District of Columbia	877,852,428	967,767,310	89,914,881
Florida	1,483,096,526	1,717,128,836	234,032,310
Georgia	815,018,982	918,781,238	103,762,256
Hawaii	202,434,156	238,805,983	36,371,827

FEDERAL TRANSIT FORMULA PROGRAMS—Continued
[6-year comparison of funding levels H.R. 3550 vs. Davis Amendment, March 30, 2004]

State	H.R. 3550	Davis Amendment	Increase
Idaho	73,260,393	86,047,086	12,426,693
Illinois	2,556,048,373	2,856,722,554	300,674,181
Indiana	417,530,452	476,695,916	59,165,463
Iowa	149,594,568	174,954,344	25,359,777
Kansas	118,069,423	138,190,463	20,121,040
Kentucky	217,385,766	253,776,373	36,390,607
Louisiana	308,212,487	356,370,390	48,157,903
Maine	56,815,827	65,391,665	8,575,838
Maryland	730,485,598	826,480,076	95,994,478
Massachusetts	1,423,677,171	1,591,967,255	168,290,084
Michigan	627,110,529	732,156,410	105,045,881
Minnesota	420,631,347	487,032,862	66,401,515
Mississippi	105,336,903	122,276,702	16,939,799
Missouri	386,141,847	447,919,643	61,777,797
Montana	55,239,907	63,899,172	8,659,265
Nebraska	93,382,341	109,844,579	16,462,238
Nevada	193,001,724	227,399,351	34,397,627
New Hampshire	56,243,067	65,593,404	9,350,337
New Jersey	2,098,273,741	2,383,583,819	285,310,078
New Mexico	112,681,925	131,579,394	18,897,469
New York	6,444,879,743	7,175,638,872	730,759,129
North Carolina	420,756,227	490,377,297	69,621,070
North Dakota ..	46,410,005	53,750,291	7,340,286
Ohio	900,583,684	1,034,764,387	134,180,702
Oklahoma	166,621,542	195,099,134	28,477,592
Oregon	338,235,316	392,830,946	54,595,630

FEDERAL TRANSIT FORMULA PROGRAMS—Continued
[6-year comparison of funding levels H.R. 3550 vs. Davis Amendment, March 30, 2004]

State	H.R. 3550	Davis Amendment	Increase
Pennsylvania ..	1,987,703,003	2,205,014,254	217,311,252
Rhode Island ..	76,644,720	89,477,672	12,832,952
South Carolina ..	181,253,492	210,208,976	28,955,485
South Dakota ..	46,483,209	53,967,891	7,484,682
Tennessee	313,483,924	364,150,802	50,666,878
Texas	1,765,377,276	2,052,505,365	287,128,089
Utah	233,854,931	275,023,227	41,168,296
Vermont	27,540,665	31,245,242	3,704,577
Virginia	603,913,755	685,812,664	81,898,909
Washington	918,384,406	1,049,682,654	131,298,248
West Virginia ..	85,312,226	98,084,121	12,771,895
Wisconsin	384,588,461	447,857,272	63,268,811
Wyoming	29,710,803	34,376,684	4,665,881

Total apportioned ... 36,059,145,018 40,945,534,437 4,886,389,419

Oversight ... 265,991,427 301,490,789 35,499,362

Grand total 36,325,136,445 41,247,025,226 4,921,888,781

Total funding levels calculated by Federal Highway Administration, U.S. Department of Transportation

State allocation includes 5307, 5307 TI, 5309 FGM, 5310, 5311 (but not RTAP), JARC, NFI, 5303, 5313, and Clean Fuel under both funding levels

TOTAL HIGHWAY/TRANSIT INVESTMENT INCREASES AND NEW JOBS CREATED UNDER DAVIS AMENDMENT

[6-year comparison of funding levels, H.R. 3550 vs. Davis Amendment, March 30, 2004]

State	Highway	Transit	Total increase	New jobs created
Alabama	641,930,651	32,286,503	674,217,154	32,025
Alaska	377,354,764	7,453,434	384,808,198	18,278
Arizona	546,862,745	66,315,929	613,178,674	29,126
Arkansas	418,494,826	19,120,008	437,614,834	20,787
California	2,983,161,532	791,817,798	3,774,979,330	179,312
Colorado	453,677,165	68,286,399	521,963,564	24,793
Connecticut	480,949,177	62,125,892	543,075,069	25,796
Delaware	140,110,573	9,373,749	149,484,322	7,101
Dist. of Col.	125,288,749	89,914,881	215,203,630	10,222
Florida	1,496,429,489	234,032,310	1,730,461,799	82,197
Georgia	1,111,763,461	103,762,256	1,215,525,717	57,737
Hawaii	163,958,507	36,371,827	200,330,334	9,516
Idaho	244,433,409	12,426,693	256,860,102	12,201
Illinois	1,243,912,775	300,674,181	1,544,586,956	73,368
Indiana	811,474,429	59,165,463	870,639,892	41,355
Iowa	390,912,140	25,359,777	416,271,917	19,773
Kansas	371,083,992	20,121,040	391,205,032	18,582
Kentucky	549,959,335	36,390,607	586,349,942	27,852
Louisiana	503,561,959	48,157,903	551,719,862	26,207
Maine	166,682,176	8,575,838	175,258,014	8,325
Maryland	508,890,726	95,994,478	604,885,204	28,732
Massachusetts	590,275,962	168,290,084	758,566,046	36,032
Michigan	1,033,958,948	105,045,881	1,139,004,829	54,103
Minnesota	627,515,527	66,401,515	693,917,042	32,961
Mississippi	385,937,487	16,939,799	402,877,286	19,137
Missouri	747,900,357	61,777,797	809,678,154	38,460
Montana	314,457,025	8,659,265	323,116,290	15,348
Nebraska	246,016,937	16,462,238	262,479,175	12,468
Nevada	229,548,244	34,397,627	263,945,871	12,537
New Hampshire	163,515,119	9,350,337	172,865,456	8,211
New Jersey	834,127,766	285,310,078	1,119,437,844	53,173
New Mexico	313,031,850	18,897,469	331,929,319	15,767
New York	1,635,087,852	730,759,129	2,365,846,981	112,378
North Carolina	909,717,121	69,621,070	979,338,191	46,519
North Dakota	207,537,203	7,340,286	214,877,489	10,207
Ohio	1,251,348,467	134,180,702	1,385,529,169	65,813
Oklahoma	488,328,418	28,477,592	516,806,010	24,548
Oregon	385,842,475	54,595,630	440,438,105	20,921
Pennsylvania	1,579,949,401	217,311,252	1,797,260,653	85,370
Rhode Island	188,693,217	12,832,952	201,526,169	9,572
South Carolina	515,224,483	28,955,485	544,179,968	25,849
South Dakota	226,412,858	7,484,682	277,079,736	13,161
Tennessee	717,211,581	50,666,878	1,004,339,670	47,706
Texas	2,507,570,916	287,128,089	2,548,739,212	121,065
Utah	248,012,183	41,168,296	251,716,760	11,957
Vermont	144,829,487	3,704,577	226,728,396	10,770
Virginia	817,694,519	81,898,909	948,992,767	45,077
Washington	569,305,588	131,298,248	582,077,483	27,649
West Virginia	358,479,108	12,771,895	421,747,919	20,033
Wisconsin	630,750,942	63,268,811	635,416,823	30,182
Wyoming	220,142,087	4,665,881	224,807,968	10,678
All states	32,177,385,058	4,855,102,917	37,032,487,975	1,759,043

Total funding levels calculated by the Federal Highway Administration and the Federal Transit Administration, U.S. Department of Transportation.

Mr. DREIER. Mr. Speaker, I continue to reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. TURNER).

Mr. TURNER of Texas. Mr. Speaker, I am greatly disturbed that we are debating a \$275 billion transportation measure without taking strong action in this bill to increase security in our rail and transit systems.

Three weeks ago, a terrorist group related to al Qaeda conducted several coordinated bombings on commuter trains in Madrid. Two hundred civilians were killed and more than 1,500 injured. The tragedy was enough to shock the nations of Europe into immediate action to get serious about transit security, but we have not responded here at home with sufficient urgency to protect the lives of the

many Americans who travel every day by rail and transit.

Earlier this week, British police arrested eight and seized half a ton of ammonia nitrate. Philippine authorities arrested four members of a terrorist group linked to al Qaeda and seized 30 pounds of TNT. Each of these cases may have prevented another Madrid-style attack.

Closer to home, Amtrak's trains were stopped this last Tuesday and searched

in Florida, North Carolina, and Pennsylvania after bomb threats were reported. We are enormously vulnerable to rail and transit attack and have an estimated need for \$2 billion in investments in security for mass transit.

□ 1345

Yet since the attacks of September 11 of 2001, the Department of Homeland Security has made available only \$115 million for this purpose.

Today, we have a \$275 billion bill that barely addresses security. It does not specifically dedicate one dollar to rail or transit security.

I offered three amendments in the Committee on Rules, two of them designed to make a down payment of \$250 million in grants to local transit agencies to improve security through surveillance and communications systems, detectors for weapons of mass destruction, training, education and other uses.

In light of terrorist threats that we face, Mr. Speaker, it is difficult to understand why we are not allowed to take up these amendments on the floor of the House today.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentleman from West Virginia (Mr. RAHALL).

Mr. RAHALL. Mr. Speaker, tomorrow, on Friday, the President of the United States will be in my congressional district talking about jobs and the economy. Unfortunately, although I was invited, and I appreciate that, I will not be with the President because I will be here in the Halls of Congress working on a bill that very vitally affects jobs and the economy, this transportation and infrastructure legislation.

I commend the gentleman from Minnesota (Ranking Member OBERSTAR) and the gentleman from Alaska (Chairman YOUNG) and the gentleman from Wisconsin (Mr. PETRI) and the gentleman from Illinois (Mr. LIPINSKI), the ranking subcommittee member, for the hard work that they have put in on this legislation.

Jobs and the economy. That is what this is about. This legislation is the quickest way to put American working men and women back to work. For every \$1 billion invested in our Nation's infrastructure, we are talking about 46,500 good paying jobs, not hamburger-flipping jobs; we are talking about good-paying jobs for our economy.

The \$318 billion passed in the Senate bill, the \$275 billion pending in this legislation is not sufficient to do the job. The President's own Department of Transportation has said that \$375 billion is what is necessary just to quote, "maintain current economic growth."

So if I were in my congressional district tomorrow with the President of the United States, I would say, Mr. President, would you please just allow us in the House of Representatives to maintain current economic growth and allow us to go to the \$375 billion spend-

ing level for this bill. That makes economic sense. It makes just and fair legislation.

And I think that is what the American people want. If this were money that we are talking about, a difference here of several billion, unfortunately if it were money going to rebuild Iraq, perhaps it would sail through this body without any Presidential veto threats. But this is money that we are talking about to go here in America, putting Americans back to work, spending money on infrastructure in America, which is not any pork spending, it is not an entitlement; but it is an investment in America's future.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think it is clear that the bill before us today will ease congestion, reduce pollution, and create good jobs across America. Most Members of this House, myself included, will vote to pass TEA LU. But I think we are missing out on a unique opportunity to further strengthen our economy.

Last night the Committee on Rules and this morning considered the Davis-Menendez-Blumenauer-Baird amendment to strengthen investment in our Nation's highway and transit infrastructure by increasing funding in the bill to the Senate-passed level of \$318 billion. However, in a move that denies the House the opportunity to fully debate the transportation needs of this country, as is usually the case when Democrats offer thoughtful alternatives in the Committee on Rules, the Republican majority defeated the amendment on a straight party-line vote.

So today I hope to offer Members another chance to vote on this important proposal. If the previous question is defeated, I will offer an amendment to the rule that will give the House the opportunity to debate and vote on the Davis substitute.

Mr. Speaker, although I hope to see more legislation to help the economy come before this House, the transportation bill before us today will be our best chance to spur job creation this year. And the Davis substitute will create nearly 1.8 million additional jobs over the bill we have on the floor today, with 120,000 new jobs in my home State of Texas alone, and create \$235 billion worth of economic activity.

Mr. Speaker, when you consider the 8.2 million people in this country that are currently unemployed, I do not see how you can vote against a measure that will create 1.8 million new jobs.

So I urge my colleagues today to vote in favor of a job creation and economic development package by voting "no" on the previous question. We only reauthorize the transportation bill once every 6 years. Let us not squander this unique opportunity to create jobs and strengthen the economy by giving in to politics as usual.

Mr. Speaker, I ask unanimous consent to insert the text of the amend-

ment and extraneous materials at this point in the RECORD.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentleman from Texas?

There was no objection.

PREVIOUS QUESTION FOR RULE FOR H. RES. 593—H.R. 3500—TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (TEA-LU)

At the end of the resolution, add the following:

"Sec. 2. Notwithstanding any other provision of this resolution the amendment specified in section 3 shall be in order without intervention of any point of order as though printed as the first amendment in part B of the report of the Committee on Rules if offered by Representative Davis of Tennessee or a designee. That amendment shall be debatable for 60 minutes equally divided and controlled by the proponent and an opponent.

Sec. 3. the amendment referred to in section 2 is as follows:

AMENDMENT TO H.R. 3550, AS REPORTED OFFERED BY MR. DAVIS OF TENNESSEE

In section 1101(a)(1) of the bill, strike "\$4,323,076,000" and all that follows through "\$4,891,164,000" and insert "\$5,076,187,293 for fiscal year 2004, \$4,953,445,477 for fiscal year 2005, \$5,171,212,959 for fiscal year 2006, \$5,263,571,478 for fiscal year 2007, \$5,556,536,840 for fiscal year 2008, and \$6,654,739,293".

In section 1101(a)(2) of the bill, strike "\$5,187,691,000" and all that follows through "\$5,869,396,000" and insert "\$6,091,424,517 for fiscal year 2004, \$5,944,133,902 for fiscal year 2005, \$6,205,455,095 for fiscal year 2006, \$6,316,285,773 for fiscal year 2007, \$6,667,843,743 for fiscal year 2008, and \$7,985,686,064".

In section 1101(a)(3) of the bill, strike "\$3,709,440,000" and all that follows through "\$4,196,891,000" and insert "\$4,355,651,438 for fiscal year 2004, \$4,250,332,027 for fiscal year 2005, \$4,437,189,163 for fiscal year 2006, \$4,516,437,339 for fiscal year 2007, \$4,767,818,482 for fiscal year 2008, and \$5,710,136,779".

In section 1101(a)(5) of the bill, strike "\$6,052,306,000" and all that follows through "\$6,847,629,000" and insert "\$7,106,661,741 for fiscal year 2004, \$6,934,823,445 for fiscal year 2005, \$7,239,697,231 for fiscal year 2006, \$7,369,000,069 for fiscal year 2007, \$7,779,151,809 for fiscal year 2008, and \$9,316,634,194".

In section 1101(a)(6) of the bill, strike "\$1,469,846,000" and all that follows through "\$1,662,996,000" and insert "\$1,725,903,868 for fiscal year 2004, \$1,684,171,440 for fiscal year 2005, \$1,758,212,543 for fiscal year 2006, \$1,789,614,076 for fiscal year 2007, \$1,889,222,762 for fiscal year 2008, and \$2,262,611,686".

In section 1102(a) of the bill, strike paragraphs (2) through (6) and insert the following:

- (2) \$37,900,000,000 for fiscal year 2005;
- (3) \$39,100,000,000 for fiscal year 2006;
- (4) \$39,100,000,000 for fiscal year 2007;
- (5) \$39,400,000,000 for fiscal year 2008; and
- (6) \$44,400,000,000 for fiscal year 2009.

In the matter proposed to be inserted as section 5338(a)(2)(A) of title 49, United States Code, by section 3034 of the bill, strike clauses (i) through (vi) and insert the following:

- "(i) \$5,081,125,000 for fiscal year 2005;
- "(ii) \$5,283,418,000 for fiscal year 2006;
- "(iii) \$5,550,420,000 for fiscal year 2007;
- "(iv) \$6,176,172,500 for fiscal year 2008; and
- "(v) \$6,834,667,500 for fiscal year 2009.

In section 3043 of the bill, strike paragraphs (2) through (6) and insert the following:

- (2) \$8,650,000,000 for fiscal year 2005;
- (3) \$9,085,123,000 for fiscal year 2006;
- (4) \$9,600,000,000 for fiscal year 2007;
- (5) \$10,490,000,000 for fiscal year 2008; and

(6) \$11,430,000,000 for fiscal year 2009.

Add at the end the following new title:

TITLE IX—HIGHWAY REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION

SEC. 9000. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) **SHORT TITLE.**—This title may be cited as the “Highway reauthorization and excise tax simplification Act of 2004”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Subtitle A—Trust Fund Reauthorization

SEC. 9001. EXTENSION OF HIGHWAY TRUST FUND AND AQUATIC RESOURCES TRUST FUND EXPENDITURE AUTHORITY AND RELATED TAXES.

(a) **HIGHWAY TRUST FUND EXPENDITURE AUTHORITY.**—

(1) **HIGHWAY ACCOUNT.**—Paragraph (1) of section 9503(c) (relating to transfers from Highway Trust Fund for certain repayments and credits) is amended—

(A) in the matter before subparagraph (A), by striking “May 1, 2004” and inserting “October 1, 2009”;

(B) by striking “or” at the end of subparagraph (F);

(C) by striking the period at the end of subparagraph (G) and inserting “, or”;

(D) by inserting after subparagraph (G), the following new subparagraph:

“(H) authorized to be paid out of the Highway Trust Fund under the Highway reauthorization and excise tax simplification Act of 2004.”; and

(E) in the matter after subparagraph (G), as added by subparagraph (D), by striking “Surface Transportation Extension Act of 2004” and inserting “Highway reauthorization and excise tax simplification Act of 2004”.

(2) **MASS TRANSIT ACCOUNT.**—Paragraph (3) of section 9503(e) (relating to establishment of Mass Transit Account) is amended—

(A) in the matter before subparagraph (A), by striking “May 1, 2004” and inserting “October 1, 2009”;

(B) by striking “or” at the end of subparagraph (D);

(C) by striking the period at the end of subparagraph (E) and inserting “, or”;

(D) by inserting after subparagraph (E), the following new subparagraph:

“(F) the Highway reauthorization and excise tax simplification Act of 2004.”; and

(E) in the matter after subparagraph (E), as added by subparagraph (D), by striking “Surface Transportation Extension Act of 2004” and inserting “Highway reauthorization and excise tax simplification Act of 2004”.

(3) **EXCEPTION TO LIMITATION ON TRANSFERS.**—Subparagraph (B) of section 9503(b)(5) (relating to limitation on transfers to Highway Trust Fund) is amended by striking “May 1, 2004” and inserting “October 1, 2009”.

(b) **AQUATIC RESOURCES TRUST FUND EXPENDITURE AUTHORITY.**—

(1) **SPORT FISH RESTORATION ACCOUNT.**—Paragraph (2) of section 9504(b) (relating to Sport Fish Restoration Account) is amended by striking “Surface Transportation Extension Act of 2004” each place it appears and inserting “Highway reauthorization and excise tax simplification Act of 2004”.

(2) **BOAT SAFETY ACCOUNT.**—Section 9504(c) (relating to expenditures from Boat Safety Account) is amended—

(A) by striking “May 1, 2004” and inserting “October 1, 2009”; and

(B) by striking “Surface Transportation Extension Act of 2004” and inserting “Highway reauthorization and excise tax simplification Act of 2004”.

(3) **EXCEPTION TO LIMITATION ON TRANSFERS.**—Paragraph (2) of section 9504(d) (relating to limitation on transfers to Aquatic Resources Trust Fund) is amended by striking “May 1, 2004” and inserting “October 1, 2009”.

(4) **TECHNICAL CORRECTION.**—The last sentence of paragraph (2) of section 9504(b) is amended by striking “subparagraph (B)”, and inserting “subparagraph (C)”.

(c) **EXTENSION OF TAXES.**—

(1) **IN GENERAL.**—The following provisions are each amended by striking “2005” each place it appears and inserting “2009”:

(A) Section 4041(a)(1)(C)(iii)(I) (relating to rate of tax on certain buses).

(B) Section 4041(a)(2)(B) (relating to rate of tax on special motor fuels).

(C) Section 4041(m)(1)(A) (relating to certain alcohol fuels produced from natural gas).

(D) Section 4051(c) (relating to termination of tax on heavy trucks and trailers).

(E) Section 4071(d) (relating to termination of tax on tires).

(F) Section 4081(d)(1) (relating to termination of tax on gasoline, diesel fuel, and kerosene).

(G) Section 4481(e) (relating to period tax in effect).

(H) Section 4482(c)(4) (relating to taxable period).

(I) Section 4482(d) (relating to special rule for taxable period in which termination date occurs).

(2) **FLOOR STOCKS REFUNDS.**—Section 6412(a)(1) (relating to floor stocks refunds) is amended—

(A) by striking “2005” each place it appears and inserting “2009”; and

(B) by striking “2006” each place it appears and inserting “2010”.

(d) **EXTENSION OF CERTAIN EXEMPTIONS.**—The following provisions are each amended by striking “2005” and inserting “2009”:

(1) Section 4221(a) (relating to certain tax-free sales).

(2) Section 4483(g) (relating to termination of exemptions for highway use tax).

(e) **EXTENSION OF DEPOSITS INTO, AND CERTAIN TRANSFERS FROM, TRUST FUND.**—

(1) **IN GENERAL.**—Subsections (b), (c)(2), (c)(3), (c)(4)(A)(i), and (c)(5)(A) of section 9503 (relating to the Highway Trust Fund) are amended—

(A) by striking “2005” each place it appears and inserting “2009”; and

(B) by striking “2006” each place it appears and inserting “2010”.

(2) **CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.**—Section 201(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–11(b)) is amended—

(A) by striking “2003” and inserting “2007”; and

(B) by striking “2004” each place it appears and inserting “2008”.

(f) **EXTENSION OF TAX BENEFITS FOR QUALIFIED METHANOL AND ETHANOL FUEL PRODUCED FROM COAL.**—Section 4041(b)(2) (relating to qualified methanol and ethanol fuel) is amended—

(1) by striking “2007” in subparagraph (C)(ii) and inserting “2010”; and

(2) by striking “October 1, 2007” in subparagraph (D) and inserting “January 1, 2011”.

(g) **PROHIBITION ON USE OF HIGHWAY ACCOUNT FOR RAIL PROJECTS.**—Section 9503(c) (relating to transfers from Highway Trust Fund for certain repayments and credits) is amended by adding at the end the following new paragraph:

“(6) **PROHIBITION ON USE OF HIGHWAY ACCOUNT FOR CERTAIN RAIL PROJECTS.**—With respect to rail projects beginning after the date of the enactment of this paragraph, no amount shall be available from the Highway Account (as defined in subsection (e)(5)(B)) for any rail project, except for any rail project involving publicly owned rail facilities or any rail project yielding a public benefit.”.

(h) **HIGHWAY TRUST FUND EXPENDITURES FOR HIGHWAY USE TAX EVASION PROJECTS.**—Section 9503(c), as amended by subsection (g), is amended to add at the end the following new paragraph:

“(7) **HIGHWAY USE TAX EVASION PROJECTS.**—From amounts available in the Highway Trust Fund, there is authorized to be expended—

“(A) for each fiscal year after 2003 to the Internal Revenue Service—

“(i) \$30,000,000 for enforcement of fuel tax compliance, including the per-certification of tax-exempt users,

“(ii) \$10,000,000 for Xstars, and

“(iii) \$10,000,000 for xfrs, and

“(B) for each fiscal year after 2003 to the Federal Highway Administration, \$50,000,000 to be allocated \$1,000,000 to each State to combat fuel tax evasion on the State level.”.

(i) **EFFECTIVE DATE.**—The amendments made by and provisions of this section shall take effect on the date of the enactment of this Act.

SEC. 9002. FULL ACCOUNTING OF FUNDS RECEIVED BY THE HIGHWAY TRUST FUND.

(a) **IN GENERAL.**—Section 9503(c) (relating to transfers from Highway Trust Fund for certain repayments and credits), as amended by section 9001 of this Act, is amended by striking paragraph (2) and redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (2), (3), (4), (5), and (6), respectively.

(b) **INTEREST ON UNEXPENDED BALANCES CREDITED TO TRUST FUND.**—Section 9503 (relating to the Highway Trust Fund) is amended by striking subsection (f).

(c) **CONFORMING AMENDMENTS.**—

(1) Section 9503(b)(4)(D) is amended by striking “paragraph (4)(D) or (5)(B)” and inserting “paragraph (3)(D) or (4)(B)”.

(2) Paragraph (2) of section 9503(c) (as redesignated by subsection (a)) is amended by adding at the end the following new sentence: “The amounts payable from the Highway Trust Fund under this paragraph shall be determined by taking into account only the portion of the taxes which are deposited into the Highway Trust Fund.”.

(3) Section 9504(a)(2) is amended by striking “section 9503(c)(4), section 9503(c)(5)” and inserting “section 9503(c)(3), section 9503(c)(4)”.

(4) Paragraph (2) of section 9504(b), as amended by section 9001 of this Act, is amended by striking “section 9503(c)(5)” and inserting “section 9503(c)(4)”.

(5) Section 9504(e) is amended by striking “section 9503(c)(4)” and inserting “section 9503(c)(3)”.

(d) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts paid for which no transfer from the Highway Trust Fund has been made before April 1, 2004.

(2) **INTEREST CREDITED.**—The amendment made by subsection (b) shall take effect on the date of the enactment of this Act.

SEC. 9003. MODIFICATION OF ADJUSTMENTS OF APPORTIONMENTS.

(a) **IN GENERAL.**—Section 9503(d) (relating to adjustments for apportionments) is amended—

(1) by striking “24-month” in paragraph (1)(B) and inserting “48-month”; and

(2) by striking “2 years” in the heading for paragraph (3) and inserting “4 years”.

(b) MEASUREMENT OF NET HIGHWAY RECEIPTS.—Section 9503(d) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

“(6) MEASUREMENT OF NET HIGHWAY RECEIPTS.—For purposes of making any estimate under paragraph (1) of net highway receipts for periods ending after the date specified in subsection (b)(1), the Secretary shall treat—

“(A) each expiring provision of subsection (b) which is related to appropriations or transfers to the Highway Trust Fund to have been extended through the end of the 48-month period referred to in paragraph (1)(B), and

“(B) with respect to each tax imposed under the sections referred to in subsection (b)(1), the rate of such tax during the 48-month period referred to in paragraph (1)(B) to be the same as the rate of such tax as in effect on the date of such estimate.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Volumetric Ethanol Excise Tax Credit

SEC. 9101. SHORT TITLE.

This subtitle may be cited as the “Volumetric Ethanol Excise Tax Credit (VEETC) Act of 2004”.

SEC. 9102. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT AND EXTENSION OF ALCOHOL FUELS INCOME TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by inserting after section 6425 the following new section:

“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.

“(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

“(1) the alcohol fuel mixture credit, plus

“(2) the biodiesel mixture credit.

“(b) ALCOHOL FUEL MIXTURE CREDIT.—

“(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the product of the applicable amount and the number of gallons of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

“(2) APPLICABLE AMOUNT.—For purposes of this subsection—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 52 cents (51 cents in the case of any sale or use after 2004).

“(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

“(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term ‘alcohol fuel mixture’ means a mixture of alcohol and a taxable fuel which—

“(A) is sold by the taxpayer producing such mixture to any person for use as a fuel,

“(B) is used as a fuel by the taxpayer producing such mixture, or

“(C) is removed from the refinery by a person producing such mixture.

“(4) OTHER DEFINITIONS.—For purposes of this subsection—

“(A) ALCOHOL.—The term ‘alcohol’ includes methanol and ethanol but does not include—

“(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

“(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

“(B) TAXABLE FUEL.—The term ‘taxable fuel’ has the meaning given such term by section 4083(a)(1).

“(5) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.

“(c) BIODIESEL MIXTURE CREDIT.—

“(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer.

“(2) APPLICABLE AMOUNT.—For purposes of this subsection—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

“(B) AMOUNT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, the applicable amount is \$1.00.

“(3) BIODIESEL MIXTURE.—For purposes of this section, the term ‘biodiesel mixture’ means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

“(A) is sold by the taxpayer producing such mixture to any person for use as a fuel,

“(B) is used as a fuel by the taxpayer producing such mixture, or

“(C) is removed from the refinery by a person producing such mixture.

“(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

“(5) OTHER DEFINITIONS.—Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

“(6) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2006.

“(d) MIXTURE NOT USED AS A FUEL, ETC.—

“(1) IMPOSITION OF TAX.—If—

“(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or biodiesel mixture, respectively, and

“(B) any person—

“(i) separates the alcohol or biodiesel from the mixture, or

“(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

“(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.

“(e) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—Rules similar to the rules under section 40(c) shall apply for purposes of this section.”.

(b) REGISTRATION REQUIREMENT.—Section 4101(a)(1) (relating to registration), as amended by sections 9211 and 9242 of this Act, is amended by inserting “and every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))” after “4081”.

(c) ADDITIONAL AMENDMENTS.—

(1) Section 40(c) is amended by striking “subsection (b)(2), (k), or (m) of section 4041, section 4081(c), or section 4091(c)” and inserting “section 4041(b)(2), section 6426, or section 6427(e)”.

(2) Paragraph (4) of section 40(d) is amended to read as follows:

“(4) VOLUME OF ALCOHOL.—For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 5 percent of the volume of such alcohol (including denaturants).”.

(3) Section 40(e)(1) is amended—

(A) by striking “2007” in subparagraph (A) and inserting “2010”, and

(B) by striking “2008” in subparagraph (B) and inserting “2011”.

(4) Section 40(h) is amended—

(A) by striking “2007” in paragraph (1) and inserting “2010”, and

(B) by striking “, 2006, or 2007” in the table contained in paragraph (2) and inserting “through 2010”.

(5) Section 4041(b)(2)(B) is amended by striking “a substance other than petroleum or natural gas” and inserting “coal (including peat)”.

(6) Section 4041 is amended by striking subsection (k).

(7) Section 4081 is amended by striking subsection (c).

(8) Paragraph (2) of section 4083(a) is amended to read as follows:

“(2) GASOLINE.—The term ‘gasoline’—

“(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)), or a denatured alcohol, and

“(B) includes, to the extent prescribed in regulations—

“(i) any gasoline blend stock, and

“(ii) any product commonly used as an additive in gasoline (other than alcohol).

For purposes of subparagraph (B)(i), the term ‘gasoline blend stock’ means any petroleum product component of gasoline.”.

(9) Section 6427 is amended by inserting after subsection (d) the following new subsection:

“(e) ALCOHOL OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS FUELS.—Except as provided in subsection (k)—

“(1) USED TO PRODUCE A MIXTURE.—If any person produces a mixture described in section 6426 in such person’s trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such mixture.

“(2) USED AS FUEL.—If alcohol (as defined in section 40A(d)(1)) or biodiesel (as defined in section 40A(d)(2)) which is not in a mixture described in section 6426—

“(A) is used by any person as a fuel in a trade or business, or

“(B) is sold by any person at retail to another person and placed in the fuel tank of such person’s vehicle,

the Secretary shall pay (without interest) to such person an amount equal to the alcohol credit (as determined under section 40(b)(2)) or the biodiesel credit (as determined under section 40A(b)(2)) with respect to such fuel.

“(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any mixture with respect to which an amount is allowed as a credit under section 6426.

“(4) TERMINATION.—This subsection shall not apply with respect to—

“(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) or alcohol (as so defined) sold or used after December 31, 2010, and

“(B) any biodiesel mixture (as defined in section 6426(c)(3)) or biodiesel (as so defined) or agri-biodiesel (as so defined) sold or used after December 31, 2006.”.

(10) Section 6427(i)(3) is amended—

(A) by striking “subsection (f)” both places it appears in subparagraph (A) and inserting “subsection (e)(1)”.

(B) by striking “gasoline, diesel fuel, or kerosene used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))” in subparagraph (A) and inserting “a mixture described in section 6426”.

(C) by adding at the end of subparagraph (A) the following new flush sentence: “In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).”.

(D) by striking “subsection (f)(1)” in subparagraph (B) and inserting “subsection (e)(1)”.

(E) by striking “20 days of the date of the filing of such claim” in subparagraph (B) and inserting “45 days of the date of the filing of such claim (20 days in the case of an electronic claim)”, and

(F) by striking “alcohol mixture” in the heading and inserting “alcohol fuel and biodiesel mixture”.

(11) Section 9503(b)(1) is amended by adding at the end the following new flush sentence: “For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 6426.”.

(12) Section 9503(b)(4), as amended by section 9101 of this Act, is amended—

(A) by adding “or” at the end of subparagraph (C),

(B) by striking the comma at the end of subparagraph (D)(iii) and inserting a period, and

(C) by striking subparagraphs (E) and (F).

(13) The table of sections for subchapter B of chapter 65 is amended by inserting after the item relating to section 6425 the following new item:

“Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.”.

(14) TARIFF SCHEDULE.—Headings 9901.00.50 and 9901.00.52 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007) are each amended in the effective period column by striking “10/1/2007” each place it appears and inserting “1/1/2011”.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to fuel sold or used after September 30, 2004.

(2) REGISTRATION REQUIREMENT.—The amendment made by subsection (b) shall take effect on April 1, 2005.

(3) EXTENSION OF ALCOHOL FUELS CREDIT.—The amendments made by paragraphs (3), (4), and (14) of subsection (c) shall take effect on the date of the enactment of this Act.

(4) REPEAL OF GENERAL FUND RETENTION OF CERTAIN ALCOHOL FUELS TAXES.—The amendments made by subsection (c)(12) shall apply to fuel sold or used after September 30, 2003.

(e) FORMAT FOR FILING.—The Secretary of the Treasury shall describe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (c)(10)(C)) not later than September 30, 2004.

SEC. 9103. BIODIESEL INCOME TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40 the following new section:

“SEC. 40A. BIODIESEL USED AS FUEL.

“(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

“(1) the biodiesel mixture credit, plus

“(2) the biodiesel credit.

“(b) DEFINITION OF BIODIESEL MIXTURE CREDIT AND BIODIESEL CREDIT.—For purposes of this section—

“(1) BIODIESEL MIXTURE CREDIT.—

“(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

“(B) QUALIFIED BIODIESEL MIXTURE.—The term ‘qualified biodiesel mixture’ means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

“(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

“(ii) is used as a fuel by the taxpayer producing such mixture.

“(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

“(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

“(ii) for the taxable year in which such sale or use occurs.

“(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

“(2) BIODIESEL CREDIT.—

“(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

“(i) is used by the taxpayer as a fuel in a trade or business, or

“(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person’s vehicle.

“(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

“(3) CREDIT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting ‘\$1.00’ for ‘50 cents’.

“(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

“(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427(e).

“(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) BIODIESEL.—The term ‘biodiesel’ means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

“(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

“(B) the requirements of the American Society of Testing and Materials D6751.

“(2) AGRI-BIODIESEL.—The term ‘agri-biodiesel’ means biodiesel derived solely from

virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

“(3) MIXTURE OR BIODIESEL NOT USED AS A FUEL, ETC.—

“(A) MIXTURES.—If—

“(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

“(ii) any person—

“(I) separates the biodiesel from the mixture, or

“(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

“(B) BIODIESEL.—If—

“(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

“(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

“(C) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

“(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

“(e) TERMINATION.—This section shall not apply to any sale or use after December 31, 2006.”.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking “plus” at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting “, plus”, and by adding at the end the following new paragraph: “(16) the biodiesel fuels credit determined under section 40A(a).”.

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d) is amended by adding at the end the following new paragraph:

“(11) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40A may be carried back to a taxable year ending on or before September 30, 2004.”.

(2)(A) Section 87 is amended to read as follows:

“SEC. 87. ALCOHOL AND BIODIESEL FUELS CREDITS.

“Gross income includes—

“(1) the amount of the alcohol fuels credit determined with respect to the taxpayer for the taxable year under section 40(a), and

“(2) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40A(a).”.

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter 1 is amended by striking “fuel credit” and inserting “and biodiesel fuels credits”.

(3) Section 196(c) is amended by striking “and” at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting “, and”, and by adding at the end the following new paragraph:

“(11) the biodiesel fuels credit determined under section 40A(a).”.

(4) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 40 the following new item:

"Sec. 40A. Biodiesel used as fuel."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel produced, and sold or used, after September 30, 2004, in taxable years ending after such date.

Subtitle C—Fuel Fraud Prevention

SEC. 9200. SHORT TITLE.

This subtitle may be cited as the "Fuel Fraud Prevention Act of 2004".

PART I—AVIATION JET FUEL

SEC. 9211. TAXATION OF AVIATION-GRADE KEROSENE.

(a) RATE OF TAX.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) in the case of aviation-grade kerosene, 21.8 cents per gallon."

(2) COMMERCIAL AVIATION.—Paragraph (2) of section 4081(a) is amended by adding at the end the following new subparagraph:

"(C) TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon."

(3) NONTAXABLE USES.—

(A) IN GENERAL.—Section 4082 is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

"(e) AVIATION-GRADE KEROSENE.—In the case of aviation-grade kerosene which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft, the rate of tax under section 4081(a)(2)(A)(iv) shall be zero."

(B) CONFORMING AMENDMENTS.—

(i) Subsection (b) of section 4082 is amended by adding at the end the following new flush sentence: "The term 'nontaxable use' does not include the use of aviation-grade kerosene in an aircraft."

(ii) Section 4082(d) is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(4) NONAIRCRAFT USE OF AVIATION-GRADE KEROSENE.—

(A) IN GENERAL.—Subparagraph (B) of section 4041(a)(1) is amended by adding at the end the following new sentence: "This subparagraph shall not apply to aviation-grade kerosene."

(B) CONFORMING AMENDMENT.—The heading for paragraph (1) of section 4041(a) is amended by inserting "and kerosene" after "diesel fuel".

(b) COMMERCIAL AVIATION.—Section 4083 is amended redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

"(b) COMMERCIAL AVIATION.—For purposes of this subpart, the term 'commercial aviation' means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by section 4261 and 4271 by reason of section 4281 or 4282 or by reason of section 4261(h)."

(c) REFUNDS.—

(1) IN GENERAL.—Paragraph (4) of section 6427(l) is amended to read as follows:

"(4) REFUNDS FOR AVIATION-GRADE KEROSENE.—

"(A) NO REFUND OF CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene used in commercial aviation (as defined in section 4083(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4081 as is attributable to—

"(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

"(ii) so much of the rate of tax specified in section 4081(a)(2)(A)(iv) as does not exceed 4.3 cents per gallon.

"(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—With respect to aviation-grade kerosene, if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

"(i) is registered under section 4101, and

"(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1)."

(2) TIME FOR FILING CLAIMS.—Paragraph (4) of section 6427(i) is amended by striking "subsection (1)(5)" and inserting "paragraph (4)(B) or (5) of subsection (1)".

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 6427(l)(2) is amended to read as follows:

"(B) in the case of aviation-grade kerosene—

"(i) any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax, or

"(ii) any use in commercial aviation (within the meaning of section 4083(b))."

(d) REPEAL OF PRIOR TAXATION OF AVIATION FUEL.—

(1) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by striking subpart B and by redesignating subpart C as subpart B.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041(c) is amended to read as follows:

"(c) AVIATION-GRADE KEROSENE.—

"(1) IN GENERAL.—There is hereby imposed a tax upon aviation-grade kerosene—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

"(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

"(2) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this subsection on the sale or use of any aviation-grade kerosene if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

"(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax specified in section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use."

(B) Section 4041(d)(2) is amended by striking "section 4091" and inserting "section 4081".

(C) Section 4041 is amended by striking subsection (e).

(D) Section 4041 is amended by striking subsection (1).

(E) Section 4041(m)(1) is amended to read as follows:

"(1) IN GENERAL.—In the case of the sale or use of any partially exempt methanol or ethanol fuel, the rate of the tax imposed by subsection (a)(2) shall be—

"(A) after September 30, 1997, and before September 30, 2009—

"(i) in the case of fuel none of the alcohol in which consists of ethanol, 9.15 cents per gallon, and

"(ii) in any other case, 11.3 cents per gallon, and

"(B) after September 30, 2009—

"(i) in the case of fuel none of the alcohol in which consists of ethanol, 2.15 cents per gallon, and

"(ii) in any other case, 4.3 cents per gallon."

(F) Sections 4101(a), 4103, 4221(a), and 6206 are each amended by striking ", 4081, or 4091" and inserting "or 4081".

(G) Section 6416(b)(2) is amended by striking "4091 or".

(H) Section 6416(b)(3) is amended by striking "or 4091" each place it appears.

(I) Section 6416(d) is amended by striking "or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)".

(J) Section 6427 is amended by striking subsection (f).

(K) Section 6427(j)(1) is amended by striking ", 4081, and 4091" and inserting "and 4081".

(L)(i) Section 6427(l)(1) is amended to read as follows:

"(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any refund paid to the ultimate vendor under paragraph (4)(B)."

(ii) Paragraph (5)(B) of section 6427(l) is amended by striking "Paragraph (1)(A) shall not apply to kerosene" and inserting "Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)".

(M) Subparagraph (B) of section 6724(d)(1) is amended by striking clause (xv) and by redesignating the succeeding clauses accordingly.

(N) Paragraph (2) of section 6724(d) is amended by striking subparagraph (W) and by redesignating the succeeding subparagraphs accordingly.

(O) Paragraph (1) of section 9502(b) is amended by adding "and" at the end of subparagraph (B) and by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

"(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and".

(P) The last sentence of section 9502(b) is amended to read as follows: "There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B)."

(Q) Subsection (b) of section 9508 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(R) Section 9508(c)(2)(A) is amended by striking "sections 4081 and 4091" and inserting "section 4081".

(S) The table of subparts for part III of subchapter A of chapter 32 is amended to read as follows:

"SUBPART A. MOTOR AND AVIATION FUELS

"SUBPART B. SPECIAL PROVISIONS APPLICABLE TO FUELS TAX".

(T) The heading for subpart A of part III of subchapter A of chapter 32 is amended to read as follows:

"Subpart A—Motor and Aviation Fuels".

(U) The heading for subpart B of part III of subchapter A of chapter 32 is amended to read as follows:

"Subpart B—Special Provisions Applicable to Fuels Tax".

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to aviation-grade kerosene removed, entered, or sold after September 30, 2004.

(f) **FLOOR STOCKS TAX.**—

(1) **IN GENERAL.**—There is hereby imposed on aviation-grade kerosene held on October 1, 2004, by any person a tax equal to—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the tax imposed before such date under section 4091 of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act.

(2) **LIABILITY FOR TAX AND METHOD OF PAYMENT.**—

(A) **LIABILITY FOR TAX.**—The person holding the kerosene on October 1, 2004, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) **METHOD AND TIME FOR PAYMENT.**—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

(3) **TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.**—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

(A) at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

(B) at the rate under section 4081(a)(2)(A)(iv) to the extent of the remainder.

(4) **HELD BY A PERSON.**—For purposes of this section, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(5) **OTHER LAWS APPLICABLE.**—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section.

SEC. 9212. TRANSFER OF CERTAIN AMOUNTS FROM THE AIRPORT AND AIRWAY TRUST FUND TO THE HIGHWAY TRUST FUND TO REFLECT HIGHWAY USE OF JET FUEL.

(a) **IN GENERAL.**—Section 9502(d) is amended by adding at the end the following new paragraph:

"(7) **TRANSFERS FROM THE TRUST FUND TO THE HIGHWAY TRUST FUND.**—

"(A) **IN GENERAL.**—The Secretary shall pay annually from the Airport and Airway Trust Fund into the Highway Trust Fund an amount (as determined by him) equivalent to amounts received in the Airport and Airway Trust Fund which are attributable to fuel that is used primarily for highway transportation purposes.

"(B) **AMOUNTS TRANSFERRED TO MASS TRANSIT ACCOUNT.**—The Secretary shall transfer 11 percent of the amounts paid into the Highway Trust Fund under subparagraph (A) to the Mass Transit Account established under section 9503(e)."

(b) **CONFORMING AMENDMENTS.**—

(1) Subsection (a) of section 9503 is amended—

(A) by striking "appropriated or credited" and inserting "paid, appropriated, or credited", and

(B) by striking "or section 9602(b)" and inserting "section 9502(d)(7), or section 9602(b)".

(2) Subsection (e)(1) of section 9503 is amended by striking "or section 9602(b)" and inserting "section 9502(d)(7), or section 9602(b)".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on October 1, 2004.

PART II—DYED FUEL**SEC. 9221. DYE INJECTION EQUIPMENT.**

(a) **IN GENERAL.**—Section 4082(a)(2) (relating to exemptions for diesel fuel and kerosene) is amended by inserting "by mechanical injection" after "indelibly dyed".

(b) **DYE INJECTOR SECURITY.**—Not later than June 30, 2004, the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a), and such regulations shall include standards for making such systems tamper resistant.

(c) **PENALTY FOR TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.**—

(1) **IN GENERAL.**—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6715 the following new section:

"SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.

"(a) **IMPOSITION OF PENALTY.**—

"(1) **TAMPERING.**—If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, then such person shall pay a penalty in addition to the tax (if any).

"(2) **FAILURE TO MAINTAIN SECURITY REQUIREMENTS.**—If any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 fails to maintain the security standards for such system as established by the Secretary, then such operator shall pay a penalty.

"(b) **AMOUNT OF PENALTY.**—The amount of the penalty under subsection (a) shall be—

"(1) for each violation described in paragraph (1), the greater of—

"(A) \$25,000, or

"(B) \$10 for each gallon of fuel involved, and

"(2) for each—

"(A) failure to maintain security standards described in paragraph (2), \$1,000, and

"(B) failure to correct a violation described in paragraph (2), \$1,000 per day for each day after which such violation was discovered or such person should have reasonably known of such violation.

"(c) **JOINT AND SEVERAL LIABILITY.**—

"(1) **IN GENERAL.**—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

"(2) **AFFILIATED GROUPS.**—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section."

(2) **CLERICAL AMENDMENT.**—The table of sections for part I of subchapter B of chapter 68 is amended by adding after the item related to section 6715 the following new item:

"Sec. 6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems."

(d) **EFFECTIVE DATE.**—The amendments made by subsections (a) and (c) shall take ef-

fect 180 days after the date on which the Secretary issues the regulations described in subsection (b).

SEC. 9222. ELIMINATION OF ADMINISTRATIVE REVIEW FOR TAXABLE USE OF DYED FUEL.

(a) **IN GENERAL.**—Section 6715 is amended by inserting at the end the following new subsection:

"(e) **NO ADMINISTRATIVE APPEAL FOR THIRD AND SUBSEQUENT VIOLATIONS.**—In the case of any person who is found to be subject to the penalty under this section after a chemical analysis of such fuel and who has been penalized under this section at least twice after the date of the enactment of this subsection, no administrative appeal or review shall be allowed with respect to such finding except in the case of a claim regarding—

"(1) fraud or mistake in the chemical analysis, or

"(2) mathematical calculation of the amount of the penalty."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to penalties assessed after the date of the enactment of this Act.

SEC. 9223. PENALTY ON UNTAXED CHEMICALLY ALTERED DYED FUEL MIXTURES.

(a) **IN GENERAL.**—Section 6715(a) (relating to dyed fuel sold for use or used in taxable use, etc.) is amended by striking "or" in paragraph (2), by inserting "or" at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph:

"(4) any person who has knowledge that a dyed fuel which has been altered as described in paragraph (3) sells or holds for sale such fuel for any use which the person knows or has reason to know is not a nontaxable use of such fuel."

(b) **CONFORMING AMENDMENT.**—Section 6715(a)(3) is amended by striking "alters, or attempts to alter," and inserting "alters, chemically or otherwise, or attempts to so alter,".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 9224. TERMINATION OF DYED DIESEL USE BY INTERCITY BUSES.

(a) **IN GENERAL.**—Paragraph (3) of section 4082(b) (relating to nontaxable use) is amended to read as follows:

"(3) any use described in section 4041(a)(1)(C)(iii)(II)."

(b) **ULTIMATE VENDOR REFUND.**—Subsection (b) of section 6427 is amended by adding at the end the following new paragraph:

"(4) **REFUNDS FOR USE OF DIESEL FUEL IN CERTAIN INTERCITY BUSES.**—

"(A) **IN GENERAL.**—With respect to any fuel to which paragraph (2)(A) applies, if the ultimate purchaser of such fuel waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

"(i) is registered under section 4101, and

"(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

"(B) **CREDIT CARDS.**—For purposes of this paragraph, if the sale of such fuel is made by means of a credit card, the person extending credit to the ultimate purchaser shall be deemed to be the ultimate vendor."

(c) **PAYMENT OF REFUNDS.**—Subparagraph (A) of section 6427(i)(4), as amended by section 9211 of this Act, is amended by inserting "subsections (b)(4) and" after "filed under".

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to fuel sold after September 30, 2004.

PART III—MODIFICATION OF INSPECTION OF RECORDS PROVISIONS

SEC. 9231. AUTHORITY TO INSPECT ON-SITE RECORDS.

(a) IN GENERAL.—Section 4083(d)(1)(A) (relating to administrative authority), as amended by section 9211 of this Act, is amended by striking “and” at the end of clause (i) and by inserting after clause (ii) the following new clause:

“(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 9232. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by section 9221 of this Act, is amended by adding at the end the following new section:

“SEC. 6717. REFUSAL OF ENTRY.

“(a) IN GENERAL.—In addition to any other penalty provided by law, any person who refuses to admit entry or refuses to permit any other action by the Secretary authorized by section 4083(d)(1) shall pay a penalty of \$1,000 for such refusal.

“(b) JOINT AND SEVERAL LIABILITY.—

“(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

“(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

“(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 4083(d)(3), as amended by section 9211 of this Act, is amended—

(A) by striking “ENTRY.—The penalty” and inserting: “ENTRY.—

“(A) FORFEITURE.—The penalty”, and

(B) by adding at the end the following new subparagraph:

“(B) ASSESSABLE PENALTY.—For additional assessable penalty for the refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), see section 6717.”.

(2) The table of sections for part I of subchapter B of chapter 68, as amended by section 9221 of this Act, is amended by adding at the end the following new item:

“Sec. 6717. Refusal of entry.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART IV—REGISTRATION AND REPORTING REQUIREMENTS

SEC. 9241. REGISTRATION OF PIPELINE OR VESSEL OPERATORS REQUIRED FOR EXEMPTION OF BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.

(a) IN GENERAL.—Section 4081(a)(1)(B) (relating to exemption for bulk transfers to registered terminals or refineries) is amended—

(1) by inserting “by pipeline or vessel” after “transferred in bulk”, and

(2) by inserting “, the operator of such pipeline or vessel,” after “the taxable fuel”.

(b) CIVIL PENALTY FOR CARRYING TAXABLE FUELS BY NONREGISTERED PIPELINES OR VESSELS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by section 9232 of this Act, is amended by adding at the end the following new section:

“SEC. 6718. CARRYING TAXABLE FUELS BY NON-REGISTERED PIPELINES OR VESSELS.

“(a) IMPOSITION OF PENALTY.—If any person knowingly transfers any taxable fuel (as defined in section 4083(a)(1)) in bulk pursuant to section 4081(a)(1)(B) to an unregistered, such person shall pay a penalty in addition to the tax (if any).

“(b) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the penalty under subsection (a) on each act shall be an amount equal to the greater of—

“(A) \$10,000, or

“(B) \$1 per gallon.

“(2) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, paragraph (1) shall be applied by increasing the amount in paragraph (1) by the product of such amount and the number of prior penalties (if any) imposed by this section on such person (or a related person or any predecessor of such person or related person).

“(c) JOINT AND SEVERAL LIABILITY.—

“(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

“(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

“(d) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.”.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by section 9232 of this Act, is amended by adding at the end the following new item:

“Sec. 6718. Carrying taxable fuels by nonregistered pipelines or vessels.”.

(c) PUBLICATION OF REGISTERED PERSONS.—Not later than June 30, 2004, the Secretary of the Treasury shall publish a list of persons required to be registered under section 4101 of the Internal Revenue Code of 1986.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2004.

SEC. 9242. DISPLAY OF REGISTRATION.

(a) IN GENERAL.—Subsection (a) of section 4101 (relating to registration) is amended—

(1) by striking “Every” and inserting the following:

“(1) IN GENERAL.—Every”, and

(2) by adding at the end the following new paragraph:

“(2) DISPLAY OF REGISTRATION.—Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an electronic identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.”.

(b) CIVIL PENALTY FOR FAILURE TO DISPLAY REGISTRATION.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by section 9241 of this Act, is amended by adding at the end the following new section:

“SEC. 6719. FAILURE TO DISPLAY REGISTRATION OF VESSEL.

“(a) FAILURE TO DISPLAY REGISTRATION.—Every operator of a vessel who fails to display proof of registration pursuant to section 4101(a)(2) shall pay a penalty of \$500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

“(b) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the product of such amount and the number of prior penalties (if any) imposed by this section on such person (or a related person or any predecessor of such person or related person).

“(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.”.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by section 9241 of this Act, is amended by adding at the end the following new item:

“Sec. 6719. Failure to display registration of vessel.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 9243. REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC.

(a) IN GENERAL.—Section 4101(a), as amended by section 9242 of this Act, is amended by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

“(2) REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC.—The Secretary shall require registration by any person which—

“(A) operates a terminal or refinery within a foreign trade zone or within a customs bonded storage facility, or

“(B) holds an inventory position with respect to a taxable fuel in such a terminal.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 9244. PENALTIES FOR FAILURE TO REGISTER AND FAILURE TO REPORT.

(a) INCREASED PENALTY.—Subsection (a) of section 7272 (relating to penalty for failure to register) is amended by inserting “(\$10,000 in the case of a failure to register under section 4101)” after “\$50”.

(b) INCREASED CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4101, false representations of registration status, etc.) is amended by striking “\$5,000” and inserting “\$10,000”.

(c) ASSESSABLE PENALTY FOR FAILURE TO REGISTER.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by section 9242 of this Act, is amended by adding at the end the following new section:

“SEC. 6720. FAILURE TO REGISTER.

“(a) FAILURE TO REGISTER.—Every person who is required to register under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

“(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

“(1) \$10,000 for each initial failure to register, and

“(2) \$1,000 for each day thereafter such person fails to register.

“(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.”.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by section 9242 of this Act, is

amended by adding at the end the following new item:

“Sec. 6720. Failure to register.”.

(d) **ASSESSABLE PENALTY FOR FAILURE TO REPORT.**—

(1) **IN GENERAL.**—Part II of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

“SEC. 6725. FAILURE TO REPORT INFORMATION UNDER SECTION 4101.

“(a) **IN GENERAL.**—In the case of each failure described in subsection (b) by any person with respect to a vessel or facility, such person shall pay a penalty of \$10,000 in addition to the tax (if any).

“(b) **FAILURES SUBJECT TO PENALTY.**—For purposes of subsection (a), the failures described in this subsection are—

“(1) any failure to make a report under section 4101(d) on or before the date prescribed therefor, and

“(2) any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.

“(c) **REASONABLE CAUSE EXCEPTION.**—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.”.

(2) **CLERICAL AMENDMENT.**—The table of sections for part II of subchapter B of chapter 68 is amended by adding at the end the following new item:

“Sec. 6725. Failure to report information under section 4101.”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to failures pending or occurring after September 30, 2004.

SEC. 9245. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

(a) **IN GENERAL.**—Subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new section:

“SEC. 4104. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

“(a) **IN GENERAL.**—The Secretary shall require any person claiming tax benefits—

“(1) under the provisions of section 34, 40, and 40A to file a return at the time such person claims such benefits (in such manner as the Secretary may prescribe), and

“(2) under the provisions of section 4041(b)(2), 6426, or 6427(e) to file a monthly return (in such manner as the Secretary may prescribe).

“(b) **CONTENTS OF RETURN.**—Any return filed under this section shall provide such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

“(c) **ENFORCEMENT.**—With respect to any person described in subsection (a) and subject to registration requirements under this title, rules similar to rules of section 4222(c) shall apply with respect to any requirement under this section.”.

(b) **CONFORMING AMENDMENT.**—The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new item:

“Sec. 4104. Information reporting for persons claiming certain tax benefits.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on October 1, 2004.

SEC. 9246. ELECTRONIC REPORTING.

(a) **IN GENERAL.**—Section 4101(d), as amended by section 9273 of this Act, is amended by adding at the end the following new sentence: “Any person who is required to report under this subsection and who has 25 or more

reportable transactions in a month shall file such report in electronic format.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply on October 1, 2004.

PART V—IMPORTS

SEC. 9251. TAX AT POINT OF ENTRY WHERE IMPORTER NOT REGISTERED.

(a) **TAX AT POINT OF ENTRY WHERE IMPORTER NOT REGISTERED.**—

(1) **IN GENERAL.**—Subpart C of part III of subchapter A of chapter 31, as amended by section 9245 of this Act, is amended by adding at the end the following new section:

“SEC. 4105. TAX AT ENTRY WHERE IMPORTER NOT REGISTERED.

“(a) **IN GENERAL.**—Any tax imposed under this part on any person not registered under section 4101 for the entry of a fuel into the United States shall be imposed at the time and point of entry.

“(b) **ENFORCEMENT OF ASSESSMENT.**—If any person liable for any tax described under subsection (a) has not paid the tax or posted a bond, the Secretary may—

“(1) seize the fuel on which the tax is due, or

“(2) detain any vehicle transporting such fuel,

until such tax is paid or such bond is filed.

“(c) **LEVY OF FUEL.**—If no tax has been paid or no bond has been filed within 5 days from the date the Secretary seized fuel pursuant to subsection (b), the Secretary may sell such fuel as provided under section 6336.”.

(2) **CONFORMING AMENDMENT.**—The table of sections for subpart C of part III of subchapter A of chapter 31 of the Internal Revenue Code of 1986, as amended by section 9245 of this Act, is amended by adding after the last item the following new item:

“Sec. 4105. Tax at entry where importer not registered.”.

(b) **DENIAL OF ENTRY WHERE TAX NOT PAID.**—The Secretary of Homeland Security is authorized to deny entry into the United States of any shipment of a fuel which is taxable under section 4081 of the Internal Revenue Code of 1986 if the person entering such shipment fails to pay the tax imposed under such section or post a bond in accordance with the provisions of section 4105 of such Code.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 9252. RECONCILIATION OF ON-LOADED CARGO TO ENTERED CARGO.

(a) **IN GENERAL.**—Subsection (a) of section 343 of the Trade Act of 2002 is amended by inserting at the end the following new paragraph:

“(4) **IN GENERAL.**—Subject to paragraphs (2) and (3), not later than 1 year after the enactment of this paragraph, the Secretary of Homeland Security, together with the Secretary of the Treasury, shall promulgate regulations providing for the transmission to the Internal Revenue Service, through an electronic data interchange system, of information pertaining to cargo of taxable fuels (as defined in section 4083 of the Internal Revenue Code of 1986) destined for importation into the United States prior to such importation.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the date of the enactment of this Act.

PART VI—MISCELLANEOUS PROVISIONS

SEC. 9261. TAX ON SALE OF DIESEL FUEL WHETHER SUITABLE FOR USE OR NOT IN A DIESEL-POWERED VEHICLE OR TRAIN.

(a) **IN GENERAL.**—Section 4083(a)(3) is amended—

(1) by striking “The term” and inserting the following:

“(A) **IN GENERAL.**—The term”, and

(2) by inserting at the end the following new subparagraph:

“(B) **LIQUID SOLD AS DIESEL FUEL.**—The term ‘diesel fuel’ includes any liquid which is sold as or offered for sale as a fuel in a diesel-powered highway vehicle or a diesel-powered train.”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 40A(b)(1)(B), as amended by section 9103 of this Act, is amended by striking “4083(a)(3)” and inserting “4083(a)(3)(A)”.

(2) Section 6426(c)(3), as added by section 5102 of this Act, is amended by striking “4083(a)(3)” and inserting “4083(a)(3)(A)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 9262. MODIFICATION OF ULTIMATE VENDOR REFUND CLAIMS WITH RESPECT TO FARMING.

(a) **IN GENERAL.**—

(1) **REFUNDS.**—Section 6427(l) is amended by adding at the end the following new paragraph:

“(6) **REGISTERED VENDORS PERMITTED TO ADMINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL FUEL AND KEROSENE SOLD TO FARMERS.**—

“(A) **IN GENERAL.**—In the case of diesel fuel or kerosene used on a farm for farming purposes (within the meaning of section 6420(c)), paragraph (1) shall not apply to the aggregate amount of such diesel fuel or kerosene if such amount does not exceed 500 gallons (as determined under subsection (i)(5)(A)(iii)).

“(B) **PAYMENT TO ULTIMATE VENDOR.**—The amount which would (but for subparagraph (A)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

“(i) is registered under section 4101, and

“(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).”.

(2) **FILING OF CLAIMS.**—Section 6427(i) is amended by inserting at the end the following new paragraph:

“(5) **SPECIAL RULE FOR VENDOR REFUNDS WITH RESPECT TO FARMERS.**—

“(A) **IN GENERAL.**—A claim may be filed under subsection (l)(6) by any person with respect to fuel sold by such person for any period—

“(i) for which \$200 or more (\$100 or more in the case of kerosene) is payable under subsection (l)(6),

“(ii) which is not less than 1 week, and

“(iii) which is for not more than 500 gallons for each farmer for which there is a claim.

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under the preceding sentence.

“(B) **TIME FOR FILING CLAIM.**—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.”.

(3) **CONFORMING AMENDMENTS.**—

(A) Section 6427(l)(5)(A) is amended to read as follows:

“(A) **IN GENERAL.**—Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.”.

(B) The heading for section 6427(l)(5) is amended by striking “farmers and”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to fuels sold for nontaxable use after the date of the enactment of this Act.

SEC. 9263. TAXABLE FUEL REFUNDS FOR CERTAIN ULTIMATE VENDORS.

(a) **IN GENERAL.**—Paragraph (4) of section 6416(a) (relating to abatements, credits, and refunds) is amended to read as follows:

“(4) **REGISTERED ULTIMATE VENDOR TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.**—

“(A) IN GENERAL.—For purposes of this subsection, if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101. For purposes of this subparagraph, if the sale of gasoline is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.

“(B) TIMING OF CLAIMS.—The procedure and timing of any claim under subparagraph (A) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).”

(b) CREDIT CARD PURCHASES OF DIESEL FUEL OR KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Section 6427(l)(5)(C) (relating to nontaxable uses of diesel fuel, kerosene, and aviation fuel), as amended by section 9252 of this Act, is amended by adding at the end the following new sentence: “For purposes of this subparagraph, if the sale of diesel fuel or kerosene is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.”

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 9264. TWO-PARTY EXCHANGES.

(a) IN GENERAL.—Subpart C of part III of subchapter A of chapter 32, as amended by section 9251 of this Act, is amended by adding at the end the following new section:

“SEC. 4106. TWO-PARTY EXCHANGES.

“(a) IN GENERAL.—In a two-party exchange, the delivering person shall not be liable for the tax imposed under of section 4081(a)(1)(A)(ii).

“(b) TWO-PARTY EXCHANGE.—The term ‘two-party exchange’ means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant to a receiving person who is so registered where all of the following occur:

“(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

“(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

“(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across the terminal rack for purposes of reporting the transaction to the Secretary.

“(4) The transaction is the subject of a written contract.”

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32, as amended by section 9251 of this Act, is amended by adding after the last item the following new item: “Sec. 4106. Two-party exchanges.”

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 9265. MODIFICATIONS OF TAX ON USE OF CERTAIN VEHICLES.

(a) NO PRORATION OF TAX UNLESS VEHICLE IS DESTROYED OR STOLEN.—

(1) IN GENERAL.—Section 4481(c) (relating to proration of tax) is amended to read as follows:

“(c) PRORATION OF TAX WHERE VEHICLE SOLD, DESTROYED, OR STOLEN.—

“(1) IN GENERAL.—If in any taxable period a highway motor vehicle is sold, destroyed, or stolen before the first day of the last month in such period and not subsequently used during such taxable period, the tax shall be reckoned proportionately from the first day of the month in such period in which the first use of such highway motor vehicle occurs to and including the last day of the month in which such highway motor vehicle was sold, destroyed, or stolen.

“(2) DESTROYED.—For purposes of paragraph (1), a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild.”

(2) CONFORMING AMENDMENTS.—

(A) Section 6156 (relating to installment payment of tax on use of highway motor vehicles) is repealed.

(B) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6156.

(b) DISPLAY OF TAX CERTIFICATE.—Paragraph (2) of section 4481(d) (relating to one tax liability for period) is amended to read as follows:

“(2) DISPLAY OF TAX CERTIFICATE.—Every taxpayer which pays the tax imposed under this section with respect to a highway motor vehicle shall, not later than 1 month after the due date of the return of tax with respect to each taxable period, receive and display on such vehicle an electronic identification device prescribed by the Secretary.”

(c) ELECTRONIC FILING.—Section 4481, as amended by section 9001 of this Act, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

“(e) ELECTRONIC FILING.—Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.”

(d) REPEAL OF REDUCTION IN TAX FOR CERTAIN TRUCKS.—Section 4483 of the Internal Revenue Code of 1986 is amended by striking subsection (f).

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall take effect on October 1, 2005.

SEC. 9266. DEDICATION OF REVENUES FROM CERTAIN PENALTIES TO THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsection (b) of section 9503 (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes), as amended by section 9001 of this Act, is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

“(5) CERTAIN PENALTIES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties assessed under sections 6715, 6715A, 6717, 6718, 6719, 6720, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).”

(b) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 9503 is amended by inserting “and Penalties” after “Taxes”.

(2) The heading of paragraph (1) of section 9503(b) is amended by striking “In general” and inserting “Certain taxes”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed after October 1, 2004.

SEC. 9267. NONAPPLICATION OF EXPORT EXEMPTION TO DELIVERY OF FUEL TO MOTOR VEHICLES REMOVED FROM UNITED STATES.

(a) IN GENERAL.—Section 4221(d)(2) (defining export) is amended by adding at the end the following new sentence: “Such term does not include the delivery of a taxable fuel (as defined in section 4083(a)(1)) into a fuel tank of a motor vehicle which is shipped or driven out of the United States.”

(b) CONFORMING AMENDMENTS.—

(1) Section 4041(g) (relating to other exemptions) is amended by adding at the end the following new sentence: “Paragraph (3) shall not apply to the sale for delivery of a liquid into a fuel tank of a motor vehicle which is shipped or driven out of the United States.”

(2) Clause (iv) of section 4081(a)(1)(A) (relating to tax on removal, entry, or sale) is amended by inserting “or at a duty-free sales enterprise (as defined in section 555(b)(8) of the Tariff Act of 1930)” after “section 4101”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or deliveries made after the date of the enactment of this Act.

PART VII—TOTAL ACCOUNTABILITY

SEC. 9271. TOTAL ACCOUNTABILITY.

(a) TAXATION OF REPORTABLE LIQUIDS.—

(1) IN GENERAL.—Section 4081(a), as amended by this Act, is amended—

(A) by inserting “or reportable liquid” after “taxable fuel” each place it appears, and

(B) by inserting “such liquid” after “such fuel” in paragraph (1)(A)(iv).

(2) RATE OF TAX.—Subparagraph (A) of section 4081(a)(2), as amended by section 9211 of this Act, is amended by striking “and” at the end of clause (iii), by striking the period at the end of clause (iv) and inserting “, and”, and by adding at the end the following new clause:

“(v) in the case of reportable liquids, the rate determined under section 4083(c)(2).”

(3) EXEMPTION.—Section 4081(a)(1) is amended by adding at the end the following new subparagraph:

“(C) EXEMPTION FOR REGISTERED TRANSFERS OF REPORTABLE LIQUIDS.—The tax imposed by this paragraph shall not apply to any removal, entry, or sale of a reportable liquid if—

“(i) such removal, entry, or sale is to a registered person who certifies that such liquid will not be used as a fuel or in the production of a fuel, or

“(ii) the sale is to the ultimate purchaser of such liquid.”

(4) REPORTABLE LIQUIDS.—Section 4083, as amended by this Act, is amended by redesignating subsections (c) and (d) (as redesignated by section 5211 of this Act) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new section:

“(c) REPORTABLE LIQUID.—For purposes of this subpart—

“(1) IN GENERAL.—The term ‘reportable liquid’ means any petroleum-based liquid other than a taxable fuel.

“(2) TAXATION.—

“(A) GASOLINE BLEND STOCKS AND ADDITIVES.—Gasoline blend stocks and additives which are reportable liquids (as defined in paragraph (1)) shall be subject to the rate of tax under clause (i) of section 4081(a)(2)(A).

“(B) OTHER REPORTABLE LIQUIDS.—Any reportable liquid (as defined in paragraph (1)) not described in subparagraph (A) shall be subject to the rate of tax under clause (iii) of section 4081(a)(2)(A).”

(5) CONFORMING AMENDMENTS.—

(A) Section 4081(e) is amended by inserting “or reportable liquid” after “taxable fuel”.

(B) Section 4083(d) (relating to certain use defined as removal), as redesignated by paragraph (4), is amended by inserting "or reportable liquid" after "taxable fuel".

(C) Section 4083(e)(1) (relating to administrative authority), as redesignated by paragraph (4), is amended—

(i) in subparagraph (A)—

(I) by inserting "or reportable liquid" after "taxable fuel", and

(II) by inserting "or such liquid" after "such fuel" each place it appears, and

(ii) in subparagraph (B), by inserting "or any reportable liquid" after "any taxable fuel".

(D) Section 4101(a)(2), as added by section 5243 of this Act, is amended by inserting "or a reportable liquid" after "taxable fuel".

(E) Section 4101(a)(3), as added by section 5242 of this Act and redesignated by section 5243 of this Act, is amended by inserting "or any reportable liquid" before the period at the end.

(F) Section 4102 is amended by inserting "or any reportable liquid" before the period at the end.

(G)(i) Section 6718, as added by section 5241 of this Act, is amended—

(I) in subsection (a), by inserting "or any reportable liquid (as defined in section 4083(c)(1))" after "section 4083(a)(1)", and

(II) in the heading, by inserting "or reportable liquids" after "taxable fuel".

(ii) The item relating to section 6718 in table of sections for part I of subchapter B of chapter 68, as added by section 5241 of this Act, is amended by inserting "or reportable liquids" after "taxable fuels".

(H) Section 6427(h) is amended to read as follows:

"(h) GASOLINE BLEND STOCKS OR ADDITIVES AND REPORTABLE LIQUIDS.—Except as provided in subsection (k)—

"(1) if any gasoline blend stock or additive (within the meaning of section 4083(a)(2)) is not used by any person to produce gasoline and such person establishes that the ultimate use of such gasoline blend stock or additive is not to produce gasoline, or

"(2) if any reportable liquid (within the meaning of section 4083(c)(1)) is not used by any person to produce a taxable fuel and such person establishes that the ultimate use of such reportable liquid is not to produce a taxable fuel,

then the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such gasoline blend stock or additive or such reportable fuel."

(I) Section 7232, as amended by this Act, is amended by inserting "or reportable liquid (within the meaning of section 4083(c)(1))" after "section 4083)".

(J) Section 343 of the Trade Act of 2002, as amended by section 9252 of this Act, is amended by inserting "and reportable liquids (as defined in section 4083(c)(1) of such Code)" after "Internal Revenue Code of 1986)".

(b) DYED DIESEL.—Section 4082(a) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting "and", and by inserting after paragraph (3) the following new paragraph:

"(4) which is removed, entered, or sold by a person registered under section 4101."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to reportable liquids (as defined in section 4083(c) of the Internal Revenue Code) and fuel sold or used after September 30, 2004.

SEC. 9272. EXCISE TAX REPORTING.

(a) IN GENERAL.—Part II of subchapter A of chapter 61 is amended by adding at the end the following new subpart:

"Subpart E—Excise Tax Reporting

"SEC. 6025. RETURNS RELATING TO FUEL TAXES.

"(a) IN GENERAL.—The Secretary shall require any person liable for the tax imposed under Part III of subchapter A of chapter 32 to file a return of such tax on a monthly basis.

"(b) INFORMATION INCLUDED WITH RETURN.—The Secretary shall require any person filing a return under subsection (a) to provide information regarding any refined product (whether or not such product is taxable under this title) removed from a terminal during the period for which such return applies."

(b) CONFORMING AMENDMENT.—The table of parts for subchapter A of chapter 61 is amended by adding at the end the following new item:

"SUBPART E—EXCISE TAX REPORTING".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after September 30, 2004.

SEC. 9273. INFORMATION REPORTING.

(a) IN GENERAL.—Section 4101(d) is amended by adding at the end the following new flush sentence: "The Secretary shall require reporting under the previous sentence with respect to taxable fuels removed, entered, or transferred from any refinery, pipeline, or vessel which is registered under this section."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply on October 1, 2004.

Subtitle D—Definition of Highway Vehicle

SEC. 9301. EXEMPTION FROM CERTAIN EXCISE TAXES FOR MOBILE MACHINERY.

(a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL.—

(1) IN GENERAL.—Section 4053 (relating to exemptions) is amended by adding at the end the following new paragraph:

"(8) MOBILE MACHINERY.—Any vehicle which consists of a chassis—

"(A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

"(B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

"(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(b) EXEMPTION FROM TAX ON USE OF CERTAIN VEHICLES.—

(1) IN GENERAL.—Section 4483 (relating to exemptions) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) EXEMPTION FOR MOBILE MACHINERY.—No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(8)."

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the day after the date of the enactment of this Act.

(d) EXEMPTION FROM FUEL TAXES.—

(1) IN GENERAL.—Section 6421(e)(2) (defining off-highway business use) is amended by adding at the end the following new subparagraph:

"(C) USES IN MOBILE MACHINERY.—

"(i) IN GENERAL.—The term 'off-highway business use' shall include any use in a vehicle which meets the requirements described in clause (ii).

"(ii) REQUIREMENTS FOR MOBILE MACHINERY.—The requirements described in this clause are—

"(I) the design-based test, and

"(II) the use-based test.

"(iii) DESIGN-BASED TEST.—For purposes of clause (ii)(I), the design-based test is met if the vehicle consists of a chassis—

"(I) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

"(II) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

"(III) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

"(iv) USE-BASED TEST.—For purposes of clause (ii)(II), the use-based test is met if the use of the vehicle on public highways was less than 5,000 miles during the taxpayer's taxable year.

"(v) SPECIAL RULE FOR USE BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—In the case of any use in a vehicle by an organization which is described in section 501(c) and exempt from tax under section 501(a), clause (ii) shall be applied without regard to subclause (II) thereof."

(2) ANNUAL REFUND OF TAX PAID.—Section 6427(i)(2) (relating to exceptions) is amended by adding at the end the following new subparagraph:

"(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used in any off-highway business use described in section 6421(e)(2)(C)."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 9302. MODIFICATION OF DEFINITION OF OFF-HIGHWAY VEHICLE.

(a) IN GENERAL.—Section 7701(a) (relating to definitions) is amended by adding at the end the following new paragraph:

"(48) OFF-HIGHWAY VEHICLES.—

"(A) OFF-HIGHWAY TRANSPORTATION VEHICLES.—

"(i) IN GENERAL.—A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired.

"(ii) DETERMINATION OF VEHICLE'S DESIGN.—For purposes of clause (i), a vehicle's design is determined solely on the basis of its physical characteristics.

"(iii) DETERMINATION OF SUBSTANTIAL LIMITATION OR IMPAIRMENT.—For purposes of

clause (i), in determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

“(B) NONTRANSPORTATION TRAILERS AND SEMITRAILERS.—A trailer or semitrailer shall not be treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an off-highway function at an off-highway site.”.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall take effect on the date of the enactment of this Act.

(2) FUEL TAXES.—With respect to taxes imposed under subchapter B of chapter 31 and part III of subchapter A of chapter 32, the amendment made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.

Subtitle E—Miscellaneous Provisions

SEC. 9401. DEDICATION OF GAS GUZZLER TAX TO HIGHWAY TRUST FUND.

(a) IN GENERAL.—Section 9503(b)(1) (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes), as amended by section 9101 of this Act, is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following new subparagraph:

“(C) section 4064 (relating to gas guzzler tax).”.

(b) UNIFORM APPLICATION OF TAX.—Subparagraph (A) of section 4064(b)(1) (defining automobile) is amended by striking the second sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 9402. MOTOR FUEL TAX ENFORCEMENT ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is established a Motor Fuel Tax Enforcement Advisory Commission (in this section referred to as the “Commission”).

(b) FUNCTION.—The Commission shall—

(1) review motor fuel revenue collections, historical and current;

(2) review the progress of investigations;

(3) develop and review legislative proposals with respect to motor fuel taxes;

(4) monitor the progress of administrative regulation projects relating to motor fuel taxes;

(5) review the results of Federal and State agency cooperative efforts regarding motor fuel taxes;

(6) review the results of Federal interagency cooperative efforts regarding motor fuel taxes; and

(7) evaluate and make recommendations regarding—

(A) the effectiveness of existing Federal enforcement programs regarding motor fuel taxes,

(B) enforcement personnel allocation, and

(C) proposals for regulatory projects, legislation, and funding.

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of the following representatives appointed by the Chairmen and the Ranking Members of the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives:

(A) At least 1 representative from each of the following Federal entities: the Department of Homeland Security, the Department of Transportation—Office of Inspector General, the Federal Highway Administration, the Department of Defense, and the Department of Justice.

(B) At least 1 representative from the Federation of State Tax Administrators.

(C) At least 1 representative from any State department of transportation.

(D) 2 representatives from the highway construction industry.

(E) 5 representatives from industries relating to fuel distribution — refiners (2 representatives), distributors (1 representative), pipelines (1 representative), and terminal operators (2 representatives).

(F) 1 representative from the retail fuel industry.

(G) 2 representatives from the staff of the Committee on Finance of the Senate and 2 representatives from the staff of the Committee on Ways and Means of the House of Representatives.

(2) TERMS.—Members shall be appointed for the life of the Commission.

(3) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(4) TRAVEL EXPENSES.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(5) CHAIRMAN.—The Chairman of the Commission shall be elected by the members.

(d) FUNDING.—Such sums as are necessary shall be available from the Highway Trust fund for the expenses of the Commission.

(e) CONSULTATION.—Upon request of the Commission, representatives of the Department of the Treasury and the Internal Revenue Service shall be available for consultation to assist the Commission in carrying out its duties under this section.

(f) OBTAINING DATA.—The Commission may secure directly from any department or agency of the United States, information (other than information required by any law to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Commission, the head of that department or agency shall furnish such nonconfidential information to the Commission. The Commission shall also gather evidence through such means as it may deem appropriate, including through holding hearings and soliciting comments by means of Federal Register notices.

(g) TERMINATION.—The Commission shall terminate after September 30, 2009.

SEC. 9403. TREASURY STUDY OF FUEL TAX COMPLIANCE AND INTERAGENCY COOPERATION.

(a) IN GENERAL.—Not later than January 31, 2006, the Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report regarding fuel tax enforcement which shall include the information and analysis specified in subsections (b) and (c) and any other information and recommendations the Secretary of the Treasury may deem appropriate.

(b) AUDITS.—With respect to audits conducted by the Internal Revenue Service, the report required under subsection (a) shall include—

(1) the number and geographic distribution of audits conducted annually, by fiscal year, between October 1, 2001, and September 30, 2005;

(2) the total volume involved for each of the taxable fuels covered by such audits and a comparison to the annual production of such fuels;

(3) the staff hours and number of personnel devoted to the audits per year; and

(4) the results of such audits by year, including total tax collected, total penalties collected, and number of referrals for criminal prosecution.

(c) ENFORCEMENT ACTIVITIES.—With respect to enforcement activities, the report required under subsection (a) shall include—

(1) the number and geographic distribution of criminal investigations and prosecutions annually, by fiscal year, between October 1, 2001, and September 30, 2005, and the results of such investigations and prosecutions;

(2) to the extent such investigations and prosecutions involved other agencies, State or Federal, a breakdown by agency of the number of joint investigations involved;

(3) an assessment of the effectiveness of joint action and cooperation between the Department of the Treasury and other Federal and State agencies, including a discussion of the ability and need to share information across agencies for both civil and criminal Federal tax enforcement and enforcement of State or Federal laws relating to fuels;

(4) the staff hours and number of personnel devoted to criminal investigations and prosecutions per year;

(5) the staff hours and number of personnel devoted to administrative collection of fuel taxes; and

(6) the results of administrative collection efforts annually, by fiscal year, between October 1, 2001, and September 30, 2005.

SEC. 9404. TREASURY STUDY OF HIGHWAY FUELS USED BY TRUCKS FOR NON-TRANSPORTATION PURPOSES.

(a) STUDY.—The Secretary of the Treasury shall conduct a study regarding the use of highway motor fuel by trucks that is not used for the propulsion of the vehicle. As part of such study—

(1) in the case of vehicles carrying equipment that is unrelated to the transportation function of the vehicle—

(A) the Secretary of the Treasury, in consultation with the Secretary of Transportation, and with public notice and comment, shall determine the average annual amount of tax paid fuel consumed per vehicle, by type of vehicle, used by the propulsion engine to provide the power to operate the equipment attached to the highway vehicle, and

(B) the Secretary of the Treasury shall review the technical and administrative feasibility of exempting such nonpropulsive use of highway fuels for the highway motor fuels excise taxes,

(2) in the case where non-transportation equipment is run by a separate motor—

(A) the Secretary of the Treasury shall determine the annual average amount of fuel exempted from tax in the use of such equipment by equipment type, and

(B) the Secretary of the Treasury shall review issues of administration and compliance related to the present-law exemption provided for such fuel use, and

(3) the Secretary of the Treasury shall—

(A) estimate the amount of taxable fuel consumed by trucks and the emissions of various pollutants due to the long-term idling of diesel engines, and

(B) determine the cost of reducing such long-term idling through the use of plug-ins at truck stops, auxiliary power units, or other technologies.

(b) REPORT.—Not later than January 1, 2006, the Secretary of the Treasury shall report the findings of the study required under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 9405. TREATMENT OF EMPLOYER-PROVIDED TRANSIT AND VAN POOLING BENEFITS.

(a) IN GENERAL.—Subparagraph (A) of section 132(f)(2) (relating to limitation on exclusion) is amended by striking “\$100” and inserting “\$120”.

(b) INFLATION ADJUSTMENT CONFORMING AMENDMENTS.—The last sentence of section 132(f)(6)(A) (relating to inflation adjustment) is amended—

(1) by striking “2002” and inserting “2005”, and

(2) by striking “2001” and inserting “2004”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 9406. STUDY OF INCENTIVES FOR PRODUCTION OF BIODIESEL.

(a) STUDY.—The General Comptroller of the United States shall conduct a study related to biodiesel fuels and the tax credit for biodiesel fuels established under this Act. Such study shall include—

(1) an assessment on whether such credit provides sufficient assistance to the producers of biodiesel fuel to establish the fuel as a viable energy alternative in the current market place,

(2) an assessment on how long such credit or similar subsidy would have to remain in effect before biodiesel fuel can compete in the market place without such assistance,

(3) a cost-benefit analysis of such credit, comparing the cost of the credit in forgone revenue to the benefits of lower fuel costs for consumers, increased profitability for the biodiesel industry, increased farm income, reduced program outlays from the Department of Agriculture, and the improved environmental conditions through the use of biodiesel fuel, and

(4) an assessment on whether such credit results in any unintended consequences for unrelated industries, including the impact, if any, on the glycerin market.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall report the findings of the study required under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

Subtitle F—Provisions Designed to Curtail Tax Shelters**SEC. 9501. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.**

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

“(1) GENERAL RULES.—

“(A) IN GENERAL.—In applying the economic substance doctrine, the determination of whether a transaction has economic substance shall be made as provided in this paragraph.

“(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—A transaction has economic substance only if—

“(I) the transaction changes in a meaningful way (apart from Federal tax effects and, if there are any Federal tax effects, also apart from any foreign, State, or local tax effects) the taxpayer’s economic position, and

“(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

“(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance

by reason of having a potential for profit unless—

“(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

“(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

“(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

“(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

“(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

“(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

“(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party’s economic income or gain, or

“(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

“(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) ECONOMIC SUBSTANCE DOCTRINE.—The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

“(B) TAX-INDIFFERENT PARTY.—The term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person’s liability under subtitle A.

“(C) SUBSTANTIAL NONTAX PURPOSE.—In applying subclause (II) of paragraph (1)(B)(i), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

“(D) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(E) TREATMENT OF LESSORS.—In applying subclause (I) of paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease, the expected net tax benefits shall not include the benefits of depreciation, or any tax credit, with respect to the leased property and subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this sub-

section shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 13, 2003.

SEC. 9502. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

“(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

“(b) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be \$50,000.

“(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be \$100,000.

“(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

“(A) IN GENERAL.—In the case of a failure under subsection (a) by—

“(i) a large entity, or

“(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

“(B) LARGE ENTITY.—For purposes of subparagraph (A), the term ‘large entity’ means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of \$10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

“(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term ‘high net worth individual’ means, with respect to a reportable transaction, a natural person whose net worth exceeds \$2,000,000 immediately before the transaction.

“(c) DEFINITIONS.—For purposes of this section—

“(1) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

“(2) LISTED TRANSACTION.—Except as provided in regulations, the term ‘listed transaction’ means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

“(d) AUTHORITY TO RESCIND PENALTY.—

“(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

“(A) the violation is with respect to a reportable transaction other than a listed transaction.

“(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title.

“(C) it is shown that the violation is due to an unintentional mistake of fact;

“(D) imposing the penalty would be against equity and good conscience, and

“(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

“(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

“(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

“(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

“(A) the facts and circumstances of the transaction,

“(B) the reasons for the rescission, and

“(C) the amount of the penalty rescinded.

“(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

“(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

“(B) a description of each penalty rescinded under this subsection and the reasons therefor.

“(e) PENALTY REPORTED TO SEC.—In the case of a person—

“(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

“(2) which—

“(A) is required to pay a penalty under this section with respect to a listed transaction,

“(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

“(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

“(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.”.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

“Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns

and statements the due date for which is after the date of the enactment of this Act.

SEC. 9503. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

“(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

“(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘reportable transaction understatement’ means the sum of—

“(A) the product of—

“(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

“(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

“(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

“(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

“(A) any listed transaction, and

“(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

“(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

“(1) IN GENERAL.—Subsection (a) shall be applied by substituting ‘30 percent’ for ‘20 percent’ with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

“(2) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

“(A) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which paragraph (1) applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(B) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

“(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).

“(e) SPECIAL RULES.—

“(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an

understatement (as defined in section 6662(d)(2))—

“(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

“(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

“(2) COORDINATION WITH OTHER PENALTIES.—

“(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

“(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

“(3) SPECIAL RULE FOR AMENDED RETURNS.—

Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

“(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term ‘noneconomic substance transaction understatement’ has the meaning given such term by section 6662B(c).

“(5) CROSS REFERENCE.—For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).”

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence: “The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.”

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

“(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

“(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

“(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

“(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

“(B) there is or was substantial authority for such treatment, and

“(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated

as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

“(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

“(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

“(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

“(ii) relates solely to the taxpayer’s chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

“(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

“(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

“(I) the tax advisor is described in clause (ii), or

“(II) the opinion is described in clause (iii).

“(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

“(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

“(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

“(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

“(IV) as determined under regulations prescribed by the Secretary, has a continuing financial interest with respect to the transaction.

“(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

“(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

“(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

“(III) does not identify and consider all relevant facts, or

“(IV) fails to meet any other requirement as the Secretary may prescribe.”

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting “for Underpayments” after “Exception”.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking “(as defined in section 6662(d)(2)(C)(iii))” in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

“(C) TAX SHELTER.—For purposes of subparagraph (B), the term ‘tax shelter’ means—

“(i) a partnership or other entity,

“(ii) any investment plan or arrangement, or

“(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.”

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking “this part” and inserting “section 6662 or 6663”.

(5) Subsection (b) of section 7525 is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(6)(A) The heading for section 6662 is amended to read as follows:

“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.”

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpayments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 9504. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

“(a) IMPOSITION OF PENALTY.—If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

“(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting ‘20 percent’ for ‘40 percent’ with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

“(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘noneconomic substance transaction understatement’ means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

“(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term ‘noneconomic substance transaction’ means any transaction if—

“(A) there is a lack of economic substance (within the meaning of section 7701(m)(1)) for the transaction giving rise to the claimed tax benefit or the transaction was not respected under section 7701(m)(2), or

“(B) the transaction fails to meet the requirements of any similar rule of law.

“(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

“(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(2) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

“(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this

part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

“(f) CROSS REFERENCES.—

“(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

“(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).”

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

“Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 13, 2003. SEC. 9505. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NON-REPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

“(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

“(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, \$10,000), or

“(ii) \$10,000,000.”

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

“(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or”.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

“(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 9506. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

“(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

“(1) between a federally authorized tax practitioner and—

“(A) any person,

“(B) any director, officer, employee, agent, or representative of the person, or

“(C) any other person holding a capital or profits interest in the person, and

“(2) in connection with the promotion of the direct or indirect participation of the

person in any tax shelter (as defined in section 1274(b)(3)(C))."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 9507. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) **IN GENERAL.**—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

"SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

"(a) **IN GENERAL.**—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

"(1) information identifying and describing the transaction,

"(2) information describing any potential tax benefits expected to result from the transaction, and

"(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

"(b) **DEFINITIONS.**—For purposes of this section—

"(1) **MATERIAL ADVISOR.**—

"(A) **IN GENERAL.**—The term 'material advisor' means any person—

"(i) who provides any material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or carrying out any reportable transaction, and

"(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

"(B) **THRESHOLD AMOUNT.**—For purposes of subparagraph (A), the threshold amount is—

"(i) \$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

"(ii) \$250,000 in any other case.

"(2) **REPORTABLE TRANSACTION.**—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

"(c) **REGULATIONS.**—The Secretary may prescribe regulations which provide—

"(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

"(2) exemptions from the requirements of this section, and

"(3) such rules as may be necessary or appropriate to carry out the purposes of this section."

(b) **CONFORMING AMENDMENTS.**—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

"Sec. 6111. Disclosure of reportable transactions."

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

"SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

"(a) **IN GENERAL.**—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

"(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

"(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction."

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting "written" before "request" in paragraph (1)(A), and

(ii) by striking "shall prescribe" in paragraph (2) and inserting "may prescribe".

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

"Sec. 6112. Material advisors of reportable transactions must keep lists of advisees."

(3)(A) The heading for section 6708 is amended to read as follows:

"SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS."

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

"Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

SEC. 9508. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) **IN GENERAL.**—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

"SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

"(a) **IN GENERAL.**—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

"(1) fails to file such return on or before the date prescribed therefor, or

"(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

"(b) **AMOUNT OF PENALTY.**—

"(1) **IN GENERAL.**—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be \$50,000.

"(2) **LISTED TRANSACTIONS.**—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

"(A) \$200,000, or

"(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the reportable transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

"(c) **RESCISSION AUTHORITY.**—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

"(d) **REPORTABLE AND LISTED TRANSACTIONS.**—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c)."

(b) **CLERICAL AMENDMENT.**—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking "tax shelters" and inserting "reportable transactions".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 9509. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) **IN GENERAL.**—Subsection (a) of section 6708 is amended to read as follows:

"(a) **IMPOSITION OF PENALTY.**—

"(1) **IN GENERAL.**—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of \$10,000 for each day of such failure after such 20th day.

"(2) **REASONABLE CAUSE EXCEPTION.**—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 9510. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) **IN GENERAL.**—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

"(a) **AUTHORITY TO SEEK INJUNCTION.**—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

"(b) **ADJUDICATION AND DECREE.**—In any action under subsection (a), if the court finds—

"(1) that the person has engaged in any specified conduct, and

"(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

"(c) **SPECIFIED CONDUCT.**—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708."

(b) **CONFORMING AMENDMENTS.**—

(1) The heading for section 7408 is amended to read as follows:

"SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS."

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

"Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions."

(c) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 9511. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) **STANDARDS CONFORMED TO TAXPAYER STANDARDS.**—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(2) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(3) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(4) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(5) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(6) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(7) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(8) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(9) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(10) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(11) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(12) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(13) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(14) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(15) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(16) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(17) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(18) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(19) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(20) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(21) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(22) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(23) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(24) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(25) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(26) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(27) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(28) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(29) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(30) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(31) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(32) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(33) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(34) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(35) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(36) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(37) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(38) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(39) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(40) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(41) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(42) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(43) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(44) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(45) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(46) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(47) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(48) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(49) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(50) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(51) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(52) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(53) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(54) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(55) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(56) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(57) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(58) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(59) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(60) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(61) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(62) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(63) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(64) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(65) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(66) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(67) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(68) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(69) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(70) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(71) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(72) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(73) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(74) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(75) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(76) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(77) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(78) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(79) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(80) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(81) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(82) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(83) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(84) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(85) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(86) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(87) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(88) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(89) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(90) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(91) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(92) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(93) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(94) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(95) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(96) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(97) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(98) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(99) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(100) by striking "the taxpayer's" and inserting "the taxpayer's or preparer's";

(1) by striking "realistic possibility of being sustained on its merits" in paragraph (1) and inserting "reasonable belief that the tax treatment in such position was more likely than not the proper treatment",

(2) by striking "or was frivolous" in paragraph (3) and inserting "or there was no reasonable basis for the tax treatment of such position", and

(3) by striking "Unrealistic" in the heading and inserting "Improper".

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking "\$250" in subsection (a) and inserting "\$1,000", and

(2) by striking "\$1,000" in subsection (b) and inserting "\$5,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

SEC. 9512. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

"(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

"(B) AMOUNT OF PENALTY.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$5,000.

"(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

"(I) such violation was due to reasonable cause, and

"(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

"(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

"(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

"(I) \$25,000, or

"(II) the amount (not exceeding \$100,000) determined under subparagraph (D), and

"(ii) subparagraph (B)(ii) shall not apply.

"(D) AMOUNT.—The amount determined under this subparagraph is—

"(i) in the case of a violation involving a transaction, the amount of the transaction, or

"(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 9513. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

"SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

"(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of \$5,000 if—

"(1) such person files what purports to be a return of a tax imposed by this title but which—

"(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

"(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

"(2) the conduct referred to in paragraph (1)—

"(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(B) reflects a desire to delay or impede the administration of Federal tax laws.

"(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

"(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of \$5,000.

"(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

"(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

"(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

"(ii) reflects a desire to delay or impede the administration of Federal tax laws.

"(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

"(i) a request for a hearing under—

"(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

"(II) section 6330 (relating to notice and opportunity for hearing before levy), and

"(ii) an application under—

"(I) section 6159 (relating to agreements for payment of tax liability in installments),

"(II) section 7122 (relating to compromises), or

"(III) section 7811 (relating to taxpayer assistance orders).

"(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

"(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(I).

"(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

"(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law."

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

"(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review."

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking "(A)" and inserting "(A)(i)";

(B) by striking "(B)" and inserting "(ii)";

(C) by striking the period at the end of the first sentence and inserting "; or"; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

"(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A)."

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing".

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking "under subsection (a)(3)(B)" and inserting "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing", and

(2) in subsection (c), by striking "and (e)" and inserting "(e), and (g)".

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

"(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review."

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

"Sec. 6702. Frivolous tax submissions."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 9514. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting ", or censure," after "Department", and

(B) by adding at the end the following new flush sentence: "The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure."

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

"(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement,

or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion."

SEC. 9515. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) **PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.**—Section 6700(a) is amended by adding at the end the following new sentence: "Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 9516. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH LISTED TRANSACTIONS NOT REPORTED.

(a) **IN GENERAL.**—Section 6501(e)(1) (relating to substantial omission of items for income taxes) is amended by adding at the end the following new subparagraph:

"(C) **LISTED TRANSACTIONS.**—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the tax for such taxable year may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the time the return is filed. This subparagraph shall not apply to any taxable year if the time for assessment or beginning the proceeding in court has expired before the time a transaction is treated as a listed transaction under section 6011."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

SEC. 9517. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) **IN GENERAL.**—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) **INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.**—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

"(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

"(2) any noneconomic substance transaction understatement (as defined in section 6662B(c))."

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transactions after the date of the enactment of this Act in taxable years ending after such date.

Subtitle G—Other Provisions

SEC. 9601. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) **IN GENERAL.**—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

"(e) **LIMITATIONS ON BUILT-IN LOSSES.**—

"(1) **LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.**—

"(A) **IN GENERAL.**—If in any transaction described in subsection (a) or (b) there would

(but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

"(B) **PROPERTY DESCRIBED.**—For purposes of subparagraph (A), property is described in this paragraph if—

"(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

"(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

"(C) **IMPORTATION OF NET BUILT-IN LOSS.**—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction."

"(2) **LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.**—

"(A) **IN GENERAL.**—If—

"(i) property is transferred in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

"(ii) the transferee's aggregate adjusted bases of the property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

"(B) **ALLOCATION OF BASIS REDUCTION.**—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

"(C) **EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.**—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer."

(b) **COMPARABLE TREATMENT WHERE LIQUIDATION.**—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

"(1) **IN GENERAL.**—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

"(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

"(B) in any case in which the liquidating corporation is a foreign corporation, the cor-

porate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transactions after the date of the enactment of this Act.

SEC. 9602. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS TRANSFERS.

(a) **TREATMENT OF CONTRIBUTED PROPERTY WITH BUILT-IN LOSS.**—Paragraph (1) of section 704(c) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following:

"(C) if any property so contributed has a built-in loss—

"(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

"(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value immediately after the contribution.

For purposes of subparagraph (C), the term 'built-in loss' means the excess of the adjusted basis of the property (determined without regard to subparagraph (C)(ii)) over its fair market value immediately after the contribution."

(b) **ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY ON TRANSFER OF PARTNERSHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN LOSS.**—

(1) **ADJUSTMENT REQUIRED.**—Subsection (a) of section 743 (relating to optional adjustment to basis of partnership property) is amended by inserting before the period "or unless the partnership has a substantial built-in loss immediately after such transfer".

(2) **ADJUSTMENT.**—Subsection (b) of section 743 is amended by inserting "or with respect to which there is a substantial built-in loss immediately after such transfer" after "section 754 is in effect".

(3) **SUBSTANTIAL BUILT-IN LOSS.**—Section 743 is amended by adding at the end the following new subsection:

"(d) **SUBSTANTIAL BUILT-IN LOSS.**—

"(1) **IN GENERAL.**—For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the transferee partner's proportionate share of the adjusted basis of the partnership property exceeds by more than \$250,000 the basis of such partner's interest in the partnership.

"(2) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes."

(4) **CLERICAL AMENDMENTS.**—

(A) The section heading for section 743 is amended to read as follows:

"SEC. 743. ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BUILT-IN LOSS."

(B) The table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking the item relating to section 743 and inserting the following new item:

"Sec. 743. Adjustment to basis of partnership property where section 754 election or substantial built-in loss."

(C) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL BASIS REDUCTION.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 734 (relating to optional adjustment to basis of undistributed partnership property) is amended by inserting before the period "or unless there is a substantial basis reduction".

(2) ADJUSTMENT.—Subsection (b) of section 734 is amended by inserting "or unless there is a substantial basis reduction" after "section 754 is in effect".

(3) SUBSTANTIAL BASIS REDUCTION.—Section 734 is amended by adding at the end the following new subsection:

"(d) SUBSTANTIAL BASIS REDUCTION.—

"(1) IN GENERAL.—For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds \$250,000.

"(2) REGULATIONS.—For regulations to carry out this subsection, see section 743(d)(2)."

(4) CLERICAL AMENDMENTS.—

(A) The section heading for section 734 is amended to read as follows:

"SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BASIS REDUCTION."

(B) The table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking the item relating to section 734 and inserting the following new item:

"Sec. 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction."

(d) EFFECTIVE DATES.—

(1) SUBSECTION (A).—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

(2) SUBSECTION (B).—The amendments made by subsection (b) shall apply to transfers after the date of the enactment of this Act.

(3) SUBSECTION (C).—The amendments made by subsection (c) shall apply to distributions after the date of the enactment of this Act.

SEC. 9603. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

"(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

"(1) no allocation may be made to stock in a corporation which is a partner in the partnership, and

"(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 9604. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking "REMIC, or FASIT" and inserting "or REMIC".

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking "a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies," and inserting "or a REMIC to which part IV of subchapter M applies,".

(3) Paragraph (1) of section 582(c) is amended by striking "and any regular interest in a FASIT".

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5) Paragraph (5) of section 860G(a) is amended by adding "and" at the end of subparagraph (B), by striking "and" at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(6) Subparagraph (C) of section 1202(e)(4) is amended by striking "REMIC, or FASIT" and inserting "or REMIC".

(7) Subparagraph (C) of section 7701(a)(19) is amended by adding "and" at the end of clause (ix), by striking "and" at the end of clause (x) and inserting a period, and by striking clause (xi).

(8) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(2) EXCEPTION FOR EXISTING FASITS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act.

(B) TRANSFER OF ADDITIONAL ASSETS NOT PERMITTED.—Except as provided in regulations prescribed by the Secretary of the Treasury or the Secretary's delegate, subparagraph (A) shall cease to apply as of the earliest date after the date of the enactment of this Act that any property is transferred to the FASIT.

SEC. 9605. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) is amended by striking "or a related party" and inserting "or equity held by the issuer (or any related party) in any other person".

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 163(l) is amended by striking "or a related party" in the material preceding subparagraph (A) and inserting "or any other person".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after the date of the enactment of this Act.

SEC. 9606. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

"(a) IN GENERAL.—If—

"(1)(A) any person acquires stock in a corporation, or

"(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

"(2) the principal purpose for which such acquisition was made is evasion or avoidance

of Federal income tax by securing the benefit of a deduction, credit, or other allowance, then the Secretary may disallow such deduction, credit, or other allowance."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

SEC. 9607. MODIFICATIONS OF CERTAIN RULES RELATING TO CONTROLLED FOREIGN CORPORATIONS.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive investment company) is amended by adding at the end the following flush sentence: "Such term shall not include any period if there is only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i) of subpart F income of such corporation for such period."

(b) DETERMINATION OF PRO RATA SHARE OF SUBPART F INCOME.—Subsection (a) of section 951 (relating to amounts included in gross income of United States shareholders) is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULES FOR DETERMINING PRO RATA SHARE OF SUBPART F INCOME.—The pro rata share under paragraph (2) shall be determined by disregarding—

"(A) any rights lacking substantial economic effect, and

"(B) stock owned by a shareholder who is a tax-indifferent party (as defined in section 7701(m)(3)) if the amount which would (but for this paragraph) be allocated to such shareholder does not reflect such shareholder's economic share of the earnings and profits of the corporation."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years on controlled foreign corporation beginning after February 13, 2003, and to taxable years of United States shareholder in which or with which such taxable years of controlled foreign corporations end.

SEC. 9608. BASIS FOR DETERMINING LOSS ALWAYS REDUCED BY NONTAXED PORTION OF DIVIDENDS.

(a) IN GENERAL.—Section 1059 (relating to corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) BASIS FOR DETERMINING LOSS ALWAYS REDUCED BY NONTAXED PORTION OF DIVIDENDS.—The basis of stock in a corporation (for purposes of determining loss) shall be reduced by the nontaxed portion of any dividend received with respect to such stock if this section does not otherwise apply to such dividend."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dividends received after the date of the enactment of this Act.

SEC. 9609. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: "In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns."

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation § 1.1502-20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 9610. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking "March 1, 2005" and inserting "March 31, 2010".

Subtitle H—Prevention of Corporate Expatriation to Avoid United States Income Tax

SEC. 9701. PREVENTION OF CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX.

(a) IN GENERAL.—Paragraph (4) of section 7701(a) (defining domestic) is amended to read as follows:

"(4) DOMESTIC.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'domestic' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

"(B) CERTAIN CORPORATIONS TREATED AS DOMESTIC.—

"(i) IN GENERAL.—The acquiring corporation in a corporate expatriation transaction shall be treated as a domestic corporation.

"(ii) CORPORATE EXPATRIATION TRANSACTION.—For purposes of this subparagraph, the term 'corporate expatriation transaction' means any transaction if—

"(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

"(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

"(iii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (ii) shall be applied by substituting '50 percent' for '80 percent' with respect to any nominally foreign corporation if—

"(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

"(II) the stock of the corporation is publicly traded and the principal market for the public trading of such stock is in the United States.

"(iv) PARTNERSHIP TRANSACTIONS.—The term 'corporate expatriation transaction' includes any transaction if—

"(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly properties constituting a trade or business of a domestic partnership,

"(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former partners of the domestic partnership or related foreign partnerships (determined without regard to stock of the acquiring corporation which is sold in a public offering related to the transaction), and

"(III) the acquiring corporation meets the requirements of subclauses (I) and (II) of clause (iii).

"(v) SPECIAL RULES.—For purposes of this subparagraph—

"(I) a series of related transactions shall be treated as 1 transaction, and

"(II) stock held by members of the expanded affiliated group which includes the acquiring corporation shall not be taken into account in determining ownership.

"(vi) OTHER DEFINITIONS.—For purposes of this subparagraph—

"(I) NOMINALLY FOREIGN CORPORATION.—The term 'nominally foreign corporation' means any corporation which would (but for this subparagraph) be treated as a foreign corporation.

"(II) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)).

"(III) RELATED FOREIGN PARTNERSHIP.—A foreign partnership is related to a domestic partnership if they are under common control (within the meaning of section 482), or they shared the same trademark or tradename."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to corporate expatriation transactions completed after September 11, 2001.

(2) SPECIAL RULE.—The amendment made by this section shall also apply to corporate expatriation transactions completed on or before September 11, 2001, but only with respect to taxable years of the acquiring corporation beginning after December 31, 2003.

Mr. FROST. Mr. Speaker, I urge my Members to vote "no" on the previous question, and I yield back the balance of my time.

Mr. DREIER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I rise in strong support of this rule. We have looked into the history of rules that allow for consideration of transportation legislation. And going back to the 102nd Congress we found that 12 amendments were made in order. That was consideration of the ISTE legislation. The TEA 21 legislation had six amendments made in order. And this measure will allow for 23 amendments. And I believe it will give an opportunity for full consideration. Actually, it is probably 23 more amendments than the distinguished chairman of the committee, the gentleman from Alaska (Mr. YOUNG), would have preferred because he is so proud of his work product; but we are going to allow Members the opportunity to have the chance to work their will on this very important measure.

If I had my way, the Federal Government would not be involved in these kinds of transportation decisions. In fact, I think that the notion of being able to completely turn back to the States the revenues that come into the trust fund and allowing States to make these decisions would be in many ways the wisest thing. But I have to face reality. And reality is that the Federal Government is involved in the issue of transportation. I believe for that reason we need to do it in the most responsible way.

This measure authorizes in excess of a quarter of a trillion dollars. A quarter of a trillion dollars. And I believe that as we look at the very important pressing needs out there, this is a level of funding that can allow us to make sure that we do improve our infrastructure.

We know that our infrastructure includes more than highways; it includes a wide range of other areas which have to do with transportation. And when we think about the ability of the United States of America to compete in this global economy, it is important for goods and services to be able to move around this country. It is important for U.S. manufacturers, for workers in this country to be able to get their goods to our Nation's ports so that they can, in fact, move into these new markets which this administration, and many of the rest of us, is working to pry open through new bilateral as well as multilateral trade agreements so that we can get into those markets.

And that is why I believe this is a very, very important measure for all of us. For our security, which is an important aspect of this measure, it is important that we improve our infrastructure here.

Let me say that when I think about that issue, I do have, as a Californian, a particular concern. My State is, in fact, the gateway to the Pacific Rim, Asia, Latin America. And a tremendous percentage of the goods that come to and from this country come through the ports of Long Beach and Los Angeles, as I said in my opening remarks.

And we have a very important issue that needs to be addressed in Southern California, the extension of the Alameda Corridor East, which is an issue that the gentleman from Minnesota (Mr. OBERSTAR) chose to address when he was testifying before the Committee on Rules as an important one.

With these two ports, Los Angeles and Long Beach, it is important now that we have the Alameda Corridor project that takes goods to downtown Los Angeles and brings goods into that Los Angeles area to get to the ports for export. We have to realize that there are areas to the east of Los Angeles that are impacted tremendously because of this new trade.

We have to realize that this also deals very closely with the issue of safety and making sure that in the area that I represent in the Inland Empire, east of downtown Los Angeles, that our emergency vehicles, ambulances, fire, police, that they are able to move as easily as possible through the area.

The Alameda Corridor East project is something that will be very, very greatly benefited by this legislation. And I think it is important that we proceed with that.

There are a wide range of other very important projects which will, as has been pointed out by many Members, create jobs to see this already strong and growing economy grow even stronger.

So I hope that my colleagues will join in a bipartisan way to agreeing to the previous question, making sure that we move ahead with this legislation and pass this measure with a strong bipartisan vote.

Mr. Speaker, I yield back the balance of my time, and move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FROST. Mr. Speaker, I object to the vote on the ground that the quorum is not present and make a point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adopting the resolution.

The vote was taken by electronic device, and there were—yeas 229, nays 194, not voting 10, as follows:

[Roll No. 105]

YEAS—229

Aderholt	Ehlers	Lewis (CA)
Akin	Emerson	Lewis (KY)
Andrews	English	Linder
Bachus	Everett	Lipinski
Baker	Feeney	LoBiondo
Ballenger	Ferguson	Lucas (OK)
Barrett (SC)	Flake	Manzullo
Bartlett (MD)	Foley	McCotter
Barton (TX)	Forbes	McCrery
Bass	Fossella	McHugh
Beauprez	Franks (AZ)	McInnis
Bereuter	Frelinghuysen	McKeon
Biggert	Garrett (NJ)	Mica
Bilirakis	Gerlach	Miller (FL)
Bishop (UT)	Gilchrest	Miller (MI)
Blackburn	Gillmor	Miller, Gary
Blunt	Gingrey	Moran (KS)
Boehler	Goodlatte	Murphy
Boehner	Goss	Musgrave
Bonilla	Granger	Myrick
Bonner	Graves	Nadler
Bono	Green (WI)	Nethercutt
Boozman	Greenwood	Neugebauer
Brady (TX)	Gutierrez	Ney
Brown (SC)	Gutknecht	Northup
Burgess	Hall	Norwood
Burns	Harris	Nunes
Burr	Hart	Nussle
Burton (IN)	Hastings (WA)	Osborne
Buyer	Hayes	Ose
Calvert	Hayworth	Otter
Camp	Hefley	Oxley
Cannon	Hensarling	Pascrell
Cantor	Herger	Paul
Capito	Hobson	Pearce
Capuano	Hoefel	Pence
Carter	Hoekstra	Peterson (MN)
Chabot	Holden	Peterson (PA)
Chocola	Hostettler	Petri
Coble	Houghton	Pickering
Cole	Hunter	Pitts
Collins	Hyde	Platts
Costello	Isakson	Pombo
Cox	Issa	Porter
Crane	Istook	Portman
Crenshaw	Jenkins	Pryce (OH)
Crowley	Johnson (CT)	Putnam
Cubin	Johnson (IL)	Radanovich
Culberson	Johnson, Sam	Ramstad
Cunningham	Keller	Regula
Davis, Jo Ann	Kelly	Rehberg
Davis, Tom	Kennedy (MN)	Renzi
Deal (GA)	King (IA)	Reynolds
DeFazio	King (NY)	Rogers (AL)
Delahunt	Kingston	Rogers (KY)
DeLay	Kirk	Rogers (MI)
DeMint	Kline	Rohrabacher
Diaz-Balart, L.	Knollenberg	Ros-Lehtinen
Diaz-Balart, M.	Kolbe	Royce
Doolittle	LaHood	Ryan (WI)
Dreier	Latham	Ryun (KS)
Duncan	LaTourette	Saxton
Dunn	Leach	Schrock

Sensenbrenner
Shadegg
Shaw
Shays
Shaw
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns

Stenholm
Sullivan
Sweeney
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)

Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—194

Abercrombie
Ackerman
Alexander
Allen
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Castle
Chandler
Clay
Clyburn
Conyers
Cooper
Cramer
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeGette
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gallegly
Gonzalez
Goode
Gordon
Green (TX)

Bradley (NH)
Brown-Waite
Ginny
Gephardt

Grijalva
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Holt
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Klecza
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender
McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Murtha
Napolitano
Neal (MA)

NOT VOTING—10

□ 1417

Messrs. HILL, KILDEE, HASTINGS of Florida, CASTLE, Mrs. NAPOLITANO, Ms. KILPATRICK, Mr. JONES of North Carolina and Mr. WEINER changed their vote from “yea” to “nay.”

Messrs. CROWLEY, CAPUANO, HOEFFEL, WALSH and PASCRELL changed their vote from “nay” to “yea.”

So the previous question was ordered. The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mr. HONDA. Mr. Speaker, on rollcall No. 105, had I been present, I would have voted “nay.”

The SPEAKER pro tempore (Mr. LAHOOD). The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

—
HOUR OF MEETING ON FRIDAY,
APRIL 2, 2004

Mr. DREIER. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 9 a.m. tomorrow Friday, April 2, 2004.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

—
TRANSPORTATION EQUITY ACT: A
LEGACY FOR USERS

The SPEAKER pro tempore. Pursuant to House Resolution 593 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 3550.

□ 1418

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 3550) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes, with Mr. SIMPSON (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose earlier today, all time for initial general debate pursuant to the order of the House of March 30, 2004, had expired.

Pursuant to House Resolution 593, no further general debate, except for the final period contemplated in the previous order of the House, is in order.

The committee amendment in the nature of a substitute printed in the bill, modified by the amendments printed in part A of House Report 108-456, is adopted. The bill, as amended, shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute, as modified, is as follows:

H.R. 3550

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,