United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *109th* CONGRESS, FIRSTSESSION

Vol. 151 WASHINGTON, THURSDAY, JULY 28, 2005 *No. 105—Book II*

House of Representatives

CONFERENCE REPORT ON H.R. 3, SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

Mr. YOUNG of Alaska submitted the following conference report and statement on the bill (H.R. 3) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes:

CONFERENCE REPORT (H. REPT. 109–203)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3), to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' or ''SAFETEA–LU''.

(b) TABLE OF CONTENTS.—

SEC. 2. GENERAL DEFINITIONS.

In this Act, the following definitions apply:

(1) DEPARTMENT.—The term ''Department'' means the Department of Transportation.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Authorization of Programs

SEC. 1101. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) INTERSTATE MAINTENANCE PROGRAM.—For the Interstate maintenance program under section 119 of title 23, United States Code—

(A) $4,883,759,623 for fiscal year 2005;
(B) $4,960,788,917 for fiscal year 2006;
(C) $5,039,058,556 for fiscal year 2007;
(D) $5,118,588,513 for fiscal year 2008; and
(E) $5,199,399,081 for fiscal year 2009.

(2) NATIONAL HIGHWAY SYSTEM.—For the National Highway System under section 103 of such title—

(A) $5,911,200,104 for fiscal year 2005;
(B) $6,005,256,569 for fiscal year 2006;
(C) $6,110,827,556 for fiscal year 2007;
(D) $6,207,937,450 for fiscal year 2008; and
(E) $6,306,611,031 for fiscal year 2009.

(3) BRIDGE PROGRAM.—For the bridge program under section 144 of such title—

(A) $4,187,708,821 for fiscal year 2005;
(B) $4,253,530,131 for fiscal year 2006;
(C) $4,320,411,313 for fiscal year 2007;
(D) $4,388,369,431 for fiscal year 2008; and
(E) $4,457,421,829 for fiscal year 2009.

(4) SURFACE TRANSPORTATION PROGRAM.—For the surface transportation program under section 133 of such title—

(A) $6,860,096,662 for fiscal year 2005;
(B) $6,269,833,394 for fiscal year 2006;
(C) $6,370,469,775 for fiscal year 2007;
(D) $6,472,726,628 for fiscal year 2008; and
(E) $6,576,630,046 for fiscal year 2009.

(5) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—For the congestion mitigation and air quality improvement program under section 149 of such title—

(A) $1,667,255,304 for fiscal year 2005;
(B) $1,694,101,866 for fiscal year 2006;
(C) $1,721,380,718 for fiscal year 2007;
(D) $1,749,098,821 for fiscal year 2008; and
(E) $1,777,263,247 for fiscal year 2009.

(6) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—For the highway safety improvement program under section 148 of such title—

(A) $1,235,810,000 for fiscal year 2006;
(B) $1,255,709,322 for fiscal year 2007;
(C) $1,275,929,067 for fiscal year 2008; and
(D) $1,296,474,396 for fiscal year 2009.

(7) APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM PROGRAM.—For the Appalachian development highway system program under subtitle IV of title 40, United States Code, $470,000,000 for each of fiscal years 2005 through 2009.

(8) RECREATIONAL TRAILS PROGRAM.—For the recreational trails program under section 206 of title 23, United States Code—

(A) $60,000,000 for fiscal year 2005;
(B) $70,000,000 for fiscal year 2006;
(C) $75,000,000 for fiscal year 2007;
(D) $80,000,000 for fiscal year 2008; and
(E) $85,000,000 for fiscal year 2009.

(9) FEDERAL LANDS HIGHWAYS PROGRAM.—

(A) INDIAN RESERVATION ROADS.—For Indian reservation roads under section 204 of such title—

(i) $300,000,000 for fiscal year 2005;
(ii) $330,000,000 for fiscal year 2006;
(iii) $370,000,000 for fiscal year 2007;
(iv) 410,000,000 for fiscal year 2008; and
(v) $450,000,000 for fiscal year 2009.

(B) PARK ROADS AND PARKWAYS.—

(i) IN GENERAL.—For park roads and parkways under section 204 of such title—

(I) $180,000,000 for fiscal year 2005;
(II) $195,000,000 for fiscal year 2006;
(III) $210,000,000 for fiscal year 2007;
(IV) $225,000,000 for fiscal year 2008; and

(V) $240,000,000 for fiscal year 2009.

(ii) MINIMUM ALLOCATION TO CERTAIN STATES.—A State containing more than 50 percent of the total acreage of the National Park System shall receive not less than 3 percent of any funds appropriated under this subparagraph.

(C) REFUGE ROADS.—For refuge roads under section 204 of such title, $29,000,000 for each of fiscal years 2005 through 2009.

(D) PUBLIC LANDS HIGHWAYS.—For Federal lands highways under section 204 of such title—

(i) $260,000,000 for fiscal year 2005;

(ii) $280,000,000 for fiscal year 2006;

(iii) $280,000,000 for fiscal year 2007;

(iv) $290,000,000 for fiscal year 2008; and

(v) $300,000,000 for fiscal year 2009.

(10) NATIONAL CORRIDOR INFRASTRUCTURE IMPROVEMENT PROGRAM.—For the national corridor infrastructure improvement program under section 1302 of this Act—

(A) $194,800,000 for fiscal year 2005;

(B) $389,600,000 for fiscal year 2006;

(C) $487,000,000 for fiscal year 2007;

(D) $487,000,000 for fiscal year 2008; and

(E) $389,600,000 for fiscal year 2009.

(11) COORDINATED BORDER INFRASTRUCTURE PROGRAM.—For the coordinated border infrastructure program under section 1303 of this Act—

(A) $123,000,000 for fiscal year 2005;

(B) $145,000,000 for fiscal year 2006;

(C) $165,000,000 for fiscal year 2007;

(D) $190,000,000 for fiscal year 2008; and

(E) $210,000,000 for fiscal year 2009.

(12) NATIONAL SCENIC BYWAYS PROGRAM.—For the national scenic byways program under section 162 of such title—

(A) $26,500,000 for fiscal year 2005;

(B) $30,000,000 for fiscal year 2006;

(C) $35,000,000 for fiscal year 2007;

(D) $40,000,000 for fiscal year 2008; and

(E) $43,500,000 for fiscal year 2009.

(13) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—For construction of ferry boats and ferry terminal facilities under section 147 of such title—

(A) $38,000,000 for fiscal year 2005;

(B) $55,000,000 for fiscal year 2006;

(C) $60,000,000 for fiscal year 2007;

(D) $65,000,000 for fiscal year 2008; and

(E) $67,000,000 for fiscal year 2009.

(14) PUERTO RICO HIGHWAY PROGRAM.—For the Puerto Rico highway program under section 165 of such title—

(A) $115,000,000 for fiscal year 2005;

(B) $120,000,000 for fiscal year 2006;

(C) $135,000,000 for fiscal year 2007;

(D) $145,000,000 for fiscal year 2008; and

(E) $150,000,000 for fiscal year 2009.

(15) PROJECTS OF NATIONAL AND REGIONAL SIGNIFICANCE PROGRAM.—For the projects of national and regional significance program under section 1301 of this Act—

(A) $177,900,000 for fiscal year 2005;

(B) $355,800,000 for fiscal year 2006;

(C) $444,750,000 for fiscal year 2007;

(D) $444,750,000 for fiscal year 2008; and

(E) $355,800,000 for fiscal year 2009.

(16) HIGH PRIORITY PROJECTS PROGRAM.—For the high priority projects program under section 117 of title 23, United States Code, $2,966,400,000 for each of fiscal years 2005 through 2009.

(17) SAFE ROUTES TO SCHOOL PROGRAM.—For the safe routes to school program under section 1404 of this Act—

(A) $54,000,000 for fiscal year 2005;

(B) $100,000,000 for fiscal year 2006;

(C) $125,000,000 for fiscal year 2007;

(D) $150,000,000 for fiscal year 2008; and

(E) $183,000,000 for fiscal year 2009.

(18) DEPLOYMENT OF MAGNETIC LEVITATION TRANSPORTATION PROJECTS.—For the deployment of magnetic levitation projects under section 1307 of this Act—

(A) $15,000,000 for each of fiscal years 2006 and 2007; and

(B) $30,000,000 for each of fiscal years 2008 and 2009.

(19) NATIONAL CORRIDOR PLANNING AND DEVELOPMENT AND COORDINATED BORDER INFRASTRUCTURE PROGRAMS.—For the national corridor planning and development and coordinated border infrastructure programs under sections 1118 and 1119 of the Transportation Equity Act for the 21st Century (112 Stat. 161, 163) $140,000,000 for fiscal year 2005.

(20) HIGHWAYS FOR LIFE.—For the Highways for LIFE Program under section 1502 of this Act—

(A) $15,000,000 for fiscal year 2006; and

(B) $20,000,000 for each of fiscal years 2007 through 2009.

(21) HIGHWAY USE TAX EVASION PROJECTS.—For highway use tax evasion projects under section 1115 of this Act—

(A) $5,000,000 for fiscal year 2005;

(B) $44,800,000 for fiscal year 2006;

(C) $53,300,000 for fiscal year 2007; and

(D) $12,000,000 for each of fiscal years 2008 and 2009.

(b) DISADVANTAGED BUSINESS ENTERPRISES.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) SMALL BUSINESS CONCERN.—The term ''small business concern'' has the meaning that term has under section 3 of the Small Business Act (15 U.S.C. 632), except that the term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has average annual gross receipts over the preceding 3 fiscal years in excess of $19,570,000, as adjusted annually by the Secretary for inflation.

(B) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term ''socially and economically disadvantaged individuals'' has the meaning that term has under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations issued pursuant to that Act, except that women shall be presumed to be socially and economically disadvantaged individuals for purposes of this subsection.

(2) GENERAL RULE.—Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, III, and V of this Act and section 403 of title 23, United States Code, shall be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.

(3) ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES.—Each State shall annually—

(A) survey and compile a list of the small business concerns referred to in paragraph (1) and the location of the concerns in the State; and

(B) notify the Secretary, in writing, of the percentage of the concerns that are controlled by women, by socially and economically disadvantaged individuals (other than women), and by individuals who are women and are otherwise socially and economically disadvantaged individuals.

(4) UNIFORM CERTIFICATION.—The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern qualifies for purposes of this subsection. The minimum uniform criteria shall include, but not be limited to, on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

(5) COMPLIANCE WITH COURT ORDERS.—Nothing in this subsection limits the eligibility of an entity or person to receive funds made available under titles I, III, and V of this Act and section 403 of title 23, United States Code, if the entity or person is prevented, in whole or in part, from complying with paragraph (1) because a Federal court issues a final order in which the court finds that the requirement of paragraph (1), or the program established under paragraph (1), is unconstitutional.

SEC. 1102. OBLIGATION CEILING.

(a) GENERAL LIMITATION.—Subject to subsections (g) and (h), and notwithstanding any other provision of law, the obligations for Federal-aid highway and highway safety construction programs shall not exceed—

(1) $34,422,400,000 for fiscal year 2005;

(2) $36,032,343,903 for fiscal year 2006;

(3) $38,244,210,516 for fiscal year 2007;

(4) $39,585,075,404 for fiscal year 2008; and

(5) $41,199,970,178 for fiscal year 2009.

(b) EXCEPTIONS.—The limitations under subsection (a) shall not apply to obligations under or for—

(1) section 125 of title 23, United States Code;

(2) section 147 of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 144 note; 92 Stat. 2714);

(3) section 9 of the Federal-Aid Highway Act of 1981 (Public Law 97–134; 95 Stat. 1701);

(4) subsections (b) and (j) of section 131 of the Surface Transportation Assistance Act of 1982 (Public Law 97–424; 96 Stat. 2119);

(5) subsections (b) and (c) of section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100–17; 101 Stat. 198);

(6) sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2027);

(7) section 157 of title 23, United States Code (as in effect on June 8, 1998);

(8) section 105 of title 23, United States Code (as in effect for fiscal years 1998 through 2004, but only in an amount equal to $639,000,000 for each of those fiscal years);

(9) Federal-aid highway programs for which obligation authority was made available under the Transportation Equity Act for the 21st Century (Public Law 105–178; 112 Stat. 107) or subsequent public laws for multiple years or to remain available until used, but only to the extent that the obligation authority has not lapsed or been used;

(10) section 105 of title 23, United States Code (but, for each of fiscal years 2005 through 2009, only in an amount equal to $639,000,000 per fiscal year); and

(11) section 1603 of this Act, to the extent that funds obligated in accordance with that section were not subject to a limitation on obligations at the time at which the funds were initially made available for obligation.

(c) DISTRIBUTION OF OBLIGATION AUTHORITY.—For each of fiscal years 2005 through 2009, the Secretary—

(1) shall not distribute obligation authority provided by subsection (a) for the fiscal year for—

(A) amounts authorized for administrative expenses and programs by section 104(a) of title 23, United States Code;

(B) programs funded from the administrative takedown authorized by section 104(a)(1) of title 23, United States Code (as in effect on the date before the date of enactment of this Act); and

(C) amounts authorized for the highway use tax evasion program and the Bureau of Transportation Statistics;

(2) shall not distribute an amount of obligation authority provided by subsection (a) that is equal to the unobligated balance of amounts made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highway and highway safety programs for previous fiscal years the funds for which are allocated by the Secretary;

(3) shall determine the ratio that—

(A) the obligation authority provided by subsection (a) for the fiscal year, less the aggregate of amounts not distributed under paragraphs (1) and (2); bears to

(B) the total of the sums authorized to be appropriated for the Federal-aid highway and highway safety construction programs (other than sums authorized to be appropriated for provisions of law described in paragraphs (1) through (9) of subsection (b) and sums authorized to be appropriated for section 105 of title 23,

United States Code, equal to the amount referred to in subsection (b)(10) for the fiscal year), less the aggregate of the amounts not distributed under paragraphs (1) and (2);

(4)(A) shall distribute the obligation authority provided by subsection (a) less the aggregate amounts not distributed under paragraphs (1) and (2), for sections 1301, 1302, and 1934 of this Act, sections 117 but individual for each of project numbered 1 through 3676 listed in the table contained in section 1702 of this Act and 144(g) of title 23, United States Code, and section 14501 of title 40, United States Code, and, during fiscal year 2005, amounts for programs, projects, and activities authorized by section 117 of title I of division H of the Consolidated Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 3212), so that the amount of obligation authority available for each of such sections is equal to the amount determined by multiplying—

(i) the ratio determined under paragraph (3); by

(ii) the sums authorized to be appropriated for that section for the fiscal year; and

(B) shall distribute $2,000,000,000 for section 105 of title 23, United States Code;

(5) shall distribute among the States the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2), for each of the programs that are allocated by the Secretary under this Act and title 23, United States Code (other than to programs to which paragraph (1) applies), by multiplying—

(A) the ratio determined under paragraph (3); by

(B) the amounts authorized to be appropriated for each such program for the fiscal year; and

(6) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2) and the amounts distributed under paragraphs (4) and (5), for Federal-aid highway and highway safety construction programs (other than the amounts apportioned for the equity bonus program, but only to the extent that the amounts apportioned for the equity bonus program for the fiscal year are greater than $2,639,000,000, and the Appalachian development highway system program) that are apportioned by the Secretary under this Act and title 23, United States Code, in the ratio that—

(A) amounts authorized to be appropriated for the programs that are apportioned to each State for the fiscal year; bear to

(B) the total of the amounts authorized to be appropriated for the programs that are apportioned to all States for the fiscal year.

(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsection (c), the Secretary shall, after August 1 of each of fiscal years 2005 through 2009—

(1) revise a distribution of the obligation authority made available under subsection (c) if an amount distributed cannot be obligated during that fiscal year; and

(2) redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year, giving priority to those States having large unobligated balances of funds apportioned under sections 104 and 144 of title 23, United States Code.

(e) APPLICABILITY OF OBLIGATION LIMITATIONS TO TRANSPORTATION RESEARCH PROGRAMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), obligation limitations imposed by subsection (a) shall apply to contract authority for transportation research programs carried out under—

(A) chapter 5 of title 23, United States Code; and

(B) title V (research title) of this Act.

(2) EXCEPTION.—Obligation authority made available under paragraph (1) shall—

(A) remain available for a period of 3 fiscal years; and

(B) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(f) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—

(1) IN GENERAL.—Not later than 30 days after the date of distribution of obligation authority under subsection (c) for each of fiscal years 2005 through 2009, the Secretary shall distribute to the States any funds that—

(A) are authorized to be appropriated for the fiscal year for Federal-aid highway programs; and

(B) the Secretary determines will not be allocated to the States, and will not be available for obligation, in the fiscal year due to the imposition of any obligation limitation for the fiscal year.

(2) RATIO.—Funds shall be distributed under paragraph (1) in the same ratio as the distribution of obligation authority under subsection (c)(6).

(3) AVAILABILITY.—Funds distributed under paragraph (1) shall be available for any purpose described in section 133(b) of title 23, United States Code.

(g) SPECIAL LIMITATION CHARACTERISTICS.—Obligation authority distributed for a fiscal year under subsection (c)(4) for the provision specified in subsection (c)(4) shall—

(1) remain available until used for obligation of funds for that provision; and

(2) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(h) ADJUSTMENT IN OBLIGATION LIMIT.—

(1) IN GENERAL.—Subject to the last sentence of section 110(a)(2) of title 23, United States Code, a limitation on obligations imposed by subsection (a) for a fiscal year shall be adjusted by an amount equal to the amount determined in accordance with section 251(b)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)(B)) for the fiscal year.

(2) DISTRIBUTION.—An adjustment under paragraph (1) shall be distributed in accordance with this section.

(i) SPECIAL RULE FOR FISCAL YEAR 2005.—

(1) IN GENERAL.—Obligation authority distributed under subsection (c)(4) for fiscal year 2005 for sections 1301, 1302, and 1934 of this Act and sections 117 and 144(g) of title 23, United States Code, may be used in fiscal year 2005 for purposes of obligation authority distributed under subsection (c)(6).

(2) RESTORATION.—Obligation authority used as described in paragraph (1) shall be restored to the original purpose on the date on which obligation authority is distributed under this section for fiscal year 2006.

(j) HIGH PRIORITY PROJECT FLEXIBILITY.—

(1) IN GENERAL.—Subject to paragraph (2), obligation authority distributed for a fiscal year under subsection (c)(4) for each project numbered 1 through 3676 listed in the table contained in section 1702 of this Act may be obligated for any other project in such section in the same State.

(2) RESTORATION.—Obligation authority used as described in paragraph (1) shall be restored to the original purpose on the date on which obligation authority is distributed under this section for the next fiscal year following obligation under paragraph (1).

(k) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to limit the distribution of obligation authority under subsection (c)(4)(A) for each of the individual projects numbered greater than 3676 listed in the table contained in section 1702 of this Act.

SEC. 1103. APPORTIONMENTS.

(a) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—Section 104(a) of title 23, United States Code, is amended to read as follows:

''(a) ADMINISTRATIVE EXPENSES.—

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

''(A) $353,024,000 for fiscal year 2005;

''(B) $370,613,540 for fiscal year 2006;

''(C) $389,079,500 for fiscal year 2007;

''(D) $408,465,500 for fiscal year 2008; and

''(E) $423,717,460 for fiscal year 2009.

''(2) PURPOSES.—The funds authorized by this subsection shall be used—

''(A) to administer the provisions of law to be financed from appropriations for the Federal-aid highway program and programs authorized under chapter 2; and

''(B) to make transfers of such sums as the Secretary determines to be appropriate to the Appalachian Regional Commission for administrative activities associated with the Appalachian development highway system.

''(3) AVAILABILITY.—The funds made available under paragraph (1) shall remain available until expended.''.

(2) CONFORMING AMENDMENTS.—Section 104 of such title is amended—

(A) in the matter preceding paragraph (1) of subsection (b) by striking ''the deduction authorized by subsection (a) and the set-aside authorized by subsection (f)'' and inserting ''the set-asides authorized by subsections (d) and (f) and section 130(e)'';

(B) in the first sentence of subsection (e)(1) by striking '', and also'' and all that follows through ''this section''; and

(C) in subsection (i) by striking ''deducted'' and inserting ''made available''.

(b) ALASKA HIGHWAY.—Section 104(b)(1)(A) of such title is amended by striking ''$18,800,000 for each of fiscal years 1998 through 2002'' and inserting ''$30,000,000 for each of fiscal years 2005 through 2009''.

(c) NATIONAL HIGHWAY SYSTEM COMPONENT.—Section 104(b)(1)(A) of such title is amended by striking ''$36,400,000 for each fiscal year'' and inserting ''$40,000,000 for each of fiscal years 2005 and 2006 and $50,000,000 for each of fiscal years 2007 through 2009''.

(d) CMAQ APPORTIONMENT.—Section 104(b)(2) of such title is amended—

(1) in subparagraph (B)—

(A) by striking clause (i) and inserting the following:

''(i) 1.0 if, at the time of apportionment, the area is a maintenance area;'';

(B) by striking ''or'' at the end of clause (vi);

(C) by striking the period at the end of clause (vii) and inserting ''; or''; and

(D) by adding at the end the following:

''(viii) 1.0 if, at the time of apportionment, an area is designated as nonattainment for ozone under subpart 1 of part D of title I of such Act (42 U.S.C. 7512 et seq.).''; and

(2) by striking subparagraph (C) and inserting the following:

''(C) ADDITIONAL ADJUSTMENT FOR CARBON MONOXIDE AREAS.—If, in addition to being designated as a nonattainment or maintenance area for ozone as described in section 149(b), any county within the area was also classified under subpart 3 of part D of title I of the Clean Air Act (42 U.S.C. 7512 et seq.) as a nonattainment or maintenance area described in section 149(b) for carbon monoxide, the weighted nonattainment or maintenance area population of the county, as determined under clauses (i) through (vi) or clause (viii) of subparagraph (B), shall be further multiplied by a factor of 1.2.''.

(e) REPORT.—Section 104(j) of such title is amended by striking ''submit to Congress a report'' and inserting ''submit to Congress a report, and also make such report available to the public in a user-friendly format via the Internet,''.

(f) OPERATION LIFESAVER.—Section 104(d) of such title is amended—

(1) by striking paragraph (1) and all that follows through the period at the end of paragraph (2)(A) and inserting the following:

''(1) OPERATION LIFESAVER.—To carry out a public information and education program to help prevent and reduce motor vehicle accidents, injuries, and fatalities and to improve driver performance at railway-highway crossings—

''(A) before making an apportionment under subsection (b)(3) for fiscal year 2005, the Secretary shall set aside $560,000 for such fiscal year; and

''(B) there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $560,000 for each of fiscal years 2006 through 2009.

''(2) RAILWAY-HIGHWAY CROSSING HAZARD ELIMINATION IN HIGH SPEED RAIL CORRIDORS.—

''(A) FUNDING.—To carry out the elimination of hazards at railway-highway crossings—

''(i) before making an apportionment under subsection (b)(3) for fiscal year 2005, the Secretary shall set aside $5,250,000 for such fiscal year; and

''(ii) there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $7,250,000 for fiscal year 2006, $10,000,000 for fiscal year 2007, $12,500,000 for fiscal year 2008, and $15,000,000 for fiscal year 2009.''; and

(2) in paragraph (2)(E)—

(A) by striking ''Not less than $250,000 of such set-aside'' and inserting ''Of such set-aside, not less than $250,000 for fiscal year 2005, $1,000,000 for fiscal year 2006, $1,750,000 for fiscal year 2007, $2,250,000 for fiscal year 2008, and $3,000,000 for fiscal year 2009''; and

(B) by striking ''per fiscal year''.

SEC. 1104. EQUITY BONUS PROGRAM.

(a) IN GENERAL.—Section 105 of title 23, United States Code, is amended to read as follows:

''§ 105. Equity bonus program

''(a) PROGRAM.—

''(1) IN GENERAL.—Subject to subsections (c) and (d), for each of fiscal years 2005 through 2009, the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a percentage of the total apportionments for the fiscal year for the programs specified in paragraph (2) that is less than the percentage calculated under subsection (b).

''(2) SPECIFIC PROGRAMS.—The programs referred to in subsection (a) are—

''(A) the Interstate maintenance program under section 119;

''(B) the national highway system program under section 103;

''(C) the highway bridge replacement and rehabilitation program under section 144;

''(D) the surface transportation program under section 133;

''(E) the highway safety improvement program under section 148;

''(F) the congestion mitigation and air quality improvement program under section 149;

''(G) metropolitan planning programs under section 104(f);

''(H) the high priority projects program under section 117;

''(I) the equity bonus program under this section;

''(J) the Appalachian development highway system program under subtitle IV of title 40;

''(K) the recreational trails program under section 206;

''(L) the safe routes to school program under section 1404 of the SAFETEA–LU;

''(M) the rail-highway grade crossing program under section 130; and

''(N) the coordinated border infrastructure program under section 1303 of the SAFETEA–LU.

''(b) STATE PERCENTAGE.—

''(1) IN GENERAL.—The percentage referred to in subsection (a) for each State shall be—

''(A) for each of fiscal years 2005 and 2006, 90.5 percent, for fiscal year 2007, 91.5 percent, and for each of fiscal years 2008 and 2009, 92 percent, of the quotient obtained by dividing—

''(i) the estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund (other than the Mass Transit Account) in the most recent fiscal year for which data are available; by

''(ii) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) for the fiscal year; or

''(B) for a State with a total population density of less than 40 persons per square mile (as reported in the decennial census conducted by the Federal Government in 2000) and of which at least 1.25 percent of the total acreage is under Federal jurisdiction, based on the report of the General Services Administration entitled 'Federal Real Property Profile' and dated September 30, 2004, a State with a total population of less than 1,000,000 (as reported in that decennial census), a State with a median household income of less than $35,000 (as reported in that decennial census), a State with a fatality rate during 2002 on Interstate highways that is greater than 1 fatality for each 100,000,000 vehicle miles traveled on Interstate highways, or a State with an indexed, State motor fuels excise tax rate higher than 150 percent of the Federal motor fuels excise tax rate as of the date of enactment of the SAFETEA–LU, the greater of—

''(i) the applicable percentage under subparagraph (A); or

''(ii) the average percentage of the State's share of total apportionments for the period of fiscal years 1998 through 2003 for the programs specified in paragraph (2).

''(2) SPECIFIC PROGRAMS.—The programs referred to in paragraph (1)(B)(ii) are (as in effect on the day before the date of enactment of the SAFETEA–LU)—

''(A) the Interstate maintenance program under section 119;

''(B) the national highway system program under section 103;

''(C) the highway bridge replacement and rehabilitation program under section 144;

''(D) the surface transportation program under section 133;

''(E) the recreational trails program under section 206;

''(F) the high priority projects program under section 117;

''(G) the minimum guarantee provided under this section;

''(H) revenue aligned budget authority amounts provided under section 110;

''(I) the congestion mitigation and air quality improvement program under section 149;

''(J) the Appalachian development highway system program under subtitle IV of title 40; and

''(K) metropolitan planning programs under section 104(f).

''(c) SPECIAL RULES.—

''(1) MINIMUM COMBINED ALLOCATION.—For each fiscal year, before making the allocations under subsection (a)(1), the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a combined total of amounts allocated under subsection (a)(1), apportionments for the programs specified in subsection (a)(2), and amounts allocated under this subsection, that is less than the following percentages of the average for fiscal years 1998 through 2003 of the annual apportionments for the State for all programs specified in subsection (b)(2):

''(A) For fiscal year 2005, 117 percent.

''(B) For fiscal year 2006, 118 percent.

''(C) For fiscal year 2007, 119 percent.

''(D) For fiscal year 2008, 120 percent.

''(E) For fiscal year 2009, 121 percent.

''(2) NO NEGATIVE ADJUSTMENT.—No negative adjustment shall be made under subsection (a)(1) to the apportionment of any State.

''(d) TREATMENT OF FUNDS.—

''(1) PROGRAMMATIC DISTRIBUTION.—The Secretary shall apportion the amounts made available under this section that exceed $2,639,000,000 so that the amount apportioned to each State under this paragraph for each program referred to in subparagraphs (A) through (F) of subsection (a)(2) is equal to the amount determined by multiplying the amount to be apportioned under this paragraph by the ratio that—

''(A) the amount of funds apportioned to each State for each program referred to in subparagraphs (A) through (F) of subsection (a)(2) for a fiscal year; bears to

''(B) the total amount of funds apportioned to such State for all such programs for such fiscal year.

''(2) REMAINING DISTRIBUTION.—The Secretary shall administer the remainder of funds made available under this section to the States in accordance with section 104(b)(3), except that paragraphs (1) through (3) of section 133(d) shall not apply to amounts administered pursuant to this paragraph.

''(e) METRO PLANNING SET ASIDE.—Notwithstanding section 104(f), no set aside provided for under that section shall apply to funds allocated under this section.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to carry out this section for each of fiscal years 2005 through 2009.''.

(b) CLERICAL AMENDMENT.—The analysis for subchapter I of chapter 1 of such title is amended by striking the item relating to section 105 and inserting the following:

''105. Equity bonus program.''.

SEC. 1105. REVENUE ALIGNED BUDGET AUTHORITY.

(a) ALLOCATION.—Section 110(a)(1) of title 23, United States Code, is amended—

(1) by striking ''2000'' and inserting ''2007'';

(2) by inserting after ''such fiscal year'' the first place it appears: ''and the succeeding fiscal year''.

(b) REDUCTION.—Section 110(a)(2) of such title is amended—

(1) by striking ''2000'' and inserting ''2007'';

(2) by striking ''October 1 of the succeeding'' and inserting ''October 15 of such'';

(3) by inserting after ''Account)'' the following: ''for such fiscal year and the succeeding fiscal year''; and

(4) by adding at the end the following: ''No reduction under this paragraph and no reduction under section 1102(h), and no reduction under title VIII or any amendment made by title VIII, of the SAFETEA–LU shall be made for a fiscal year if, as of October 1 of such fiscal year the balance in the Highway Trust Fund (other than the Mass Transit Account) exceeds $6,000,000,000.''.

(c) GENERAL DISTRIBUTION.—Section 110(b)(1)(A) of such title is amended—

(1) by striking ''minimum guarantee'' and inserting ''equity bonus''; and

(2) by striking ''Transportation Equity Act for the 21st Century'' and inserting ''SAFETEA–LU''.

(d) ADDITION OF HIGHWAY SAFETY IMPROVEMENT PROGRAM.—Section 110(c) of such title is amended by inserting ''the highway safety improvement program,'' after ''the surface transportation program,''.

(e) TECHNICAL AMENDMENT.—Section 110(b)(1)(A) of such title is amended by striking ''for'' the second place it appears.

(f) SPECIAL RULE.—If the amount available pursuant to section 110 of title 23, United States Code, for fiscal year 2007 is greater than zero, the Secretary shall—

(1) determine the total amount necessary to increase each State's rate of return (as determined under section 105(b)(1)(A) of title 23, United States Code) to 92 percent, excluding amounts provided under this paragraph;

(2) allocate to each State the lesser of—

(A) the amount computed for that State under paragraph (1); or

(B) an amount determined by multiplying the total amount calculated under section 110 of title 23, United States Code, for fiscal year 2007 by the ratio that—

(i) the amount determined for such State under paragraph (1); bears to

(ii) the total amount computed for all States in paragraph (1); and

(3) allocate amounts remaining in excess of the amounts allocated in paragraph (2) to all States in accordance with section 110 of title 23, United States Code.

SEC. 1106. FUTURE INTERSTATE SYSTEM ROUTES.

(a) EXTENSION OF DATE.—Section 103(c)(4)(B)(ii) of title 23, United States Code, is amended by striking ''12'' and inserting ''25''.

(b) REMOVAL OF DESIGNATION.—Section 103(c)(4)(B)(iii) of such title is amended—

(1) in subclause (I) by striking ''in the agreement between the Secretary and the State or States''; and

(2) by adding at the end the following:

''(III) EXISTING AGREEMENTS.—An agreement described in clause (ii) that is entered into before the date of enactment of this subclause shall be deemed to include the 25-year time limitation described in that clause, regardless of any earlier construction completion date in the agreement.''.

SEC. 1107. METROPOLITAN PLANNING.

Section 104(f) of title 23, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) SET-ASIDE.—On October 1 of each fiscal year, the Secretary shall set aside 1.25 percent of the funds authorized to be appropriated for the Interstate maintenance, national highway system, surface transportation, congestion mitigation and air quality improvement, and highway bridge replacement and rehabilitation programs authorized under this title to carry out the requirements of section 134.'';

(2) in paragraph (2) by striking ''per centum'' and inserting ''percent'';

(3) in paragraph (3)—

(A) by striking ''The funds'' and inserting the following:

''(A) IN GENERAL.—The funds''; and

(B) by striking ''These funds'' and all that follows and inserting the following:

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

(4) in paragraph (4)—

(A) by striking ''The distribution'' and inserting the following:

''(A) IN GENERAL.—The distribution''; and

(B) by adding at the end the following:

''(B) REIMBURSEMENT.—Not later than 30 days after the date of receipt by a State of a request for reimbursement of expenditures made by a metropolitan planning organization for carrying out section 134, the State shall reimburse, from funds distributed under this paragraph to the metropolitan planning organization by the State, the metropolitan planning organization for those expenditures.''.

SEC. 1108. TRANSFER OF HIGHWAY AND TRANSIT FUNDS.

Section 104(k) of title 23, United States Code, is amended to read as follows:

''(k) TRANSFER OF HIGHWAY AND TRANSIT FUNDS.—

''(1) TRANSFER OF HIGHWAY FUNDS FOR TRANSIT PROJECTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), funds made available for transit projects or transportation planning under this title may be transferred to and administered by the Secretary in accordance with chapter 53 of title 49.

''(B) NON-FEDERAL SHARE.—The provisions of this title relating to the non-Federal share shall apply to the funds transferred under subparagraph (A).

''(2) TRANSFER OF TRANSIT FUNDS FOR HIGHWAY PROJECTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), funds made available for highway projects or transportation planning under chapter 53 of title 49 may be transferred to and administered by the Secretary in accordance with this title.

''(B) NON-FEDERAL SHARE.—The provisions of chapter 53 of title 49 relating to the non-Federal share shall apply to funds transferred under subparagraph (A).

''(3) TRANSFER OF FUNDS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Secretary may, at the request of a State, transfer funds apportioned or allocated under this title to the State to another State, or to the Federal Highway Administration, for the purpose of funding 1 or more projects that are eligible for assistance with funds so apportioned or allocated.

''(B) APPORTIONMENT.—The transfer shall have no effect on any apportionment of funds to a State under this section or section 105 or 144.

''(C) SURFACE TRANSPORTATION PROGRAM.—Funds that are apportioned or allocated to a State under subsection (b)(3) and attributed to an urbanized area of a State with a population of over 200,000 individuals under section 133(d)(3) may be transferred under this paragraph only if the metropolitan planning organization designated for the area concurs, in writing, with the transfer request.

''(4) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority for funds transferred under this subsection shall be transferred in the same manner and amount as the funds for the projects that are transferred under this subsection.''.

SEC. 1109. RECREATIONAL TRAILS.

(a) RECREATIONAL TRAILS PROGRAM FORMULA.—Section 104(h) of title 23, United States Code, is amended—

(1) in paragraph (1) by striking the first sentence and inserting the following: ''Before apportioning sums authorized to be appropriated to carry out the recreational trails program under section 206, the Secretary shall deduct for administrative, research, technical assistance, and training expenses for such program $840,000 for each of fiscal years 2005 through 2009.''; and

(2) in paragraph (2) by striking ''After'' and all that follows through ''remainder of the sums'' and inserting ''The Secretary shall apportion the sums''.

(b) PERMISSIBLE USES.—Section 206(d)(2) of such title is amended to read as follows:

''(2) PERMISSIBLE USES.—Permissible uses of funds apportioned to a State for a fiscal year to carry out this section include—

''(A) maintenance and restoration of existing recreational trails;

''(B) development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails;

''(C) purchase and lease of recreational trail construction and maintenance equipment;

''(D) construction of new recreational trails, except that, in the case of new recreational trails crossing Federal lands, construction of the trails shall be—

''(i) permissible under other law;

''(ii) necessary and recommended by a statewide comprehensive outdoor recreation plan that is required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–4 et seq.) and that is in effect;

''(iii) approved by the administering agency of the State designated under subsection (c)(1); and

''(iv) approved by each Federal agency having jurisdiction over the affected lands under such terms and conditions as the head of the Federal agency determines to be appropriate, except that the approval shall be contingent on compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);

''(E) acquisition of easements and fee simple title to property for recreational trails or recreational trail corridors;

''(F) assessment of trail conditions for accessibility and maintenance;

''(G) development and dissemination of publications and operation of educational programs to promote safety and environmental protection, (as those objectives relate to 1 or more of the use of recreational trails, supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training), but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year; and

''(H) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year.''.

(c) USE OF APPORTIONMENTS.—Section 206(d)(3) of such title is amended—

(1) by striking subparagraph (C);

(2) by redesignating subparagraph (D) as subparagraph (C); and

(3) in subparagraph (C) (as so redesignated) by striking ''(2)(F)'' and inserting ''(2)(H)''.

(d) FEDERAL SHARE.—Section 206(f) of such title is amended—

(1) in paragraph (1)—

(A) by inserting ''and the Federal share of the administrative costs of a State'' after ''project''; and

(B) by striking ''not exceed 80 percent'' and inserting ''be determined in accordance with section 120(b)'';

(2) in paragraph (2)(A) by striking ''80 percent of'' and inserting ''the amount determined in accordance with section 120(b) for'';

(3) in paragraph (2)(B) by inserting ''sponsoring the project'' after ''Federal agency'';

(4) by striking paragraph (5);

(5) by redesignating paragraph (4) as paragraph (5);

(6) in paragraph (5) (as so redesignated) by striking ''80 percent'' and inserting ''the Federal share as determined in accordance with section 120(b)''; and

(7) by inserting after paragraph (3) the following:

''(4) USE OF RECREATIONAL TRAILS PROGRAM FUNDS TO MATCH OTHER FEDERAL PROGRAM FUNDS.—Notwithstanding any other provision of law, funds made available under this section may be used toward the non-Federal matching share for other Federal program funds that are—

''(A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and

''(B) expended on a project that is eligible for assistance under this section.''.

(e) PLANNING AND ENVIRONMENTAL ASSESSMENT COSTS INCURRED PRIOR TO PROJECT APPROVAL.—Section 206(h)(1) of such title is amended by adding at the end the following:

''(C) PLANNING AND ENVIRONMENTAL ASSESSMENT COSTS INCURRED PRIOR TO PROJECT APPROVAL.—The Secretary may allow preapproval planning and environmental compliance costs to be credited toward the non-Federal share of the cost of a project described in subsection (d)(2) (other than subparagraph (H)) in accordance with subsection (f), limited to costs incurred less than 18 months prior to project approval.''.

(f) ENCOURAGEMENT OF USE OF YOUTH CONSERVATION OR SERVICE CORPS.—The Secretary shall encourage the States to enter into contracts and cooperative agreements with qualified youth conservation or service corps to perform construction and maintenance of recreational trails under section 206 of title 23, United States Code.

SEC. 1110. TEMPORARY TRAFFIC CONTROL DEVICES.

(a) STANDARDS.—Section 109(e) of title 23, United States Code, is amended—

(1) by striking ''(e) No funds'' and inserting the following:

''(e) INSTALLATION OF SAFETY DEVICES.—

''(1) HIGHWAY AND RAILROAD GRADE CROSSINGS AND DRAWBRIDGES.—No funds''; and

(2) by adding at the end the following:

''(2) TEMPORARY TRAFFIC CONTROL DEVICES.—No funds shall be approved for expenditure on any Federal-aid highway, or highway affected under chapter 2, unless proper temporary traffic control devices to improve safety in work zones will be installed and maintained during construction, utility, and maintenance operations on that portion of the highway with respect to which such expenditures are to be made. Installation and maintenance of the devices shall be in accordance with the Manual on Uniform Traffic Control Devices.''.

(b) LETTING OF CONTRACTS.—Section 112 of such title is amended—

(1) by striking subsection (f);

(2) by redesignating subsection (g) as subsection (f); and

(3) by adding at the end the following:

''(g) TEMPORARY TRAFFIC CONTROL DEVICES.—

''(1) ISSUANCE OF REGULATIONS.—The Secretary, after consultation with appropriate Federal and State officials, shall issue regulations establishing the conditions for the appropriate use of, and expenditure of funds for, uniformed law enforcement officers, positive protective measures between workers and motorized traffic, and installation and maintenance of temporary traffic control devices during construction, utility, and maintenance operations.

''(2) EFFECTS OF REGULATIONS.—Based on regulations issued under paragraph (1), a State shall—

''(A) develop separate pay items for the use of uniformed law enforcement officers, positive protective measures between workers and motorized traffic, and installation and maintenance of temporary traffic control devices during construction, utility, and maintenance operations; and

''(B) incorporate such pay items into contract provisions to be included in each contract entered into by the State with respect to a highway project to ensure compliance with section 109(e)(2).

''(3) LIMITATION.—Nothing in the regulations shall prohibit a State from implementing standards that are more stringent than those required under the regulations.

''(4) POSITIVE PROTECTIVE MEASURES DEFINED.—In this subsection, the term 'positive protective measures' means temporary traffic barriers, crash cushions, and other strategies to avoid traffic accidents in work zones, including full road closures.''.

(c) CLARIFICATION OF DATE.—Section 109(g) of such title is amended in the first sentence by striking ''The Secretary'' and all that follows through ''of 1970'' and inserting ''Not later than January 30, 1971, the Secretary shall issue''.

SEC. 1111. SET-ASIDES FOR INTERSTATE DISCRETIONARY PROJECTS.

(a) IN GENERAL.—Section 118(c)(1) of title 23, United States Code, is amended by striking ''$50,000,000'' and all that follows through ''2003'' and inserting ''$100,000,000 for each of fiscal years 2005 through 2009''.

(b) TECHNICAL AMENDMENTS.—

(1) SECTION 116.—Section 116(b) of such title is amended by striking ''highway department'' and inserting ''transportation department''.

(2) SECTION 120.—Section 120(e) of such title is amended in the first sentence by striking ''such system'' and inserting ''such highway''.

(3) SECTION 127.—Section 127(a) of such title is amended by striking ''118(b)(1)'' and inserting ''118(b)(2)''.

(4) BICYCLE AND PEDESTRIAN SAFETY GRANTS.—Section 1212(i) of the Transportation Equity Act for the 21st Century (112 Stat. 196–197) is amended by redesignating subparagraphs (D) and (E) as paragraphs (2) and (3), respectively, and moving such paragraphs 2 ems to the left.

SEC. 1112. EMERGENCY RELIEF.

There are authorized to be appropriated for each fiscal year such sums as may be necessary for allocations by the Secretary described in subsections (a) and (b) of section 125 of title 23, United States Code, if the total of those allocations in such fiscal year are in excess of $100,000,000.

SEC. 1113. SURFACE TRANSPORTATION PROGRAM.

(a) PROGRAM ELIGIBILITY.—Section 133(b) of title 23, United States Code, is amended—

(1) in paragraph (6) by inserting '', including advanced truck stop electrification systems'' before the period at the end; and

(2) by inserting after paragraph (11) the following:

''(12) Projects relating to intersections that—

''(A) have disproportionately high accident rates;

''(B) have high levels of congestion, as evidenced by—

''(i) interrupted traffic flow at the intersection; and

''(ii) a level of service rating that is not better than 'F' during peak travel hours, calculated in accordance with the Highway Capacity Manual issued by the Transportation Research Board; and

''(C) are located on a Federal-aid highway.''.

(b) REPEAL OF SAFETY PROGRAMS SET-ASIDE.—

(1) REPEAL.—Section 133(d)(1) of such title is repealed.

(2) TECHNICAL AMENDMENTS.—Section 133(d) of such title is amended—

(A) in the first sentence of paragraph (3)(A)—

(i) by striking ''subparagraphs (C) and (D)'' and inserting ''subparagraph (C)''; and

(ii) by striking ''80 percent'' and inserting ''90 percent'';

(B) in paragraph (3)(B) by striking ''tobe'' and inserting ''to be''; and

(C) in paragraph (3)—

(i) by striking subparagraph (C);

(ii) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and

(iii) in subparagraph (C) (as redesignated by clause (ii)) by adding a period at the end.

(3) EFFECTIVE DATE.—Paragraph (1) and paragraph (2)(A)(ii) of this subsection shall take effect October 1, 2005.

(c) TRANSPORTATION ENHANCEMENT ACTIVITIES.—Effective October 1, 2005, section 133(d)(2) of such title is amended by striking ''10 percent'' and all that follows through ''section 104(b)(3) for a fiscal year'' and inserting the following: ''In a fiscal year, the greater of 10 percent of the funds apportioned to a State under section 104(b)(3) for such fiscal year, or the amount set aside under this paragraph with respect to the State for fiscal year 2005,''.

(d) OBLIGATION AUTHORITY.—Section 133(f)(1) of such title is amended—

(1) by striking ''1998 through 2000'' and inserting ''2004 through 2006''; and

(2) by striking ''2001 through 2003'' and inserting ''2007 through 2009''.

(e) TECHNICAL CORRECTION.—Effective June 9, 1998, section 1108(e) of the Transportation Equity Act for the 21st Century (112 Stat. 140) is amended by striking ''Section 133'' and inserting ''Section 133(f)''.

SEC. 1114. HIGHWAY BRIDGE PROGRAM.

(a) FINDING AND DECLARATION.—Section 144(a) of title 23, United States Code, is amended to read as follows:

''(a) FINDING AND DECLARATION.—Congress finds and declares that it is in the vital interest of the United States that a highway bridge program be carried out to enable States to improve the condition of their highway bridges over waterways, other topographical barriers, other highways, and railroads through replacement and rehabilitation of bridges that the States and the Secretary determine are structurally deficient or functionally obsolete and through systematic preventive maintenance of bridges.''.

(b) PARTICIPATION.—Section 144(d) of such title is amended to read as follows:

''(d) PARTICIPATION.—

''(1) BRIDGE REPLACEMENT AND REHABILITATION.—On application by a State or States to the Secretary for assistance for a highway bridge that has been determined to be eligible for replacement or rehabilitation under subsection (b) or (c), the Secretary may approve Federal participation in—

''(A) replacing the bridge with a comparable facility; or

''(B) rehabilitating the bridge.

''(2) TYPES OF ASSISTANCE.—On application by a State or States to the Secretary, the Secretary may approve Federal assistance for any of the following activities for a highway bridge that has been determined to be eligible for replacement or rehabilitation under subsection (b) or (c):

''(A) Painting.

''(B) Seismic retrofit.

''(C) Systematic preventive maintenance.

''(D) Installation of scour countermeasures.

''(E) Application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anticing and de-icing compositions.

''(3) BASIS FOR DETERMINATION.—The Secretary shall determine the eligibility of highway bridges for replacement or rehabilitation for each State based on structurally deficient and functionally obsolete highway bridges in the State.

''(4) SPECIAL RULE FOR PREVENTIVE MAINTENANCE.—Notwithstanding any other provision of this subsection, a State may carry out a project under paragraph (2)(B), (2)(C), or (2)(D) for a highway bridge without regard to whether the bridge is eligible for replacement or rehabilitation under this section.''.

(c) APPORTIONMENT OF FUNDS.—Section 144(e) of such title is amended—

(1) in the third sentence by striking ''square footage'' and inserting ''deck area'';

(2) in the fourth sentence by striking ''the total cost of deficient bridges in a State and in all States shall be reduced by the total cost of any highway bridges constructed under subsection (m) in such State, relating to replacement of destroyed bridges and ferryboat services, and,''; and

(3) in the seventh sentence by striking ''for the same period as funds apportioned for projects on the Federal-aid primary system under this title'' and inserting ''for the period specified in section 118(b)(2)''.

(d) OFF-SYSTEM BRIDGES.—Section 144(g)(3) of such title is amended to read as follows:

''(3) OFF-SYSTEM BRIDGES.—

''(A) IN GENERAL.—Not less than 15 percent of the amount apportioned to each State in each of fiscal years 2005 through 2009 shall be expended for projects to replace, rehabilitate, paint, perform systematic preventive maintenance or seismic retrofit of, or apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anticing and de-icing compositions to, or install scour countermeasures to, highway bridges located on public roads, other than those on a Federal-aid highway, or to complete the Warwick Intermodal Station (including the construction of a people mover between the Station and the T.F. Green Airport).

''(B) REDUCTION OF EXPENDITURES.—The Secretary, after consultation with State and local officials, may reduce the requirement for expenditure for bridges not on a Federal-aid highway under subparagraph (A) with respect to the State if the Secretary determines that the State

has inadequate needs to justify the expenditure.''.

(e) BRIDGE SET-ASIDE.—

(1) FISCAL YEAR 2005.—Section 144(g)(1)(C) of such title is amended—

(A) in the subsection heading by striking ''2003''and inserting ''2005''; and

(B) in the first sentence by striking ''2003'' and inserting ''2005''.

(2) FISCAL YEARS 2006 THROUGH 2009.—Effective October 1, 2005, section 144(g) of such title (as amended by subsection (d) of this section) is amended—

(A) by striking the subsection designation and all that follows through the period at the end of paragraph (2) and inserting the following:

''(g) BRIDGE SET-ASIDES.—

''(1) DESIGNATED PROJECTS.—

''(A) IN GENERAL.—Of the amounts authorized to be appropriated to carry out the bridge program under this section for each of the fiscal years 2006 through 2009, all but $100,000,000 shall be apportioned as provided in subsection (e). Such $100,000,000 shall be available as follows:

''(i) $12,500,000 per fiscal year for the Golden Gate Bridge.

''(ii) $18,750,000 per fiscal year for the construction of a bridge joining the Island of Gravina to the community of Ketchikan in Alaska.

''(iii) $12,500,000 per fiscal year to the State of Nevada for construction of a replacement of the federally owned bridge over the Hoover Dam in the Lake Mead National Recreation Area.

''(iv) $12,500,000 per fiscal year to the State of Missouri for construction of a structure over the Mississippi River to connect the city of St. Louis, Missouri, to the State of Illinois.

''(v) $12,500,000 per fiscal year for replacement and reconstruction of State maintained bridges in the State of Oklahoma.

''(vi) $4,500,000 per fiscal year for replacement of the Missisquoi Bay Bridge, Vermont.

''(vii) $8,000,000 per fiscal year for replacement and reconstruction of State-maintained bridges in the State of Vermont.

''(viii) $8,750,000 per fiscal year for design, planning, and right-of-way acquisition for the Interstate Route 74 bridge from Bettendorf, Iowa, to Moline, Illinois.

''(ix) $10,000,000 per fiscal year for replacement and reconstruction of State-maintained bridges in the State of Oregon.

''(B) GRAVINA ACCESS SCORING.—The project described in subparagraph (A)(ii) shall not be counted for purposes of the reduction set forth in the fourth sentence of subsection (e).

''(C) PERIOD OF AVAILABILITY.—Amounts made available to a State under this paragraph shall remain available until expended.'';

(B) by striking paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2).

(f) CONTINUATION OF REPORT; FEDERAL SHARE.—Section 144 of such title is amended by adding at the end the following:

''(r) ANNUAL MATERIALS REPORT ON NEW BRIDGE CONSTRUCTION AND BRIDGE REHABILITATION.—Not later than 1 year after the date of enactment of this subsection, and annually thereafter, the Secretary shall publish in the Federal Register a report describing construction materials used in new Federal-aid bridge construction and bridge rehabilitation projects.

''(s) FEDERAL SHARE.—

''(1) IN GENERAL.—Except as provided under paragraph (2), the Federal share of the cost of a project payable from funds made available to carry out this section shall be determined under section 120(b).

''(2) INTERSTATE SYSTEM.—The Federal share of the cost of a project on the Interstate System payable from funds made available to carry out this section shall be determined under section 120(a).''.

(g) TECHNICAL AMENDMENT.—Section 144(i) of such title is amended by striking ''at the same time'' and all that follows through ''Congress''.

SEC. 1115. HIGHWAY USE TAX EVASION PROJECTS.

(a) ELIGIBLE ACTIVITIES.—

(1) INTERGOVERNMENTAL ENFORCEMENT EFFORTS.—Section 143(b)(2) of title 23, United States Code, is amended by inserting before the period the following: ''; except that of funds so made available for each of fiscal years 2005 through 2009, $2,000,000 shall be available only to carry out intergovernmental enforcement efforts, including research and training''.

(2) CONDITIONS ON FUNDS ALLOCATED TO INTERNAL REVENUE SERVICE.—Section 143(b)(3) of such title is amended by striking ''The'' and inserting ''Except as otherwise provided in this section, the''.

(3) LIMITATION ON USE OF FUNDS.—Section 143(b)(4) of such title is amended—

(A) by striking ''and'' at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting a semicolon; and

(C) by adding at the end the following:

''(H) to support efforts between States and Indian tribes to address issues relating to State motor fuel taxes; and

''(I) to analyze and implement programs to reduce tax evasion associated with foreign imported fuel.''.

(4) REPORTS.—Section 143(b) of such title is amended by adding at the end the following:

''(9) REPORTS.—The Commissioner of the Internal Revenue Service and each State shall submit to the Secretary an annual report that describes the projects, examinations, and criminal investigations funded by and carried out under this section. Such report shall specify the estimated annual yield from such projects, examinations, and criminal investigations.''.

(b) EXCISE FUEL REPORTING SYSTEM.—Section 143(c) of such title is amended to read as follows:

''(c) EXCISE TAX FUEL REPORTING.—

''(1) IN GENERAL.—Not later than 90 days after the date of enactment of the SAFETEA–LU, the Secretary shall enter into a memorandum of understanding with the Commissioner of the Internal Revenue Service for the purposes of—

''(A) the additional development of capabilities needed to support new reporting requirements and databases established under such Act and the American Jobs Creation Act of 2004 (P.L. 108–357), and such other reporting requirements and database development as may be determined by the Secretary, in consultation with the Commissioner of the Internal Revenue Service, to be useful in the enforcement of fuel excise taxes, including provisions recommended by the Fuel Tax Enforcement Advisory Committee;

''(B) the completion of requirements needed for the electronic reporting of fuel transactions from carriers and terminal operators,

''(C) the operation and maintenance of an excise summary terminal activity reporting system and other systems used to provide strategic analyses of domestic and foreign motor fuel distribution trends and patterns,

''(D) the collection, analysis, and sharing of information on fuel distribution and compliance or noncompliance with fuel taxes, and

''(E) the development, completion, operation, and maintenance of an electronic claims filing system and database and an electronic database of heavy vehicle highway use payments.

''(2) ELEMENTS OF MEMORANDUM OF UNDERSTANDING.—The memorandum of understanding shall provide that—

''(A) the Internal Revenue Service shall develop and maintain any system under paragraph (1) through contracts,

''(B) any system under paragraph (1) shall be under the control of the Internal Revenue Service, and

''(C) any system under paragraph (1) shall be made available for use by appropriate State and Federal revenue, tax, and law enforcement authorities, subject to section 6103 of the Internal Revenue Code of 1986.

''(3) FUNDING.—Of the amounts made available to carry out this section for each of fiscal years 2005 through 2009, the Secretary shall make available to the Internal Revenue Service such funds as may be necessary to complete, operate, and maintain the systems under paragraph (1) in accordance with this subsection.

''(4) REPORTS.—Not later than September 30 of each year, the Commissioner of the Internal Revenue Service shall provide reports to the Secretary on the status of the Internal Revenue Service projects funded under this subsection.''.

(c) ALLOCATIONS.—Of the amounts authorized to be appropriated under section 1101(a)(21) of this Act for highway use tax evasion projects for each of the fiscal years 2005 through 2009, the following amounts shall be allocated to the Internal Revenue Service to carry out section 143 of title 23, United States Code:

(1) $5,000,000 for fiscal year 2005.

(2) $44,800,000 for fiscal year 2006.

(3) $53,300,000 for fiscal year 2007.

(4) $12,000,000 for each of fiscal years 2008 and 2009.

SEC. 1116. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM.

(a) APPORTIONMENT.—The Secretary shall apportion funds made available by section 1101(a)(7) of this Act for fiscal years 2005 through 2009 among the States based on the latest available cost to complete estimate for the Appalachian development highway system under section 14501 of title 40, United States Code.

(b) APPLICABILITY OF TITLE 23.—Funds made available by section 1101(a)(7) of this Act for the Appalachian development highway system shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of any project under this section shall be determined in accordance with section 14501 of title 40, United States Code, and such funds shall be available to construct highways and access roads under such section and shall remain available until expended.

(c) USE OF TOLL CREDITS.—Section 120(j)(1) of title 23, United States Code, is amended by inserting ''and the Appalachian development highway system program under section 14501 of title 40'' after ''section 125''.

SEC. 1117. TRANSPORTATION, COMMUNITY, AND SYSTEM PRESERVATION PROGRAM.

(a) ESTABLISHMENT.—In cooperation with appropriate State, tribal, regional, and local governments, the Secretary shall establish a comprehensive program to address the relationships among transportation, community, and system preservation plans and practices and identify private sector-based initiatives to improve such relationships.

(b) PURPOSE.—Through the program under this section, the Secretary shall facilitate the planning, development, and implementation of strategies to integrate transportation, community, and system preservation plans and practices that address 1 or more of the following:

(1) Improve the efficiency of the transportation system of the United States.

(2) Reduce the impacts of transportation on the environment.

(3) Reduce the need for costly future investments in public infrastructure.

(4) Provide efficient access to jobs, services, and centers of trade.

(5) Examine community development patterns and identify strategies to encourage private sector development that achieves the purposes identified in paragraphs (1) through (4).

(c) GENERAL AUTHORITY.—The Secretary shall allocate funds made available to carry out this section to States, metropolitan planning organizations, local governments, and tribal governments to carry out eligible projects to integrate transportation, community, and system preservation plans and practices.

(d) ELIGIBILITY.—A project described in subsection (c) is an eligible project under this section if the project—

(1) is eligible for assistance under title 23 or chapter 53 of title 49, United States Code; or

(2) is to conduct any other activity relating to transportation, community, and system preservation that the Secretary determines to be appropriate, including corridor preservation activities that are necessary to implement 1 or more of the following:

(A) Transit-oriented development plans.

(B) Traffic calming measures.

(C) Other coordinated transportation, community, and system preservation practices.

(e) CRITERIA.—In allocating funds made available to carry out this section, the Secretary shall give priority consideration to applicants that—

(1) have instituted preservation or development plans and programs that—

(A) are coordinated with State and local preservation or development plans, including transit-oriented development plans;

(B) promote cost-effective and strategic investments in transportation infrastructure that minimize adverse impacts on the environment; or

(C) promote innovative private sector strategies;

(2) have instituted other policies to integrate transportation, community, and system preservation practices, such as—

(A) spending policies that direct funds to high-growth areas;

(B) urban growth boundaries to guide metropolitan expansion;

(C) ''green corridors'' programs that provide access to major highway corridors for areas targeted for efficient and compact development; or

(D) other similar programs or policies as determined by the Secretary;

(3) have preservation or development policies that include a mechanism for reducing potential impacts of transportation activities on the environment;

(4) demonstrate a commitment to public and private involvement, including the involvement of nontraditional partners in the project team; and

(5) examine ways to encourage private sector investments that address the purposes of this section.

(f) EQUITABLE DISTRIBUTION.—In allocating funds to carry out this section, the Secretary shall ensure the equitable distribution of funds to a diversity of populations and geographic regions.

(g) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $25,000,000 for fiscal year 2005 and $61,250,000 for each of fiscal years 2006, 2007, 2008, and 2009.

(2) CONTRACT AUTHORITY.—Funds made available to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable, and the Federal share for projects and activities carried out with such funds shall be determined in accordance with section 120(b) of title 23, United States Code.

(h) CONFORMING AMENDMENT.—Section 1221 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 221) is repealed.

SEC. 1118. TERRITORIAL HIGHWAY PROGRAM.

(a) IN GENERAL.—Chapter 2 of title 23, United States Code, is amended by striking section 215 and inserting the following:

''§215. Territorial highway program

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

''(1) PROGRAM.—The term 'program' means the territorial highway program established under subsection (b).

''(2) TERRITORY.—The term 'territory' means the any of the following territories of the United States:

''(A) American Samoa.

''(B) The Commonwealth of the Northern Mariana Islands.

''(C) Guam.

''(D) The United States Virgin Islands.

''(b) PROGRAM.—

''(1) IN GENERAL.—Recognizing the mutual benefits that will accrue to the territories and the United States from the improvement of highways in the territories, the Secretary may carry out a program to assist each government of a territory in the construction and improvement of a system of arterial and collector highways, and necessary inter-island connectors, that is—

''(A) designated by the Governor or chief executive officer of each territory; and

''(B) approved by the Secretary.

''(2) FEDERAL SHARE.—The Federal share of Federal financial assistance provided to territories under this section shall be in accordance with section 120(h).

''(c) TECHNICAL ASSISTANCE.—

''(1) IN GENERAL.—To continue a long-range highway development program, the Secretary may provide technical assistance to the governments of the territories to enable the territories to, on a continuing basis—

''(A) engage in highway planning;

''(B) conduct environmental evaluations;

''(C) administer right-of-way acquisition and relocation assistance programs; and

''(D) design, construct, operate, and maintain a system of arterial and collector highways, including necessary inter-island connectors.

''(2) FORM AND TERMS OF ASSISTANCE.—Technical assistance provided under paragraph (1), and the terms for the sharing of information among territories receiving the technical assistance, shall be included in the agreement required by subsection (e).

''(d) NONAPPLICABILITY OF CERTAIN PROVISIONS.—

''(1) IN GENERAL.—Except to the extent that provisions of chapter 1 are determined by the Secretary to be inconsistent with the needs of the territories and the intent of the program, chapter 1 (other than provisions of chapter 1 relating to the apportionment and allocation of funds) shall apply to funds authorized to be appropriated for the program.

''(2) APPLICABLE PROVISIONS.—The agreement required by subsection (e) for each territory shall identify the sections of chapter 1 that are applicable to that territory and the extent of the applicability of those sections.

''(e) AGREEMENT.—

''(1) IN GENERAL.—Except as provided in paragraph (4), none of the funds made available for the program shall be available for obligation or expenditure with respect to any territory until the chief executive officer of the territory enters into an agreement with the Secretary (not later than 1 year after the date of enactment of SAFETEA–LU), providing that the government of the territory shall—

''(A) implement the program in accordance with applicable provisions of chapter 1 and subsection (d);

''(B) design and construct a system of arterial and collector highways, including necessary inter-island connectors, in accordance with standards that are—

''(i) appropriate for each territory; and

''(ii) approved by the Secretary;

''(C) provide for the maintenance of facilities constructed or operated under this section in a condition to adequately serve the needs of present and future traffic; and

''(D) implement standards for traffic operations and uniform traffic control devices that are approved by the Secretary.

''(2) TECHNICAL ASSISTANCE.—The agreement required by paragraph (1) shall—

''(A) specify the kind of technical assistance to be provided under the program;

''(B) include appropriate provisions regarding information sharing among the territories; and

''(C) delineate the oversight role and responsibilities of the territories and the Secretary.

''(3) REVIEW AND REVISION OF AGREEMENT.—The agreement entered into under paragraph (1) shall be reevaluated and, as necessary, revised, at least every 2 years.

''(4) EXISTING AGREEMENTS.—With respect to an agreement under the section between the Secretary and the chief executive officer of a territory that is in effect as of the date of enactment of the SAFETEA–LU—

''(A) the agreement shall continue in force until replaced by an agreement entered into in accordance with paragraph (1); and

''(B) amounts made available for the program under the existing agreement shall be available for obligation or expenditure so long as the agreement, or the existing agreement entered into under paragraph (1), is in effect.

''(f) PERMISSIBLE USES OF FUNDS.—

''(1) IN GENERAL.—Funds made available for the program may be used only for the following projects and activities carried out in a territory:

''(A) Eligible surface transportation program projects described in section 133(b).

''(B) Cost-effective, preventive maintenance consistent with section 116(d).

''(C) Ferry boats, terminal facilities, and approaches, in accordance with subsections (b) and (c) of section 129.

''(D) Engineering and economic surveys and investigations for the planning, and the financing, of future highway programs.

''(E) Studies of the economy, safety, and convenience of highway use.

''(F) The regulation and equitable taxation of highway use.

''(G) Such research and development as are necessary in connection with the planning, design, and maintenance of the highway system.

''(2) PROHIBITION ON USE OF FUNDS FOR ROUTINE MAINTENANCE.—None of the funds made available for the program shall be obligated or expended for routine maintenance.

''(g) LOCATION OF PROJECTS.—Territorial highway projects (other than those described in paragraphs (1), (3), and (4) of section 133(b)) may not be undertaken on roads functionally classified as local.''.

(b) CONFORMING AMENDMENTS.—

(1) ELIGIBLE PROJECTS.—Section 103(b) of such title is amended—

(A) in the heading for paragraph (6) by striking ''ELIGIBLE'' and inserting ''STATE ELIGIBLE'';

(B) in paragraph (6) by striking subparagraph (P) ; and

(C) by adding at the end the following:

''(7) TERRITORY ELIGIBLE PROJECTS.—Subject to approval by the Secretary, funds set aside for this program under section 104(b)(1) for the National Highway System may be obligated for projects eligible for assistance under the territorial highway program under section 215.''.

(2) FUNDING.—Section 104(b)(1)(A) of such title is amended by striking ''to the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands'' and inserting ''for the territorial highway program under section 215''.

(3) CLERICAL AMENDMENT.—The analysis for chapter 2 of such title is amended by striking the item relating to section 215 and inserting the following:

''215. Territorial highway program.''.

SEC. 1119. FEDERAL LANDS HIGHWAYS.

(a) FEDERAL SHARE PAYABLE.—

(1) IN GENERAL.—Section 120(k) of title 23, United States Code, is amended—

(A) by striking ''Federal-aid highway''; and

(B) by striking ''section 104'' and inserting ''this title or chapter 53 of title 49''.

(2) TECHNICAL REFERENCES.—Section 120(l) of such title is amended by striking ''section 104'' and inserting ''this title or chapter 53 of title 49''.

(b) PAYMENTS TO FEDERAL AGENCIES FOR FEDERAL-AID PROJECTS.—Section 132 of such title is amended—

(1) by striking the first 2 sentences and inserting the following:

''(a) IN GENERAL.—In a case in which a proposed Federal-aid project is to be undertaken by a Federal agency in accordance with an agreement between a State and the Federal agency, the State may—

''(1) direct the Secretary to transfer the funds for the Federal share of the project directly to the Federal agency; or

''(2) make such deposit with, or payment to, the Federal agency as is required to meet the obligation of the State under the agreement for the work undertaken or to be undertaken by the Federal agency.

''(b) REIMBURSEMENT.—On execution with a State of a project agreement described in subsection (a), the Secretary may reimburse the State, using any available funds, for the estimated Federal share under this title of the obligation of the State deposited or paid under subsection (a)(2).''; and

(2) in the last sentence by striking ''Any sums'' and inserting the following:

''(c) RECOVERY AND CREDITING OF FUNDS.—Any sums''.

(c) ALLOCATIONS.—Section 202 of such title is amended—

(1) in subsection (a) by striking ''(a) On October 1'' and all that follows through ''Such allocation'' and inserting the following:

''(a) ALLOCATION BASED ON NEED.—

''(1) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall allocate sums authorized to be appropriated for the fiscal year for forest development roads and trails according to the relative needs of the various national forests and grasslands.

''(2) PLANNING.—The allocation under paragraph (1)'';

(2) in subsection (d)(2)—

(A) by adding at the end the following:

''(E) TRANSFERRED FUNDS.—

''(i) IN GENERAL.—Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under this paragraph, the funds shall be distributed to, and available for immediate use by, the eligible Indian tribes, in accordance with the formula for distribution of funds under the Indian reservation roads program.

''(ii) USE OF FUNDS.—Notwithstanding any other provision of this section, funds available to Indian tribes for Indian reservation roads shall be expended on projects identified in a transportation improvement program approved by the Secretary.''; and

(B) in subsection (d)(3)(A) by striking ''under this title'' and inserting ''under this chapter and section 125(e)''.

(d) FEDERAL LANDS HIGHWAYS PROGRAM.—Section 202 of such title is amended by striking subsection (b) and inserting the following:

''(b) ALLOCATION FOR PUBLIC LANDS HIGHWAYS.—

''(1) PUBLIC LANDS HIGHWAYS.—

''(A) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall allocate 34 percent of the sums authorized to be appropriated for that fiscal year for public lands highways among those States having unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations, on the basis of need in the States, respectively, as determined by the Secretary, on application of the State transportation departments of the respective States.

''(B) PREFERENCE.—In making the allocation under subparagraph (A), the Secretary shall give preference to those projects that are significantly impacted by Federal land and resource management activities that are proposed by a State that contains at least 3 percent of the total public land in the United States.

''(2) FOREST HIGHWAYS.—

''(A) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall allocate 66 percent of the funds authorized to be appropriated for public lands highways for forest highways in accordance with section 134 of the Federal-Aid Highway Act of 1987 (23 U.S.C. 202 note; 101 Stat. 173).

''(B) PUBLIC ACCESS TO AND WITHIN NATIONAL FOREST SYSTEM.—In making the allocation under subparagraph (A), the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through—

''(i) renewable resource and land use planning; and

''(ii) assessments of the impact of that planning on transportation facilities.''.

(e) BIA ADMINISTRATIVE EXPENSES.—Section 202(d)(2) of such title (as amended by subsection (c)(2) of this section) is amended by adding at the end the following:

''(F) ADMINISTRATIVE EXPENSES.—

''(i) IN GENERAL.—Of the funds authorized to be appropriated for Indian reservation roads, $20,000,000 for fiscal year 2006, $22,000,000 for fiscal year 2007, $24,500,000 for fiscal year 2008, and $27,000,000 for fiscal year 2009 may be used by the Secretary of the Interior for program management and oversight and project-related administrative expenses.

''(ii) HEALTH AND SAFETY ASSURANCES.—Notwithstanding any other provision of law, an Indian tribal government may approve plans, specifications, and estimates and commence road and bridge construction with funds made available for Indian reservation roads under the Transportation Equity Act for the 21st Century (Public Law 105–178) and SAFETEA–LU through a contract or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) if the Indian tribal government—

''(I) provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;

''(II) obtains the advance review of the plans and specifications from a State-licensed civil engineer that has certified that the plans and specifications meet or exceed the applicable health and safety standards; and

''(III) provides a copy of the certification under subclause (I) to the Deputy Assistant Secretary for Tribal Government Affairs or the Assistant Secretary for Indian Affairs, as appropriate.''.

(f) NATIONAL TRIBAL TRANSPORTATION FACILITY INVENTORY.—Section 202(d)(2) of such title (as amended by subsection (e)) is amended by adding at the end the following:

''(G) NATIONAL TRIBAL TRANSPORTATION FACILITY INVENTORY.—

''(i) IN GENERAL.—Not later than 2 years after the date of enactment of the SAFETEA–LU, the Secretary, in cooperation with the Secretary of the Interior, shall complete a comprehensive national inventory of transportation facilities that are eligible for assistance under the Indian reservation roads program.

''(ii) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORY.—For purposes of identifying the tribal transportation system and determining the relative transportation needs among Indian tribes, the Secretary shall include, at a minimum, transportation facilities that are eligible for assistance under the Indian reservation roads program that a tribe has requested, including facilities that—

''(I) were included in the Bureau of Indian Affairs system inventory for funding formula purposes in 1992 or any subsequent fiscal year;

''(II) were constructed or reconstructed with funds from the Highway Trust Funds (other than the Mass Transit Account) under the Indian reservation roads program since 1983;

''(III) are owned by an Indian tribal government; or

''(IV) are community streets or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in Oklahoma) in which the majority of residents are American Indians or Alaska Natives; or

''(V) are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal termini, such as airports, harbors, or boat landings.

''(iii) LIMITATION ON PRIMARY ACCESS ROUTES.—For purposes of this subparagraph, a proposed primary access route is the shortest practicable route connecting 2 points of the proposed route.

''(iv) ADDITIONAL FACILITIES.—Nothing in this subparagraph shall preclude the Secretary from including additional transportation facilities that are eligible for funding under the Indian reservation roads program in the inventory used for the national funding allocation if such additional facilities are included in the inventory in a uniform and consistent manner nationally.

''(v) REPORT TO CONGRESS.—Not later than 90 days after the date of completion of the inventory under this subparagraph, the Secretary shall prepare and submit a report to Congress that includes the data gathered and the results of the inventory.''.

(g) INDIAN RESERVATION ROAD BRIDGES.—Section 202(d)(4) of such title is amended—

(1) in subparagraph (B)—

(A) by striking ''(B) RESERVATION.—Of the amounts'' and all that follows through ''to replace,'' and inserting the following:

''(B) FUNDING.—

''(i) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other funds made available for Indian reservation roads for each fiscal year, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $14,000,000 for each of fiscal years 2005 through 2009 to carry out planning, design, engineering, preconstruction, construction, and inspection of projects to replace,''; and

(B) by adding at the end the following:

''(ii) AVAILABILITY.—Funds made available to carry out this subparagraph shall be available for obligation in the same manner as if such funds were apportioned under chapter 1.'';

(2) in subparagraph (C) by striking clause (iii) and inserting the following:

''(iii) be structurally deficient or functionally obsolete; and''; and

(3) by striking subparagraph (D) and inserting the following:

''(D) APPROVAL REQUIREMENT.—

''(i) IN GENERAL.—Subject to clause (ii), on request by an Indian tribe or the Secretary of the Interior, the Secretary may make funds available under this subsection for preliminary engineering for Indian reservation road bridge projects.

''(ii) CONSTRUCTION AND CONSTRUCTION ENGINEERING.—The Secretary may make funds available under clause (i) for construction and construction engineering after approval of applicable plans, specifications, and estimates in accordance with this title.''.

(4) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—Section 202(d) of such title is amended by adding at the end the following:

''(5) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available to an Indian tribal government under this chapter for a highway, road, bridge, parkway, or transit facility program or project that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe shall be made available, on the request of the Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), contracts and

agreements for the planning, research, design, engineering, construction, and maintenance relating to the program or project.

''(B) EXCLUSION OF AGENCY PARTICIPATION.—In accordance with subparagraph (A), all funds for a program or project to which subparagraph (A) applies shall be paid to the Indian tribal government without regard to the organizational level at which the Department of the Interior has previously carried out, or the Department of Transportation has previously carried out under the Federal lands highway programs, the programs, functions, services, or activities involved.

''(C) CONSORTIA.—Two or more Indian tribes that are otherwise eligible to participate in a program or project to which this chapter applies may form a consortium to be considered as a single Indian tribe for the purpose of participating in the project under this section.

''(D) SECRETARY AS SIGNATORY.—Notwithstanding any other provision of law, the Secretary is authorized to enter into a funding agreement with an Indian tribal government to carry out a highway, road, bridge, parkway, or transit program or project under subparagraph (A) that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe.

''(E) FUNDING.—The amount an Indian tribal government receives for a program or project under subparagraph (A) shall equal the sum of the funding that the Indian tribal government would otherwise receive for the program or project in accordance with the funding formula established under this subsection and such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.

''(F) ELIGIBILITY.—

''(i) IN GENERAL.—Subject to clause (ii), funds may be made available under subparagraph (A) to an Indian tribal government for a program or project in a fiscal year only if the Indian tribal government requesting such funds demonstrates to the satisfaction of the Secretary financial stability and financial management capability during the 3 fiscal years immediately preceding the fiscal year for which the request is being made.

''(ii) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPABILITY.—An Indian tribal government that had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribal government self-determination contracts or self-governance funding agreements with any Federal agency during the 3-fiscal year period referred in clause (i) shall be conclusive evidence of the financial stability and financial management capability for purposes of clause (i).

''(G) ASSUMPTION OF FUNCTIONS AND DUTIES.—An Indian tribal government receiving funding under subparagraph (A) for a program or project shall assume all functions and duties that the Secretary of the Interior would have performed with respect to a program or project under this chapter, other than those functions and duties that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).

''(H) POWERS.—An Indian tribal government receiving funding under subparagraph (A) for a program or project shall have all powers that the Secretary of the Interior would have exercised in administering the funds transferred to the Indian tribal government for such program or project under this section if the funds had not been transferred, except to the extent that such powers are powers that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).

''(I) DISPUTE RESOLUTION.—In the event of a disagreement between the Secretary or the Secretary of the Interior and an Indian tribe over whether a particular function, duty, or power may be lawfully transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.), the Indian tribe shall have the right to pursue all alternative dispute resolutions and appeal procedures authorized by such Act, including regulations issued to carry out such Act.

''(J) TERMINATION OF CONTRACT OR AGREEMENT.—On the date of the termination of a contract or agreement under this section by an Indian tribal government, the Secretary shall transfer all funds that would have been allocated to the Indian tribal government under the contract or agreement to the Secretary of the Interior to provide continued transportation services in accordance with applicable law.''.

(h) PLANNING AND AGENCY COORDINATION.—Section 204 of such title is amended—

(1) in subsection (a)(1) by inserting ''refuge roads,'' after ''parkways,''; and

(2) by striking subsection (b) and inserting the following:

''(b) USE OF FUNDS.—

''(1) IN GENERAL.—Funds made available for public lands highways, park roads and parkways, and Indian reservation roads shall be used by the Secretary and the Secretary of the appropriate Federal land management agency to pay the cost of—

''(A) transportation planning, research, and engineering and construction of, highways, roads, parkways, and transit facilities located on public lands, national parks, and Indian reservations; and

''(B) operation and maintenance of transit facilities located on public lands, national parks, and Indian reservations.

''(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to such activity with—

''(A) a State (including a political subdivision of a State); or

''(B) an Indian tribe.

''(3) INDIAN RESERVATION ROADS.—In the case of an Indian reservation road—

''(A) Indian labor may be employed, in accordance with such rules and regulations as may be promulgated by the Secretary of the Interior, to carry out any construction or other activity described in paragraph (1); and

''(B) funds made available to carry out this section may be used to pay bridge preconstruction costs (including planning, design, and engineering).

''(4) FEDERAL EMPLOYMENT.—No maximum limitation on Federal employment shall be applicable to construction or improvement of Indian reservation roads.

''(5) AVAILABILITY OF FUNDS.—Funds made available under this section for each class of Federal lands highways shall be available for any transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, the areas served by the particular class of Federal lands highways.

''(6) RESERVATION OF FUNDS.—The Secretary of the Interior may reserve funds from administrative funds of the Bureau of Indian Affairs that are associated with the Indian reservation roads program to finance Indian technical centers under section 504(b).''.

(i) MAINTENANCE OF INDIAN RESERVATION ROADS.—Section 204(c) of such title is amended by striking the second and third sentences and inserting the following: ''Notwithstanding any other provision of this title, of the amount of funds allocated for Indian reservation roads from the Highway Trust Fund, not more than 25 percent of the funds allocated to an Indian tribe may be expended for the purpose of maintenance, excluding road sealing which shall not be subject to any limitation. The Bureau of Indian Affairs shall continue to retain primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations. The Secretary shall ensure that funding made available under this subsection for maintenance of Indian reservation roads for each fiscal year is supplementary to and not in lieu of any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.''.

(j) REFUGE ROADS.—Section 204(k)(1) of such title is amended—

(1) in subparagraph (B)—

(A) by striking ''(2), (5),'' and inserting ''(2), (3), (5),''; and

(B) by striking ''and'' after the semicolon;

(2) in subparagraph (C) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(D) the non-Federal share of the cost of any project funded under this title or chapter 53 of title 49 that provides access to or within a wildlife refuge; and

''(E) maintenance and improvement of recreational trails; except that expenditures on trails under this subparagraph shall not exceed 5 percent of available funds for each fiscal year.''.

(k) TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.—Section 204 of such title is amended by adding at the end the following:

''(l) TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.—

''(1) IN GENERAL.—An Indian tribe and a State may enter into a road maintenance agreement under which an Indian tribe assumes the responsibilities of the State for—

''(A) Indian reservation roads; and

''(B) roads providing access to Indian reservation roads.

''(2) TRIBAL-STATE AGREEMENTS.—Agreements entered into under paragraph (1)—

''(A) shall be negotiated between the State and the Indian tribe; and

''(B) shall not require the approval of the Secretary.

''(3) ANNUAL REPORT.—Effective beginning with fiscal year 2005, the Secretary shall prepare and submit to Congress an annual report that identifies—

''(A) the Indian tribes and States that have entered into agreements under paragraph (1);

''(B) the number of miles of roads for which Indian tribes have assumed maintenance responsibilities; and

''(C) the amount of funding transferred to Indian tribes for the fiscal year under agreements entered into under paragraph (1).''.

(l) DEPUTY ASSISTANT SECRETARY OF TRANSPORTATION FOR TRIBAL GOVERNMENT AFFAIRS.—Section 102 of title 49, United States Code, is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following:

''(f) DEPUTY ASSISTANT SECRETARY FOR TRIBAL GOVERNMENT AFFAIRS.—

''(1) ESTABLISHMENT.—In accordance with Federal policies promoting Indian self determination, the Department of Transportation shall have, within the office of the Secretary, a Deputy Assistant Secretary for Tribal Government Affairs appointed by the President to plan, coordinate, and implement the Department of Transportation policy and programs serving Indian tribes and tribal organizations and to coordinate tribal transportation programs and activities in all offices and administrations of the Department and to be a participant in any negotiated rulemaking relating to, or having an impact on, projects, programs, or funding associated with the tribal transportation program.

''(2) RESERVATION OF TRUST OBLIGATIONS.—

''(A) RESPONSIBILITY OF SECRETARY.—In carrying out this title, the Secretary shall be responsible to exercise the trust obligations of the United States to Indians and Indian tribes to ensure that the rights of a tribe or individual Indian are protected.

''(B) PRESERVATION OF UNITED STATES RESPONSIBILITY.—Nothing in this title shall absolve the United States from any responsibility to Indians and Indian tribes, including responsibilities derived from the trust relationship and any treaty, executive order, or agreement between the United States and an Indian tribe.''.

(m) FOREST HIGHWAYS.—Of the amounts made available for public lands highways under section 1101—

(1) not to exceed $20,000,000 per fiscal year may be used for the maintenance of forest highways;

(2) not to exceed $1,000,000 per fiscal year may be used for signage identifying public hunting and fishing access; and

(3) not to exceed $10,000,000 per fiscal year shall be used by the Secretary of Agriculture to pay the costs of facilitating the passage of aquatic species beneath roads in the National Forest System, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate.

(n) WILDLIFE VEHICLE COLLISION REDUCTION STUDY.—

(1) IN GENERAL.—The Secretary shall conduct a study of methods to reduce collisions between motor vehicles and wildlife (in this subsection referred to as ''wildlife vehicle collisions'').

(2) CONTENTS.—

(A) AREAS OF STUDY.—The study shall include an assessment of the causes and impacts of wildlife vehicle collisions and solutions and best practices for reducing such collisions.

(B) METHODS FOR CONDUCTING THE STUDY.—In carrying out the study, the Secretary shall—

(i) conduct a thorough literature review; and

(ii) survey current practices of the Department of Transportation.

(3) CONSULTATION.—In carrying out the study, the Secretary shall consult with appropriate experts in the field of wildlife vehicle collisions.

(4) REPORT.—

(A) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the results of the study.

(B) CONTENTS.—The report shall include a description of each of the following:

(i) Causes of wildlife vehicle collisions.

(ii) Impacts of wildlife vehicle collisions.

(iii) Solutions to and prevention of wildlife vehicle collisions.

(5) MANUAL.—

(A) DEVELOPMENT.—Based upon the results of the study, the Secretary shall develop a best practices manual to support State efforts to reduce wildlife vehicle collisions.

(B) AVAILABILITY.—The manual shall be made available to States not later than 1 year after the date of transmission of the report under paragraph (4).

(C) CONTENTS.—The manual shall include, at a minimum, the following:

(i) A list of best practices addressing wildlife vehicle collisions.

(ii) A list of information, technical, and funding resources for addressing wildlife vehicle collisions.

(iii) Recommendations for addressing wildlife vehicle collisions.

(iv) Guidance for developing a State action plan to address wildlife vehicle collisions.

(6) TRAINING.—Based upon the manual developed under paragraph (5), the Secretary shall develop a training course on addressing wildlife vehicle collisions for transportation professionals.

(o) LIMITATION ON APPLICABILITY.—The requirements of the January 4, 2005, Federal Highway Administration, a final rule on the implementation of the Uniform Relocation Assistance and Real Property Acquisition policy Act of 1970 (42 U.S.C. 4601 et seq.) shall not apply to the voluntary conservation easement activities of the Department of Agriculture or the Department of the Interior.

SEC. 1120. PUERTO RICO HIGHWAY PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''§ 165. Puerto Rico highway program

''(a) IN GENERAL.—The Secretary shall allocate funds made available to carry out this section for each of fiscal years 2005 through 2009 to the Commonwealth of Puerto Rico to carry out a highway program in the Commonwealth.

''(b) APPLICABILITY OF TITLE.—Amounts made available by section 1101(a)(14) of the SAFETEA–LU shall be available for obligation in the same manner as if such funds were apportioned under this chapter.

''(c) TREATMENT OF FUNDS.—Amounts made available to carry out this section for a fiscal year shall be administered as follows:

''(1) APPORTIONMENT.—For the purpose of imposing any penalty under this title or title 49, the amounts shall be treated as being apportioned to Puerto Rico under sections 104(b) and 144, for each program funded under those sections in an amount determined by multiplying—

''(A) the aggregate of the amounts for the fiscal year; by

''(B) the ratio that—

''(i) the amount of funds apportioned to Puerto Rico for each such program for fiscal year 1997; bears to

''(ii) the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 1997.

''(2) PENALTY.—The amounts treated as being apportioned to Puerto Rico under each section referred to in paragraph (1) shall be deemed to be required to be apportioned to Puerto Rico under that section for purposes of the imposition of any penalty under this title or title 49.

''(d) EFFECT ON ALLOCATIONS AND APPORTIONMENTS.—Subject to subsection (c)(2), nothing in this section affects any allocation under section 105 and any apportionment under sections 104 and 144.''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of such title is amended by adding at the end the following:

''165. Puerto Rico highway program.''.

(c) DEFINITION OF STATE.—For the purposes of apportioning funds under sections 104, 105, 130, 144, and 206 of title 23, United States Code, and section 1404, relating to the safe routes to school program, the term ''State'' means any of the 50 States and the District of Columbia.

SEC. 1121. HOV FACILITIES.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1120 of this Act), is amended by adding at the end the following:

''§ 166. HOV Facilities

''(a) IN GENERAL.—

''(1) AUTHORITY OF STATE AGENCIES.—A State agency that has jurisdiction over the operation of a HOV facility shall establish the occupancy requirements of vehicles operating on the facility.

''(2) OCCUPANCY REQUIREMENT.—Except as otherwise provided by this section, no fewer than 2 occupants per vehicle may be required for use of a HOV facility.

''(b) EXCEPTIONS.—

''(1) IN GENERAL.—Notwithstanding the occupancy requirement of subsection (a)(2), the exceptions in paragraphs (2) through (5) shall apply with respect to a State agency operating a HOV facility.

''(2) MOTORCYCLES AND BICYCLES.—

''(A) IN GENERAL.—Subject to subparagraph (B), the State agency shall allow motorcycles and bicycles to use the HOV facility.

''(B) SAFETY EXCEPTION.—

''(i) IN GENERAL.—A State agency may restrict use of the HOV facility by motorcycles or bicycles (or both) if the agency certifies to the Secretary that such use would create a safety hazard and the Secretary accepts the certification.

''(ii) ACCEPTANCE OF CERTIFICATION.—The Secretary may accept a certification under this subparagraph only after the Secretary publishes notice of the certification in the Federal Register and provides an opportunity for public comment.

''(3) PUBLIC TRANSPORTATION VEHICLES.—The State agency may allow public transportation vehicles to use the HOV facility if the agency—

''(A) establishes requirements for clearly identifying the vehicles; and

''(B) establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

''(4) HIGH OCCUPANCY TOLL VEHICLES.—The State agency may allow vehicles not otherwise exempt pursuant to this subsection to use the HOV facility if the operators of the vehicles pay a toll charged by the agency for use of the facility and the agency—

''(A) establishes a program that addresses how motorists can enroll and participate in the toll program;

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

''(C) establishes policies and procedures to—

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

''(ii) enforce violations of use of the facility.

''(5) LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—

''(A) INHERENTLY LOW EMISSION VEHICLE.—Before September 30, 2009, the State agency may allow vehicles that are certified as inherently low-emission vehicles pursuant to section 88.311–93 of title 40, Code of Federal Regulations (or successor regulations), and are labeled in accordance with section 88.312–93 of such title (or successor regulations), to use the HOV facility if the agency establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

''(B) OTHER LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—Before September 30, 2009, the State agency may allow vehicles certified as low emission and energy-efficient vehicles under subsection (e), and labeled in accordance with subsection (e), to use the HOV facility if the operators of the vehicles pay a toll charged by the agency for use of the facility and the agency—

''(i) establishes a program that addresses the selection of vehicles under this paragraph; and

''(ii) establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

''(C) AMOUNT OF TOLLS.—Under subparagraph (B), a State agency may charge no toll or may charge a toll that is less than tolls charged under paragraph (3).

''(c) REQUIREMENTS APPLICABLE TO TOLLS.—

''(1) IN GENERAL.—Tolls may be charged under paragraphs (3) and (4) of subsection (b) notwithstanding section 301 and, except as provided in paragraphs (2) and (3), subject to the requirements of section 129.

''(2) HOV FACILITIES ON THE INTERSTATE SYSTEM.—Notwithstanding section 129, tolls may be charged under paragraphs (3) and (4) of subsection (b) on a HOV facility on the Interstate System.

''(3) EXCESS TOLL REVENUES.—If a State agency makes a certification under section 129(a)(3) with respect to toll revenues collected under paragraphs (3) and (4) of subsection (b), the State, in the use of toll revenues under that sentence, shall give priority consideration to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety.

''(d) HOV FACILITY MANAGEMENT, OPERATION, MONITORING, AND ENFORCEMENT.—

''(1) IN GENERAL.—A State agency that allows vehicles to use a HOV facility under paragraph (3) or (4) of subsection (b) in a fiscal year shall certify to the Secretary that the agency will carry out the following responsibilities with respect to the facility in the fiscal year:

''(A) Establishing, managing, and supporting a performance monitoring, evaluation, and reporting program for the facility that provides

for continuous monitoring, assessment, and reporting on the impacts that the vehicles may have on the operation of the facility and adjacent highways.

''(B) Establishing, managing, and supporting an enforcement program that ensures that the facility is being operated in accordance with the requirements of this section.

''(C) Limiting or discontinuing the use of the facility by the vehicles if the presence of the vehicles has degraded the operation of the facility.

''(2) DEGRADED FACILITY.—

''(A) DEFINITION OF MINIMUM AVERAGE OPERATING SPEED.—In this paragraph, the term 'minimum average operating speed' means—

''(i) 45 miles per hour, in the case of a HOV facility with a speed limit of 50 miles per hour or greater; and

''(ii) not more than 10 miles per hour below the speed limit, in the case of a HOV facility with a speed limit of less than 50 miles per hour.

''(B) STANDARD FOR DETERMINING DEGRADED FACILITY.—For purposes of paragraph (1), the operation of a HOV facility shall be considered to be degraded if vehicles operating on the facility are failing to maintain a minimum average operating speed 90 percent of the time over a consecutive 180-day period during morning or evening weekday peak hour periods (or both).

''(C) MANAGEMENT OF LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—In managing the use of HOV lanes by low emission and energy-efficient vehicles that do not meet applicable occupancy requirements, a State agency may increase the percentages described in subsection (f)(3)(B)(i).

''(e) CERTIFICATION OF LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—Not later than 180 days after the date of enactment of this section, the Administrator of the Environmental Protection Agency shall—

''(1) issue a final rule establishing requirements for certification of vehicles as low emission and energy-efficient vehicles for purposes of this section and requirements for the labeling of the vehicles; and

''(2) establish guidelines and procedures for making the vehicle comparisons and performance calculations described in subsection (f)(3)(B), in accordance with section 32908(b) of title 49.

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

''(1) ALTERNATIVE FUEL VEHICLE.—The term 'alternative fuel vehicle' means a vehicle that is operating on—

''(A) methanol, denatured ethanol, or other alcohols;

''(B) a mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;

''(C) natural gas;

''(D) liquefied petroleum gas;

''(E) hydrogen;

''(F) coal derived liquid fuels;

''(G) fuels (except alcohol) derived from biological materials;

''(H) electricity (including electricity from solar energy); or

''(I) any other fuel that the Secretary prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits, including fuels regulated under section 490 of title 10, Code of Federal Regulations (or successor regulations).

''(2) HOV FACILITY.—The term 'HOV facility' means a high occupancy vehicle facility.

''(3) LOW EMISSION AND ENERGY-EFFICIENT VEHICLE.—The term 'low emission and energy-efficient vehicle' means a vehicle that—

''(A) has been certified by the Administrator as meeting the Tier II emission level established in regulations prescribed by the Administrator under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model year vehicle; and

''(B)(i) is certified by the Administrator of the Environmental Protection Agency, in consultation with the manufacturer, to have achieved not less than a 50-percent increase in city fuel economy or not less than a 25-percent increase in combined city-highway fuel economy (or such greater percentage of city or city-highway fuel economy as may be determined by a State under subsection (d)(2)(C)) relative to a comparable vehicle that is an internal combustion gasoline fueled vehicle (other than a vehicle that has propulsion energy from onboard hybrid sources); or

''(ii) is an alternative fuel vehicle.

''(4) PUBLIC TRANSPORTATION VEHICLE.—The term 'public transportation vehicle' means a vehicle that—

''(A) provides designated public transportation (as defined in section 221 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12141) or provides public school transportation (to and from public or private primary, secondary, or tertiary schools); and

''(B)(i) is owned or operated by a public entity;

''(ii) is operated under a contract with a public entity; or

''(iii) is operated pursuant to a license by the Secretary or a State agency to provide motorbus or school vehicle transportation services to the public.

''(5) STATE AGENCY.—

''(A) IN GENERAL.—The term 'State agency', as used with respect to a HOV facility, means an agency of a State or local government having jurisdiction over the operation of the facility.

''(B) INCLUSION.—The term 'State agency' includes a State transportation department.''.

(b) CONFORMING AMENDMENTS.—

(1) PROGRAM EFFICIENCIES.—Section 102 of title 23, United States Code, is amended—

(A) by striking subsection (a); and

(B) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(2) CHAPTER ANALYSIS.—The analysis for such subchapter (as amended by section 1120 of this Act) is amended by adding at the end the following:

''166. HOV facilities.''.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary and the States should provide additional incentives (including the use of high occupancy vehicle lanes on State and Interstate highways) for the purchase and use of hybrid and other fuel efficient vehicles, which have been proven to minimize air emissions and decrease consumption of fossil fuels.

SEC. 1122. DEFINITIONS.

(a) TRANSPORTATION ENHANCEMENT ACTIVITY.—Section 101(a)(35) of title 23, United States Code, is amended to read as follows:

''(35) TRANSPORTATION ENHANCEMENT ACTIVITY.—The term 'transportation enhancement activity' means, with respect to any project or the area to be served by the project, any of the following activities as the activities relate to surface transportation:

''(A) Provision of facilities for pedestrians and bicycles.

''(B) Provision of safety and educational activities for pedestrians and bicyclists.

''(C) Acquisition of scenic easements and scenic or historic sites (including historic battlefields).

''(D) Scenic or historic highway programs (including the provision of tourist and welcome center facilities).

''(E) Landscaping and other scenic beautification.

''(F) Historic preservation.

''(G) Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).

''(H) Preservation of abandoned railway corridors (including the conversion and use of the corridors for pedestrian or bicycle trails).

''(I) Inventory, control, and removal of outdoor advertising.

''(J) Archaeological planning and research.

''(K) Environmental mitigation—

''(i) to address water pollution due to highway runoff; or

''(ii) reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

''(L) Establishment of transportation museums.''.

(b) ADVANCED TRUCK STOP ELECTRIFICATION SYSTEM.—Such section 101(a) is amended by adding at the end the following:

''(38) ADVANCED TRUCK STOP ELECTRIFICATION SYSTEM.—The term 'advanced truck stop electrification system' means a system that delivers heat, air conditioning, electricity, or communications to a heavy duty vehicle.''.

Subtitle B—Congestion Relief

SEC. 1201. REAL-TIME SYSTEM MANAGEMENT INFORMATION PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a real-time system management information program to provide, in all States, the capability to monitor, in real-time, the traffic and travel conditions of the major highways of the United States and to share that information to improve the security of the surface transportation system, to address congestion problems, to support improved response to weather events and surface transportation incidents, and to facilitate national and regional highway traveler information.

(2) PURPOSES.—The purposes of the real-time system management information program are to—

(A) establish, in all States, a system of basic real-time information for managing and operating the surface transportation system;

(B) identify longer range real-time highway and transit monitoring needs and develop plans and strategies for meeting such needs; and

(C) provide the capability and means to share that data with State and local governments and the traveling public.

(b) DATA EXCHANGE FORMATS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall establish data exchange formats to ensure that the data provided by highway and transit monitoring systems, including statewide incident reporting systems, can readily be exchanged across jurisdictional boundaries, facilitating nationwide availability of information.

(c) REGIONAL INTELLIGENT TRANSPORTATION SYSTEM ARCHITECTURE.—

(1) ADDRESSING INFORMATION NEEDS.—As State and local governments develop or update regional intelligent transportation system architectures, described in section 940.9 of title 23, Code of Federal Regulations, such governments shall explicitly address real-time highway and transit information needs and the systems needed to meet such needs, including addressing coverage, monitoring systems, data fusion and archiving, and methods of exchanging or sharing highway and transit information.

(2) DATA EXCHANGE.—States shall incorporate the data exchange formats established by the Secretary under subsection (b) to ensure that the data provided by highway and transit monitoring systems may readily be exchanged with State and local governments and may be made available to the traveling public.

(d) ELIGIBILITY.—Subject to project approval by the Secretary, a State may obligate funds apportioned to the State under sections 104(b)(1), 104(b)(2), and 104(b)(3) of title 23, United States Code, for activities relating to the planning and deployment of real-time monitoring elements that advance the goals and purposes described in subsection (a).

(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as altering or otherwise affecting the applicability of the requirements of chapter 1 of title 23, United States Code (including requirements relating to the eligibility of a project for

assistance under the program, the location of the project, and the Federal-share payable on account of the project), to amounts apportioned to a State for a program under section 104(b) that are obligated by the State for activities and projects under this section.

(f) STATEWIDE INCIDENT REPORTING SYSTEM DEFINED.—In this section, the term ''statewide incident reporting system'' means a statewide system for facilitating the real-time electronic reporting of surface transportation incidents to a central location for use in monitoring the event, providing accurate traveler information, and responding to the incident as appropriate.

Subtitle C—Mobility and Efficiency

SEC. 1301. PROJECTS OF NATIONAL AND REGIONAL SIGNIFICANCE.

(a) FINDINGS.—Congress finds the following:

(1) Under current law, surface transportation programs rely primarily on formula capital apportionments to States.

(2) Despite the significant increase for surface transportation program funding in the Transportation Equity Act of the 21st Century, current levels of investment are insufficient to fund critical high-cost transportation infrastructure facilities that address critical national economic and transportation needs.

(3) Critical high-cost transportation infrastructure facilities often include multiple levels of government, agencies, modes of transportation, and transportation goals and planning processes that are not easily addressed or funded within existing surface transportation program categories.

(4) Projects of national and regional significance have national and regional benefits, including improving economic productivity by facilitating international trade, relieving congestion, and improving transportation safety by facilitating passenger and freight movement.

(5) The benefits of projects described in paragraph (4) accrue to local areas, States, and the Nation as a result of the effect such projects have on the national transportation system.

(6) A program dedicated to constructing projects of national and regional significance is necessary to improve the safe, secure, and efficient movement of people and goods throughout the United States and improve the health and welfare of the national economy.

(b) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program to provide grants to States for projects of national and regional significance.

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

(1) ELIGIBLE PROJECT COSTS.—The term ''eligible project costs'' means the costs of—

(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities; and

(B) construction, reconstruction, rehabilitation, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements.

(2) ELIGIBLE PROJECT.—The term ''eligible project'' means any surface transportation project eligible for Federal assistance under title 23, United States Code, including freight railroad projects and activities eligible under such title.

(3) STATE.—The term ''State'' has the meaning such term has in section 101(a) of title 23, United States Code.

(d) ELIGIBILITY.—To be eligible for assistance under this section, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

(1) $500,000,000; or

(2) 75 percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located.

(e) APPLICATIONS.—Each State seeking to receive a grant under this section for an eligible project shall submit to the Secretary an application in such form and in accordance with such requirements as the Secretary shall establish.

(f) COMPETITIVE GRANT SELECTION AND CRITERIA FOR GRANTS.—

(1) IN GENERAL.—The Secretary shall—

(A) establish criteria for selecting among projects that meet the eligibility criteria specified in subsection (d);

(B) conduct a national solicitation for applications; and

(C) award grants on a competitive basis.

(2) CRITERIA FOR GRANTS.—The Secretary may approve a grant under this section for a project only if the Secretary determines that the project—

(A) is based on the results of preliminary engineering;

(B) is justified based on the ability of the project—

(i) to generate national economic benefits, including creating jobs, expanding business opportunities, and impacting the gross domestic product;

(ii) to reduce congestion, including impacts in the State, region, and Nation;

(iii) to improve transportation safety, including reducing transportation accidents, injuries, and fatalities;

(iv) to otherwise enhance the national transportation system; and

(v) to garner support for non-Federal financial commitments and provide evidence of stable and dependable financing sources to construct, maintain, and operate the infrastructure facility; and

(C) is supported by an acceptable degree of non-Federal financial commitments, including evidence of stable and dependable financing sources to construct, maintain, and operate the infrastructure facility.

(3) SELECTION CONSIDERATIONS.—In selecting a project under this section, the Secretary shall consider the extent to which the project—

(A) leverages Federal investment by encouraging non-Federal contributions to the project, including contributions from public-private partnerships;

(B) uses new technologies, including intelligent transportation systems, that enhance the efficiency of the project; and

(C) helps maintain or protect the environment.

(4) PRELIMINARY ENGINEERING.—In evaluating a project under paragraph (2)(A), the Secretary shall analyze and consider the results of preliminary engineering for the project.

(5) NON-FEDERAL FINANCIAL COMMITMENT.—

(A) EVALUATION OF PROJECT.—In evaluating a project under paragraph (2)(C), the Secretary shall require that—

(i) the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases; and

(ii) each proposed non-Federal source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

(B) CONSIDERATIONS.—In assessing the stability, reliability, and availability of proposed sources of non-Federal financing under subparagraph (A), the Secretary shall consider—

(i) existing financial commitments;

(ii) the degree to which financing sources are dedicated to the purposes proposed;

(iii) any debt obligation that exists or is proposed by the recipient for the proposed project; and

(iv) the extent to which the project has a non-Federal financial commitment that exceeds the required non-Federal share of the cost of the project.

(6) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall issue regulations on the manner in which the Secretary will evaluate and rate the projects based on the results of preliminary engineering, project justification, and the degree of non-Federal financial commitment, as required under this subsection.

(7) PROJECT EVALUATION AND RATING.—

(A) IN GENERAL.—A proposed project may advance from preliminary engineering to final design and construction only if the Secretary finds that the project meets the requirements of this subsection and there is a reasonable likelihood that the project will continue to meet such requirements.

(B) EVALUATION AND RATING.—In making such findings, the Secretary shall evaluate and rate the project as ''highly recommended'', ''recommended'', or ''not recommended'' based on the results of preliminary engineering, the project justification criteria, and the degree of non-Federal financial commitment, as required under this subsection. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established under the regulations issued under paragraph (6).

(g) LETTERS OF INTENT AND FULL FUNDING GRANT AGREEMENTS.—

(1) LETTER OF INTENT.—

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

(B) NOTIFICATION.—At least 60 days before issuing a letter under subparagraph (A) or entering into a full funding grant agreement, the Secretary shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

(C) NOT AN OBLIGATION.—The issuance of a letter is deemed not to be an obligation under sections 1108(c), 1108(d), 1501, and 1502(a) of title 31, United States Code, or an administrative commitment.

(D) OBLIGATION OR COMMITMENT.—An obligation or administrative commitment may be made only when contract authority is allocated to a project.

(2) FULL FUNDING GRANT AGREEMENT.—

(A) IN GENERAL.—A project financed under this subsection shall be carried out through a full funding grant agreement. The Secretary shall enter into a full funding grant agreement based on the evaluations and ratings required under subsection (f)(7).

(B) TERMS.—If the Secretary makes a full funding grant agreement with an applicant, the agreement shall—

(i) establish the terms of participation by the United States Government in a project under this section;

(ii) establish the maximum amount of Government financial assistance for the project;

(iii) cover the period of time for completing the project, including a period extending beyond the period of an authorization; and

(iv) make timely and efficient management of the project easier according to the laws of the United States.

(C) AGREEMENT.—An agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law. The agreement shall state that the contingent commitment is not an obligation of the Government. Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding

grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

(3) AMOUNTS.—The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent and full funding grant agreements may be not more than the greater of the amount authorized to carry out this section or an amount equivalent to the last 2 fiscal years of funding authorized to carry out this section less an amount the Secretary reasonably estimates is necessary for grants under this section not covered by a letter. The total amount covered by new letters and contingent commitments included in full funding grant agreements may be not more than a limitation specified in law.

(h) GRANT REQUIREMENTS.—

(1) IN GENERAL.—A grant for a project under this section shall be subject to all of the requirements of title 23, United States Code.

(2) OTHER TERMS AND CONDITIONS.—The Secretary shall require that all grants under this section be subject to all terms, conditions, and requirements that the Secretary decides are necessary or appropriate for purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section.

(i) GOVERNMENT'S SHARE OF PROJECT COST.—Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the cost of a project receiving assistance under this section. A grant for the project is for 80 percent of the project cost, unless the grant recipient requests a lower grant percentage. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

(j) FISCAL CAPACITY CONSIDERATIONS.—If the Secretary gives priority consideration to financing projects that include more than the non-Government share required under subsection (i) the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

(k) REPORTS.—

(1) ANNUAL REPORT.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that includes a proposal on the allocation of amounts to be made available to finance grants under this section.

(2) RECOMMENDATIONS ON FUNDING.—The annual report under this paragraph shall include evaluations and ratings, as required under subsection (f). The report shall also include recommendations of projects for funding based on the evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 fiscal years and for the next 10 fiscal years based on information currently available to the Secretary.

(l) APPLICABILITY OF TITLE 23.—Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended and the Federal share of the cost of a project under this section shall be as provided in this section.

(m) DESIGNATED PROJECTS.—Notwithstanding any other provision of this section, the Secretary shall allocate for each of fiscal years 2005 through 2009, from funds made available to carry out this section, 20 percent of the following amounts for grants to carry out the following projects under this section:

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SEC. 1302. NATIONAL CORRIDOR INFRASTRUCTURE IMPROVEMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall establish and implement a program to make allocations to States for highway construction projects in corridors of national significance to promote economic growth and international or interregional trade pursuant to the selection factors provided in this section. A State must submit an application to the Secretary in order to receive an allocation under this section.

(b) SELECTION PROCESS.—

(1) PRIORITY.—In the selection process under this section, the Secretary shall give priority to projects in corridors that are a part of, or will be designated as part of, the Dwight D. Eisenhower National System of Interstate and Defense Highways after completion of the work described in the application received by the Secretary and to any project that will be completed within 5 years of the date of the allocation of funds for the project.

(2) SELECTION FACTORS.—In making allocations under this section, the Secretary shall consider the following factors:

(A) The extent to which the corridor provides a link between 2 existing segments of the Interstate System.

(B) The extent to which the project will facilitate major multistate or regional mobility and economic growth and development in areas underserved by existing highway infrastructure.

(C) The extent to which commercial vehicle traffic in the corridor—

(i) has increased since the date of enactment of the North American Free Trade Agreement Implementation Act (16 U.S.C. 4401 et seq.); and

(ii) is projected to increase in the future.

(D) The extent to which international truckborne commodities move through the corridor.

(E) The extent to which the project will make improvements to an existing segment of the Interstate System that will result in a decrease in congestion.

(F) The reduction in commercial and other travel time through a major freight corridor expected as a result of the project.

(G) The value of the cargo carried by commercial vehicle traffic in the corridor and the economic costs arising from congestion in the corridor.

(H) The extent of leveraging of Federal funds provided to carry out this section, including—

(i) use of innovative financing;

(ii) combination with funding provided under other sections of this Act and title 23, United States Code; and

(iii) combination with other sources of Federal, State, local, or private funding.

(c) APPLICABILITY OF TITLE 23.—Funds made available by section 1101(a)(10) of this Act to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall remain available until expended, and the Federal share of the cost of a project under this section shall be determined in accordance with section 120 of such title.

(d) STATE DEFINED.—In this section, the term ''State'' has the meaning such term has in section 101(a) of title 23, United States Code.

(e) DESIGNATED PROJECTS.—The Secretary shall allocate for each of fiscal years 2005 through 2009, from funds made available to carry out this section, 20 percent of the following amounts for grants to carry out the following projects under this section:

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SEC. 1303. COORDINATED BORDER INFRASTRUCTURE PROGRAM.

(a) GENERAL AUTHORITY.—The Secretary shall implement a coordinated border infrastructure program under which the Secretary shall distribute funds to border States to improve the safe movement of motor vehicles at or across the border between the United States and Canada and the border between the United States and Mexico.

(b) ELIGIBLE USES.—Subject to subsection (d), a State may use funds apportioned under this section only for—

(1) improvements in a border region to existing transportation and supporting infrastructure that facilitate cross-border motor vehicle and cargo movements;

(2) construction of highways and related safety and safety enforcement facilities in a border region that facilitate motor vehicle and cargo movements related to international trade;

(3) operational improvements in a border region, including improvements relating to electronic data interchange and use of telecommunications, to expedite cross border motor vehicle and cargo movement;

(4) modifications to regulatory procedures to expedite safe and efficient cross border motor vehicle and cargo movements; and

(5) international coordination of transportation planning, programming, and border operation with Canada and Mexico relating to expediting cross border motor vehicle and cargo movements.

(c) APPORTIONMENT OF FUNDS.—On October 1 of each fiscal year, the Secretary shall apportion among border States sums authorized to be appropriated to carry out this section for such fiscal year as follows:

(1) 20 percent in the ratio that—

(A) the total number of incoming commercial trucks that pass through the land border ports of entry within the boundaries of a border State, as determined by the Secretary; bears to

(B) the total number of incoming commercial trucks that pass through such ports of entry within the boundaries of all the border States, as determined by the Secretary.

(2) 30 percent in the ratio that—

(A) the total number of incoming personal motor vehicles and incoming buses that pass through land border ports of entry within the boundaries of a border State, as determined by the Secretary; bears to

(B) the total number of incoming personal motor vehicles and incoming buses that pass through such ports of entry within the boundaries of all the border States, as determined by the Secretary.

(3) 25 percent in the ratio that—

(A) the total weight of incoming cargo by commercial trucks that pass through land border ports of entry within the boundaries of a border State, as determined by the Secretary; bears to

(B) the total weight of incoming cargo by commercial trucks that pass through such ports of entry within the boundaries of all the border States, as determined by the Secretary.

(4) 25 percent of the ratio that—

(A) the total number of land border ports of entry within the boundaries of a border State, as determined by the Secretary; bears to

(B) the total number of land border ports of entry within the boundaries of all the border States, as determined by the Secretary.

(d) PROJECTS IN CANADA OR MEXICO.—A project in Canada or Mexico, proposed by a border State to directly and predominantly facilitate cross-border motor vehicle and cargo movements at an international port of entry into the border region of the State, may be constructed using funds apportioned to the State under this section if, before obligation of those funds, Canada or Mexico, or the political subdivision of Canada or Mexico that is responsible for the operation of the facility to be constructed, provides assurances satisfactory to the Secretary that any facility constructed under this subsection will be—

(1) constructed in accordance with standards equivalent to applicable standards in the United States; and

(2) properly maintained and used over the useful life of the facility for the purpose for which the Secretary is allocating such funds to the project.

(e) TRANSFER OF FUNDS TO THE GENERAL SERVICES ADMINISTRATION.—

(1) STATE FUNDS.—At the request of a border State, funds apportioned to the State under this section may be transferred to the General Services Administration for the purpose of funding 1 or more projects described in subsection (b) if—

(A) the Secretary determines, after consultation with the transportation department of the border State, that the General Services Administration should carry out the project; and

(B) the General Services Administration agrees to accept the transfer of, and to administer, those funds in accordance with this section.

(2) NON-FEDERAL SHARE.—

(A) IN GENERAL.—A border State that makes a request under paragraph (1) shall provide directly to the General Services Administration, for each project covered by the request, the non-Federal share of the cost of the project.

(B) NO AUGMENTATION OF APPROPRIATIONS.—Funds provided by a border State under subparagraph (A)—

(i) shall not be considered to be an augmentation of the appropriations made available to the General Services Administration; and

(ii) shall be—

(I) administered, subject to paragraph (1)(B), in accordance with the procedures of the General Services Administration; but

(II) available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.

(3) OBLIGATION AUTHORITY.—Obligation authority shall be transferred to the General Services Administration for a project in the same manner and amount as the funds provided for the project under paragraph (1).

(4) LIMITATION ON TRANSFER OF FUNDS.—No State may transfer to the General Services Administration under this subsection an amount that is more than the lesser of—

(A) 15 percent of the aggregate amount of funds apportioned to the State under this section for such fiscal year; or

(B) $5,000,000.

(f) APPLICABILITY OF TITLE 23.—Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that, subject to subsection (e), such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of a project under this section shall be determined in accordance with section 120 of such title.

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

(1) BORDER REGION.—The term ''border region'' means any portion of a border State within 100 miles of an international land border with Canada or Mexico.

(2) BORDER STATE.—The term ''border State'' means any State that has an international land border with Canada or Mexico.

(3) COMMERCIAL TRUCK.—The term ''commercial truck'' means a commercial motor vehicle as defined in section 31301(4) (other than subparagraph (B)) of title 49, United States Code.

(4) MOTOR VEHICLE.—The term ''motor vehicle'' has the meaning such term has under section 101(a) of title 23, United States Code.

(5) STATE.—The term ''State'' has the meaning such term has in section 101(a) of such title 23.

SEC. 1304. HIGH PRIORITY CORRIDORS ON THE NATIONAL HIGHWAY SYSTEM.

(a) EVACUATION ROUTES.—Section 1105(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2032) is amended in the first sentence by inserting ''and evacuation routes'' after ''corridors'' the first place it appears.

(b) CORRIDORS.—Section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032) is amended—

(1) by striking paragraph (14) and inserting the following:

''(14) Heartland Expressway from Denver, Colorado, through Scottsbluff, Nebraska, to Rapid City, South Dakota as follows:

''(A) In the State of Colorado, the Heartland Expressway Corridor shall generally follow—

''(i) Interstate 76 from Denver to Brush; and

''(ii) Colorado Highway 71 from Limon to the border between the States of Colorado and Nebraska.

''(B) In the State of Nebraska, the Heartland Expressway Corridor shall generally follow—

''(i) Nebraska Highway 71 from the border between the States of Colorado and Nebraska to Scottsbluff;

''(ii) United States Route 26 from Scottsbluff to the intersection with State Highway L62A;

''(iii) State Highway L62A from the intersection with United States Route 26 to United States Route 385 north of Bridgeport;

''(iv) United States Route 385 to the border between the States of Nebraska and South Dakota; and

''(v) United States Highway 26 from Scottsbluff to the border of the States of Nebraska and Wyoming.

''(C) In the State of Wyoming, the Heartland Expressway Corridor shall generally follow United States Highway 26 from the border of the States of Nebraska and Wyoming to the termination at Interstate 25 at Interchange number 94.

''(D) In the State of South Dakota, the Heartland Expressway Corridor shall generally follow—

''(i) United States Route 385 from the border between the States of Nebraska and South Dakota to the intersection with State Highway 79; and

''(ii) State Highway 79 from the intersection with United States Route 385 to Rapid City.'';

(2) in paragraph (23) by inserting before the period at the end the following: ''and the connection from Wichita, Kansas, to Sioux City, Iowa, which includes I–135 from Wichita, Kansas to Salina, Kansas, United States Route 81 from Salina, Kansas, to Norfolk, Nebraska, Nebraska State Route 35 from Norfolk, Nebraska, to South Sioux City, Nebraska, and the connection to I–29 in Sioux City, Iowa'';

(3) in paragraph (33) by striking ''I–395'' and inserting ''and including the I–395 corridor'';

(4) by striking paragraph (34) and inserting the following:

''(34) The Alameda Corridor-East and Southwest Passage, California. The Alameda Corridor-East is generally described as the corridor from East Los Angeles (terminus of Alameda Corridor) through Los Angeles, Orange, San Bernardino, and Riverside Counties, to termini at Barstow in San Bernardino County and Coachella in Riverside County. The Southwest Passage shall follow I–10 from San Bernardino to the Arizona State line.'';

(5) by adding at the end the following:

''(46) Interstate Route 710 between the terminus at Long Beach, California, to California State Route 60.

''(47) Interstate Route 87 from the Quebec border to New York City.

''(48) The Route 50 High Plains Corridor along the United States Route 50 corridor from Newton, Kansas, to Pueblo, Colorado.

''(49) The Atlantic Commerce Corridor on Interstate Route 95 from Jacksonville, Florida, to Miami, Florida.

''(50) The East-West Corridor commencing in Watertown, New York, continuing northeast through New York, Vermont, New Hampshire, and Maine, and terminating in Calais, Maine.

''(51) The SPIRIT Corridor on United States Route 54 from El Paso, Texas, through New

Mexico, Texas, and Oklahoma to Wichita, Kansas.

''(52) The route in Arkansas running south of and parallel to Arkansas State Highway 226 from the relocation of United States Route 67 to the vicinity of United States Route 49 and United States Route 63.

''(53) United States Highway Route 6 from Interstate Route 70 to Interstate Route 15, Utah.

''(54) The California Farm-to-Market Corridor, California State Route 99 from south of Bakersfield to Sacramento, California.

''(55) In Texas, Interstate Route 20 from Interstate Route 35E in Dallas County, east to the intersection of Interstate Route 635, north to the intersection of Interstate Route 30, northeast through Texarkana to Little Rock, Arkansas, Interstate Route 40 northeast from Little Rock east to the proposed Interstate Route 69 corridor.

''(56) In the State of Texas, the La Entrada al Pacifico Corridor consisting of the following highways and any portion of a highway in a corridor on 2 miles of either side of the center line of the highway:

''(A) State Route 349 from Lamesa to the point on that highway that is closest to 32 degrees, 7 minutes, north latitude, by 102 degrees, 6 minutes, west longitude.

''(B) The segment or any roadway extending from the point described by subparagraph (A) to the point on Farm-to-Market Road 1788 closest to 32 degrees, 0 minutes, north latitude, by 102 degrees, 16 minutes, west longitude.

''(C) Farm-to-Market Road 1788 from the point described by subparagraph (B) to its intersection with Interstate Route 20.

''(D) Interstate Route 20 from its intersection with Farm-to-Market Road 1788 to its intersection with United States Route 385.

''(E) United States Route 385 from Odessa to Fort Stockton, including those portions that parallel United States Route 67 and Interstate Route 10.

''(F) United States Route 67 from Fort Stockton to Presidio, including those portions that parallel Interstate Route 10 and United States Route 90.

''(57) United States Route 41 corridor between Interstate Route 94 via Interstate Route 894 and Highway 45 near Milwaukee and Interstate Route 43 near Green Bay in the State of Wisconsin.

''(58) The Theodore Roosevelt Expressway from Rapid City, South Dakota, north on United States Route 85 to Williston, North Dakota, west on United States Route 2 to Culbertson, Montana, and north on Montana Highway 16 to the international border with Canada at the port of Raymond, Montana.

''(59) The Central North American Trade Corridor from the border between North Dakota and South Dakota, north on United States Route 83 through Bismark and Minot, North Dakota, to the international border with Canada.

''(60) The Providence Beltline Corridor beginning at Interstate Route 95 in the vicinity of Hope Valley, Rhode Island, traversing eastwardly intersecting and merging into Interstate Route 295, continuing northeastwardly along Interstate Route 95, and terminating at the Massachusetts border, and including the western bypass of Providence, Rhode Island, from Interstate Route 295 to the Massachusetts border.

''(61) In the State of Missouri, the corridors consisting of the following highways:

''(A) Interstate Route 70, from Interstate Route 29/35 to United States Route 61/Avenue of the Saints.

''(B) Interstate Route 72/United States Route 36, from the intersection with Interstate Route 29 to United States Route 61/Avenue of the Saints.

''(C) United States Route 67, from Interstate Route 55 to the Arkansas State line.

''(D) United States Route 65, from United States Route 36/Interstate Route 72 to the East-West TransAmerica corridor, at the Arkansas State line.

''(E) United States Route 63, from United States Route 36 and the proposed Interstate Route 72 to the East-West TransAmerica corridor, at the Arkansas State line.

''(F) United States Route 54, from the Kansas State line to United States Route 61/Avenue of the Saints.

''(62) The Georgia Developmental Highway System Corridors identified in section 32–4–22 of the Official Code of Georgia, Annotated.

''(63) The Liberty Corridor, a corridor in an area encompassing very critical and significant transportation infrastructure providing regional, national, and international access through the State of New Jersey, including Interstate Routes 95, 80, 287, and 78, and United States Routes 1, 3, 9, 17, and 46, and portways and connecting infrastructure.

''(64) The corridor in an area of passage in the State of New Jersey serving significant interstate and regional traffic, located near the cities of Camden, New Jersey, and Philadelphia, Pennsylvania, and including Interstate Route 295, United States Route 42, United States Route 130, and Interstate Route 676.

''(65) The Interstate Route 95 Corridor beginning at the New York State line and continuing through Connecticut to the Rhode Island State line.

''(66) The Interstate Route 91 Corridor from New Haven, Connecticut, to the Massachusetts State line.

''(67) The Fairbanks-Yukon International Corridor consisting of the portion of the Alaska Highway from the international border with Canada to the Richardson Highway, and the Richardson Highway from its junction with the Alaska Highway to Fairbanks, Alaska.

''(68) The Washoe County corridor, along Interstate Route 580/United States Route 95/United States Route 95A, from Reno, Nevada, to Las Vegas, Nevada.

''(69) The Cross Valley Connector connecting Interstate Route 5 and State Route 14, Santa Clarita Valley, California.

''(70) The Economic Lifeline corridor, along Interstate Route 15 and Interstate Route 40, California, Arizona, and Nevada, including Interstate Route 215 South from near San Bernadino, California, to Riverside, California, and State Route 91 from Riverside, California, to the intersection with Interstate Route 15 near Corona, California.

''(71) The High Desert Corridor/E-220 from Los Angeles, California, to Las Vegas, Nevada, via Palmdale and Victorville, California.

''(72) The North-South corridor, along Interstate Route 49 North, from Kansas City, Missouri, to Shreveport, Louisiana.

''(73) The Louisiana Highway corridor, along Louisiana Highway 1, from Grand Isle, Louisiana, to the intersection with United States Route 90.

''(74) The portion of United States Route 90 from Interstate Route 49 in Lafayette, Louisiana, to Interstate Route 10 in New Orleans, Louisiana.

''(75) The Louisiana 28 corridor from Fort Polk to Alexandria, Louisiana.

''(76) The portion of Interstate Route 75 from Toledo, Ohio, to Cincinnati, Ohio.

''(77) The portion of United States Route 24 from the Indiana/Ohio State line to Toledo, Ohio.

''(78) The portion of Interstate Route 71 from Cincinnati, Ohio, to Cleveland, Ohio.

''(79) Interstate Route 376 from the Pittsburgh Interchange (I/C No. 56) of the Pennsylvania Turnpike, westward on Interstate Route 279, United States Route 22, United States Route 30, and Pennsylvania Route 60, continuing past the Pittsburgh International Airport on Turnpike Route 60, to the Pennsylvania Turnpike (Interstate Route 76), Interchange 10, and continuing north on Pennsylvania Turnpike Route 60 and on United States Route 422 to Interstate Route 80.

''(80) The Intercounty Connector, a new east-west multimodal highway between Interstate Route 270 and Interstate Route 95/United States Route 1 in Montgomery and Prince George's Counties, Maryland.''; and

(6) by aligning paragraph (45) with paragraph (46) (as added by paragraph (5)).

(c) INTERSTATE ROUTES.—Section 1105(e)(5) of the Intermodal Surface Transporation Efficiency Act of 1991 is amended—

(1) in subparagraph (A) by striking ''and subsection (c)(45)'' and inserting ''subsection (c)(45), subsection (c)(54), and subsection (c)(57)'';

(2) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E); and

(3) by inserting after subparagraph (A) the following:

''(B) INTERSTATE ROUTE 376.—

''(i) DESIGNATION OF INTERSTATE ROUTE 376.—

''(I) IN GENERAL.—The routes referred to in subsection (c)(79), except the portion of Pennsylvania Turnpike Route 60 and United States Route 422 between Pennsylvania Turnpike Interchange 10 and Interstate Route 80, shall be designated as Interstate Route 376.

''(II) SIGNS.—The State of Pennsylvania shall have jurisdiction over the highways described in subclause (I) (except Pennsylvania Turnpike Route 60) and erect signs in accordance with Interstate signing criteria that identify the routes described in subclause (I) as Interstate Route 376.

''(III) ASSISTANCE FROM SECRETARY.—The Secretary shall assist the State of Pennsylvania in carrying out, not later than December 31, 2008, an activity under subclause (II) relating to Interstate Route 376 and in complying with sections 109 and 139 of title 23, United States Code.

''(ii) OTHER SEGMENTS.—The segment of the route referred to in subsection (c)(79) located between the Pennsylvania Turnpike, Interchange 10, and Interstate Route 80 may be signed as Interstate Route 376 under clause (i)(II) if that segment meets the criteria under sections 109 and 139 of title 23, United States Code.''.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out, in accordance with title 23, United States Code, projects on corridors identified in section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032) such sums as may be necessary.

SEC. 1305. TRUCK PARKING FACILITIES.

(a) ESTABLISHMENT.—In cooperation with appropriate State, regional, and local governments, the Secretary shall establish a pilot program to address the shortage of long-term parking for commercial motor vehicles on the National Highway System.

(b) ALLOCATION OF FUNDS.—

(1) IN GENERAL.—The Secretary shall allocate funds made available to carry out this section among States, metropolitan planning organizations, and local governments.

(2) APPLICATIONS.—To be eligible for an allocation under this section, a State (as defined in section 101(a) of title 23, United States Code), metropolitan planning organization, or local government shall submit to the Secretary an application at such time and containing such information as the Secretary may require.

(3) ELIGIBLE PROJECTS.—Funds allocated under this subsection shall be used by the recipient for projects described in an application approved by the Secretary. Such projects shall serve the National Highway System and may include the following:

(A) Constructing safety rest areas (as defined in section 120(c) of title 23, United States Code) that include parking for commercial motor vehicles.

(B) Constructing commercial motor vehicle parking facilities adjacent to commercial truck stops and travel plazas.

(C) Opening existing facilities to commercial motor vehicle parking, including inspection and weigh stations and park-and-ride facilities.

(D) Promoting the availability of publicly or privately provided commercial motor vehicle parking on the National Highway System using intelligent transportation systems and other means.

(E) Constructing turnouts along the National Highway System for commercial motor vehicles.

(F) Making capital improvements to public commercial motor vehicle parking facilities currently closed on a seasonal basis to allow the facilities to remain open year-round.

(G) Improving the geometric design of interchanges on the National Highway System to improve access to commercial motor vehicle parking facilities.

(4) PRIORITY.—In allocating funds made available to carry out this section, the Secretary shall give priority to applicants that—

(A) demonstrate a severe shortage of commercial motor vehicle parking capacity in the corridor to be addressed;

(B) have consulted with affected State and local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations; and

(C) demonstrate that their proposed projects are likely to have positive effects on highway safety, traffic congestion, or air quality.

(c) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the results of the pilot program.

(d) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $6,250,000 for each of fiscal years 2006 through 2009.

(2) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of a project under this section shall be determined in accordance with sections 120(b) and 120(c) of such title.

(e) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects funded under this section shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code.

SEC. 1306. FREIGHT INTERMODAL DISTRIBUTION PILOT GRANT PROGRAM.

(a) IN GENERAL.—The Secretary shall establish and implement a freight intermodal distribution pilot grant program.

(b) PURPOSES.—The purposes of the program established under subsection (a) shall be for the Secretary to make grants to States—

(1) to facilitate and support intermodal freight transportation initiatives at the State and local levels to relieve congestion and improve safety; and

(2) to provide capital funding to address infrastructure and freight distribution needs at inland ports and intermodal freight facilities.

(c) ELIGIBLE PROJECTS.—Projects for which grants may be made under this section shall help relieve congestion, improve transportation safety, facilitate international trade, and encourage public-private partnership and may include projects for the development and construction of intermodal freight distribution and transfer facilities at inland ports.

(d) SELECTION PROCESS.—

(1) APPLICATIONS.—A State (as defined in section 101(a) of title 23, United States Code) shall submit for approval by the Secretary an application for a grant under this section containing such information as the Secretary may require to receive such a grant.

(2) PRIORITY.—In selecting projects for grants, the Secretary shall give priority to projects that will—

(A) reduce congestion into and out of international ports located in the United States;

(B) demonstrate ways to increase the likelihood that freight container movements involve freight containers carrying goods; and

(C) establish or expand intermodal facilities that encourage the development of inland freight distribution centers.

(3) DESIGNATED PROJECTS.—Subject to the provisions of this section, the Secretary shall allocate for each of fiscal years 2005 through 2009, from funds made available to carry out this section, 20 percent of the following amounts for grants to carry out the following projects under this section:

(A) Short-haul intermodal projects, Oregon, $5,000,000.

(B) The Georgia Port Authority, $5,000,000.

(C) The ports of Los Angeles and Long Beach, California, $5,000,000.

(D) Fairbanks, Alaska, $5,000,000.

(E) Charlotte Douglas International Airport Freight Intermodal Facility, North Carolina, $5,000,000.

(F) South Piedmont Freight Intermodal Center, North Carolina, $5,000,000.

(e) USE OF GRANT FUNDS.—Funds made available to a recipient of a grant under this section shall be used by the recipient for the project described in the application of the recipient approved by the Secretary.

(f) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the results of the pilot program carried out under this section.

(g) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $6,000,000 for each of fiscal years 2005 through 2009.

(2) CONTRACT AUTHORITY.—Funds authorized by this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of a project under this section shall be determined in accordance with section 120 of such title.

(h) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects for which grants are made under this section shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code.

SEC. 1307. DEPLOYMENT OF MAGNETIC LEVITATION TRANSPORTATION PROJECTS.

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

(1) ELIGIBLE PROJECT COSTS.—The term ''eligible project costs''—

(A) means the capital cost of the fixed guideway infrastructure of a MAGLEV project, including land, piers, guideways, propulsion equipment and other components attached to guideways, power distribution facilities (including substations), control and communications facilities, access roads, and storage, repair, and maintenance facilities, but not including costs incurred for a new station; and

(B) includes the costs of preconstruction planning activities.

(2) FULL PROJECT COSTS.—The term ''full project costs'' means the total capital costs of a MAGLEV project, including eligible project costs and the costs of stations, vehicles, and equipment.

(3) MAGLEV.—The term ''MAGLEV'' means transportation systems employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour.

(4) STATE.—The term ''State'' has the meaning such term has under section 101(a) of title 23, United States Code.

(b) IN GENERAL.—

(1) ASSISTANCE FOR ELIGIBLE PROJECTS.—The Secretary shall make available financial assistance to pay the Federal share of full project costs of eligible projects authorized by this section.

(2) USE OF ASSISTANCE.—Financial assistance provided under paragraph (1) shall be used only to pay eligible project costs of projects authorized by this section.

(3) APPLICABILITY OF OTHER LAWS.—Financial assistance made available under this section, and projects assisted with such assistance, shall be subject to section 5333(a) of title 49, United States Code.

(c) PROJECT ELIGIBILITY.—To be eligible to receive financial assistance under subsection (b), a project shall—

(1) involve a segment or segments of a high-speed ground transportation corridor;

(2) result in an operating transportation facility that provides a revenue producing service; and

(3) be approved by the Secretary based on an application submitted to the Secretary by a State or authority designated by 1 or more States.

(d) ALLOCATION.—Of the amounts made available to carry out this section for a fiscal year, the Secretary shall allocate 50 percent for the MAGLEV project between Las Vegas and Primm, Nevada, and 50 percent for a MAGLEV project located east of the Mississippi River.

SEC. 1308. DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall carry out a program in the 8 States comprising the Delta Region (Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee) to—

(1) support and encourage multistate transportation planning and corridor development;

(2) provide for transportation project development;

(3) facilitate transportation decisionmaking; and

(4) support transportation construction.

(b) ELIGIBLE RECIPIENTS.—A State transportation department or metropolitan planning organization in a Delta Region State may receive and administer funds provided under the program.

(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under the program for multistate highway planning, development, and construction projects.

(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—All activities funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by sections 134 and 135 of title 23, United States Code.

(e) SELECTION CRITERIA.—The Secretary shall select projects to be carried out under the program based on—

(1) whether the project is located—

(A) in an area under the authority of the Delta Regional Authority; and

(B) on a Federal-aid highway;

(2) endorsement of the project by the State department of transportation; and

(3) evidence of the ability of the recipient of funds provided under the program to complete the project.

(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

(1) encourage State and local officials to work together to develop plans for multimodal and multijurisdictional transportation decisionmaking; and

(2) give priority to projects that emphasize multimodal planning, including planning for operational improvements that—

(A) increase the mobility of people and goods;

(B) improve the safety of the transportation system with respect to catastrophic natural disasters or disasters caused by human activity; and

(C) contribute to the economic vitality of the area in which the project is being carried out.

(g) FEDERAL SHARE.—Amounts provided by the Delta Regional Authority to carry out a project under this subsection may be applied to the non-Federal share of the project required by section 120 of title 23, United States Code.

(h) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $10,000,000 for each of fiscal years 2006 through 2009.

(2) CONTRACT AUTHORITY.—Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended.

SEC. 1309. EXTENSION OF PUBLIC TRANSIT VEHICLE EXEMPTION FROM AXLE WEIGHT RESTRICTIONS.

Section 1023(h)(1) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 127 note; 106 Stat. 1552) is amended by striking ''2005'' and inserting ''2009''.

SEC. 1310. INTERSTATE OASIS PROGRAM.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, in consultation with the States and other interested parties, the Secretary shall—

(1) establish an interstate oasis program; and

(2) after providing an opportunity for public comment, develop standards for designating, as an interstate oasis, a facility that—

(A) offers—

(i) products and services to the public;

(ii) 24-hour access to restrooms; and

(iii) parking for automobiles and heavy trucks; and

(B) meets other standards established by the Secretary.

(b) STANDARDS FOR DESIGNATION.—The standards for designation under subsection (a) shall include standards relating to—

(1) the appearance of a facility; and

(2) the proximity of the facility to the Dwight D. Eisenhower National System of Interstate and Defense Highways.

(c) ELIGIBILITY FOR DESIGNATION.—If a State (as defined in section 101(a) of title 23, United States Code) elects to participate in the interstate oasis program, any facility meeting the standards established by the Secretary shall be eligible for designation under this section.

(d) LOGO.—The Secretary shall design a logo to be displayed by a facility designated under this section.

Subtitle D—Highway Safety

SEC. 1401. HIGHWAY SAFETY IMPROVEMENT PROGRAM.

(a) SAFETY IMPROVEMENT.—

(1) IN GENERAL.—Section 148 of title 23, United States Code, is amended to read as follows:

''§ 148. Highway safety improvement program

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

''(1) HIGH RISK RURAL ROAD.—The term 'high risk rural road' means any roadway functionally classified as a rural major or minor collector or a rural local road—

''(A) on which the accident rate for fatalities and incapacitating injuries exceeds the statewide average for those functional classes of roadway; or

''(B) that will likely have increases in traffic volume that are likely to create an accident rate for fatalities and incapacitating injuries that exceeds the statewide average for those functional classes of roadway.

''(2) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'highway safety improvement program' means the program carried out under this section.

''(3) HIGHWAY SAFETY IMPROVEMENT PROJECT.—

''(A) IN GENERAL.—The term 'highway safety improvement project' means a project described in the State strategic highway safety plan that—

''(i) corrects or improves a hazardous road location or feature; or

''(ii) addresses a highway safety problem.

''(B) INCLUSIONS.—The term 'highway safety improvement project' includes a project for one or more of the following:

''(i) An intersection safety improvement.

''(ii) Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition).

''(iii) Installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists, pedestrians, and the disabled.

''(iv) Installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents.

''(v) An improvement for pedestrian or bicyclist safety or safety of the disabled.

''(vi) Construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130, including the separation or protection of grades at railway-highway crossings.

''(vii) Construction of a railway-highway crossing safety feature, including installation of protective devices.

''(viii) The conduct of a model traffic enforcement activity at a railway-highway crossing.

''(ix) Construction of a traffic calming feature.

''(x) Elimination of a roadside obstacle.

''(xi) Improvement of highway signage and pavement markings.

''(xii) Installation of a priority control system for emergency vehicles at signalized intersections.

''(xiii) Installation of a traffic control or other warning device at a location with high accident potential.

''(xiv) Safety-conscious planning.

''(xv) Improvement in the collection and analysis of crash data.

''(xvi) Planning, integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to workzone safety.

''(xvii) Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of motorists and workers), and crash attenuators.

''(xviii) The addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife.

''(xix) Installation and maintenance of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.

''(xx) Construction and yellow-green signs at pedestrian-bicycle crossings and in school zones.

''(xxi) Construction and operational improvements on high risk rural roads.

''(4) SAFETY PROJECT UNDER ANY OTHER SECTION.—

''(A) IN GENERAL.—The term 'safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

''(B) INCLUSION.—The term 'safety project under any other section' includes a project to promote the awareness of the public and educate the public concerning highway safety matters (including motorcyclist safety) and a project to enforce highway safety laws.

''(5) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'State highway safety improvement program' means projects or strategies included in the State strategic highway safety plan carried out as part of the State transportation improvement program under section 135(g).

''(6) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term 'State strategic highway safety plan' means a plan developed by the State transportation department that—

''(A) is developed after consultation with—

''(i) a highway safety representative of the Governor of the State;

''(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

''(iii) representatives of major modes of transportation;

''(iv) State and local traffic enforcement officials;

''(v) persons responsible for administering section 130 at the State level;

''(vi) representatives conducting Operation Lifesaver;

''(vii) representatives conducting a motor carrier safety program under section 31102, 31106, or 31309 of title 49;

''(viii) motor vehicle administration agencies; and

''(ix) other major State and local safety stakeholders;

''(B) analyzes and makes effective use of State, regional, or local crash data;

''(C) addresses engineering, management, operation, education, enforcement, and emergency services elements (including integrated, interoperable emergency communications) of highway safety as key factors in evaluating highway projects;

''(D) considers safety needs of, and high-fatality segments of, public roads;

''(E) considers the results of State, regional, or local transportation and highway safety planning processes;

''(F) describes a program of projects or strategies to reduce or eliminate safety hazards;

''(G) is approved by the Governor of the State or a responsible State agency; and

''(H) is consistent with the requirements of section 135(g).

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a highway safety improvement program.

''(2) PURPOSE.—The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on public roads.

''(c) ELIGIBILITY.—

''(1) IN GENERAL.—To obligate funds apportioned under section 104(b)(5) to carry out this section, a State shall have in effect a State highway safety improvement program under which the State—

''(A) develops and implements a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in paragraph (2);

''(B) produces a program of projects or strategies to reduce identified safety problems;

''(C) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of proposed improvements; and

''(D) submits to the Secretary an annual report that—

''(i) describes, in a clearly understandable fashion, not less than 5 percent of locations determined by the State, using criteria established in accordance with paragraph (2)(B)(ii), as exhibiting the most severe safety needs; and

''(ii) contains an assessment of—

''(I) potential remedies to hazardous locations identified;

''(II) estimated costs associated with those remedies; and

''(III) impediments to implementation other than cost associated with those remedies.

''(2) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.—As part of the State strategic highway safety plan, a State shall—

''(A) have in place a crash data system with the ability to perform safety problem identification and countermeasure analysis;

''(B) based on the analysis required by subparagraph (A)—

''(i) identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists (including motorcyclists), bicyclists, pedestrians, and other highway users; and

''(ii) using such criteria as the State determines to be appropriate, establish the relative severity of those locations, in terms of accidents,

injuries, deaths, traffic volume levels, and other relevant data;

''(C) adopt strategic and performance-based goals that—

''(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

''(ii) focus resources on areas of greatest need; and

''(iii) are coordinated with other State highway safety programs;

''(D) advance the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that—

''(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

''(ii) includes all public roads;

''(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists (including motorcyclists), bicyclists, pedestrians, the disabled, and other highway users; and

''(iv) includes a means of identifying the relative severity of hazardous locations described in clause (iii) in terms of accidents, injuries, deaths, and traffic volume levels;

''(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through crash data analysis;

''(ii) identify opportunities for preventing the development of such hazardous conditions; and

''(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

''(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

''(ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

''(d) ELIGIBLE PROJECTS.—

''(1) IN GENERAL.—A State may obligate funds apportioned to the State under section 104(b)(5) to carry out—

''(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail; or

''(B) as provided in subsection (e), other safety projects.

''(2) USE OF OTHER FUNDING FOR SAFETY.—

''(A) EFFECT OF SECTION.—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

''(B) USE OF OTHER FUNDS.—States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

''(e) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.—

''(1) IN GENERAL.—To further the implementation of a State strategic highway safety plan, a State may use up to 10 percent of the amount of funds apportioned to the State under section 104(b)(5) for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan if the State certifies that—

''(A) the State has met needs in the State relating to railway-highway crossings; and

''(B) the State has met the State's infrastructure safety needs relating to highway safety improvement projects.

''(2) OTHER TRANSPORTATION AND HIGHWAY SAFETY PLANS.—Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this section.

''(f) HIGH RISK RURAL ROADS.—

''(1) IN GENERAL.—After making an apportionment under section 104(b)(5) for a fiscal year beginning after September 30, 2005, the Secretary shall ensure, from amounts made available to carry out this section for such fiscal year, that a total of $90,000,000 of such apportionment is set aside by the States, proportionally according to the share of each State of the total amount so apportioned, for use only for construction and operational improvements on high risk rural roads.

''(2) SPECIAL RULE.—A State may use funds apportioned to the State pursuant to this subsection for any project under this section if the State certifies to the Secretary that the State has met all of State needs for construction and operational improvements on high risk rural roads.

''(g) REPORTS.—

''(1) IN GENERAL.—A State shall submit to the Secretary a report that—

''(A) describes progress being made to implement highway safety improvement projects under this section;

''(B) assesses the effectiveness of those improvements; and

''(C) describes the extent to which the improvements funded under this section contribute to the goals of—

''(i) reducing the number of fatalities on roadways;

''(ii) reducing the number of roadway-related injuries;

''(iii) reducing the occurrences of roadway-related crashes;

''(iv) mitigating the consequences of roadway-related crashes; and

''(v) reducing the occurrences of crashes at railway-highway crossings.

''(2) CONTENTS; SCHEDULE.—The Secretary shall establish the content and schedule for a report under paragraph (1).

''(3) TRANSPARENCY.—The Secretary shall make reports submitted under subsection (c)(1)(D) available to the public through—

''(A) the Web site of the Department; and

''(B) such other means as the Secretary determines to be appropriate.

''(4) DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION.—Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose directly relating to paragraph (1) or subsection (c)(1)(D), or published by the Secretary in accordance with paragraph (3), shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in such reports, surveys, schedules, lists, or other data.

''(h) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement project carried out with funds apportioned to a State under section 104(b)(5) shall be 90 percent.''.

(2) CLERICAL AMENDMENT.—The analysis for chapter 1 of such title is amended by striking the item relating to section 148 and inserting the following:

''148. Highway safety improvement program.''.

(3) CONFORMING AMENDMENTS.—

(A) TRANSFERS OF APPORTIONMENTS.—Section 104(g) of such title is amended in the first sentence by striking ''sections 130, 144, and 152 of this title'' and inserting ''sections 130 and 144''.

(B) UNIFORM TRANSFERABILITY.—Section 126(a) of such title is amended by inserting ''under'' after ''State's apportionment''.

(C) OTHER SECTIONS.—Sections 154, 164, and 409 of such title are amended by striking ''152'' each place it appears and inserting ''148''.

(b) APPORTIONMENT OF HIGHWAY SAFETY IMPROVEMENT PROGRAM FUNDS.—Section 104(b) of such title (as amended by section 1103 of this Act) is amended—

(1) in the matter preceding paragraph (1) by inserting after ''Improvement program,'' the following: ''the highway safety improvement program,''; and

(2) by adding at the end the following:

''(5) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

''(A) IN GENERAL.—For the highway safety improvement program, in accordance with the following formula:

''(i) 33⅓ percent of the apportionments in the ratio that—

''(I) the total lane miles of Federal-aid highways in each State; bears to

''(II) the total lane miles of Federal-aid highways in all States.

''(ii) 33⅓ percent of the apportionments in the ratio that—

''(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

''(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

''(iii) 33⅓ percent of the apportionments in the ratio that—

''(I) the number of fatalities on the Federal-aid system in each State in the latest fiscal year for which data are available; bears to

''(II) the number of fatalities on the Federal-aid system in all States in the latest fiscal year for which data are available.

''(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.''.

(d) ELIMINATION OF HAZARDS RELATING TO RAILWAY-HIGHWAY CROSSINGS.—

(1) FUNDS FOR PROTECTIVE DEVICES.—Section 130(e) of such title is amended—

(A) by striking ''At'' and inserting the following:

''(1) IN GENERAL.—Before making an apportionment under section 104(b)(5) for a fiscal year, the Secretary shall set aside, from amounts made available to carry out the highway safety improvement program under section 148 for such fiscal year, at least $220,000,000 for the elimination of hazards and the installation of protective devices at railway-highway crossings. At''; and

(B) by adding at the end the following:

''(2) SPECIAL RULE.—If a State demonstrates to the satisfaction of the Secretary that the State has met all its needs for installation of protective devices at railway-highway crossings, the State may use funds made available by this section for other purposes under this subsection.''.

(2) APPORTIONMENT.—Section 130(f) of such title is amended to read as follows:

''(f) APPORTIONMENT.—

''(1) FORMULA.—Fifty percent of the funds set aside to carry out this section pursuant to subsection (e)(1) shall be apportioned to the States in accordance with the formula set forth in section 104(b)(3)(A), and 50 percent of such funds shall be apportioned to the States in the ratio that total public railway-highway crossings in each State bears to the total of such crossings in all States.

''(2) MINIMUM APPORTIONMENT.—Notwithstanding paragraph (1), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under paragraph (1).

''(3) FEDERAL SHARE.—The Federal share payable on account of any project financed with funds set aside to carry out this section shall be 90 percent of the cost thereof.''.

(3) BIENNIAL REPORTS TO CONGRESS.—Section 130(g) of such title is amended in the third sentence—

(A) by inserting ''and the Committee on Commerce, Science, and Transportation,'' after ''Public Works''; and

(B) by striking ''not later than April 1 of each year'' and inserting '', not later than April 1, 2006, and every 2 years thereafter,''.

(4) EXPENDITURE OF FUNDS.—Section 130 of such title is amended by adding at the end the following:

''(k) EXPENDITURE OF FUNDS.—Not more than 2 percent of funds apportioned to a State to

carry out this section may be used by the State for compilation and analysis of data in support of activities carried out under subsection (g).''.

(e) TRANSITION.—

(1) IMPLEMENTATION.—Except as provided in paragraph (2), the Secretary shall approve obligations of funds apportioned under section 104(b)(5) of title 23, United States Code (as added by subsection (b)) to carry out section 148 of that title, only if, not later than October 1 of the second fiscal year beginning after the date of enactment of this Act, a State has developed and implemented a State strategic highway safety plan as required pursuant to section 148(c) of that title.

(2) INTERIM PERIOD.—

(A) IN GENERAL.—Before October 1 of the second fiscal year after the date of enactment of this Act and until the date on which a State develops and implements a State strategic highway safety plan, the Secretary shall apportion funds to a State for the highway safety improvement program and the State may obligate funds apportioned to the State for the highway safety improvement program under section 148 for projects that were eligible for funding under sections 130 and 152 of that title, as in effect on the day before the date of enactment of this Act.

(B) NO STRATEGIC HIGHWAY SAFETY PLAN.—If a State has not developed a strategic highway safety plan by October 1, 2007, the State shall receive for the highway safety improvement program for each subsequent fiscal year until the date of development of such plan an amount that equals the amount apportioned to the State for that program for fiscal year 2007.

SEC. 1402. WORKER INJURY PREVENTION AND FREE FLOW OF VEHICULAR TRAFFIC.

Not later than 1 year after the date of enactment of this Act, the Secretary shall issue regulations to decrease the likelihood of worker injury and maintain the free flow of vehicular traffic by requiring workers whose duties place them on or in close proximity to a Federal-aid highway (as defined in section 101 of title 23, United States Code) to wear high visibility garments. The regulations may also require such other worker-safety measures for workers with those duties as the Secretary determines to be appropriate.

SEC. 1403. TOLL FACILITIES WORKPLACE SAFETY STUDY.

(a) IN GENERAL.—The Secretary shall conduct a study on the safety of highway toll collection facilities, including toll booths, to determine the safety of the facilities for the toll collectors who work in and around the facilities, including consideration of—

(1) the effect of design or construction of the facilities on the likelihood of vehicle collisions with the facilities;

(2) the safety of crosswalks used by toll collectors in transit to and from toll booths;

(3) the extent of the enforcement of speed limits in the vicinity of the facilities;

(4) the use of warning devices, such as vibration and rumble strips, to alert drivers approaching the facilities;

(5) the use of cameras to record traffic violations in the vicinity of the facilities;

(6) the use of traffic control arms in the vicinity of the facilities;

(7) law enforcement practices and jurisdictional issues that affect safety in the vicinity of the facilities; and

(8) the incidence of accidents and injuries in the vicinity of toll booths.

(b) DATA COLLECTION.—As part of the study, the Secretary shall collect data regarding the incidence of accidents and injuries in the vicinity of highway toll collection facilities.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study, together with recommendations for improving toll facilities workplace safety.

(d) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund (other than the Mass Transit Account), $500,000 for fiscal year 2006.

(2) CONTRACT AUTHORITY.—Funds authorized to be appropriated by this section shall be available for obligation in the same manner and to the same extent as if the funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of the project shall be 100 percent, and the funds shall remain available until expended and shall not be transferable.

SEC. 1404. SAFE ROUTES TO SCHOOL PROGRAM.

(a) ESTABLISHMENT.—Subject to the requirements of this section, the Secretary shall establish and carry out a safe routes to school program for the benefit of children in primary and middle schools.

(b) PURPOSES.—The purposes of the program shall be—

(1) to enable and encourage children, including those with disabilities, to walk and bicycle to school;

(2) to make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and

(3) to facilitate the planning, development, and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools.

(c) APPORTIONMENT OF FUNDS.—

(1) IN GENERAL.—Subject to paragraphs (2), (3), and (4), amounts made available to carry out this section for a fiscal year shall be apportioned among the States in the ratio that—

(A) the total student enrollment in primary and middle schools in each State; bears to

(B) the total student enrollment in primary and middle schools in all States.

(2) MINIMUM APPORTIONMENT.—No State shall receive an apportionment under this section for a fiscal year of less than $1,000,000.

(3) SET-ASIDE FOR ADMINISTRATIVE EXPENSES.—Before apportioning under this subsection amounts made available to carry out this section for a fiscal year, the Secretary shall set aside not more than $3,000,000 of such amounts for the administrative expenses of the Secretary in carrying out this subsection.

(4) DETERMINATION OF STUDENT ENROLLMENTS.—Determinations under this subsection concerning student enrollments shall be made by the Secretary.

(d) ADMINISTRATION OF AMOUNTS.—Amounts apportioned to a State under this section shall be administered by the State's department of transportation.

(e) ELIGIBLE RECIPIENTS.—Amounts apportioned to a State under this section shall be used by the State to provide financial assistance to State, local, and regional agencies, including nonprofit organizations, that demonstrate an ability to meet the requirements of this section.

(f) ELIGIBLE PROJECTS AND ACTIVITIES.—

(1) INFRASTRUCTURE-RELATED PROJECTS.—

(A) IN GENERAL.—Amounts apportioned to a State under this section may be used for the planning, design, and construction of infrastructure-related projects that will substantially improve the ability of students to walk and bicycle to school, including sidewalk improvements, traffic calming and speed reduction improvements, pedestrian and bicycle crossing improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools.

(B) LOCATION OF PROJECTS.—Infrastructure-related projects under subparagraph (A) may be carried out on any public road or any bicycle or pedestrian pathway or trail in the vicinity of schools.

(2) NONINFRASTRUCTURE-RELATED ACTIVITIES.—

(A) IN GENERAL.—In addition to projects described in paragraph (1), amounts apportioned to a State under this section may be used for noninfrastructure-related activities to encourage walking and bicycling to school, including public awareness campaigns and outreach to press and community leaders, traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, health, and environment, and funding for training, volunteers, and managers of safe routes to school programs.

(B) ALLOCATION.—Not less than 10 percent and not more than 30 percent of the amount apportioned to a State under this section for a fiscal year shall be used for noninfrastructure-related activities under this subparagraph.

(3) SAFE ROUTES TO SCHOOL COORDINATOR.—Each State receiving an apportionment under this section for a fiscal year shall use a sufficient amount of the apportionment to fund a full-time position of coordinator of the State's safe routes to school program.

(g) CLEARINGHOUSE.—

(1) IN GENERAL.—The Secretary shall make grants to a national nonprofit organization engaged in promoting safe routes to schools to—

(A) operate a national safe routes to school clearinghouse;

(B) develop information and educational programs on safe routes to school; and

(C) provide technical assistance and disseminate techniques and strategies used for successful safe routes to school programs.

(2) FUNDING.—The Secretary shall carry out this subsection using amounts set aside for administrative expenses under subsection (c)(3).

(h) TASK FORCE.—

(1) IN GENERAL.—The Secretary shall establish a national safe routes to school task force composed of leaders in health, transportation, and education, including representatives of appropriate Federal agencies, to study and develop a strategy for advancing safe routes to school programs nationwide.

(2) REPORT.—Not later than March 31, 2006, the Secretary shall submit to Congress a report containing the results of the study conducted, and a description of the strategy developed, under paragraph (1) and information regarding the use of funds for infrastructure-related and noninfrastructure-related activities under paragraphs (1) and (2) of subsection (f).

(3) FUNDING.—The Secretary shall carry out this subsection using amounts set aside for administrative expenses under subsection (c)(3).

(i) APPLICABILITY OF TITLE 23.—Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of a project or activity under this section shall be 100 percent.

(j) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects assisted under this subsection shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code.

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

(1) IN THE VICINITY OF SCHOOLS.—The term ''in the vicinity of schools'' means, with respect to a school, the area within bicycling and walking distance of the school (approximately 2 miles).

(2) PRIMARY AND MIDDLE SCHOOLS.—The term ''primary and middle schools'' means schools providing education from kindergarten through eighth grade.

SEC. 1405. ROADWAY SAFETY IMPROVEMENTS FOR OLDER DRIVERS AND PEDESTRIANS.

(a) IN GENERAL.—The Secretary shall carry out a program to improve traffic signs and pavement markings in all States (as such term is defined in section 101 of title 23, United States Code) in a manner consistent with the recommendations included in the publication of the Federal Highway Administration entitled ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians (FHWA–RD–01–103)'' and dated October 2001.

(b) FEDERAL SHARE.—The Federal share of the cost of a project carried out under this section shall be determined in accordance with section 120 of title 23, United States Code.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section for each of fiscal years 2005 through 2009.

SEC. 1406. SAFETY INCENTIVE GRANTS FOR USE OF SEAT BELTS.

Section 157(g)(1) of title 23, United States Code, is amended by striking ''2004, and'' and all that follows through ''2005'' and inserting ''2004, and $112,000,000 for fiscal year 2005''.

SEC. 1407. SAFETY INCENTIVES TO PREVENT OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS.

(a) CODIFICATION OF PENALTY.—Section 163 of title 23, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

''(e) PENALTY.—

''(1) IN GENERAL.—On October 1, 2003, and October 1 of each fiscal year thereafter, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold from amounts apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) an amount equal to the amount specified in paragraph (2).

''(2) AMOUNT TO BE WITHHELD.—If a State is subject to a penalty under paragraph (1), the Secretary shall withhold for a fiscal year from the apportionments of the State described in paragraph (1) an amount equal to a percentage of the funds apportioned to the State under paragraphs (1), (3), and (4) of section 104(b) for fiscal year 2003. The percentage shall be as follows:

''(A) For fiscal year 2004, 2 percent.

''(B) For fiscal year 2005, 4 percent.

''(C) For fiscal year 2006, 6 percent.

''(D) For fiscal year 2007, and each fiscal year thereafter, 8 percent.

''(3) FAILURE TO COMPLY.—If, within 4 years from the date that an apportionment for a State is withheld in accordance with this subsection, the Secretary determines that the State has enacted and is enforcing a law described in subsection (a), the apportionment of the State shall be increased by an amount equal to the amount withheld. If, at the end of such 4-year period, any State has not enacted or is not enforcing a law described in subsection (a) any amounts so withheld from such State shall lapse.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 163(f)(1) of such title (as redesignated by subsection (a)(1) of this section) is amended by striking ''2004, and'' and inserting ''2004, and $110,000,000 for fiscal year 2005''.

(c) REPEAL.—Section 351 of the Department of Transportation and Related Agencies Appropriations Act, 2001 (23 U.S.C. 163 note; 114 Stat. 1356A–34) is repealed.

SEC. 1408. IMPROVEMENT OR REPLACEMENT OF HIGHWAY FEATURES ON NATIONAL HIGHWAY SYSTEM.

(a) UPDATE OF IMPLEMENTATION GUIDANCE.—The Secretary, in cooperation with the American Association of State Highway and Transportation Officials, shall update as appropriate the August 28, 1998, Federal Highway Administration Policy on Implementation of the report of the Transportation Research Board of the National Research Council entitled ''NCHRP Report 350–Recommended Procedures for the Safety Performance Evaluation of Highway Features''.

(b) GUIDANCE.—The Secretary, in cooperation with the Association, shall publish updated guidance regarding the conditions under which States, when choosing to improve or replace highway features on the National Highway System, should improve or replace such features with highway features that have been tested, evaluated, and found to be acceptable under the guidelines of the report referred to in subsection (a).

(c) MATTERS TO BE CONSIDERED.—Guidance published in accordance with subsection (a)—

(1) shall address those highway features that are covered by the guidelines in the report referred to in subsection (b); and

(2) shall consider types of highway features, cost-effectiveness, and practicality of replacement with highway features that have been found to be acceptable under the report guidelines to determine conditions when such features should be used.

SEC. 1409. WORK ZONE SAFETY GRANTS.

(a) IN GENERAL.—The Secretary shall establish and implement a work zone safety grant program under which the Secretary may make grants to nonprofit organizations and not-for-profit organizations to provide training to prevent or reduce highway work zone injuries and fatalities.

(b) ELIGIBLE ACTIVITIES.—Grants may be made under the program for the following purposes:

(1) Training for construction craft workers on the prevention of injuries and fatalities in highway and road construction.

(2) Development of guidelines for the prevention of highway work zone injuries and fatalities.

(3) Training for State and local government transportation agencies and other groups implementing guidelines for the prevention of highway work zone injuries and fatalities.

(c) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $5,000,000 for each of fiscal years 2006 through 2009.

(2) CONTRACT AUTHORITY.—Funds authorized by this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable.

(d) CONSTRUCTION WORK IN ALASKA.—Section 114 of title 23, United States Code, is amended by adding at the end of the following:

''(c) CONSTRUCTION WORK IN ALASKA.—

''(1) IN GENERAL.—The Secretary shall ensure that a worker who is employed on a remote project for the construction of a highway or portion of a highway located on a Federal-aid system in the State of Alaska and who is not a domiciled resident of the locality shall receive meals and lodging.

''(2) LODGING.—The lodging under paragraph (1) shall be in accordance with section 1910.142 of title 29, Code of Federal Regulations (relating to temporary labor camp requirements).

''(3) PER DIEM.—

''(A) IN GENERAL.—Contractors are encouraged to use commercial facilities and lodges on remote projects, however, when such facilities are not available, per diem in lieu of room and lodging may be paid on remote Federal highway projects at a basic rate of $75.00 per day or part of a day the worker is employed on the project. Where the contractor provides or furnishes room and lodging or pays a per diem, the cost of the amount shall not be considered a part of wages and shall be excluded from the calculation of wages.

''(B) SECRETARY OF LABOR.—Such per diem rate shall be adopted by the Secretary of Labor for all applicable remote Federal highway projects in Alaska.

''(C) EXCEPTION.—Per diem shall not be allowed on any of the following remote projects for the construction of a highway or portion of a highway located on a Federal-aid system:

''(i) West of Livengood on the Elliot Highway.

''(ii) Mile 0 on the Dalton Highway to the North Slope of Alaska; north of Mile 20 on the Taylor Highway.

''(iii) East of Chicken on the Top of the World Highway and south of Tetlin Junction to the Alaska Canadian border.

''(4) DEFINITIONS.—In this subsection, the following definitions apply:

''(A) REMOTE.—The term 'remote', as used with respect to a project, means that the project is 65 road miles or more from the international airport in Fairbanks, Anchorage, or Juneau, Alaska, as the case may be, or is inaccessible by road in a 2-wheel drive vehicle.

''(B) RESIDENT.—The term 'resident', as used with respect to a project, means a person living within 65 road miles of the midpoint of the project for at least 12 consecutive months prior to the award of the project.''.

SEC. 1410. NATIONAL WORK ZONE SAFETY INFORMATION CLEARINGHOUSE.

(a) GRANTS.—The Secretary shall make grants for fiscal years 2006 through 2009 to a national nonprofit foundation for the operation of the National Work Zone Safety Information Clearinghouse, authorized by section 358(b)(2) of Public Law 104–59, created for the purpose of assembling and disseminating, by electronic and other means, information relating to improvement of roadway work zone safety.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $1,000,000 for each of fiscal years 2006 through 2009.

(c) CONTRACT AUTHORITY.—Funds authorized by this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except the Federal share of the cost of activities carried out using such funds shall be 100 percent, and such funds shall remain available until expended and shall not be transferable.

SEC. 1411. ROADWAY SAFETY.

(a) ROAD SAFETY.—

(1) IN GENERAL.—The Secretary shall enter into an agreement to assist in the activities of a national nonprofit organization that is dedicated solely to improving public road safety—

(A) by improving the quality of data pertaining to public road hazards and design features that affect or increase the severity of motor vehicle crashes;

(B) by developing and carrying out a public awareness campaign to educate State and local transportation officials, public safety officials, and motorists regarding the extent to which public road hazards and design features are a factor in motor vehicle crashes; and

(C) by promoting public road safety research and technology transfer activities.

(2) FUNDING.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $500,000 for each of fiscal years 2006 through 2009 to carry out this subsection.

(3) APPLICABILITY OF TITLE 23.—Funds made available by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, except that the funds shall remain available until expended.

(b) BICYCLE AND PEDESTRIAN SAFETY GRANTS.—

(1) IN GENERAL.—The Secretary shall make grants to a national, not-for-profit organization

engaged in promoting bicycle and pedestrian safety—

(A) to operate a national bicycle and pedestrian clearinghouse;

(B) to develop information and educational programs; and

(C) to disseminate techniques and strategies for improving bicycle and pedestrian safety.

(2) FUNDING.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $300,000 for fiscal year 2005 and $500,000 for each of fiscal years 2006 through 2009 to carry out this subsection.

(3) APPLICABILITY OF TITLE 23.—Funds made available by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, except that the funds shall remain available until expended.

SEC. 1412. IDLING REDUCTION FACILITIES IN INTERSTATE RIGHTS-OF-WAY.

Section 111 of title 23, United States Code, is amended by adding at the end the following:

''(d) IDLING REDUCTION FACILITIES IN INTERSTATE RIGHTS-OF-WAY.—

''(1) IN GENERAL.—Notwithstanding subsection (a), a State may—

''(A) permit electrification or other idling reduction facilities and equipment, for use by motor vehicles used for commercial purposes, to be placed in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in the State, so long as those idling reduction measures do not reduce the existing number of designated truck parking spaces at any given rest or recreation area; and

''(B) charge a fee, or permit the charging of a fee, for the use of those parking spaces actively providing power to a truck to reduce idling.

''(2) PURPOSE.—The exclusive purpose of the facilities described in paragraph (1) (or similar technologies) shall be to enable operators of motor vehicles used for commercial purposes—

''(A) to reduce idling of a truck while parked in the rest or recreation area; and

''(B) to use installed or other equipment specifically designed to reduce idling of a truck, or provide alternative power for supporting driver comfort, while parked.''.

Subtitle E—Construction and Contract Efficiency

SEC. 1501. PROGRAM EFFICIENCIES.

(a) ADVANCE CONSTRUCTION.—Section 115 of title 23, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by striking subsections (a) and (b) and inserting the following:

''(a) IN GENERAL.—The Secretary may authorize a State to proceed with a project authorized under this title—

''(1) without the use of Federal funds; and

''(2) in accordance with all procedures and requirements applicable to the project other than those procedures and requirements that limit the State to implementation of a project—

''(A) with the aid of Federal funds previously apportioned or allocated to the State; or

''(B) with obligation authority previously allocated to the State.

''(b) OBLIGATION OF FEDERAL SHARE.—The Secretary, on the request of a State and execution of a project agreement, may obligate all or a portion of the Federal share of a project authorized to proceed under this section from any category of funds for which the project is eligible.''.

(b) OBLIGATION AND RELEASE OF FUNDS.—Section 118(d) of such title is amended to read as follows:

''(d) OBLIGATION AND RELEASE OF FUNDS.—

''(1) IN GENERAL.—Funds apportioned or allocated to a State for a purpose for any fiscal year shall be considered to be obligated if a sum equal to the total of the funds apportioned or allocated to the State for that purpose for that fiscal year and previous fiscal years is obligated.

''(2) RELEASED FUNDS.—Any funds released by the final payment for a project, or by modifying the project agreement for a project, shall be—

''(A) credited to the same class of funds previously apportioned or allocated to the State for the project; and

''(B) immediately available for obligation.

''(3) NET OBLIGATIONS.—Notwithstanding any other provision of law (including a regulation), obligations recorded against funds made available under this subsection shall be recorded and reported as net obligations.''.

SEC. 1502. HIGHWAYS FOR LIFE PILOT PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish and implement a pilot program to be known as the ''Highways for LIFE Pilot Program''.

(2) PURPOSE.—The purpose of the pilot program shall be to advance longer-lasting highways using innovative technologies and practices to accomplish the fast construction of efficient and safe highways and bridges.

(3) OBJECTIVES.—Under the pilot program, the Secretary shall provide leadership and incentives to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in the highway construction process that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction.

(b) PROJECTS.—

(1) APPLICATIONS.—To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that is in such form and contains such information as the Secretary requires. Each application shall contain a description of proposed projects to be carried by the State under the pilot program.

(2) ELIGIBILITY.—A proposed project shall be eligible for assistance under the pilot program if the project—

(A) constructs, reconstructs, or rehabilitates a route or connection on a Federal-aid highway eligible for assistance under chapter 1 of title 23, United States Code;

(B) uses innovative technologies, manufacturing processes, financing, or contracting methods that improve safety, reduce congestion due to construction, and improve quality; and

(C) meets additional criteria as determined by the Secretary.

(3) PROJECT PROPOSAL.—A project proposal submitted under paragraph (1) shall contain—

(A) an identification and description of the projects to be delivered;

(B) a description of how the projects will result in improved safety, faster construction, reduced congestion due to construction, user satisfaction, and improved quality;

(C) a description of the innovative technologies, manufacturing processes, financing, and contracting methods that will be used for the proposed projects; and

(D) such other information as the Secretary may require.

(4) SELECTION CRITERIA.—In selecting projects for approval under this section, the Secretary shall ensure that the projects provide an evaluation of a broad range of technologies in a wide variety of project types and shall give priority to the projects that—

(A) address achieving the Highways for LIFE performance standards for quality, safety, and speed of construction;

(B) deliver and deploy innovative technologies, manufacturing processes, financing, contracting practices, and performance measures that will demonstrate substantial improvements in safety, congestion, quality, and cost-effectiveness;

(C) include innovation that will lead to change in the administration of the State's transportation program to more quickly construct long-lasting, high-quality, cost-effective projects that improve safety and reduce congestion;

(D) are or will be ready for construction within 1 year of approval of the project proposal; and

(E) meet such other criteria as the Secretary determines appropriate.

(5) FINANCIAL ASSISTANCE.—

(A) FUNDS FOR HIGHWAYS FOR LIFE PROJECTS.—Out of amounts made available to carry out this section for a fiscal year, the Secretary may allocate to a State up to 20 percent, but not more than $5,000,000, of the total cost of a project approved under this section. Notwithstanding any other provision of law, funds allocated to a State under this subparagraph may be applied to the non-Federal share of the cost of construction of a project under title 23, United States Code.

(B) USE OF APPORTIONED FUNDS.—A State may obligate not more than 10 percent of the amount apportioned to the State under 1 or more of paragraphs (1), (2), (3), and (4) of section 104(b) of title 23, United States Code, for a fiscal year for projects approved under this section.

(C) INCREASED FEDERAL SHARE.—Notwithstanding sections 120 and 129 of title 23, United States Code, the Federal share payable on account of any project constructed with Federal funds allocated under this section, or apportioned under section 104(b) of such title, to a State under such title and approved under this section may amount to 100 percent of the cost of construction of such project.

(D) LIMITATION ON STATUTORY CONSTRUCTION.—Except as provided in subparagraph (C), nothing in this subsection shall be construed as altering or otherwise affecting the applicability of the requirements of chapter 1 of title 23, United States Code (including requirements relating to the eligibility of a project for assistance under the program and the location of the project), to amounts apportioned to a State for a program under section 104(b) that are obligated by the State for projects approved under this subsection.

(6) PROJECT SELECTIONS.—In the period of fiscal years 2005 through 2009, the Secretary, to the maximum extent possible, shall approve at least 1 project in each State for participation in the pilot program and for financial assistance under paragraph (5) if the State submits an application and the project meets the eligibility requirements and selection criteria under this subsection.

(7) MAXIMUM NUMBER OF PROJECTS.—The maximum number of projects for which the Secretary may allocate funds under this subsection in a fiscal year is 15.

(c) TECHNOLOGY PARTNERSHIPS.—

(1) IN GENERAL.—The Secretary may make grants or enter into cooperative agreements or other transactions to foster the development, improvement, and creation of innovative technologies and facilities to improve safety, enhance the speed of highway construction, and improve the quality and durability of highways.

(2) FEDERAL SHARE.—The Federal share of the cost of an activity carried out under this subsection shall not exceed 80 percent.

(d) TECHNOLOGY TRANSFER AND INFORMATION DISSEMINATION.—

(1) IN GENERAL.—The Secretary shall conduct a highways for life technology transfer program.

(2) AVAILABILITY OF INFORMATION.—The Secretary shall ensure that the information and technology used, developed, or deployed under this subsection is made available to the transportation community and the public.

(e) STAKEHOLDER INPUT AND INVOLVEMENT.—The Secretary shall establish a process for stakeholder input and involvement in the development, implementation, and evaluation of the Highways for LIFE Pilot Program. The process may include participation by representatives of State departments of transportation and other interested persons.

(f) PROJECT MONITORING AND EVALUATION.—The Secretary shall monitor and evaluate the effectiveness of any activity carried out under this section.

(g) CONTRACT AUTHORITY.—Except as otherwise provided in this section, funds authorized to be appropriated to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.

(h) STATE DEFINED.—In this section, the term ''State'' has the meaning such term has in section 101(a) of title 23, United States Code.

SEC. 1503. DESIGN BUILD.

Section 112(b)(3) of title 23, United States Code, is amended—

(1) by redesignating subparagraph (D) as subparagraph (E); and

(2) by striking subparagraph (C) and inserting the following:

''(C) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter (including intermodal projects) for which the Secretary has approved the use of design-build contracting under criteria specified in regulations issued by the Secretary.

''(D) REGULATORY PROCESS.—Not later than 90 days after the date of enactment of the SAFETEA–LU, the Secretary shall issue revised regulations under section 1307(c) of the Transportation Equity Act for 21st Century (23 U.S.C. 112 note; 112 Stat. 230) that—

''(i) do not preclude a State transportation department or local transportation agency, prior to compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), from—

''(I) issuing requests for proposals;

''(II) proceeding with awards of design-build contracts; or

''(III) issuing notices to proceed with preliminary design work under design-build contracts;

''(ii) require that the State transportation department or local transportation agency receive concurrence from the Secretary before carrying out an activity under clause (i); and

''(iii) preclude the design-build contractor from proceeding with final design or construction of any permanent improvement prior to completion of the process under such section 102.''.

Subtitle F—Finance

SEC. 1601. TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT AMENDMENTS.

(a) DEFINITIONS.—Section 181 of title 23, United States Code, is amended—

(1) in paragraph (3) by striking ''category'' and ''offered into the capital markets'';

(2) by striking paragraph (7) and redesignating paragraphs (8) through (15) as paragraphs (7) through (14), respectively;

(3) in paragraph (8) (as redesignated by paragraph (2) of this subsection)—

(A) in subparagraph (B) by striking the period at the end and inserting a semicolon; and

(B) by striking subparagraph (D) and inserting the following:

''(D) a project that—

''(i) is a project—

''(I) for a public freight rail facility or a private facility providing public benefit for highway users;

''(II) for an intermodal freight transfer facility;

''(III) for a means of access to a facility described in subclause (I) or (II);

''(IV) for a service improvement for a facility described in subclause (I) or (II) (including a capital investment for an intelligent transportation system); or

''(V) that comprises a series of projects described in subclauses (I) through (IV) with the common objective of improving the flow of goods;

''(ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements; and

''(iii) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.''; and

(4) in paragraph (10) (as redesignated by paragraph (2) of this subsection) by striking ''bond'' and inserting ''credit''.

(b) DETERMINATION OF ELIGIBILITY.—Section 182(a) of such title is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

''(1) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter.

''(2) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary, shall submit a project application to the Secretary.'';

(2) in paragraph (3)(A)(i) by striking ''$100,000,000'' and inserting ''$50,000,000'';

(3) in paragraph (3)(A)(ii) by striking ''50'' and inserting ''33⅓'';

(4) in paragraph (3)(B) by striking ''$30,000,000'' and inserting ''$15,000,000''; and

(5) in paragraph (4)—

(A) by striking ''Project financing'' and inserting ''The Federal credit instrument''; and

(B) by inserting before the period at the end ''that also secure the project obligations''.

(c) PROJECT SELECTION.—Section 182(b) of such title is amended—

(1) in paragraph (1) by striking ''criteria'' the second place it appears and inserting ''requirements''; and

(2) in paragraph (2)(B) by inserting '', which may be the Federal credit instrument,'' after ''obligations''.

(d) SECURED LOANS.—

(1) AGREEMENTS.—Section 183(a)(1) of such title is amended—

(A) in subparagraph (A) by inserting ''of any project selected under section 602'' after ''costs'';

(B) by striking the semicolon at the end of subparagraph (B) and all that follows through ''under section 182.'' and inserting ''of any project selected under section 602; or''; and

(C) by adding at the end the following:

''(C) to refinance long-term project obligations or Federal credit instruments if such refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

''(i) is selected under section 602; or

''(ii) otherwise meets the requirements of section 602.''.

(2) INVESTMENT-GRADE RATING REQUIREMENT.—Section 183(a)(4) of such title is amended—

(A) by striking ''The funding'' and inserting ''The execution''; and

(B) by striking the first comma and all that follows through ''1 rating agency''.

(3) TERMS AND LIMITATIONS.—Section 183(b) of such title is amended—

(A) in paragraph (2)—

(i) by inserting ''the lesser of'' after ''exceed''; and

(ii) by inserting ''or, if the secured loan does not receive an investment grade rating, the amount of the senior project obligations'' after ''costs'';

(B) in paragraph (3)(A)(i) by inserting ''that also secure the senior project obligations'' after ''sources''; and

(C) in paragraph (4) by striking ''marketable''.

(4) REPAYMENT.—Section 183(c) of such title is amended—

(A) by striking paragraph (3);

(B) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively;

(C) in paragraph (3)(A) (as redesignated by subparagraph (B) of this paragraph) by striking ''during the 10 years''; and

(D) in subparagraph (3)(B)(ii) (as so redesignated) by striking ''loan'' and all that follows and inserting ''loan.''.

(e) LINES OF CREDIT.—

(1) TERMS AND LIMITATIONS.—Section 184(b) of such title is amended—

(A) by striking paragraph (2) and inserting the following:

''(2) MAXIMUM AMOUNTS.—The total amount of the line of credit shall not exceed 33 percent of the reasonably anticipated eligible project costs.'';

(B) in paragraph (3) by striking '', any debt service reserve fund, and any other available reserve'' and inserting ''but not including reasonably required financing reserves'';

(C) in paragraph (4)—

(i) by striking ''marketable'';

(ii) by striking ''on which'' and inserting ''of execution of''; and

(iii) by striking ''is obligated'' and inserting ''agreement'';

(D) in paragraph (5)(A)(i) by inserting ''that also secure the senior project obligations'' after ''sources''; and

(E) in paragraph (6) by striking ''line of credit'' and inserting ''full amount of the line of credit, to the extent not drawn upon,''.

(2) REPAYMENT.—Section 184(c) of such title is amended—

(A) in paragraph (2)—

(i) by striking ''scheduled'';

(ii) by inserting ''be scheduled to'' after ''shall''; and

(iii) by striking ''be fully repaid, with interest,'' and inserting ''to conclude, with full repayment of principal and interest,''; and

(B) by striking paragraph (3).

(f) PROGRAM ADMINISTRATION.—Section 185 of such title is amended to read as follows:

''§ 185. Program administration

''(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instruments made available under this subchapter.

''(b) FEES.—

''(1) IN GENERAL.—The Secretary may collect and spend fees, contingent upon authority being provided in appropriations Acts, at a level that is sufficient to cover—

''(A) the costs of services of expert firms retained pursuant to subsection (d); and

''(B) all or a portion of the costs to the Federal Government of servicing the Federal credit instruments.

''(c) SERVICER.—

''(1) IN GENERAL.—The Secretary may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments.

''(2) DUTIES.—The servicer shall act as the agent for the Secretary.

''(3) FEE.—The servicer shall receive a servicing fee, subject to approval by the Secretary.

''(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.''.

(g) FUNDING.—Section 188 of such title is amended to read as follows:

''§ 188. Funding

''(a) FUNDING.—

''(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter $122,000,000 for each of fiscal years 2005 through 2009.

''(2) AVAILABILITY.—Amounts made available to carry out this chapter shall remain available until expended.

''(3) ADMINISTRATIVE COSTS.—From funds made available to carry out this chapter, the Secretary may use, for the administration of this

subchapter, not more than $2,200,000 for each of fiscal years 2005 through 2009.

''(b) CONTRACT AUTHORITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, approval by the Secretary of a Federal credit instrument that uses funds made available under this subchapter shall impose upon the United States a contractual obligation to fund the Federal credit investment.

''(2) AVAILABILITY.—Amounts authorized under this section for a fiscal year shall be available for obligation on October 1 of the fiscal year.''.

(h) DATES FOR SUBMISSION OF REPORTS.—Section 189 of such title is amended—

(1) by striking the section designation and heading and inserting the following:

''§ 189. Reports to Congress'';

(2) by striking ''Not later than 4 years after the date of enactment of this subchapter,'' and inserting ''On June 1, 2006, and every 2 years thereafter,''; and

(3) by striking ''subchapter'' each place it appears and inserting ''chapter (other than section 610)''.

(i) CLERICAL AMENDMENT.—The analysis for chapter 1 of such title is amended by striking the item relating to section 185 and inserting the following:

''185. Program administration.''.

SEC. 1602. STATE INFRASTRUCTURE BANKS.

(a) IN GENERAL.—Subchapter II of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''§ 190. State infrastructure bank program

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

''(1) CAPITAL PROJECT.—The term 'capital project' has the meaning such term has under section 5302 of title 49.

''(2) OTHER FORMS OF CREDIT ASSISTANCE.—The term 'other forms of credit assistance' includes any use of funds in an infrastructure bank—

''(A) to provide credit enhancements;

''(B) to serve as a capital reserve for bond or debt instrument financing;

''(C) to subsidize interest rates;

''(D) to insure or guarantee letters of credit and credit instruments against credit risk of loss;

''(E) to finance purchase and lease agreements with respect to transit projects;

''(F) to provide bond or debt financing instrument security; and

''(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which such assistance is being provided.

''(3) STATE.—The term 'State' has the meaning such term has under section 401.

''(4) CAPITALIZATION.—The term 'capitalization' means the process used for depositing funds as initial capital into a State infrastructure bank to establish the infrastructure bank.

''(5) COOPERATIVE AGREEMENT.—The term 'cooperative agreement' means written consent between a State and the Secretary which sets forth the manner in which the infrastructure bank established by the State in accordance with this section will be administered.

''(6) LOAN.—The term 'loan' means any form of direct financial assistance from a State infrastructure bank that is required to be repaid over a period of time and that is provided to a project sponsor for all or part of the costs of the project.

''(7) GUARANTEE.—The term 'guarantee' means a contract entered into by a State infrastructure bank in which the bank agrees to take responsibility for all or a portion of a project sponsor's financial obligations for a project under specified conditions.

''(8) INITIAL ASSISTANCE.—The term 'initial assistance' means the first round of funds that are loaned or used for credit enhancement by a State infrastructure bank for projects eligible for assistance under this section.

''(9) LEVERAGE.—The term 'leverage' means a financial structure used to increase funds in a State infrastructure bank through the issuance of debt instruments.

''(10) LEVERAGED.—The term 'leveraged', as used with respect to a State infrastructure bank, means that the bank has total potential liabilities that exceed the capital of the bank.

''(b) COOPERATIVE AGREEMENTS.—Subject to the provisions of this section, the Secretary may enter into cooperative agreements with States for the establishment of State infrastructure banks for making loans and providing other forms of credit assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under this section.

''(c) INTERSTATE COMPACTS.—

''(1) IN GENERAL.—Congress grants consent to 2 or more of the States, entering into a cooperative agreement under subsection (a) with the Secretary for the establishment by such States of a multistate infrastructure bank in accordance with this section, to enter into an interstate compact establishing such bank in accordance with this section.

''(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

''(d) FUNDING.—

''(1) HIGHWAY ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank to deposit into the highway account of the bank not to exceed—

''(A) 10 percent of the funds apportioned to the State for each of fiscal years 2005 through 2009 under each of sections 104(b)(1), 104(b)(3), 104(b)(4), and 144; and

''(B) 10 percent of the funds allocated to the State for each of such fiscal years under section 105.

''(2) TRANSIT ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under section 5307, 5309, or 5311 of title 49, to deposit into the transit account of the bank not to exceed 10 percent of the funds made available to the State or other recipient in each of fiscal years 2005 through 2009 for capital projects under each of such sections.

''(3) RAIL ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under subtitle V of title 49, to deposit into the rail account of the bank funds made available to the State or other recipient in each of fiscal years 2005 through 2009 for capital projects under such subtitle.

''(4) CAPITAL GRANTS.—

''(A) HIGHWAY ACCOUNT.—Federal funds deposited into a highway account of a State infrastructure bank under paragraph (1) shall constitute for purposes of this section a capitalization grant for the highway account of the bank.

''(B) TRANSIT ACCOUNT.—Federal funds deposited into a transit account of a State infrastructure bank under paragraph (2) shall constitute for purposes of this section a capitalization grant for the transit account of the bank.

''(C) RAIL ACCOUNT.—Federal funds deposited into a rail account of a State infrastructure bank under paragraph 3 shall constitute for purposes of this section a capitalization grant for the rail account of the bank.

''(5) SPECIAL RULE FOR URBANIZED AREAS OF OVER 200,000.—Funds in a State infrastructure bank that are attributed to urbanized areas of a State with urbanized populations of over 200,000 under section 133(d)(3) may be used to provide assistance with respect to a project only if the metropolitan planning organization designated for such area concurs, in writing, with the provision of such assistance.

''(6) DISCONTINUANCE OF FUNDING.—If the Secretary determines that a State is not implementing the State's infrastructure bank in accordance with a cooperative agreement entered into under subsection (b), the Secretary may prohibit the State from contributing additional Federal funds to the bank.

''(e) FORMS OF ASSISTANCE FROM INFRASTRUCTURE BANKS.—An infrastructure bank established under this section may make loans or provide other forms of credit assistance to a public or private entity in an amount equal to all or a part of the cost of carrying out a project eligible for assistance under this section. The amount of any loan or other form of credit assistance provided for the project may be subordinated to any other debt financing for the project. Initial assistance provided with respect to a project from Federal funds deposited into an infrastructure bank under this section may not be made in the form of a grant.

''(f) ELIGIBLE PROJECTS.—Subject to subsection (e), funds in an infrastructure bank established under this section may be used only to provide assistance for projects eligible for assistance under this title and capital projects defined in section 5302 of title 49, and any other projects relating to surface transportation that the Secretary determines to be appropriate.

''(g) INFRASTRUCTURE BANK REQUIREMENTS.—In order to establish an infrastructure bank under this section, the State establishing the bank shall—

''(1) deposit in cash, at a minimum, into each account of the bank from non-Federal sources an amount equal to 25 percent of the amount of each capitalization grant made to the State and deposited into such account; except that, if the deposit is into the highway account of the bank and the State has a non-Federal share under section 120(b) that is less than 25 percent, the percentage to be deposited from non-Federal sources shall be the lower percentage of such grant;

''(2) ensure that the bank maintains on a continuing basis an investment grade rating on its debt, or has a sufficient level of bond or debt financing instrument insurance, to maintain the viability of the bank;

''(3) ensure that investment income derived from funds deposited to an account of the bank are—

''(A) credited to the account;

''(B) available for use in providing loans and other forms of credit assistance to projects eligible for assistance from the account; and

''(C) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;

''(4) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible;

''(5) ensure that repayment of any loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;

''(6) ensure that the term for repaying any loan will not exceed 30 years after the date of the first payment on the loan; and

''(7) require the bank to make an annual report to the Secretary on its status no later than September 30 of each year and such other reports as the Secretary may require under guidelines issued to carry out this section.

''(h) APPLICABILITY OF FEDERAL LAW.—

''(1) IN GENERAL.—The requirements of this title and title 49 that would otherwise apply to funds made available under this title or such title and projects assisted with those funds shall apply to—

''(A) funds made available under this title or such title and contributed to an infrastructure bank established under this section, including the non-Federal contribution required under subsection (g); and

''(B) projects assisted by the bank through the use of the funds;

except to the extent that the Secretary determines that any requirement of such title (other than sections 113 and 114 of this title and section 5333 of title 49) is not consistent with the objectives of this section.

''(2) REPAYMENTS.—The requirements of this title and title 49 shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall be considered to be Federal funds.

''(i) UNITED STATES NOT OBLIGATED.—The deposit of Federal funds into an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contribution. Any security or debt-financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

''(j) MANAGEMENT OF FEDERAL FUNDS.—Sections 3335 and 6503 of title 31 shall not apply to funds deposited into an infrastructure bank under this section.

''(k) PROGRAM ADMINISTRATION.—For each of fiscal years 2005 through 2009, a State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this section to pay the reasonable costs of administering the bank.''.

(b) PREPARATORY AMENDMENTS.—

(1) SECTION 181.—Section 181 of such title is amended—

(A) by striking the section designator and heading and inserting the following:

''§ 181. Generally applicable provisions'';

(B) by striking ''In this subchapter'' and inserting the following:

''(a) DEFINITIONS.—In this chapter'';

(C) in paragraph (5) by striking ''184'' and inserting ''604'';

(D) in paragraph (11) (as redesignated by section 1601(a) of this Act) by striking ''183'' and inserting ''603''; and

(E) by adding at the end the following:

''(b) TREATMENT OF CHAPTER.—For purposes of this title, this chapter shall be treated as being part of chapter 1.''.

(2) SECTION 182.—Section 182(b)(2)(A)(viii) of such title is amended by inserting ''and chapter 1'' after ''this chapter''.

(3) SECTION 183.—Section 183(a)(3) of such title is amended by striking ''182(b)(2)(B)'' and inserting ''602(b)(2)(B)''.

(4) SECTION 184.—Section 184 of such title is amended—

(A) in subsection (a)(1) by striking ''182'' and inserting ''602'';

(B) in subsection (a)(3) by striking ''182(b)(2)(B)'' and inserting ''602(b)(2)(B)''; and

(C) in subsection (b)(10) by striking ''183'' and inserting ''603''.

(5) REFERENCES IN SUBCHAPTER.—Subchapter II of chapter 1 of such title is amended by striking ''this subchapter'' each place it appears and inserting ''this chapter''.

(6) SUBCHAPTER HEADINGS.—Chapter 1 of such title is further amended—

(A) by striking ''SUBCHAPTER I—GENERAL PROVISIONS'' preceding section 101; and

(B) by striking ''SUBCHAPTER II—INFRASTRUCTURE FINANCE'' preceding section 181.

(c) CHAPTER 6.—Such title is further amended by adding at the end the following:

''CHAPTER 6—INFRASTRUCTURE FINANCE

''Sec.

''601. Generally applicable provisions.
''602. Determination of eligibility and project selection.
''603. Secured loans.
''604. Lines of credit.
''605. Program administration.
''606. State and local permits.
''607. Regulations.
''608. Funding.
''609. Reports to Congress.
''610. State infrastructure bank program.''.

(d) MOVING AND REDESIGNATING.—Such title is further amended—

(1) by redesignating sections 181 through 189 as sections 601 through 609, respectively;

(2) by moving such sections from chapter 1 to chapter 6 (as added by subsection (c)); and

(3) by inserting such sections after the analysis for chapter 6.

(e) ANALYSIS FOR CHAPTER 1 AND TABLE OF CHAPTERS.—

(1) ANALYSIS FOR CHAPTER 1.—The analysis for chapter 1 of such title is amended—

(A) by striking the headings for subchapters I and II; and

(B) by striking the items relating to sections 181 through 189.

(2) TABLE OF CHAPTERS.—The table of chapters for such title is amended by inserting after the item relating to chapter 5 the following:

''6. Infrastructure Finance ..... 601.''.

SEC. 1603. USE OF EXCESS FUNDS AND FUNDS FOR INACTIVE PROJECTS.

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

(1) ELIGIBLE FUNDS.—

(A) IN GENERAL.—The term ''eligible funds'' means excess funds or inactive funds for a specific transportation project or activity that were—

(i) allocated before fiscal year 1991; and

(ii) designated in a public law, or a report accompanying a public law, for allocation for the specific surface transportation project or activity.

(B) INCLUSION.—The term ''eligible funds'' includes funds described in subparagraph (A) that were allocated and designated for a demonstration project.

(2) EXCESS FUNDS.—The term ''excess funds'' means—

(A) funds obligated for a specific transportation project or activity that remain available for the project or activity after the project or activity has been completed or canceled; or

(B) an unobligated balance of funds allocated for a transportation project or activity that the State in which the project or activity was to be carried out certifies are no longer needed for the project or activity.

(3) INACTIVE FUNDS.—The term ''inactive funds'' means—

(A) an obligated balance of Federal funds for an eligible transportation project or activity against which no expenditures have been charged during any 1-year period beginning after the date of obligation of the funds; and

(B) funds that are available to carry out a transportation project or activity in a State, but, as certified by the State, are unlikely to be advanced for the project or activity during the 1-year period beginning on the date of certification.

(b) AVAILABILITY FOR STP PURPOSES.—Eligible funds shall be—

(1) made available in accordance with this section to the State that originally received the funds; and

(2) available for obligation for any eligible purpose under section 133 of title 23, United States Code.

(c) RETENTION FOR ORIGINAL PURPOSE.—

(1) IN GENERAL.—The Secretary may determine that eligible funds identified as inactive funds shall remain available for the purpose for which the funds were initially made available if the applicable State certifies that the funds are necessary for that initial purpose.

(2) REPORT.—A certification provided by a State under paragraph (1) shall include a report on the status of, and an estimated completion date for, the project that is the subject of the certification.

(d) AUTHORITY TO OBLIGATE.—Notwithstanding the original source or period of availability of eligible funds, the Secretary may, on the request by a State—

(1) obligate the funds for any eligible purpose under section 133 of title 23, United States Code; or

(2)(A) deobligate the funds; and

(B) reobligate the funds for any eligible purpose under that section.

(e) APPLICABILITY.—

(1) IN GENERAL.—Subject to paragraph (2), this section applies only to eligible funds.

(2) DISCRETIONARY ALLOCATIONS; SECTION 125 PROJECTS.—This section does not apply to funds that are—

(A) allocated at the discretion of the Secretary and for which the Secretary has the authority to withdraw the allocation for use on other projects; or

(B) made available to carry out projects under section 125 of title 23, United States Code.

(f) PERIOD OF AVAILABILITY; TITLE 23 REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding the original source or period of availability of eligible funds obligated, or deobligated and reobligated, under subsection (d), the eligible funds—

(A) shall remain available for obligation for a period of 3 fiscal years after the fiscal year in which this Act is enacted; and

(B) except as provided in paragraph (2), shall be subject to the requirements of title 23, United States Code, that apply to section 133 of that title, including provisions relating to Federal share.

(2) EXCEPTION.—With respect to eligible funds described in paragraph (1)—

(A) section 133(d) of title 23, United States Code, shall not apply; and

(B) the period of availability of the eligible funds shall be determined in accordance with this section.

(g) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing any action taken by the Secretary under this section.

(h) SENSE OF CONGRESS REGARDING USE OF ELIGIBLE FUNDS.—It is the sense of Congress that eligible funds made available under this Act or title 23, United States Code, should be available for obligation for transportation projects and activities in the same geographic region for which the eligible funds were initially made available.

SEC. 1604. TOLLING.

(a) VALUE PRICING PILOT PROGRAM.—Section 1012(b)(8) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 149 note; 105 Stat. 1938) is amended—

(1) by redesignating subparagraphs (A) and (B) as subparagraphs (C) and (D), respectively; and

(2) by inserting before subparagraph (C) (as redesignated by paragraph (1)) the following:

''(A) IN GENERAL.—There are authorized to be appropriated to the Secretary from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection—

''(i) for fiscal year 2005, $11,000,000; and

''(ii) for each of fiscal years 2006 through 2009, $12,000,000.

''(B) SET-ASIDE FOR PROJECTS NOT INVOLVING HIGHWAY TOLLS.—Of the amounts made available to carry out this subsection, $3,000,000 for each of fiscal years 2006 through 2009 shall be available only for congestion pricing pilot projects that do not involve highway tolls.''.

(b) EXPRESS LANES DEMONSTRATION PROGRAM.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) ELIGIBLE TOLL FACILITY.—The term ''eligible toll facility'' includes—

(i) a facility in existence on the date of enactment of this Act that collects tolls;

(ii) a facility in existence on the date of enactment of this Act that serves high occupancy vehicles;

(iii) a facility modified or constructed after the date of enactment of this Act to create additional tolled lane capacity (including a facility constructed by a private entity or using private funds); and

(iv) in the case of a new lane added to a previously non-tolled facility, only the new lane.

(B) NONATTAINMENT AREA.—The term ''nonattainment area'' has the meaning given that term in section 171 of the Clean Air Act (42 U.S.C. 7501).

(2) DEMONSTRATION PROGRAM.—Notwithstanding sections 129 and 301 of title 23, United States Code, the Secretary shall carry out 15 demonstration projects during the period of fiscal years 2005 through 2009 to permit States, public authorities, or a public or private entities designated by States, to collect a toll from motor vehicles at an eligible toll facility for any highway, bridge, or tunnel, including facilities on the Interstate System—

(A) to manage high levels of congestion;

(B) to reduce emissions in a nonattainment area or maintenance area; or

(C) to finance the expansion of a highway, for the purpose of reducing traffic congestion, by constructing 1 or more additional lanes (including bridge, tunnel, support, and other structures necessary for that construction) on the Interstate System.

(3) LIMITATION ON USE OF REVENUES.—

(A) USE.—

(i) IN GENERAL.—Toll revenues received under paragraph (2) shall be used by a State, public authority, or private entity designated by a State, for—

(I) debt service;

(II) a reasonable return on investment of any private financing;

(III) the costs necessary for proper operation and maintenance of any facilities under paragraph (2) (including reconstruction, resurfacing, restoration, and rehabilitation); or

(IV) if the State, public authority, or private entity annually certifies that the tolled facility is being adequately operated and maintained, any other purpose relating to a highway or transit project carried out under title 23 or 49, United States Code.

(B) REQUIREMENTS.—

(i) VARIABLE PRICE REQUIREMENT.—A facility that charges tolls under this subsection may establish a toll that varies in price according to time of day or level of traffic, as appropriate to manage congestion or improve air quality.

(ii) HOV VARIABLE PRICING REQUIREMENT.—The Secretary shall require, for each high occupancy vehicle facility that charges tolls under this subsection, that the tolls vary in price according to time of day or level of traffic, as appropriate to manage congestion or improve air quality.

(iii) HOV PASSENGER REQUIREMENTS.—Pursuant to section 166 of title 23, United States Code, a State may permit motor vehicles with fewer than 2 occupants to operate in high occupancy vehicle lanes as part of a variable toll pricing program established under this subsection.

(C) AGREEMENT.—

(i) IN GENERAL.—Before the Secretary may permit a facility to charge tolls under this subsection, the Secretary and the applicable State, public authority, or private entity designated by a State shall enter into an agreement for each facility incorporating the conditions described in subparagraphs (A) and (B).

(ii) TERMINATION.—An agreement under clause (i) shall terminate with respect to a facility upon the decision of the State, public authority, or private entity designated by a State to discontinue the variable tolling program under this subsection for the facility.

(iii) DEBT.—If there is any debt outstanding on a facility at the time at which the decision is made to discontinue the program under this subsection with respect to the facility, the facility may continue to charge tolls in accordance with the terms of the agreement until such time as the debt is retired.

(D) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of a project on a facility tolled under this subsection, including a project to install the toll collection facility shall be a percentage, not to exceed 80 percent, determined by the applicable State.

(4) ELIGIBILITY.—To be eligible to participate in the program under this subsection, a State, public authority, or private entity designated by a State shall provide to the Secretary—

(A) a description of the congestion or air quality problems sought to be addressed under the program;

(B) a description of—

(i) the goals sought to be achieved under the program; and

(ii) the performance measures that would be used to gauge the success made toward reaching those goals; and

(C) such other information as the Secretary may require.

(5) AUTOMATION.—Fees collected from motorists using an express lane shall be collected only through the use of noncash electronic technology that optimizes the free flow of traffic on the tolled facility.

(6) INTEROPERABILITY.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate a final rule specifying requirements, standards, or performance specifications for automated toll collection systems implemented under this section.

(B) DEVELOPMENT.—In developing that rule, which shall be designed to maximize the interoperability of electronic collection systems, the Secretary shall, to the maximum extent practicable—

(i) seek to accelerate progress toward the national goal of achieving a nationwide interoperable electronic toll collection system;

(ii) take into account the use of noncash electronic technology currently deployed within an appropriate geographical area of travel and the noncash electronic technology likely to be in use within the next 5 years; and

(iii) seek to minimize additional costs and maximize convenience to users of toll facility and to the toll facility owner or operator.

(7) REPORTING.—

(A) IN GENERAL.—The Secretary, in cooperation with State and local agencies and other program participants and with opportunity for public comment, shall—

(i) develop and publish performance goals for each express lane project;

(ii) establish a program for regular monitoring and reporting on the achievement of performance goals, including—

(I) effects on travel, traffic, and air quality;

(II) distribution of benefits and burdens;

(III) use of alternative transportation modes; and

(IV) use of revenues to meet transportation or impact mitigation needs.

(B) REPORTS TO CONGRESS.—The Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

(i) not later than 1 year after the date of enactment of this Act, and annually thereafter, a report that describes in detail the uses of funds under this subsection in accordance with paragraph (8)(D); and

(ii) not later than 3 years after the date of enactment of this Act, and every 3 years thereafter, a report that describes any success of the program under this subsection in meeting congestion reduction and other performance goals established for express lane programs.

(c) INTERSTATE SYSTEM CONSTRUCTION TOLL PILOT PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall establish and implement an Interstate System construction toll pilot program under which the Secretary, notwithstanding sections 129 and 301 of title 23, United States Code, may permit a State or an interstate compact of States to collect tolls on a highway, bridge, or tunnel on the Interstate System for the purpose of constructing Interstate highways.

(2) LIMITATION ON NUMBER OF FACILITIES.—The Secretary may permit the collection of tolls under this section on 3 facilities on the Interstate System.

(3) ELIGIBILITY.—To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that contains, at a minimum, the following:

(A) An identification of the facility on the Interstate System proposed to be a toll facility.

(B) In the case of a facility that affects a metropolitan area, an assurance that the metropolitan planning organization designated under section 134 or 135 for the area has been consulted concerning the placement and amount of tolls on the facility.

(C) An analysis demonstrating that financing the construction of the facility with the collection of tolls under the pilot program is the most efficient and economical way to advance the project.

(D) A facility management plan that includes—

(i) a plan for implementing the imposition of tolls on the facility;

(ii) a schedule and finance plan for the construction of the facility using toll revenues;

(iii) a description of the public transportation agency that will be responsible for implementation and administration of the pilot program;

(iv) a description of whether consideration will be given to privatizing the maintenance and operational aspects of the facility, while retaining legal and administrative control of the portion of the Interstate route; and

(v) such other information as the Secretary may require.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under paragraph (3) only if the Secretary determines that—

(A) the State's analysis under paragraph (3)(C) is reasonable;

(B) the State plan for implementing tolls on the facility takes into account the interests of local, regional, and interstate travelers;

(C) the State plan for construction of the facility using toll revenues is reasonable;

(D) the State will develop, manage, and maintain a system that will automatically collect the tolls; and

(E) the State has given preference to the use of a public toll agency with demonstrated capability to build, operate, and maintain a toll expressway system meeting criteria for the Interstate System.

(5) PROHIBITION ON NONCOMPETE AGREEMENTS.—Before the Secretary may permit a State to participate in the pilot program, the State must enter into an agreement with the Secretary that provides that the State will not enter into an agreement with a private person under which the State is prevented from improving or expanding the capacity of public roads adjacent to the toll facility to address conditions resulting from traffic diverted to such roads from the toll facility, including—

(A) excessive congestion;

(B) pavement wear; and

(C) an increased incidence of traffic accidents, injuries, or fatalities.

(6) LIMITATIONS ON USE OF REVENUES; AUDITS.—Before the Secretary may permit a State to participate in the pilot program, the State

must enter into an agreement with the Secretary that provides that—

(A) all toll revenues received from operation of the toll facility will be used only for—

(i) debt service;

(ii) reasonable return on investment of any private person financing the project; and

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

(B) regular audits will be conducted to ensure compliance with subparagraph (A) and the results of such audits will be transmitted to the Secretary.

(7) LIMITATION ON USE OF INTERSTATE MAINTENANCE FUNDS.—During the term of the pilot program, funds apportioned for Interstate maintenance under section 104(b)(4) of title 23, United States Code, may not be used on a facility for which tolls are being collected under the program.

(8) PROGRAM TERM.—The Secretary may approve an application of a State for permission to collect a toll under this section only if the application is received by the Secretary before the last day of the 10-year period beginning on the date of enactment of this Act.

(9) INTERSTATE SYSTEM DEFINED.—In this section, the term ''Interstate System'' has the meaning such term has under section 101 of title 23, United States Code.

Subtitle G—High Priority Projects

SEC. 1701. HIGH PRIORITY PROJECTS PROGRAM.

(a) AUTHORIZATION OF HIGH PRIORITY PROJECTS.—Section 117(a) of title 23, United States Code, is amended to read as follows:

''(a) AUTHORIZATION OF HIGH PRIORITY PROJECTS.—

''(1) IN GENERAL.—The Secretary is authorized to carry out high priority projects with funds made available to carry out the high priority projects program under this section.

''(2) AVAILABILITY OF FUNDS.—

''(A) FOR TEA21.—Of amounts made available to carry out this section for fiscal years 1998 through 2003, the Secretary, subject to subsection (b), shall make available to carry out each project described in section 1602 of the Transportation Equity Act for the 21st Century the amount listed for such project in such section.

''(B) FOR SAFETEA–LU.—Of amounts made available to carry out this section for fiscal years 2005 through 2009, the Secretary, subject to subsection (b), shall make available to carry out each project described in section 1702 of the SAFETEA–LU the amount listed for such project in such section.

''(3) AVAILABILITY OF UNALLOCATED FUNDS.—Any amounts made available to carry out such program that are not allocated for projects described in such section shall be available to the Secretary, subject to subsection (b), to carry out such other high priority projects as the Secretary determines appropriate.''.

(b) ALLOCATION PERCENTAGES.—Section 117(b) of such title is amended to read as follows:

''(b) FOR TEA21.—For each project to be carried out with funds made available to carry out the high priority projects program under this section for fiscal years 1998 through 2003—

''(1) 11 percent of such amount shall be available for obligation beginning in fiscal year 1998;

''(2) 15 percent of such amount shall be available for obligation beginning in fiscal year 1999;

''(3) 18 percent of such amount shall be available for obligation beginning in fiscal year 2000;

''(4) 18 percent of such amount shall be available for obligation beginning in fiscal year 2001;

''(5) 19 percent of such amount shall be available for obligation beginning in fiscal year 2002; and

''(6) 19 percent of such amount shall be available for obligation beginning in fiscal year 2003.

''(c) FOR SAFETEA–LU.—For each project to be carried out with funds made available to carry out the high priority projects program under this section for fiscal years 2005 through 2009—

''(1) 20 percent of such amount shall be available for obligation beginning in fiscal year 2005;

''(2) 20 percent of such amount shall be available for obligation beginning in fiscal year 2006;

''(3) 20 percent of such amount shall be available for obligation beginning in fiscal year 2007;

''(4) 20 percent of such amount shall be available for obligation beginning in fiscal year 2008; and

''(5) 20 percent of such amount shall be available for obligation beginning in fiscal year 2009.''.

(c) ADVANCE CONSTRUCTION.—Section 117(e) of such title is amended—

(1) in paragraph (1) by inserting after ''21st Century'' the following: ''or section 1701 of the SAFETEA–LU , as the case may be,''; and

(2) by striking ''section 1602 of the Transportation Equity Act for the 21st Century.'' and inserting ''such section 1602 or 1702, as the case may be.''

(d) AVAILABILITY OF OBLIGATION LIMITATION.—Section 117(g) of such title is amended by inserting after ''21st Century'' the following: ''or section 1102(g) of the SAFETEA–LU, as the case may be''.

(e) FEDERAL-STATE RELATIONSHIP.—Section 145(b) of such title is amended—

(1) by inserting after ''described in'' the following: ''section 1702 of the SAFETEA–LU,'';

(2) by inserting after ''for such projects by'' the following: ''section 1101(a)(16) of the SAFETEA–LU,''; and

(3) by striking ''117 of title 23, United States Code,'' and inserting ''section 117 of this title,''.

SEC. 1702. PROJECT AUTHORIZATIONS.

Subject to section 117 of title 23, United States Code, the amount listed for each high priority project in the following table shall be available (from amounts made available by section 1101(a)(16) of this Act) for fiscal years 2005 through 2009 to carry out each such project:

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Insert offset folio 547/291 here EH28JY7.006

Insert offset folio 547/292 here EH28JY7.007

Insert offset folio 547/293 here EH28JY7.008

Insert offset folio 547/294 here EH28JY7.009

Insert offset folio 547/295 here EH28JY7.010

Insert offset folio 547/296 here EH28JY7.011

Insert offset folio 547/297 here EH28JY7.012

Insert offset folio 547/298 here EH28JY7.013

Insert offset folio 547/299 here EH28JY7.014

Insert offset folio 547/300 here EH28JY7.015

Insert offset folio 547/301 here EH28JY7.016

Insert offset folio 547/302 here EH28JY7.017

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SEC. 1703. TECHNICAL AMENDMENTS TO TRANSPORTATION PROJECTS.

(a) TEA–21.—The table contained in section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 257) is amended—

(1) in item number 35 by inserting ''and for other related purposes'' after ''Yard'';

(2) in item number 78 by striking ''Third'' and all that follows through ''Bridge'' and inserting ''Bayview Transportation Improvements Project'';

(3) in item number 312 by inserting ''through construction'' after ''engineering'';

(4) in item number 566 by striking ''Prunedale Bypass'' and inserting ''improvements to Prunedale'';

(5) in item number 732 by striking ''reviews and other preliminary work'' and inserting ''reviews, other preliminary work, and transitional construction'';

(6) in item number 744 by striking ''Preliminary'' and all that follows through ''Fitchburg'' and inserting ''Design, construction or reconstruction, and right of way acquisition for roadway improvements along the Route 12 corridor in Leominster and Fitchburg to enhance access from Route 2 to North Leominster and downtown Fitchburg'';

(7) in item number 800 by striking ''Fairview Township'' and inserting ''or other projects selected by the York County, Pennsylvania MPO'';

(8) in item number 820 by striking ''Conduct'' and all that follows through ''interchange'' and inserting ''Conduct a transportation needs study and make improvements to I–75 interchanges in the Grayling area'';

(9) in item number 863, by adding at the end the following: '', including the Cuyahoga-Woodland Avenue Bridge'';

(10) in item number 897 by striking ''Road upgrade'' and all that follows through ''Hills'' and inserting ''Engineering and construction of a new access road to a development near Interstate Route 57 and 167th Street in Country Club Hills'';

(11) in item 1096 by striking ''Construct'' and all that follows through ''Independence'' and inserting ''Construction and improvements in Reminderville, Ohio (43 percent); streetscaping, bicycle trails, and related improvements to the I–90—SR 615 Interchange in Mentor, Ohio (20 percent); planning and construction of a bicycle trail adjacent to such Interchange (14 percent); Eastlake Stadium transit intermodal facility (16 percent); and purchase of right-of-way for transportation enhancement activities in Bainbridge Township, Ohio (7 percent)'';

(12) in item number 1121 by striking ''Construct'' and all that follows through ''Douglaston Parkway'' and inserting ''Provide landscaping along both sides of the Grand Central Parkway from 188th Street to 172nd Street'';

(13) in item number 1225 by striking ''Construct SR 9 bypass'' and inserting ''Study, design, and construct transportation solutions for SR 9 corridor'';

(14) in item number 1349 by inserting '', and improvements to streets and roads providing access to,'' after ''along'';

(15) in item number 1375 by striking ''Preliminary'' and all that follows through ''Emmet County'' and inserting ''Petoskey area transportation needs study and trunkline preservation and safety in the Petoskey area'';

(16) in item number 1392 by striking ''Construct'' and all that follows through ''multimodal center'' and inserting ''Improve the ramp configuration at the I–476 PA Turnpike Landsdale Interchange'';

(17) in item number 1447 by striking ''Extend'' and all that follows through ''Valparaiso'' and inserting ''Design and construction of interchange at I–65 and 109th Avenue, Crown Point''; and

(18) in item number 1474 by adding at the end the following: '', widen Cuyahoga SR87, and $4,000,000 of the amount authorized to construct grading separation at Front Street, Berea''.

(b) ISTEA.—Item number 32 in the table contained in section 1106(a)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2038) is amended by striking ''Extension of 34th Street from IL Rt.15 to County Road 10'' and inserting ''Extension and improvements of 34th Street''.

Subtitle H—Environment

SEC. 1801. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.

(a) IN GENERAL.—Section 147 of title 23, United States Code, is amended to read as follows:

''§ 147. Construction of ferry boats and ferry terminal facilities

''(a) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c).

''(b) FEDERAL SHARE.—The Federal share of the cost of construction of ferry boats, ferry terminals, and ferry maintenance facilities under this section shall be 80 percent.

''(c) ALLOCATION OF FUNDS.—The Secretary shall give priority in the allocation of funds under this section to those ferry systems, and public entities responsible for developing ferries, that—

''(1) provide critical access to areas that are not well-served by other modes of surface transportation;

''(2) carry the greatest number of passengers and vehicles; or

''(3) carry the greatest number of passengers in passenger-only service.

''(d) SET-ASIDE FOR PROJECTS ON NHS.—

''(1) IN GENERAL.—$20,000,000 of the amount made available to carry out this section for each of fiscal years 2005 through 2009 shall be obligated for the construction or refurbishment of ferry boats and ferry terminal facilities and approaches to such facilities within marine highway systems that are part of the National Highway System.

''(2) ALASKA.—$10,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of Alaska.

''(3) NEW JERSEY.—$5,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of New Jersey.

''(4) WASHINGTON.—$5,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of Washington.

''(e) PERIOD OF AVAILABILITY.—Notwithstanding section 118(b), funds made available to carry out this section shall remain available until expended.

''(f) APPLICABILITY.—All provisions of this chapter that are applicable to the National Highway System, other than provisions relating to apportionment formula and Federal share, shall apply to funds made available to carry out this section, except as determined by the Secretary to be inconsistent with this section.''.

(b) CLERICAL AMENDMENT.—The analysis for such subchapter is amended by striking the item relating to section 147 and inserting the following:

''147. Construction of ferry boats and ferry terminal facilities.''.

(c) CONFORMING REPEAL.—Section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2005) is repealed.

(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts made available to carry out section 147 of title 23, United States Code, by section 1101 of this Act, there are authorized to be appropriated such sums as may be necessary to carry out such section 147 for fiscal year 2006 and each fiscal year thereafter. Such funds shall remain available until expended.

(e) NATIONAL FERRY DATABASE.—

(1) ESTABLISHMENT.—The Secretary, acting through the Bureau of Transportation Statistics, shall establish and maintain a national ferry database.

(2) CONTENTS.—The database shall contain current information regarding ferry systems, including information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful.

(3) UPDATE REPORT.—Using information collected through the database, the Secretary shall periodically modify as appropriate the report submitted under section 1207(c) of the Transportation Equity Act for the 21st Century (23 U.S.C. 129 note; 112 Stat. 185–186).

(4) REQUIREMENTS.—The Secretary shall—

(A) compile the database not later than 1 year after the date of enactment of this Act and update the database every 2 years thereafter;

(B) ensure that the database is easily accessible to the public; and

(C) make available, from the amounts made available for the Bureau of Transportation Statistics by section 5101 of this Act, not more than $500,000 for each of fiscal years 2006 through 2009 to establish and maintain the database.

(f) TERRITORY FERRIES.—Section 129(c)(5) of title 23, United States Code, is amended by striking ''the Commonwealth of Puerto Rico'' each place it appears and inserting ''any territory of the United States''.

SEC. 1802. NATIONAL SCENIC BYWAYS PROGRAM.

(a) IN GENERAL.—Section 162(a) of title 23, United States Code, is amended—

(1) in paragraph (1) by striking ''the roads as'' and all that follows and inserting ''the roads as—

''(A) National Scenic Byways;

''(B) All-American Roads; or

''(C) America's Byways.''; and

(2) by striking paragraph (3) and inserting the following:

''(3) NOMINATION.—

''(A) IN GENERAL.—To be considered for a designation, a road must be nominated by a State, an Indian tribe, or a Federal land management agency and must first be designated as a State scenic byway, an Indian tribe scenic byway, or, in the case of a road on Federal land, as a Federal land management agency byway.

''(B) NOMINATION BY INDIAN TRIBES.—An Indian tribe may nominate a road as a National Scenic Byway under subparagraph (A) only if a Federal land management agency (other than the Bureau of Indian Affairs), a State, or a political subdivision of a State does not have—

''(i) jurisdiction over the road; or

''(ii) responsibility for managing the road.

''(C) SAFETY.—An Indian tribe shall maintain the safety and quality of roads nominated by the Indian tribe under subparagraph (A).

''(4) RECIPROCAL NOTIFICATION.—States, Indian tribes, and Federal land management agencies shall notify each other regarding nominations made under this subsection for roads that—

''(A) are within the jurisdictional boundary of the State, Federal land management agency, or Indian tribe; or

''(B) directly connect to roads for which the State, Federal land management agency, or Indian tribe is responsible.''.

(b) GRANTS AND TECHNICAL ASSISTANCE.—Section 162(b) of such title is amended—

(1) in paragraph (1) by inserting ''and Indian tribes'' after ''provide technical assistance to States'';

(2) in paragraph (1)(A) by striking ''designated as'' and all that follows through ''; and'' and inserting ''designated as—

''(i) National Scenic Byways;

''(ii) All-American Roads;

''(iii) America's Byways;

''(iv) State scenic byways; or

''(v) Indian tribe scenic byways; and''; and

(3) in paragraph (1)(B) by inserting ''or Indian tribe'' after ''State'';

(4) in paragraph (2)(A) by striking ''Byway or All-American Road'' and inserting ''Byway, All-American Road, or 1 of America's Byways'';

(5) in paragraph (2)(B)—

(A) by striking ''State-designated'' and inserting ''State or Indian tribe''; and

(B) by striking ''designation as a'' and all that follows through ''; and'' and inserting ''designation as—

''(i) a National Scenic Byway;

''(ii) an All-American Road; or

''(iii) 1 of America's Byways; and''; and

(6) in paragraph (2)(C) by inserting ''or Indian tribe'' after ''State''.

(c) ELIGIBLE PROJECTS.—Section 162(c) of such title is amended—

(1) in paragraph (1) by inserting ''or Indian tribe'' after ''State'';

(2) in paragraph (3)—

(A) by inserting ''Indian tribe scenic byway,'' after ''improvements to a State scenic byway,''; and

(B) by inserting ''Indian tribe scenic byway,'' after ''designation as a State scenic byway,''; and

(3) in paragraph (4) by striking ''passing lane,''.

(d) CONFORMING AMENDMENT.—Section 162(e) of such title is amended by inserting ''or Indian tribe'' after ''State''.

SEC. 1803. AMERICA'S BYWAYS RESOURCE CENTER.

(a) IN GENERAL.—The Secretary shall allocate funds made available to carry out this section to the America's Byways Resource Center established pursuant to section 1215(b)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 209).

(b) TECHNICAL SUPPORT AND EDUCATION.—

(1) USE OF FUNDS.—The Center shall use funds allocated to the Center under this section to continue to provide technical support and conduct educational activities for the national scenic byways program established under section 162 of title 23, United States Code.

(2) ELIGIBLE ACTIVITIES.—Technical support and educational activities carried out under this subsection shall provide local officials and organizations associated with National Scenic Byways, All-American Roads, and America's Byways with proactive, technical, and on-site customized assistance, including training, communications (including a public awareness series), publications, conferences, on-site meetings, and other assistance considered appropriate to develop and sustain such byways and roads.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $1,500,000 for fiscal year 2005 and $3,000,000 for each of fiscal years 2006 through 2009.

(d) APPLICABILITY OF TITLE 23.—Funds authorized by this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of any project or activity carried out under this section shall be 100 percent, and such funds shall remain available until expended and shall not be transferable.

SEC. 1804. NATIONAL HISTORIC COVERED BRIDGE PRESERVATION.

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

(1) HISTORIC COVERED BRIDGE.—The term ''historic covered bridge'' means a covered bridge that is listed or eligible for listing on the National Register of Historic Places.

(2) STATE.—The term ''State'' has the meaning such term has in section 101(a) of title 23, United States Code.

(b) HISTORIC COVERED BRIDGE PRESERVATION.—The Secretary shall—

(1) collect and disseminate information on historic covered bridges;

(2) conduct educational programs relating to the history and construction techniques of historic covered bridges;

(3) conduct research on the history of historic covered bridges; and

(4) conduct research on, and study techniques for, protecting historic covered bridges from rot, fire, natural disasters, or weight-related damage.

(c) GRANTS.—

(1) IN GENERAL.—The Secretary shall make a grant to a State that submits an application to the Secretary that demonstrates a need for assistance in carrying out 1 or more historic covered bridge projects described in paragraph (2).

(2) ELIGIBLE PROJECTS.—A grant under paragraph (1) may be made for a project—

(A) to rehabilitate or repair a historic covered bridge; or

(B) to preserve a historic covered bridge, including through—

(i) installation of a fire protection system, including a fireproofing or fire detection system and sprinklers;

(ii) installation of a system to prevent vandalism and arson; or

(iii) relocation of a bridge to a preservation site.

(3) AUTHENTICITY REQUIREMENTS.—A grant under paragraph (1) may be made for a project only if—

(A) to the maximum extent practicable, the project—

(i) is carried out in the most historically appropriate manner; and

(ii) preserves the existing structure of the historic covered bridge; and

(B) the project provides for the replacement of wooden components with wooden components, unless the use of wood is impracticable for safety reasons.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund (other than the Mass Transit Account), $10,000,000 for each of fiscal years 2006 through 2009.

(e) APPLICABILITY OF TITLE 23.—Funds made available to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of any project or activity carried out under this section shall be determined in accordance with section 120 of such title, and such funds shall remain available until expended and shall not be transferable.

SEC. 1805. USE OF DEBRIS FROM DEMOLISHED BRIDGES AND OVERPASSES.

(a) IN GENERAL.—Any State that demolishes a bridge or an overpass that is eligible for Federal assistance under the highway bridge replacement and rehabilitation program under section 144 of title 23, United States Code, is directed to first make the debris from the demolition of such bridge or overpass available for beneficial use by a Federal, State, or local government, unless such use obstructs navigation.

(b) RECIPIENT RESPONSIBILITIES.—A recipient of the debris described in subsection (a) shall—

(1) bear the additional cost associated with having the debris made available;

(2) ensure that placement of the debris complies with applicable law; and

(3) assume all future legal responsibility arising from the placement of the debris, which may include entering into an agreement to hold the owner of the demolished bridge or overpass harmless in any liability action.

(c) DEFINITION.—In this section, the term ''beneficial use'' means the application of the debris for purposes of shore erosion control or stabilization, ecosystem restoration, and marine habitat creation.

SEC. 1806. ADDITIONAL AUTHORIZATION OF CONTRACT AUTHORITY FOR STATES WITH INDIAN RESERVATIONS.

Section 1214(d)(5)(A) of the Transportation Equity Act for the 21st Century (23 U.S.C. 202 note; 112 Stat. 206) is amended by striking ''$1,500,000 for each of fiscal years 1998 through 2003'' and inserting ''$1,800,000 for each of fiscal years 2005 through 2009''.

SEC. 1807. NONMOTORIZED TRANSPORTATION PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish and carry out a nonmotorized transportation pilot program to construct, in the following 4 communities selected by the Secretary, a network of nonmotorized transportation infrastructure facilities, including sidewalks, bicycle lanes, and pedestrian and bicycle trails, that connect directly with transit stations, schools, residences, businesses, recreation areas, and other community activity centers:

(1) Columbia, Missouri.

(2) Marin County, California.

(3) Minneapolis-St. Paul, Minnesota.

(4) Sheboygan County, Wisconsin.

(b) PURPOSE.—The purpose of the program shall be to demonstrate the extent to which bicycling and walking can carry a significant part of the transportation load, and represent a major portion of the transportation solution, within selected communities.

(c) GRANTS.—In carrying out the program, the Secretary may make a grant of $6,250,000 per fiscal year for each of the communities set forth in subsection (a) to State, local, and regional agencies that the Secretary determines are suitably equipped and organized to carry out the objectives and requirements of this section. An agency that receives a grant under this section may suballocate grant funds to a nonprofit organization to carry out the program under this section.

(d) STATISTICAL INFORMATION.—In carrying out the program, the Secretary shall develop statistical information on changes in motor vehicle, nonmotorized transportation, and public transportation usage in communities participating in the program and assess how such changes decrease congestion and energy usage, increase the frequency of bicycling and walking, and promote better health and a cleaner environment.

(e) REPORTS.—The Secretary shall submit to Congress an interim report not later than September 30, 2007, and a final report not later than September 30, 2010, on the results of the program.

(f) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund (other than the Mass Transit Account), $25,000,000 for each of fiscal years 2006 through 2009.

(2) CONTRACT AUTHORITY.—Funds authorized to be appropriated by this section shall be available for obligation in the same manner and to the same extent as if the funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of the project shall be 100 percent, and the funds shall remain available until expended and shall not be transferable.

(g) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects assisted under this subsection shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code.

SEC. 1808. ADDITION TO CMAQ-ELIGIBLE PROJECTS.

(a) FORMER 1-HOUR MAINTENANCE AREAS.—Section 149(b) of title 23, United States Code, is amended in the matter preceding paragraph (1)(A) by inserting ''or is required to prepare, and file with the Administrator of the Environmental Protection Agency, maintenance plans under the Clean Air Act (42 U.S.C. 7401 et seq.)'' after ''1997,''.

(b) ELIGIBLE PROJECTS.—Section 149(b) of such title is amended—

(1) by striking paragraph (1) and inserting the following:

''(1)(A)(i) if the Secretary, after consultation with the Administrator determines, on the basis of information published by the Environmental Protection Agency pursuant to section 108(f)(1)(A) of the Clean Air Act (other than clause (xvi)) that the project or program is likely to contribute to—

''(I) the attainment of a national ambient air quality standard; or

''(II) the maintenance of a national ambient air quality standard in a maintenance area; and

''(ii) a high level of effectiveness in reducing air pollution, in cases of projects or programs where sufficient information is available in the database established pursuant to subsection (h) to determine the relative effectiveness of such projects or programs; or,

''(B) in any case in which such information is not available, if the Secretary, after such consultation, determines that the project or program is part of a program, method, or strategy described in such section 108(f)(1)(A);''.

(2) in paragraph (4)—

(A) by inserting '', including advanced truck stop electrification systems,'' after ''facility or program''; and

(B) by striking ''or'' at the end;

(3) in paragraph (5)—

(A) by inserting ''improve transportation systems management and operations that mitigate congestion and improve air quality,'' after ''intersections,''; and

(B) by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(6) if the project or program involves the purchase of integrated, interoperable emergency communications equipment; or

''(7) if the project or program is for—

''(A) the purchase of diesel retrofits that are—

''(i) for motor vehicles (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)); or

''(ii) published in the list under subsection (f)(2) for non-road vehicles and non-road engines (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)) that are used in construction projects that are—

''(I) located in nonattainment or maintenance areas for ozone, PM_{10}, or $PM_{2.5}$ (as defined under the Clean Air Act (42 U.S.C. 7401 et seq.)); and

''(II) funded, in whole or in part, under this title; or

''(B) the conduct of outreach activities that are designed to provide information and technical assistance to the owners and operators of diesel equipment and vehicles regarding the purchase and installation of diesel retrofits.''.

(c) STATES RECEIVING MINIMUM APPORTIONMENT.—Section 149(c) of such title is amended—

(1) in paragraph (1) by striking ''for any project eligible under the surface transportation program under section 133.'' and inserting the following: ''for any project in the State that—

''(A) would otherwise be eligible under this section as if the project were carried out in a nonattainment or maintenance area; or

''(B) is eligible under the surface transportation program under section 133.''; and

(2) in paragraph (2) by striking ''for any project in the State eligible under section 133.'' and inserting the following: ''for any project in the State that—

''(A) would otherwise be eligible under this section as if the project were carried out in a nonattainment or maintenance area; or

''(B) is eligible under the surface transportation program under section 133.''.

(d) COST-EFFECTIVE EMISSION REDUCTION GUIDANCE.—Section 149 of such title is amended by adding at the end the following:

''(f) COST-EFFECTIVE EMISSION REDUCTION GUIDANCE.—

''(1) DEFINITIONS.—In this subsection, the following definitions apply:

''(A) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(B) DIESEL RETROFIT.—The term 'diesel retrofit' means a replacement, repowering, rebuilding, after treatment, or other technology, as determined by the Administrator.

''(2) EMISSION REDUCTION GUIDANCE.—The Administrator, in consultation with the Secretary, shall publish a list of diesel retrofit technologies and supporting technical information for—

''(A) diesel emission reduction technologies certified or verified by the Administrator, the California Air Resources Board, or any other entity recognized by the Administrator for the same purpose;

''(B) diesel emission reduction technologies identified by the Administrator as having an application and approvable test plan for verification by the Administrator or the California Air Resources Board that is submitted not later that 18 months of the date of enactment of this subsection;

''(C) available information regarding the emission reduction effectiveness and cost effectiveness of technologies identified in this paragraph, taking into consideration air quality and health effects.

''(3) PRIORITY.—

''(A) IN GENERAL.—States and metropolitan planning organizations shall give priority in distributing funds received for congestion mitigation and air quality projects and programs from apportionments derived from application of sections 104(b)(2)(B) and 104(b)(2)(C) to—

''(i) diesel retrofits, particularly where necessary to facilitate contract compliance, and other cost-effective emission reduction activities, taking into consideration air quality and health effects; and

''(ii) cost-effective congestion mitigation activities that provide air quality benefits.

''(B) SAVINGS.—This paragraph is not intended to disturb the existing authorities and roles of governmental agencies in making final project selections.

''(4) NO EFFECT ON AUTHORITY OR RESTRICTIONS.—Nothing in this subsection modifies or otherwise affects any authority or restriction established under the Clean Air Act (42 U.S.C. 7401 et seq.) or any other law (other than provisions of this title relating to congestion mitigation and air quality).''.

(e) IMPROVED INTERAGENCY CONSULTATION.—Section 149 of such title (as amended by subsection (d)) is amended by adding at the end the following:

''(g) INTERAGENCY CONSULTATION.—The Secretary shall encourage States and metropolitan planning organizations to consult with State and local air quality agencies in nonattainment and maintenance areas on the estimated emission reductions from proposed congestion mitigation and air quality improvement programs and projects.''.

(f) EVALUATION AND ASSESSMENT OF CMAQ PROJECTS.—Section 149 of such title (as amended by subsection (e)) is amended by adding at the end the following:

''(h) EVALUATION AND ASSESSMENT OF PROJECTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall evaluate and assess a representative sample of projects funded under the congestion mitigation and air quality program to—

''(A) determine the direct and indirect impact of the projects on air quality and congestion levels; and

''(B) ensure the effective implementation of the program.

''(2) DATABASE.—Using appropriate assessments of projects funded under the congestion mitigation and air quality program and results from other research, the Secretary shall maintain and disseminate a cumulative database describing the impacts of the projects.

''(3) CONSIDERATION.—The Secretary, in consultation with the Administrator, shall consider the recommendations and findings of the report submitted to Congress under section 1110(e) of the Transportation Equity Act for the 21st Century (112 Stat. 144), including recommendations and findings that would improve the operation and evaluation of the congestion mitigation and air quality improvement program.''.

(g) FLEXIBILITY IN THE STATE OF MONTANA.—The State of Montana may use funds apportioned under section 104(b)(2) of title 23, United States Code, for the operation of public transit activities that serve a nonattainment or maintenance area.

(h) AVAILABILITY OF FUNDS FOR STATE OF MICHIGAN.—The State of Michigan may use funds apportioned under section 104(b)(2) of such title for the operation and maintenance of intelligent transportation system strategies that serve a nonattainment or maintenance area.

(i) AVAILABILITY OF FUNDS FOR THE STATE OF MAINE.—The State of Maine may use funds apportioned under section 104(b)(2) of such title to support, through September 30, 2009, the operation of passenger rail service between Boston, Massachusetts, and Portland, Maine.

(j) AVAILABILITY OF FUNDS FOR OREGON.—The State of Oregon may use funds apportioned on or before September 30, 2009, under section 104(b)(2) of such title to support the operation of additional passenger rail service between Eugene and Portland.

(k) AVAILABILTY OF FUNDS FOR CERTAIN OTHER STATES.—The States of Missouri, Iowa, Minnesota, Wisconsin, Illinois, Indiana, and Ohio may use funds apportioned under section 104(b)(2) of such title to purchase alternative fuel (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) or biodiesel.

Subtitle I—Miscellaneous

SEC. 1901. INCLUSION OF REQUIREMENTS FOR SIGNS IDENTIFYING FUNDING SOURCES IN TITLE 23.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code, is amended by inserting after section 320—

(1) the following:

''§ 321. Signs identifying funding sources''; and

(2) the text of section 154 of the Federal-Aid Highway Act of 1987 (23 U.S.C. 101 note).

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by inserting after the item relating to section 320 the following:

''321. Signs identifying funding sources.''.

(c) CONFORMING REPEAL.—Section 154 of the Federal-Aid Highway Act of 1987 (23 U.S.C. 101 note; 101 Stat. 209) is repealed.

SEC. 1902. DONATIONS AND CREDITS.

Section 323 of title 23, United States Code, is amended—

(1) in the first sentence of subsection (c) by inserting '', or a local government from offering to donate funds, materials, or services performed by local government employees,'' after ''services''; and

(2) by striking subsection (e).

SEC. 1903. INCLUSION OF BUY AMERICA REQUIREMENTS IN TITLE 23.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code, is amended by inserting after section 312—

(1) the following:

''§ 313. Buy America''; and

(2) the text of section 165 of the Highway Improvement Act of 1982 (23 U.S.C. 101 note; 96 Stat. 2136).

(b) CLERICAL AMENDMENT.—The analysis for chapter 3 of such title is amended by inserting after the item relating to section 312 the following:

''313. Buy America.''.

(c) CONFORMING AMENDMENTS.—Section 313 of such title (as added by subsection (a)) is amended—

(1) in subsection (a) by striking ''by this Act'' the first place it appears and all that follows through ''of 1978'' and inserting ''to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title'';

(2) in subsection (b) by redesignating paragraph (4) as paragraph (3);

(3) in subsection (d) by striking ''this Act,'' and all that follows through ''Code, which'' and inserting ''the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title that'';

(4) by striking subsection (e); and

(5) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(d) CONFORMING REPEAL.—Section 165 of the Highway Improvement Act of 1982 (23 U.S.C. 101 note; 96 Stat. 2136) is repealed.

SEC. 1904. STEWARDSHIP AND OVERSIGHT.

(a) IN GENERAL.—Section 106 of title 23, United States Code, is amended—

(1) by striking subsection (e) and inserting the following:

''(e) VALUE ENGINEERING ANALYSIS.—

''(1) DEFINITION OF VALUE ENGINEERING ANALYSIS.—

''(A) IN GENERAL.—In this subsection, the term 'value engineering analysis' means a systematic process of review and analysis of a project, during the concept and design phases, by a multidisciplined team of persons not involved in the project, that is conducted to provide recommendations such as those described in subparagraph (B) for—

''(i) providing the needed functions safely, reliably, and at the lowest overall cost;

''(ii) improving the value and quality of the project; and

''(iii) reducing the time to complete the project.

''(B) INCLUSIONS.—The recommendations referred to in subparagraph (A) include, with respect to a project—

''(i) combining or eliminating otherwise inefficient use of costly parts of the original proposed design for the project; and

''(ii) completely redesigning the project using different technologies, materials, or methods so as to accomplish the original purpose of the project.

''(2) ANALYSIS.—The State shall provide a value engineering analysis or other cost-reduction analysis for—

''(A) each project on the Federal-aid system with an estimated total cost of $25,000,000 or more;

''(B) a bridge project with an estimated total cost of $20,000,000 or more; and

''(C) any other project the Secretary determines to be appropriate.

''(3) MAJOR PROJECTS.—The Secretary may require more than 1 analysis described in paragraph (2) for a major project described in subsection (h).

''(4) REQUIREMENTS.—Analyses described in paragraph (1) for a bridge project shall—

''(A) include bridge substructure requirements based on construction material; and

''(B) be evaluated—

''(i) on engineering and economic bases, taking into consideration acceptable designs for bridges; and

''(ii) using an analysis of life-cycle costs and duration of project construction.''; and

(2) by striking subsections (g) and (h) and inserting the following:

''(g) OVERSIGHT PROGRAM.—

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Secretary shall establish an oversight program to monitor the effective and efficient use of funds authorized to carry out this title.

''(B) MINIMUM REQUIREMENT.—At a minimum, the program shall be responsive to all areas relating to financial integrity and project delivery.

''(2) FINANCIAL INTEGRITY.—

''(A) FINANCIAL MANAGEMENT SYSTEMS.—The Secretary shall perform annual reviews that address elements of the State transportation departments' financial management systems that affect projects approved under subsection (a).

''(B) PROJECT COSTS.—The Secretary shall develop minimum standards for estimating project costs and shall periodically evaluate the practices of States for estimating project costs, awarding contracts, and reducing project costs.

''(3) PROJECT DELIVERY.—The Secretary shall perform annual reviews that address elements of the project delivery system of a State, which elements include 1 or more activities that are involved in the life cycle of a project from conception to completion of the project.

''(4) RESPONSIBILITY OF THE STATES.—

''(A) IN GENERAL.—The States shall be responsible for determining that subrecipients of Federal funds under this title have—

''(i) adequate project delivery systems for projects approved under this section; and

''(ii) sufficient accounting controls to properly manage such Federal funds.

''(B) PERIODIC REVIEW.—The Secretary shall periodically review the monitoring of subrecipients by the States.

''(5) SPECIFIC OVERSIGHT RESPONSIBILITIES.—

''(A) EFFECT OF SECTION.—Nothing in this section shall affect or discharge any oversight responsibility of the Secretary specifically provided for under this title or other Federal law.

''(B) APPALACHIAN DEVELOPMENT HIGHWAYS.—The Secretary shall retain full oversight responsibilities for the design and construction of all Appalachian development highways under section 14501 of title 40.

''(h) MAJOR PROJECTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, a recipient of Federal financial assistance for a project under this title with an estimated total cost of $500,000,000 or more, and recipients for such other projects as may be identified by the Secretary, shall submit to the Secretary for each project—

''(A) a project management plan; and

''(B) an annual financial plan.

''(2) PROJECT MANAGEMENT PLAN.—A project management plan shall document—

''(A) the procedures and processes that are in effect to provide timely information to the project decisionmakers to effectively manage the scope, costs, schedules, and quality of, and the Federal requirements applicable to, the project; and

''(B) the role of the agency leadership and management team in the delivery of the project.

''(3) FINANCIAL PLAN.—A financial plan shall—

''(A) be based on detailed estimates of the cost to complete the project; and

''(B) provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

''(i) OTHER PROJECTS.—A recipient of Federal financial assistance for a project under this title with an estimated total cost of $100,000,000 or more that is not covered by subsection (h) shall prepare an annual financial plan. Annual financial plans prepared under this subsection shall be made available to the Secretary for review upon the request of the Secretary.''.

(b) CONFORMING AMENDMENTS.—Section 114(a) of title 23, United States Code, is amended—

(1) in the first sentence by striking ''highways or portions of highways located on a Federal-aid system'' and inserting ''Federal-aid highway or a portion of a Federal-aid highway''; and

(2) by striking the second sentence and inserting ''The Secretary shall have the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate.''.

SEC. 1905. TRANSPORTATION DEVELOPMENT CREDITS.

Section 120(j)(1) of title 23, United States Code, is amended—

(1) by striking ''A State'' and inserting the following:

''(A) IN GENERAL.—A State''; and

(2) by striking the last sentence and inserting the following:

''(B) SPECIAL RULE FOR USE OF FEDERAL FUNDS.—If the public, quasi-public, or private agency has built, improved, or maintained the facility using Federal funds, the credit under this paragraph shall be reduced by a percentage equal to the percentage of the total cost of building, improving, or maintaining the facility that was derived from Federal funds.

''(C) FEDERAL FUNDS DEFINED.—In this paragraph, the term 'Federal funds' does not include loans of Federal funds or other financial assistance that must be repaid to the Government.''.

SEC. 1906. GRANT PROGRAM TO PROHIBIT RACIAL PROFILING.

(a) GRANTS.—Subject to the requirements of this section, the Secretary shall make grants to a State that—

(1)(A) has enacted and is enforcing a law that prohibits the use of racial profiling in the enforcement of State laws regulating the use of Federal-aid highways; and

(B) is maintaining and allows public inspection of statistical information for each motor vehicle stop made by a law enforcement officer on a Federal-aid highway in the State regarding the race and ethnicity of the driver and any passengers; or

(2) provides assurances satisfactory to the Secretary that the State is undertaking activities to comply with the requirements of paragraph (1).

(b) ELIGIBLE ACTIVITIES.—A grant received by a State under subsection (a) shall be used by the State—

(1) in the case of a State eligible under subsection (a)(1), for costs of—

(A) collecting and maintaining of data on traffic stops;

(B) evaluating the results of the data; and

(C) developing and implementing programs to reduce the occurrence of racial profiling, including programs to train law enforcement officers; and

(2) in the case of a State eligible under subsection (a)(2), for costs of—

(A) activities to comply with the requirements of subsection (a)(1); and

(B) any eligible activity under paragraph (1).

(c) RACIAL PROFILING.—

(1) IN GENERAL.—To meet the requirement of subsection (a)(1), a State law shall prohibit, in the enforcement of State laws regulating the use of Federal-aid highways, a State or local law enforcement officer from using the race or ethnicity of the driver or passengers to any degree in making routine or spontaneous law enforcement decisions, such as ordinary traffic stops on Federal-aid highways.

(2) LIMITATION.—Nothing in this subsection shall alter the manner in which a State or local law enforcement officer considers race or ethnicity whenever there is trustworthy information, relevant to the locality or time frame, that links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization.

(d) LIMITATIONS.—

(1) MAXIMUM AMOUNT OF GRANTS.—The total amount of grants made to a State under this section in a fiscal year may not exceed 5 percent of the amount made available to carry out this section in the fiscal year.

(2) ELIGIBILITY.—A State may not receive a grant under subsection (a)(2) in more than 2 fiscal years.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $7,500,000 for each of fiscal years 2005 through 2009.

(2) CONTRACT AUTHORITY.—Funds authorized by this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except the Federal share of the cost of activities carried out using such funds shall be 80 percent, and such funds shall remain available until expended and shall not be transferable.

SEC. 1907. PAVEMENT MARKING SYSTEMS DEMONSTRATION PROJECTS.

(a) IN GENERAL.—The Secretary shall conduct a demonstration project in the State of Alaska,

and a demonstration project in the State of Tennessee, to study the safety impacts, environmental impacts, and cost effectiveness of different pavement marking systems and the effect of State bidding and procurement processes on the quality of pavement marking material employed in highway projects. The demonstration projects shall each include an evaluation of the impacts and effectiveness of increasing the width of pavement marking edge lines from 4 inches to 6 inches and an evaluation of advanced acrylic water-borne pavement markings.

(b) REPORT.—Not later than June 30, 2009, the Secretary shall submit to Congress a report on the results of the demonstration projects, together with findings and recommendations on methods that will optimize the cost-benefit ratio of the use of Federal funds on pavement marking.

(c) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund (other than the Mass Transit Account), $1,000,000 for each of fiscal years 2006 through 2009.

(2) CONTRACT AUTHORITY.—Funds authorized to be appropriated by this section shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code; expect that the Federal share of the cost of the demonstration projects shall be 100 percent, and such funds shall remain available until expended and shall not be transferable.

SEC. 1908. INCLUSION OF CERTAIN ROUTE SEGMENTS ON INTERSTATE SYSTEM AND NHS.

(a) INTERSTATE SYSTEM.—

(1) CREEK TURNPIKE, OKLAHOMA.—The Secretary shall designate as part of the Interstate System (as defined in section 101 of title 23, United States Code) in accordance with section 103(c)(4) of such title the portion of the Creek Turnpike connecting Interstate Route 44 east and west of Tulsa, Oklahoma.

(2) CERTAIN SECTION OF INTERSTATE ROUTE 181.—The Secretary shall designate as part of Interstate Route 26 the 11-mile section of Interstate Route 181 lying northwest of the intersection with Interstate Route 81, Tennessee.

(3) TREATMENT.—The designations under paragraph (2) shall be treated, for purposes of title 23, United States Code, as being made under section 103(c)(4) of such title.

(b) NATIONAL HIGHWAY SYSTEM.—The Secretary shall designate as a component of the National Highway System in accordance with section 103(b)(4) of title 23, United States Code, the portion of United States Route 271 from the Arkansas State line, west to the intersection with United States Route 59, and northwest to the intersection with Interstate Route 40, Sallisaw, Oklahoma.

SEC. 1909. FUTURE OF SURFACE TRANSPORTATION SYSTEM.

(a) DECLARATION OF POLICY.—Section 101(b) of title 23, United States Code, is amended—

(1) by striking ''(b) It is hereby declared'' and all that follows through the first undesignated paragraph and inserting the following:

''(b) DECLARATION OF POLICY.—

''(1) ACCELERATION OF CONSTRUCTION OF FEDERAL-AID HIGHWAY SYSTEMS.—Congress declares that it is in the national interest to accelerate the construction of Federal-aid highway systems, including the Dwight D. Eisenhower National System of Interstate and Defense, because many of the highways (or portions of the highways) are inadequate to meet the needs of local and interstate commerce for the national and civil defense.'';

(2) in the second undesignated paragraph by striking ''It is hereby declared'' and all that follows through ''objectives of this Act'' and inserting the following:

''(2) COMPLETION OF INTERSTATE SYSTEM.—Congress declares that the prompt and early completion of the Dwight D. Eisenhower National System of Interstate and Defense Highways (referred to in this section as the 'Interstate System'), so named because of its primary importance to the national defense, is essential to the national interest''; and

(3) by striking the third undesignated paragraph and inserting the following:

''(3) TRANSPORTATION NEEDS OF 21ST CENTURY.—Congress declares that—

''(A) it is in the national interest to preserve and enhance the surface transportation system to meet the needs of the United States for the 21st Century;

''(B) the current urban and long distance personal travel and freight movement demands have surpassed the original forecasts and travel demand patterns are expected to continue to change;

''(C) continued planning for and investment in surface transportation is critical to ensure the surface transportation system adequately meets the changing travel demands of the future;

''(D) among the foremost needs that the surface transportation system must meet to provide for a strong and vigorous national economy are safe, efficient, and reliable—

''(i) national and interregional personal mobility (including personal mobility in rural and urban areas) and reduced congestion;

''(ii) flow of interstate and international commerce and freight transportation; and

''(iii) travel movements essential for national security;

''(E) special emphasis should be devoted to providing safe and efficient access for the type and size of commercial and military vehicles that access designated National Highway System intermodal freight terminals;

''(F) the connection between land use and infrastructure is significant;

''(G) transportation should play a significant role in promoting economic growth, improving the environment, and sustaining the quality of life; and

''(H) the Secretary should take appropriate actions to preserve and enhance the Interstate System to meet the needs of the 21st Century.''.

(b) NATIONAL SURFACE TRANSPORTATION POLICY AND REVENUE STUDY COMMISSION.—

(1) ESTABLISHMENT.—There is established a commission to be known as the ''National Surface Transportation Policy and Revenue Study Commission'' (in this subsection referred to as the ''Commission'').

(2) MEMBERSHIP.—

(A) COMPOSITION.—The Commission shall be composed of 12 members, of whom—

(i) 1 member shall be the Secretary, who shall serve as Chairperson;

(ii) 3 members shall be appointed by the President;

(iii) 2 members shall be appointed by the Speaker of the House of Representatives;

(iv) 2 members shall be appointed by the minority leader of the House of Representatives;

(v) 2 members shall be appointed by the majority leader of the Senate; and

(vi) 2 members shall be appointed by the minority leader of the Senate.

(B) QUALIFICATIONS.—Members appointed under subparagraph (A)—

(i) shall include—

(I) individuals representing State and local governments, metropolitan planning organizations, transportation-related industries, and public interest organizations involved with scientific, regulatory, economic, and environmental activities relating to transportation;

(II) individuals with a background in public finance, including experience in developing State and local revenue resources;

(III) individuals involved in surface transportation program administration;

(IV) individuals that have conducted academic research into related issues; and

(V) individuals that provide unique perspectives on current and future requirements for revenue sources to support the Highway Trust Fund and policies impacting those revenues; and

(ii) shall be balanced geographically to the extent consistent with maintaining the highest level of expertise on the Commission.

(C) DATE OF APPOINTMENTS.—The appointment of a member of the Commission shall be made not later than 120 days after the date of establishment of the Commission.

(D) TERMS.—A member shall be appointed for the life of the Commission.

(E) VACANCIES.—A vacancy on the Commission—

(i) shall not affect the powers of the Commission; and

(ii) shall be filled in the same manner as the original appointment was made.

(F) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold the initial meeting of the Commission.

(G) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(H) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(I) VICE CHAIRPERSON.—The Commission shall select a Vice Chairperson from among the appointed members of the Commission.

(3) DUTIES.—

(A) IN GENERAL.—The Commission shall—

(i) conduct a comprehensive study of—

(I) the current condition and future needs of the surface transportation system;

(II) short-term sources of Highway Trust Fund revenues;

(III) long-term alternatives to replace or supplement the fuel tax as the principal revenue source to support the Highway Trust Fund, including new or alternate sources of revenue;

(IV) revenue sources to fund the needs of the surface transportation system over at least the 30-year period beginning on the date of enactment of this Act, including new or alternate sources of revenue;

(V) revenues flowing into the Highway Trust Fund under laws in existence on the date of enactment of this Act, including individual components of the overall flow of the revenues; and

(VI) whether the amount of revenues described in subclause (V) is likely to increase, decrease, or remain constant absent any change in law, taking into consideration the impact of possible changes in public vehicular choice, fuel use, and travel alternatives that could be expected to reduce or increase revenues into the Highway Trust Fund;

(B) develop a conceptual plan, with alternative approaches, to ensure that the surface transportation system will continue to serve the needs of the United States, including specific recommendations regarding design and operational standards, Federal policies, and legislative changes;

(C) consult with the Secretary of the Treasury in conducting the study to ensure that the views of the Secretary concerning essential attributes of Highway Trust Fund revenue alternatives are considered;

(D) consult with representatives of State departments of transportation and metropolitan planning organizations and other key interested stakeholders in conducting the study to ensure that—

(i) the views of the stakeholders on alternative revenue sources to support State transportation improvement programs are considered; and

(ii) any recommended Federal financing strategy takes into account State financial requirements; and

(E) based on the study, make specific recommendations regarding—

(i) actions that should be taken to develop alternative revenue sources to sup port the Highway Trust Fund; and

(ii) the time frame for taking those actions.

(4) RELATED WORK.—To the maximum extent practicable, the study shall build on related work that has been completed by—

(A) the Secretary;
(B) the Secretary of Energy;
(C) the Transportation Research Board, including the findings, conclusions, and recommendations of the recent study conducted by the Transportation Research Board on alternatives to the fuel tax to support highway program financing; and
(D) other entities and persons.
(5) SURFACE TRANSPORTATION NEEDS.—With respect to surface transportation needs, the investigation and study shall specifically address—
(A) the current condition and performance of the Interstate System (including the physical condition of bridges and pavements and operational characteristics and performance), relying primarily on existing data sources;
(B) the future of the Interstate System, based on a range of legislative and policy approaches for 15-, 30-, and 50-year time periods;
(C) the expected demographics and business uses that impact the surface transportation system;
(D) the expected use of the surface transportation system, including the effects of changing vehicle types, modes of transportation, fleet size and weights, and traffic volumes;
(E) desirable design policies and standards for future improvements of the surface transportation system, including additional access points;
(F) the identification of urban, rural, national, and interregional needs for the surface transportation system;
(G) the potential for expansion, upgrades, or other changes to the surface transportation system, including—
(i) deployment of advanced materials and intelligent technologies;
(ii) critical multistate, urban, and rural corridors needing capacity, safety, and operational enhancements;
(iii) improvements to intermodal linkages;
(iv) security and military deployment enhancements;
(v) strategies to enhance asset preservation; and
(vi) implementation strategies;
(H) the improvement of emergency preparedness and evacuation using the surface transportation system, including—
(i) examination of the potential use of all modes of the surface transportation system in the safe and efficient evacuation of citizens during times of emergency;
(ii) identification of the location of critical bottlenecks; and
(iii) development of strategies to improve system redundancy, especially in areas with a high potential for terrorist attacks;
(I) alternatives for addressing environmental concerns associated with the future development of the surface transportation system;
(J) the assessment of the current and future capabilities for conducting system-wide real-time performance data collection and analysis, traffic monitoring, and transportation systems operations and management; and
(K) policy and legislative alternatives for addressing future needs for the surface transportation system.
(6) FINANCING.—With respect to financing, the study shall address specifically—
(A) the advantages and disadvantages of alternative revenue sources to meet anticipated Federal surface transportation financial requirements;
(B) recommendations concerning the most promising revenue sources to support long-term Federal surface transportation financing requirements;
(C) development of a broad transition strategy to move from the current tax base to new funding mechanisms, including the time frame for various components of the transition strategy;
(D) recommendations for additional research that may be needed to implement recommended alternatives; and
(E) the extent to which revenues should reflect the relative use of the highway system.
(7) FINANCING RECOMMENDATIONS.—
(A) FACTORS FOR CONSIDERATION.—In developing financing recommendations under this subsection, the Commission shall consider—
(i) the ability to generate sufficient revenues from all modes to meet anticipated long-term surface transportation financing needs;
(ii) the roles of the various levels of government and the private sector in meeting future surface transportation financing needs;
(iii) administrative costs (including enforcement costs) to implement each option;
(iv) the expected increase in nontaxed fuels and the impact of taxing those fuels;
(v) the likely technological advances that could ease implementation of each option;
(vi) the equity and economic efficiency of each option;
(vii) the flexibility of different options to allow various pricing alternatives to be implemented; and
(viii) potential compatibility issues with State and local tax mechanisms under each alternative.
(B) NEED AND REVENUE ANALYSIS.—In developing financing recommendations under this subsection, the Commission shall distinguish between—
(i) the needs of, and revenues for, the surface transportation system that are eligible to receive funds from the Highway Trust Fund; and
(ii) the needs for projects and programs that are not eligible to receive funds from the Highway Trust Fund.
(8) TECHNICAL ADVISORY COMMITTEE.—The Secretary shall establish a technical advisory committee, in a manner consistent with the Federal Advisory Committee Act (5 U.S.C. App.), to collect and evaluate technical input from—
(A) appropriate Federal, State, and local officials with responsibility for transportation;
(B) appropriate State and local elected officials;
(C) transportation and trade associations;
(D) emergency management officials;
(E) freight providers;
(F) the general public; and
(G) other entities and persons determined to be appropriate by the Secretary to ensure a diverse range of views.
(9) REPORT AND RECOMMENDATIONS.—Not later than July 1, 2007, the Commission shall submit to Congress—
(A) a final report that contains a detailed statement of the findings and conclusions of the Commission; and
(B) the recommendations of the Commission for such legislation and administrative actions as the Commission considers to be appropriate.
(10) POWERS OF THE COMMISSION.—
(A) HEARINGS.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section.
(B) INFORMATION FROM FEDERAL AGENCIES.—
(i) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers necessary to carry out this section.
(ii) PROVISION OF INFORMATION.—On request of the Chairperson of the Commission, the head of a Federal agency shall provide the requested information to the Commission.
(C) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.
(D) DONATIONS.—The Commission may accept, use, and dispose of donations of services or property.
(11) COMMISSION PERSONNEL MATTERS.—
(A) MEMBERS.—A member of the Commission shall serve without pay but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.
(B) CONTRACTORS.—The Commission may enter into agreements with an appropriate organizations, agencies, and entities to conduct the study required under this section, under the strategic guidance of the Commission.
(C) ADMINISTRATIVE SUPPORT.—On the request of the Commission, the Administrator of the Federal Highway Administration shall provide to the Commission, on a reimbursable basis, the administrative support and services necessary for the Commission to carry out the duties of the Commission under this section.
(D) DETAIL OF PERSONNEL.—
(i) IN GENERAL.—On the request of the Commission, the Secretary may detail, on a reimbursable basis, any of the personnel of the Department to the Commission to assist the Commission in carrying out the duties of the Commission under this section.
(ii) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.
(12) COOPERATION.—The staff of the Secretary shall cooperate with the Commission in the study required under this section, including providing such nonconfidential data and information as are necessary to conduct the study.
(13) RELATIONSHIP TO OTHER LAW.—
(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), funds made available to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.
(B) FEDERAL SHARE.—The Federal share of the cost of the study and the Commission under this section shall be 100 percent.
(C) AVAILABILITY.—Funds made available to carry out this section shall remain available until expended.
(14) DEFINITION OF SURFACE TRANSPORTATION SYSTEM.—In this subsection, the term ''surface transportation system'' includes—
(A) the National Highway System, as defined in section 103(b) of title 23, United States Code;
(B) congressional high priority corridors;
(C) intermodal connectors;
(D) intermodal freight facilities;
(E) public transportation infrastructure and facilities; and
(F) freight and intercity passenger bus and rail infrastructure and facilities.
(15) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $1,400,000 for each of fiscal years 2006 and 2007.
(16) APPLICABILITY OF TITLE 23.—Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall remain available until expended, and the Federal share of the cost of a project under this section shall be as provided in this section.
(17) TERMINATION.—
(A) IN GENERAL.—The Commission shall terminate on the date that is 180 days after the date on which the Commission submits the report of the Commission under paragraph (9).
(B) RECORDS.—Not later than the date of termination of the Commission under subparagraph (A), all records and papers of the Commission shall be delivered to the Archivist of the United States for deposit in the National Archives.

SEC. 1910. MOTORIST INFORMATION CONCERNING FULL SERVICE RESTAURANTS.

Not later than 180 days after the date of enactment of this Act, the Secretary may initiate a rulemaking to determine whether—

(1) full service restaurants should be given priority on not more than 2 panels of the camping or attractions logo-specific service signs in the Manual on Uniform Traffic Control Devices of the Department of Transportation when the food logo-specific service sign is fully used; and

(2) full service restaurants should be given priority on not more than 2 panels of the food logo-specific service signs in such Manual when the camping or attractions logo specific service signs are fully used.

SEC. 1911. APPROVAL AND FUNDING FOR CERTAIN CONSTRUCTION PROJECTS.

(a) PROJECT APPROVAL.—If the Secretary finds that the project number STP–189–1(15)CT 3 in Gwinnett County, Georgia, was not listed in the current regional transportation plan because of a clerical error, such failure to be listed shall not be a basis for not approving the project. The Secretary shall make a final decision on the approval of the project within 30 days after the date of receipt by the Secretary of a construction authorization request from the department of transportation for the State of Georgia.

(b) CONFORMITY DETERMINATION.—

(1) IN GENERAL.—Approval, funding, and implementation of the project referred to in subsection (a) shall not be subject to the requirements of part 93 of title 40, Code of Federal Regulations (or successor regulations).

(2) REGIONAL EMISSIONS.—Notwithstanding paragraph (1), all subsequent regional emission analyses required by section 93.118 or 93.119 of title 40, Code of Federal Regulations (or successor regulations), shall include the project.

SEC. 1912. LEAD AGENCY DESIGNATION.

The public entity established under California law in 1989 to acquire rights-of-way in northwestern California to maintain surface transportation infrastructure is designated as the lead agency for the purpose of accepting Federal funds authorized under item 13 of the table contained in section 1108(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2061).

SEC. 1913. BRIDGE CONSTRUCTION, NORTH DAKOTA.

Notwithstanding any other provision of law, and regardless of the source of Federal funds, the Federal share of the eligible costs of construction of a bridge between Bismarck, North Dakota, and Mandan, North Dakota, shall be 90 percent.

SEC. 1914. MOTORCYCLIST ADVISORY COUNCIL.

(a) IN GENERAL.—The Secretary, acting through the Administrator of the Federal Highway Administration, in consultation with the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, shall appoint a Motorcyclist Advisory Council to coordinate with and advise the Administrator on infrastructure issues of concern to motorcyclists, including—

(1) barrier design;

(2) road design, construction, and maintenance practices; and

(3) the architecture and implementation of intelligent transportation system technologies.

(b) COMPOSITION.—The Council shall consist of not more than 10 members of the motorcycling community with professional expertise in national motorcyclist safety advocacy, including—

(1) at least—

(A) 1 member recommended by a national motorcyclist association;

(B) 1 member recommended by a national motorcycle riders foundation;

(C) 1 representative of the National Association of State Motorcycle Safety Administrators;

(D) 2 members of State motorcyclists' organizations;

(E) 1 member recommended by a national organization that represents the builders of highway infrastructure;

(F) 1 member recommended by a national association that represents the traffic safety systems industry; and

(G) 1 member of a national safety organization; and

(2) at least 1, and not more than 2, motorcyclists who are traffic system design engineers or State transportation department officials.

SEC. 1915. LOAN FORGIVENESS.

Debt outstanding as of the date of enactment of this Act for project number Q–DPM–0013(001) carried out under section 108(c) of title 23, United States Code, is deemed satisfied.

SEC. 1916. TREATMENT OF OFF RAMP.

Notwithstanding any other provision of law, the New Harbor Boulevard North off-ramp project along the Interstate Route 405 Collector-Distributor Road in Costa Mesa, California (Susan Street Slip-Ramp), shall be treated for purposes of title 23, United States Code, as satisfying all Federal requirements, and the California State department of transportation shall authorize any final environmental, engineering, or design analyses necessary to approve, as expeditiously as possible, construction of the project consistent with applicable California State operational and safety standards.

SEC. 1917. OPENING OF INTERSTATE RAMPS.

(a) IN GENERAL.—The Maryland State highway administration and the Federal Highway Administration shall work cooperatively—

(1) to expedite the project being developed as of the date of enactment of this Act to improve Interstate Route 495 through the area of the Arena Drive interchange to allow for safe exit, including improvements to the adjacent interchanges upstream and downstream along Interstate Route 495; and

(2) to expedite action on the Interstate access request so that the Interstate Route 495/Arena Drive interchange can be opened safely to all vehicles 24 hours per day, 7 days per week.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the status of opening the Interstate Route 495/Arena Drive interchange to full-time use.

SEC. 1918. CREDIT TO STATE OF LOUISIANA FOR STATE MATCHING FUNDS.

(a) IN GENERAL.—The Secretary may provide a credit to the State of Louisiana in an amount equal to non Federal Share of the cost of any planning, engineering, design, or construction work carried out by the State on any project that the Secretary determines is integral to the project authorized by item number 202 in the table contained in section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 264).

(b) ELIGIBILITY OF CREDIT.—The credit may be used for any future payment relating to the completion of the project referred to in subsection (a) that is required by the State under title 23, United States Code.

SEC. 1919. ROAD USER FEES.

(a) STUDY.—The Secretary shall enter into an agreement with the Public Policy Center of the University of Iowa for an analysis and report to the Secretary and the Secretary of the Treasury on a long-term field test of an approach to assessing highway use fees based upon actual mileage driven by a specific vehicle on specific types of highways by use of an onboard computer—

(1) which is linked to satellites to calculate highway mileage traversed;

(2) which computes the appropriate highway use fees for each of the Federal, State, and local governments as the vehicle makes use of the highways; and

(3) the data from which is periodically downloaded by the vehicle owner to a collection center for an assessment of highway use fees due in each jurisdiction traversed; and

(4) which includes methods of ensuring privacy of road users.

(b) COMPONENTS OF FIELD TEST.—The components of the field test shall include 2 years for preparation, including selection of vendors and test participants, and a 3-year testing period.

(c) REPORTS.—The Secretary shall submit annual reports on the status of the analysis and, not later than July 1, 2009, a final report on the results of the analysis, together with findings and recommendations. The reports shall be submitted to the Secretary of the Treasury, the Committee on Transportation and Infrastructure and the Committee on Ways and Means of the House of Representatives, and the Committee on Environment and Public Works and the Committee on Finance of the Senate.

(d) AUTHORIZATION OF APPROPRIATION.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $2,000,000 fiscal year 2006 and $3,500,000 for each of fiscal years 2007, 2008, and 2009.

(2) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code; except the Federal share of the cost of the analysis and report shall be 100 percent, and such funds shall remain available until expended and shall not be transferable.

SEC. 1920. TRANSPORTATION AND LOCAL WORKFORCE INVESTMENT.

(a) FINDINGS.—Congress finds the following:

(1) Federal-aid highway programs provide State and local governments and other recipients substantial funds for projects that produce significant employment and job-training opportunities.

(2) Every $1,000,000,000 in Federal infrastructure investment creates an estimated 47,500 jobs.

(3) Jobs in transportation construction, including apprenticeship positions, typically pay more than twice the minimum wage, and include health and other benefits.

(4) Transportation projects provide the impetus for job training and employment opportunities for low income individuals residing in the area in which a transportation project is planned.

(5) Transportation projects can offer young people, particularly those who are economically disadvantaged, the opportunity to gain productive employment.

(6) The Alameda Corridor, a $2,400,000,000 transportation project, is an example of a transportation project that included a local hiring provision resulting in a full 30 percent of the project jobs being filled by locally hired and trained men and women.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal transportation projects should facilitate and encourage the collaboration between interested persons, including Federal, State, and local governments, community colleges, apprentice programs, local high schools, and other community-based organizations that have an interest in improving the job skills of low-income individuals, to help leverage scarce training and community resources and to help ensure local participation in the building of transportation projects.

SEC. 1921. UPDATE OF OBSOLETE TEXT.

Section 137(a) of title 23, United States Code, is amended in the first sentence by striking ''on the Federal-aid urban system'' and inserting ''on a Federal-aid highway''.

SEC. 1922. TECHNICAL AMENDMENTS TO NONDISCRIMINATION SECTION.

(a) STATE ASSURANCES.—Section 140(a) of title 23, United States Code, is amended—

(1) in the first sentence by striking ''subsection (a) of section 105 of this title'' and inserting ''section 135'';

(2) in the second sentence by striking ''He'' and inserting ''The Secretary'';

(3) in the third sentence—

(A) by striking ''shall, where he considers it necessary to assure'' and inserting ''if necessary to ensure''; and

(B) by inserting ''shall'' after ''opportunity,''; and

(4) in the last sentence—

(A) by striking ''him'' and inserting ''the Secretary'' and

(B) by striking ''he'' and inserting ''the Secretary of Transportation''.

(b) HIGHWAY CONSTRUCTION AND TECHNOLOGY TRAINING.—Section 140(b) of such title is amended—

(1) in the first sentence by striking ''highway construction'' and inserting ''surface transportation''; and

(2) in the second sentence—

(A) by striking ''he may deem''; and

(B) by striking ''not to exceed $2,500,000 for the transition quarter ending September 30, 1976, and''.

(c) MINORITY BUSINESS TRAINING PROGRAMS.—Section 140(c) of such title is amended in the second sentence—

(1) by striking ''subsection 104(b)(3) of this title'' and inserting ''section 104(b)(3)''; and

(2) by striking ''he may deem''.

(d) TECHNICAL AMENDMENT.—Section 140(d) of such title is amended in the subsection heading by striking ''AND CONTRACTING''.

SEC. 1923. TRANSPORTATION ASSETS AND NEEDS OF DELTA REGION.

(a) AGREEMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall enter into an agreement with the Delta Regional Authority (in this section referred to as the ''DRA'') to conduct a comprehensive study of transportation assets and needs for all modes of transportation (including passenger and freight transportation) in the 8 States comprising the Delta region (Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee).

(b) CONSULTATION.—Under the agreement, the DRA, in conducting the study, shall consult with the Department, State transportation departments, local planning and development districts, local and regional governments, and metropolitan planning organizations.

(c) REPORT.—Under the agreement, the DRA, not later than 2 years after the date of entry into the agreement, shall submit to the Secretary and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a final report on the results of the study, together with such recommendations as the DRA considers to be appropriate.

(d) PLAN.—Under the agreement, the DRA, upon completion of the report, shall establish a regional strategic plan to implement the recommendations of the report.

(e) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account), to carry out this section $500,000 for each of the fiscal years 2005 and 2006.

(2) CONTRACT AUTHORITY.—Funds authorized by this section shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall remain available until expended and shall not be transferable.

SEC. 1924. ALASKA WAY VIADUCT STUDY.

(a) FINDINGS.—Congress finds that—

(1) in 2001, the Alaska Way Viaduct, a critical segment of the National Highway System in Seattle, Washington, was seriously damaged by the Nisqually earthquake;

(2) an effort to address the possible repair, retrofit, or replacement of the Viaduct that conforms with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is underway; and

(3) as a result of the efforts referred to in paragraph (2), a locally preferred alternative for the Viaduct is being developed.

(b) STUDY.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary, in cooperation with the Washington State department of transportation and the city of Seattle, Washington, shall conduct a comprehensive study to determine the specific damage to the Alaska Way Viaduct from the Nisqually earthquake of 2001 that contribute to the ongoing degradation of the Viaduct.

(2) REQUIREMENTS.—The study under paragraph (1) shall—

(A) identify any repair, retrofit, and replacement costs for the Viaduct that are eligible for additional assistance from the emergency fund authorized under section 125 of title 23, United States Code, consistent with the emergency relief manual governing eligible expenses from the emergency fund; and

(B) determine the amount of assistance from the emergency fund for which the Viaduct is eligible.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to Congress a report that describes the findings of the study.

SEC. 1925. COMMUNITY ENHANCEMENT STUDY.

(a) IN GENERAL.—The Secretary shall conduct a study on—

(1) the role of well-designed transportation projects in—

(A) promoting economic development;

(B) protecting public health, safety and the environment; and

(C) enhancing the architectural design and planning of communities; and

(2) the positive economic, cultural, aesthetic, scenic, architectural, and environmental benefits of such projects for communities.

(b) CONTENTS.—The study shall address the following:

(1) The degree to which well-designed transportation projects have positive economic, cultural, aesthetic, scenic, architectural, and environmental benefits for communities.

(2) The degree to which such projects protect and contribute to improvements in public health and safety.

(3) The degree to which such projects use inclusive public participation processes to achieve quicker, more certain, and better results.

(4) The degree to which positive results are achieved by linking transportation, design, and the implementation of community visions for the future.

(5) Facilitating the use of successful models or best practices in transportation investment or development to accomplish each of the following:

(A) Enhancement of community identity.

(B) Protection of public health and safety.

(C) Provision of a variety of choices in housing, shopping, transportation, employment, and recreation.

(D) Preservation and enhancement of existing infrastructure.

(E) Creation of a greater sense of community through public involvement.

(c) REPORT.—Not later than September 20, 2007, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study.

(d) ADMINISTRATION.—To carry out this section, the Secretary shall make a grant to, or enter into a cooperative agreement or contract with, a national organization representing architects who have expertise in the design of a wide range of transportation and infrastructure projects, which include the design of buildings, public facilities, and surrounding communities.

(e) AUTHORIZATION.—Of the amounts made available to carry out the transportation, community, and system preservation program by section 1117 of this Act $1,000,000 shall be available for each of fiscal years 2006 and 2007 to carry out this section; except that, notwithstanding section 1117(g) of this Act, the Federal share of the cost of the study shall be 100 percent.

SEC. 1926. BUDGET JUSTIFICATION.

The Department of Transportation and each agency in the Department shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a budget justification concurrently with the President's annual budget submission to Congress under section 1105(a) of title 31, United States Code.

SEC. 1927. 14TH AMENDMENT HIGHWAY AND 3RD INFANTRY DIVISION HIGHWAY.

Not later than December 31, 2005, any funds made available to commission studies and reports regarding construction of a route linking Augusta, Georgia, Macon, Georgia, Columbus, Georgia, Montgomery, Alabama, and Natchez, Mississippi and a route linking through Savannah, Georgia, Augusta, Georgia, and Knoxville, Tennessee, shall be provided to the Secretary to—

(1) carry out a study and submit to the appropriate committees of Congress a report that describes the steps and estimated funding necessary to construct a route for the 14th Amendment Highway, from Augusta, Georgia, to Natchez, Mississippi (formerly designated the Fall Line Freeway in the State of Georgia); and

(2) carry out a study and submit to the appropriate committees of Congress a report that describes the steps and estimated funding necessary to designate and construct a route for the 3rd Infantry Division Highway, extending from Savannah, Georgia, to Knoxville, Tennessee, by way of Augusta, Georgia (formerly the Savannah River Parkway in the State of Georgia).

SEC. 1928. SENSE OF CONGRESS REGARDING BUY AMERICA.

It is the sense of Congress that—

(1) the Buy America test required by section 165 of the Surface Transportation Assistance Act of 1982 (23 U.S.C. 101 note) needs to be applied to an entire bridge project and not only to component parts of such project;

(2) the law clearly states that domestic materials must be used in Federal highway projects unless there is a finding that the inclusion of domestic materials will increase the cost of the overall project by more than 25 percent;

(3) uncertainty regarding how to apply Buy America laws for major bridge projects threatens the domestic bridge industry;

(4) because the Nation's unemployment rate continues to hover around 5.6 percent, steps are needed to protect American workers and the domestic bridge building industry; and

(5) the Buy American Act (41 U.S.C. 10a et seq.) was designed to ensure that, when taxpayer money is spent on direct Federal Government procurement and infrastructure projects, these expenditures stimulate United States production and job creation.

SEC. 1929. DESIGNATION OF DANIEL PATRICK MOYNIHAN INTERSTATE HIGHWAY.

(a) DESIGNATION.—The portion of Interstate Route 86 in the State of New York, extending from the Pennsylvania border near Lake Erie through Orange County, New York, shall be known and designated as the ''Daniel Patrick Moynihan Interstate Highway''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the highway portion referred to in subsection (a) shall be deemed to be a reference to the ''Daniel Patrick Moynihan Interstate Highway''.

SEC. 1930. DESIGNATION OF THOMAS P. "TIP" O'NEILL, JR. TUNNEL.

(a) DESIGNATION.—In honor of his service to the Commonwealth of Massachusetts and the United States, and in recognition of his contributions toward the construction of the Central Artery project in Boston, the northbound and southbound tunnel of Interstate Route 93, located in the city of Boston, which extends north of the intersection of Interstate Route 90 and Interstate Route 93 to the Leonard P.

Zakim Bunker Hill Bridge, shall be known and designated as the ''Thomas P. 'Tip' O'Neill, Jr. Tunnel''.

(b) REFERENCES.—Any reference in law, map, regulation, document, paper, or other record of the United States to the tunnel referred to in subsection (a) shall be deemed to be a reference to the ''Thomas P. 'Tip' O'Neill, Jr. Tunnel''.

SEC. 1931. RICHARD NIXON PARKWAY, CALIFORNIA.

(a) DESIGNATION.—The segment of the Imperial Highway located between California State Route 91 and Esperanza Road in the State of California shall be known and designated as the ''Richard Nixon Parkway''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the highway segment referred to in subsection (a) shall be deemed to be a reference to the ''Richard Nixon Parkway''.

SEC. 1932. AMO HOUGHTON BYPASS.

(a) DESIGNATION.—The 3-mile segment of Interstate Route 86 between its interchange with New York State Route 15 in the vicinity of Painted Post, New York, and its interchange with New York State Route 352 in the vicinity of Corning, New York, shall be known and designated as the ''Amo Houghton Bypass''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the highway segment referred to in subsection (a) shall be deemed to be a reference to the ''Amo Houghton Bypass''.

SEC. 1933. BILLY TAUZIN ENERGY CORRIDOR.

(a) DESIGNATION.—Louisiana Route 1 shall be known and designated as the ''Billy Tauzin Energy Corridor''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the highway segment referred to in subsection (a) shall be deemed to be a reference to the ''Billy Tauzin Energy Corridor''.

SEC. 1934. TRANSPORTATION IMPROVEMENTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—For each of fiscal years 2005 through 2009, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to make allocations in accordance with paragraph (2) to carry out each project described in the table contained in subsection (c), at the amount specified for each such project in that table.

(2) ALLOCATION PERCENTAGES.—Of the total amount specified for each project described in the table contained in subsection (c), 10 percent for fiscal year 2005, 20 percent for fiscal year 2006, 25 percent for fiscal year 2007, 25 percent for fiscal year 2008, and 20 percent for fiscal year 2009 shall be allocated to carry out each such project in that table.

(b) CONTRACT AUTHORITY.—

(1) IN GENERAL.—Funds authorized to be appropriated to carry out this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except that the funds shall remain available until expended.

(2) FEDERAL SHARE.—The Federal share of the cost of a project under this section shall be determined in accordance with section 120 of such title.

(c) TABLE.—The table referred to in subsections (a) and (b) is as follows:

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SEC. 1935. PROJECT FLEXIBILITY.

(a) IN GENERAL.—Notwithstanding any other provision of law, funds allocated for a project described in subsection (b) in a State may be obligated for any other project in the State for which funds are so allocated, except that the total amount of funds authorized for any project for which funds are so allocated shall not be reduced.

(b) PROJECTS.—The projects described in this subsection are—

(1) the projects numbered greater than 3676 listed in the table contained in section 1702 of this Act;

(2) the projects numbered greater than 18 listed in the table contained in section 1301 of this Act;

(3) the projects numbered greater than 27 listed in the table contained in section 1302 of this Act; and

(4) the projects listed in the table contained in section 1934 of this Act.

SEC. 1936. ADVANCES.

Notwithstanding any other provision of law, funds apportioned to a State under section 104(b) of title 23, United States Code, may be obligated to carry out a project designated in any of sections 1301, 1302, 1306, and 1934 of this Act and sections 117 and 144(g) of title 23, United States Code, in an amount not to exceed the amount authorized for that project, only from a program under which the project would be eligible, except that any amounts obligated to carry out the project shall be restored from funds allocated for the project.

SEC. 1937. ROADS IN CLOSED BASINS.

(a) IN GENERAL.—The Secretary shall use funds made available to carry out section 125 of title 23, United States Code, through advancement or reimbursement, without further emergency declaration, to construct such measures as the Secretary determines to be necessary for the continuation of roadway services, or the impoundment of water to protect roads, or both, at Devils Lake in the State of North Dakota, as the Secretary determines to be appropriate.

(b) REQUIREMENTS.—The Secretary shall carry out construction under subsection (a) in accordance with—

(1) the options and needs identified in the report of the Devils Lake Surface Transportation Task Force of the Federal Highway Administration dated May 4, 2000, and entitled ''Roadways Serving as Water Barriers'';

(2) any needs relating to Devils Lake identified after May 4, 2000; and

(3) any monitoring, study, or design or preliminary engineering associated with evaluating or constructing the measures.

(c) AFFECTED AREAS.—The Secretary shall carry out construction under this section in an area that has been the subject of an emergency declaration issued during the period beginning on January 1, 1993, and ending on the date of enactment of this Act.

(d) FUNDING.—

(1) IN GENERAL.—Except as provided in paragraph (2), to the extent that expenditures relating to construction under this section could not be made pursuant to any other authority under section 125 of title 23, United States Code, the expenditures shall not exceed—

(A) $10,000,000 during any fiscal year; and

(B) a total amount of $70,000,000.

(2) EXCEPTION.—Nothing in paragraph (1) limits any expenditure with respect to—

(A) emergency relief in response to a development occurring after the date of enactment of this Act; or

(B) an authority under any other provision of law (including section 125 of such title).

(e) EFFECT OF SECTION.—Nothing in this section authorizes or provides funding for the construction, operation, or maintenance of an outlet at Devils Lake in the State of North Dakota.

SEC. 1938. TECHNOLOGY.

States are encouraged to consider using a nondestructive technology able to detect cracks including sub-surface flaws as small as 0.005 inches in length or depth in steel bridges.

SEC. 1939. BIA INDIAN ROAD PROGRAM.

(a) LIMITATION ON APPLICABILITY OF CERTAIN RULE.—The final rule effective October 1, 2004, published in the Federal Register, July 19, 2004, at pages 43089, relating to the Indian reservation road program administered by the Bureau of Indian Affairs of the Department of the Interior, shall not apply to the following Alaska villages with respect to the following projects:

(1) Craig, Alaska, Craig Community Association, Point St. Nicholas Road improvements.

(2) Cordova, Alaska, Native Village of Eyak, Shepard's Point Road improvements.

(3) Hydaburg, Alaska, Hydaburg Community Association, Hydaburg community street improvements.

(4) Healy Lake, Alaska, Healy Lake Traditional, Cummings Road improvements.

(b) SPECIAL RULE.—For the villages listed in subsection (a), the Indian reservation road program shall be administered by the Bureau of Indian Affairs under the rules and regulations in effect before the adoption of the final rule referred to in subsection (a), and the Secretary shall pay, from amounts made available to carry out section 202(d) of title 23, United States Code, for fiscal year 2006 each of the tribal organizations referred to in subsection (a) for the Federal share of the costs of the projects listed in subsection (a).

SEC. 1940. GOING-TO-THE-SUN ROAD, GLACIER NATIONAL PARK, MONTANA.

(a) PROJECT AUTHORIZATION.—There is authorized to be appropriated to the Secretary from the Highway Trust Fund (other than the Mass Transit Account) to resurface, repair, rehabilitate, and reconstruct the Going-to-the-Sun Road at Glacier National Park, Montana, in accordance with the framework identified in Alternative 3 (shared use alternative) of the environmental impact statement and record of decision dated 2003 and relating to the Going-to-the-Sun Road, to remain available until expended—

(1) $10,000,000 for fiscal year 2005;

(2) $10,000,000 for fiscal year 2006;

(3) $10,000,000 for fiscal year 2007;

(4) $10,000,000 for fiscal year 2008; and

(5) $10,000,000 for fiscal year 2009.

(b) FEDERAL SHARE.—The Federal share of the costs of the project described in subsection (a) shall be 100 percent.

SEC. 1941. BEARTOOTH HIGHWAY, MONTANA.

(a) PROJECT AUTHORIZATION.—Of funds made available for the State of Montana for the project for development and construction of United States Route 212, Red Lodge North, Montana, as described in the table contained in section 1934 (including amounts transferred to the project under section 1935), on request of the State of Montana, the Secretary shall obligate such sums as are necessary to reconstruct the Beartooth Highway in the State of Montana.

(b) REIMBURSEMENT.—The amounts used for reconstruction under subsection (a) shall be reimbursed to the project relating to United States Route 212 described in subsection (a) on the date or dates on which funding is allocated for the Beartooth Highway under section 125 of title 23, United States Code.

(c) FEDERAL SHARE.—The Federal share payable for funds allocated for the Beartooth Highway under section 125 of such title shall be 100 percent.

SEC. 1942. OPENING OF AIRFIELD AT MALMSTROM AIR FORCE BASE, MONTANA.

Not later than 1 day after the date of the enactment of this Act, the Secretary of the Air Force shall—

(1) open the airfield at Malmstrom Air Force Base, Montana; and

(2) enable flying operations for all fixed-wing aircraft at that base.

SEC. 1943. GREAT LAKES ITS IMPLEMENTATION.

(a) IN GENERAL.—The Secretary shall make grants to the State of Wisconsin to continue intelligent transportation system activities in the corridor serving the Greater Milwaukee, Wisconsin, Chicago, Illinois, and Gary, Indiana, areas initiated under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240) and other areas of the State of Wisconsin.

(b) FUNDING.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $2,000,000 for each of fiscal years 2006 through 2008 and $3,000,000 for fiscal year 2009 to carry out this section.

(c) CONTRACT AUTHORITY.—Funds made available to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.

SEC. 1944. TRANSPORTATION CONSTRUCTION AND REMEDIATION, OTTAWA COUNTY, OKLAHOMA.

(a) IN GENERAL.—The Secretary shall allocate to the State of Oklahoma amounts made available to carry out this section for the activities described in subsection (b).

(b) OKLAHOMA PLAN FOR TAR CREEK.—The activities referred to in subsection (a) are all activities described in the Oklahoma Plan for Tar Creek, including activities under that Plan that are to be carried out by involved Federal and State entities.

(c) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $10,000,000 for fiscal year 2006.

(B) AVAILABILITY.—Funds authorized to be appropriated under subparagraph (A) shall remain available until expended.

(2) CONTRACT AUTHORITY.—Except as otherwise provided in this section, funds authorized to be appropriated under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.

(3) TITLE 23 ELIGIBILITY.—Activities described in subsection (b) shall be considered to be eligible for funding under any program for which funds are apportioned under section 104(b) of such title, as in effect on the day before the date of enactment of this section.

SEC. 1945. INFRASTRUCTURE AWARENESS PROGRAM.

(a) IN GENERAL.—In cooperation with the subcontracting production entity that received funds under section 1212(b) of the Transportation Equity Act for the 21st Century (112 Stat. 193), the Secretary shall fund the production of a documentary about infrastructure that demonstrates advancements in Alaska, the last frontier.

(b) FEDERAL SHARE.—The Federal share of the cost of production of the documentary under subsection (a) shall be 100 percent.

(c) FUNDING.—There is authorized to be appropriated out of the Highway Trust fund (other than the Mass Transit Account) to carry out this section $1,500,000 for fiscal year 2005 and $1,450,000 for fiscal year 2006. Such fund shall remain available until expended.

(d) APPLICABILITY OF TITLE 23.—Funds authorized by this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United State Code; except that the Federal share of the cost of production of the documentary under this section shall be determined in accordance with this section.

SEC. 1946. GATEWAY RURAL IMPROVEMENT PILOT PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a pilot program in the State of Vermont to be known as the ''Gateway Rural Improvement Pilot Program'' (referred to in this section as the ''program'') to demonstrate the benefits to a rural rail corridor of a freight transportation gateway program.

(b) ELIGIBLE ACTIVITIES.—Under the program—

(1) funding preference shall be given to selecting a corridor in the State of Vermont that includes a border crossing; and

(2) individual projects shall provide community and highway benefits by addressing economic, congestion, security, safety, and environmental issues.

(c) COST SHARING.—

(1) FEDERAL SHARE.—The Federal share of the cost of a project under this section shall be determined in accordance with section 120 of title 23, United States Code.

(2) NON-FEDERAL SHARE.—Project user fees may be used to provide all or part of the non-Federal share of the cost of a project funded under this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to such amounts as are otherwise authorized to be appropriated for the Department, there are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 1947. ELIGIBLE SAFETY IMPROVEMENTS.

Section 120(c) of title 23, United States Code, is amended in the first sentence by inserting ''traffic circles (also known as 'roundabouts'),'' after ''traffic control signalization,''.

SEC. 1948. EMERGENCY SERVICE ROUTE.

Notwithstanding any Federal law, regulation, or policy to the contrary, no Federal funds shall be obligated or expended for the demolition of the existing Brightman Street Bridge connecting Fall River and Somerset, Massachusetts, and the existing Brightman Street Bridge shall be maintained for pedestrian and bicycle access, and as an emergency service route.

SEC. 1949. KNIK ARM BRIDGE FUNDING CLARIFICATION.

The Secretary shall provide to the public entity known as the Knik Arm Bridge and Toll Authority, established by the State of Alaska, funds provided in items 2465 and 3677 in the table contained in section 1702, item 2 in the table contained in section 1934, and item 14 in the table contained in section 1302.

SEC. 1950. LINCOLN PARISH, LA/I–20 TRANSPORTATION CORRIDOR PROGRAM.

(a) IN GENERAL.—The Secretary shall credit non-Federal expenditures paid on or after October 23, 2000, by project sponsors of the Lincoln Parish transportation and community and system preservation project funded by the Department of Transportation and Related Agencies Appropriations Act, 2001 (Public Law 106–346), and the United States Route 167/I–20 interchange Interstate maintenance discretionary project funded by the Department of Transportation and Related Agencies Appropriations Act, 2002 (Public Law 107–87), that are in excess of the non-Federal matching requirements for such projects as non-Federal contributions toward the non-Federal matching requirements for all LA/I–20 Transportation Corridor Program elements between Louisiana Route 149 and Louisiana Route 33.

(b) EXPIRATION OF AUTHORITY.—The authority to provide credit under subsection (a) expires on September 30, 2009.

SEC. 1951. BONDING ASSISTANCE PROGRAM.

Section 332 of title 49, United States Code, is amended by inserting at the end the following:

''(e) BONDING ASSISTANCE.—

''(1) IN GENERAL.—The Secretary, acting through the Minority Resource Center established under subsection (b), shall provide assistance in obtaining bid, payment, and performance bonds by disadvantaged business enterprises pursuant to subsection (b)(4).

''(2) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated such sums as may be necessary for each of fiscal years 2005 through 2009 to carry out activities under this subsection.''.

SEC. 1952. CONGESTION RELIEF.

The Secretary shall conduct a design and feasibility analysis to alleviate southbound traffic congestion along the George Washington Parkway, Virginia, between Interstate Route 495 and the 14th Street Bridge and shall take appropriate action in response to the results of that analysis.

SEC. 1953. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out, in accordance with title 23, United States Code, projects under section 1301 and 1302 of this Act.

SEC. 1954. BICYCLE TRANSPORTATION AND PEDESTRIAN WALKWAYS.

Section 217(c) of title 23, United States Code, is amended by striking ''in conjunction with such trails, roads, highways, and parkways''.

SEC. 1955. CONVEYANCE TO THE CITY OF ELY, NEVADA.

Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712), the Secretary of Interior, acting through the Director of the Bureau of Land Management, shall convey within 45 days after the date of enactment of this Act to the city of Ely, Nevada, subject to valid existing rights, without consideration, all right, title, and interest of the United States in the land located within the railroad corridor described in rights-of-way numbered Nev–043230, Nev–043231, Nev–043232, Nev–43240, Nev–043234, ELKO–03009, ELKO–03514, and CC–05887.

SEC. 1956. BROWNFIELDS GRANTS.

Section 104(k)(4)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)(4)(B)) is amended by adding at the end the following:

''(iii) EXCEPTION.—Notwithstanding clause (i)(IV), the Administrator may use up to 25 percent of the funds made available to carry out this subsection to make a grant or loan under this subsection to eligible entities that satisfy all of the elements set forth in section 101(40) to qualify as a bona fide prospective purchaser, except that the date of acquisition of the property was on or before January 11, 2002.''.

SEC. 1957. TRAFFIC CIRCLE CONSTRUCTION, CLARENDON, VERMONT.

(a) IN GENERAL.—The State of Vermont agency of transportation shall—

(1) not later than August 1, 2005, commence planning for a traffic circle at the intersection of United States Route 7 and Vermont Route 103 in Clarendon, Vermont; and

(2) not later than August 1, 2007, complete construction of that traffic circle.

(b) FUNDING.—From amounts made available to the State of Vermont by this Act, the Secretary shall provide to the State of Vermont agency of transportation $1,000,000 for use in carrying out this section.

SEC. 1958. LIMITATION ON PROJECT APPROVAL.

Notwithstanding any provision of title 23, United States Code, the Secretary is prohibited from approving any Federal-aid highway project in Orange and Seminole Counties, Florida, which provides access from Interstate Route 4 to the right-of-way or median of Interstate Route 4 if tolls or toll facilities are used for the access to the right-of-way or median.

SEC. 1959. CROSS HARBOR FREIGHT MOVEMENT PROJECT.

The Secretary shall provide to the public entity known as the Port Authority of New York and New Jersey, established by the States of New York and New Jersey, funds provided for project numbered 12 in section 1301 of this Act.

SEC. 1960. DENALI ACCESS SYSTEM PROGRAM.

The Denali Commission Act of 1998 (42 U.S.C. 3121 note) is amended—

(1) by redesignating section 309 as section 310; and

(2) by inserting after section 308 the following:

''SEC. 309. DENALI ACCESS SYSTEM PROGRAM.

''(a) ESTABLISHMENT OF THE DENALI ACCESS SYSTEM PROGRAM.—Not later than 3 months after the date of enactment of the SAFETEA–LU, the Secretary of Transportation shall establish a program to pay the costs of planning, designing, engineering, and constructing road and other surface transportation infrastructure identified for the Denali access system program under this section.

''(b) DENALI ACCESS SYSTEM PROGRAM ADVISORY COMMITTEE.—

''(1) ESTABLISHMENT.—Not later than 3 months after the date of enactment of the SAFETEA–LU, the Denali Commission shall establish a Denali Access System Program Advisory Committee (referred to in this section as the 'advisory committee') .

''(2) MEMBERSHIP.—The advisory committee shall be composed of 9 members to be appointed by the Governor of the State of Alaska as follows:

''(A) The chairman of the Denali Commission.

''(B) 4 members who represent existing regional native corporations, native nonprofit entities, or tribal governments, including one member who is a civil engineer.

''(C) 4 members who represent rural Alaska regions or villages, including one member who is a civil engineer.

''(3) TERMS.—

''(A) IN GENERAL.—Except for the chairman of the Commission who shall remain a member of the advisory committee, members shall be appointed to serve a term of 4 years.

''(B) INITIAL MEMBERS.—Except for the chairman of the Commission, of the 8 initial members appointed to the advisory committee, 2 shall be appointed for a term of 1 year, 2 shall be appointed for a term of 2 years, 2 shall be appointed for a term of 3 years, and 2 shall be appointed for a term of 4 years. All subsequent appointments shall be for 4 years.

''(4) RESPONSIBILITIES.—The advisory committee shall be responsible for the following activities:

''(A) Advising the Commission on the surface transportation needs of Alaska Native villages and rural communities, including projects for the construction of essential access routes within remote Alaska Native villages and rural communities and for the construction of roads and facilities necessary to connect isolated rural communities to a road system.

''(B) Advising the Commission on considerations for coordinated transportation planning among the Alaska Native villages, Alaska rural villages, the State of Alaska, and other government entities.

''(C) Establishing a list of transportation priorities for Alaska Native village and rural community transportation projects on an annual basis, including funding recommendations.

''(D) Facilitate the Commission's work on transportation projects involving more than one region.

''(5) FACA EXEMPTION.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory committee.

''(c) ALLOCATION OF FUNDS.—

''(1) IN GENERAL.—The Secretary shall allocate funding authorized and made available for the Denali access system program to the Commission to carry out this section.

''(2) DISTRIBUTION OF FUNDING.—In distributing funds for surface transportation projects funded under the program, the Commission shall consult the list of transportation priorities developed by the advisory committee.

''(d) PREFERENCE TO ALASKA MATERIALS AND PRODUCTS.—To construct a project under this section, the Commission shall encourage, to the maximum extent practicable, the use of employees and businesses that are residents of Alaska.

''(e) DESIGN STANDARDS.—Each project carried out under this section shall use technology and design standards determined by the Commission to be appropriate given the location and the functionality of the project.

''(f) MAINTENANCE.—Funding for a construction project under this section may include an additional amount equal to not more than 10 percent of the total cost of construction, to be

retained for future maintenance of the project. All such retained funds shall be dedicated for maintenance of the project and may not be used for other purposes.

''(g) LEAD AGENCY DESIGNATION.—For purposes of projects carried out under this section, the Commission shall be designated as the lead agency for purposes of accepting Federal funds and for purposes of carrying out this project.

''(h) NON-FEDERAL SHARE.—Notwithstanding any other provision of law, funds made available to carry out this section may be used to meet the non-Federal share of the cost of projects under title 23, United States Code.

''(i) SURFACE TRANSPORTATION PROGRAM TRANSFERABILITY.—

''(1) TRANSFERABILITY.—In any fiscal year, up to 15 percent of the amounts made available to the State of Alaska for surface transportation by section 133 of title 23, United States Code, may be transferred to the Denali access system program.

''(2) NO EFFECT ON SET-ASIDE.—Paragraph (2) of section 133(d), United States Code, shall not apply to funds transferred under paragraph (1).

''(j) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $15,000,000 for each of fiscal years 2006 through 2009.

''(2) APPLICABILITY OF TITLE 23.—Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of any project carried out using such funds shall be determined in accordance with section 120(b).''.

SEC. 1961. I–95/CONTEE ROAD INTERCHANGE STUDY.

(a) IN GENERAL.—The Secretary shall conduct a study on the I–95/Contee Road relocated interchange project located in Prince George's County, Maryland. The study shall assess how the proposed interchange will—

(1) leverage Federal investment in the I–95/Contee Road relocated interchange project by encouraging a public-private partnership between the State of Maryland and the private financial interests supporting the project;

(2) improve overall transportation efficiency in the area and enhance fire, rescue, and emergency response in the area;

(3) complement planned development in the area by providing sufficient access to the Interstate System; and

(4) otherwise provide public benefits and revenues.

(b) DATA COLLECTION.—As part of the study, the Secretary shall collect data regarding the economic impact of the project, including new jobs and State and county revenues in the form of real estate property taxes, retail sales taxes, and income and hotel sales and occupancy taxes.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study, including any recommendations of the Secretary.

(d) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund (other than the Mass Transit Account), $1,000,000 for fiscal year 2006.

(2) CONTRACT AUTHORITY.—Funds authorized to be appropriated by this section shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of the project shall be 100 percent, and such funds shall remain available until expended and shall not be transferable.

SEC. 1962. MULTIMODAL FACILITY IMPROVEMENTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall make available from funds in the Highway Trust Fund (other than the Mass Transit Account) $5,000,000 for each of fiscal years 2006 through 2009 for multimodal facility improvements, construction, and ferry acquisition by North Bay Ferry Service, Inc., located at Port Sonoma in Petaluma, California.

(b) CONTRACT AUTHORITY.—Funds appropriated to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except that such funds shall remain available until expended.

(c) LIMITATION.—Not more than 50 percent of funds appropriated to carry out this section shall be used for facility improvements and construction.

(d) FEDERAL SHARE.—The Federal Share of the cost of a facility improvement or construction project under this section shall be 80 percent.

(e) REQUIREMENT.—Ferries to which assistance is provided under this section shall be purchased by a United States company that designs and builds vessels in the United States.

SEC. 1963. APOLLO THEATER LEASES.

Notwithstanding the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 et seq.), or any other provision of law, the Economic Development Administration shall, in order to facilitate the further financing of the project, approve, without compensation to the agency, a series of leases of the Apollo Theater, located in Harlem, New York, to be improved by Economic Development Administration project numbers 01–01–7308 and 01–01–07552.

SEC. 1964. PROJECT FEDERAL SHARE.

(a) IN GENERAL.—Notwithstanding any other provision of law, only for the States of Alaska, Montana, Nevada, North Dakota, Oregon, and South Dakota, the Federal share of the cost of a project described in subsection (b) shall be determined in accordance with section 120(b) of title 23, United States Code.

(b) PROJECTS.—The projects described in this subsection are—

(1) the projects listed in section 1702;

(2) the projects listed in section 1301; and

(3) the projects listed in section 1934.

TITLE II—HIGHWAY SAFETY

SEC. 2001. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) HIGHWAY SAFETY PROGRAMS.—For carrying out section 402 of title 23, United States Code, $163,680,000 for fiscal year 2005, $217,000,000 for fiscal year 2006, $220,000,000 for fiscal year 2007, $225,000,000 for fiscal year 2008, and $235,000,000 for fiscal year 2009.

(2) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—For carrying out section 403 of title 23, United States Code, $71,424,000 for fiscal year 2005, $110,000,000 for fiscal year 2006, $107,750,000 for fiscal year 2007, $107,750,000 for fiscal year 2008, and $105,500,000 for fiscal year 2009.

(3) OCCUPANT PROTECTION INCENTIVE GRANTS.—For carrying out section 405 of title 23, United States Code, $19,840,000 for fiscal year 2005, $25,000,000 for fiscal year 2006, $25,000,000 for fiscal year 2007, $25,000,000 for fiscal year 2008, and $25,000,000 for fiscal year 2009.

(4) SAFETY BELT PERFORMANCE GRANTS.—For carrying out section 406 of title 23, United States Code, $124,500,000 for fiscal year 2006, $124,500,000 for fiscal year 2007, $124,500,000 for fiscal year 2008, and $124,500,000 for fiscal year 2009.

(5) STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.—For carrying out section 408 of title 23, United States Code, $34,500,000 for fiscal year 2006, $34,500,000 for fiscal year 2007, $34,500,000 for fiscal year 2008, and $34,500,000 for fiscal year 2009.

(6) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANT PROGRAM.—For carrying out section 410 of title 23, United States Code, $39,680,000 for fiscal year 2005, $120,000,000 for fiscal year 2006, $125,000,000 for fiscal year 2007, $131,000,000 for fiscal year 2008, and $139,000,000 for fiscal year 2009.

(7) NATIONAL DRIVER REGISTER.—For the National Highway Traffic Safety Administration to carry out chapter 303 of title 49, United States Code, $3,968,000 for fiscal year 2005, $4,000,000 for fiscal year 2006, $4,000,000 for fiscal year 2007, $4,000,000 for fiscal year 2008, and $4,000,000 for fiscal year 2009.

(8) HIGH VISIBILITY ENFORCEMENT PROGRAM.—For carrying out section 2009 of this title $29,000,000 for fiscal year 2006, $29,000,000 for fiscal year 2007, $29,000,000 for fiscal year 2008, and $29,000,000 for fiscal year 2009.

(9) MOTORCYCLIST SAFETY.—For carrying out section 2010 of this title $6,000,000 for fiscal year 2006, $6,000,000 for fiscal year 2007, $6,000,000 for fiscal year 2008, and $7,000,000 for fiscal year 2009.

(10) CHILD SAFETY AND CHILD BOOSTER SEAT SAFETY INCENTIVE GRANTS.—For carrying out section 2011 of this title $6,000,000 for fiscal year 2006, $6,000,000 for fiscal year 2007, $6,000,000 for fiscal year 2008, and $7,000,000 for fiscal year 2009.

(11) ADMINISTRATIVE EXPENSES.—For administrative and related operating expenses of the National Highway Traffic Safety Administration in carrying out chapter 4 of title 23, United States Code, and this title $17,500,000 for fiscal year 2006, $17,750,000 for fiscal year 2007, $18,250,000 for fiscal year 2008, and $18,500,000 for fiscal year 2009.

(b) PROHIBITION ON OTHER USES.—Except as otherwise provided in chapter 4 of title 23, United States Code, and this title, (including the amendments made by this title), the amounts made available from the Highway Trust Fund (other than the Mass Transit Account) for a program under such chapter shall only be used to carry out such program and may not be used by States or local governments for construction purposes.

(c) APPLICABILITY OF TITLE 23.—Except as otherwise provided in chapter 4 of title 23, United States Code, and this title, amounts made available under subsection (a) for each of fiscal years 2005 through 2009 shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

(d) TRANSFERS.—In each fiscal year, the Secretary may transfer any amounts remaining available under paragraph (3), (5), or (6) of subsection (a) to the amounts made available under any other of such paragraphs in order to ensure, to the maximum extent possible, that each State receives the maximum incentive funding for which the State is eligible under sections 405, 408, and 410 of title 23, United States Code.

(e) CLARIFICATIONS.—The amounts made available by each of subsections (a)(1) through (a)(7) shall be less any amounts made available from the Highway Trust Fund (other than the Mass Transit Account) by laws enacted before the date of enactment of this Act for the respective programs referred to in each of such subsections for fiscal year 2005. Amounts authorized by such subsections are post-rescission and shall not be subject to any rescission after the date of enactment of this Act.

SEC. 2002. HIGHWAY SAFETY PROGRAMS.

(a) PROGRAMS TO BE INCLUDED.—Section 402(a) of title 23, United States Code, is amended—

(1) in clause (2) by striking ''and to increase public awareness of the benefit of motor vehicles equipped with airbags'';

(2) by redesignating clause (6) as clause (7);

(3) by inserting after clause (5) the following:

''(6) to reduce accidents resulting from unsafe driving behavior (including aggressive or fatigued driving and distracted driving arising from the use of electronic devices in vehicles)''; and

(4) in the 10th sentence by inserting ''aggressive driving, fatigued driving, distracted driving,'' after ''school bus accidents,''

(b) ADMINISTRATION OF STATE PROGRAMS.—Section 402(b)(1) of such title is amended—

(1) in subparagraph (C) by striking ''and'' at the end;

(2) by redesignating clause (6) as clause (7);

(3) in subparagraph (D) by striking ''State.'' and inserting ''State; and''; and

(4) by adding at the end the following:

''(E) provide satisfactory assurances that the State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within a State as identified by the State highway safety planning process, including—

''(i) national law enforcement mobilizations;

''(ii) sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;

''(iii) an annual statewide safety belt use survey in accordance with criteria established by the Secretary for the measurement of State safety belt use rates to ensure that the measurements are accurate and representative; and

''(iv) development of statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources.''.

(c) DEDUCTION DELETION.—Section 402(c) of such title is amended—

(1) by striking the second sentence; and

(2) in the sixth sentence by striking ''three-fourths of 1 percent'' and inserting ''2 percent''.

(d) LAW ENFORCEMENT AND CONSOLIDATION OF APPLICATIONS.—Section 402 of such title is further amended by adding at the end the following:

''(l) LAW ENFORCEMENT VEHICULAR PURSUIT TRAINING.—A State shall actively encourage all relevant law enforcement agencies in such State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are in effect on the date of enactment of this subsection or as revised and in effect after such date as determined by the Secretary.

''(m) CONSOLIDATION OF GRANT APPLICATIONS.—The Secretary shall establish an approval process by which a State may apply for all grants under this chapter through a single application process with one annual deadline. The Bureau of Indian Affairs shall establish a similar simplified process for applications for grants from Indian tribes under this chapter.''.

(e) CONFORMING REPEAL FOR ADMINISTRATIVE EXPENSES.—Section 405(d) of such title is repealed.

SEC. 2003. HIGHWAY SAFETY RESEARCH AND OUTREACH PROGRAMS.

(a) REVISED AUTHORITY AND REQUIREMENTS.—Section 403(a) of title 23, United States Code, is amended to read as follows:

''(a) AUTHORITY OF THE SECRETARY.—The Secretary is authorized to use funds appropriated to carry out this section to—

''(1) conduct research on all phases of highway safety and traffic conditions, including accident causation, highway or driver characteristics, communications, and emergency care;

''(2) conduct ongoing research into driver behavior and its effect on traffic safety;

''(3) conduct research on, launch initiatives to counter, and conduct demonstration projects on fatigued driving by drivers of motor vehicles and distracted driving in such vehicles, including the effect that the use of electronic devices and other factors deemed relevant by the Secretary have on driving;

''(4) conduct training or education programs in cooperation with other Federal departments and agencies, States, private sector persons, highway safety personnel, and law enforcement personnel;

''(5) conduct research on, and evaluate the effectiveness of, traffic safety countermeasures, including seat belts and impaired driving initiatives;

''(6) conduct research on, evaluate, and develop best practices related to driver education programs (including driver education curricula, instructor training and certification, program administration and delivery mechanisms) and make recommendations for harmonizing driver education and multistage graduated licensing systems;

''(7) conduct research, training, and education programs related to older drivers;

''(8) conduct demonstration projects; and

''(9) conduct research, training, and programs relating to motorcycle safety, including impaired driving.''

(b) INTERNATIONAL COOPERATION.—Section 403 of such title is amended by adding at the end the following:

''(g) INTERNATIONAL COOPERATION.—The Administrator of the National Highway Traffic Safety Administration may participate and cooperate in international activities to enhance highway safety.''.

(c) ON-SCENE MOTOR VEHICLE COLLISION CAUSATION.—

(1) STUDY.—The Secretary shall conduct under section 403 of title 23, United States Code, a nationally representative study to collect on-scene motor vehicle collision data and to determine crash causation. The Secretary shall enter into a contract with the National Academy of Sciences to conduct a review of the research, design, methodology, and implementation of the study.

(2) CONSULTATION.—The study under this subsection may be conducted in consultation with other Federal departments and agencies with relevant expertise.

(3) FINAL REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit a report on the results of the study conducted under this subsection to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(d) RESEARCH ON DISTRACTED, INATTENTIVE, AND FATIGUED DRIVERS.—In conducting research under section 403(a)(3) of title 23, United States Code, the Secretary shall carry out not less than 2 demonstration projects to evaluate new and innovative means of combating traffic system problems caused by distracted, inattentive, or fatigued drivers. The demonstration projects shall be in addition to any other research carried out under such section.

(e) PEDESTRIAN SAFETY.—

(1) IN GENERAL.—The Secretary shall—

(A) produce a comprehensive report on pedestrian safety that builds on the current level of knowledge of pedestrian safety countermeasures by identifying the most effective advanced technology and intelligent transportation systems, such as automated pedestrian detection and warning systems (infrastructure-based and vehicle-based), road design, and vehicle structural design that could potentially mitigate the crash forces on pedestrians in the event of a crash; and

(B) include in the report recommendations on how new technological developments could be incorporated into educational and enforcement efforts and how they could be integrated into national design guidelines developed by the American Association of State Highway and Transportation Officials.

(2) DUE DATE.—The Secretary shall complete the report under this subsection not less than 2 years after the date of enactment of this Act and submit a copy of the report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(f) REFUSAL OF INTOXICATION TESTING.—

(1) STUDY.—The Secretary shall carry out under section 403 of title 23, United States Code, a study of the frequency with which persons arrested for the offense of operating a motor vehicle while under the influence of alcohol and persons arrested for the offense of operating a motor vehicle while intoxicated refuse to take a test to determine blood alcohol concentration levels and the effect such refusals have on the ability of States to prosecute such persons for those offenses.

(2) CONSULTATION.—In carrying out the study under this subsection, the Secretary shall consult with the Governors of the States, the States' Attorneys General, and the United States Sentencing Commission.

(3) REPORT.—

(A) REQUIREMENT FOR REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report on the results of the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(B) CONTENT.—The report shall include any recommendation for legislation, including any recommended model State legislation, and any other recommendations that the Secretary considers appropriate for implementing a program designed to decrease the occurrence of refusals by arrested persons to submit to a test to determine blood alcohol concentration levels.

(g) IMPAIRED MOTORCYCLE DRIVING.—

(1) STUDYING.—In conducting research under section 403(a)(9) of title 23, United States Code, the Secretary shall conduct a study on educational, public information and other activities targeted at reducing motorcycle accidents and resulting fatalities and injuries, where the operator of the motorcycle is impaired.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study, including the data collected and statistics compiled and recommendations to reduce the number of motorcycle accidents described in paragraph (1) and the resulting fatalities and injuries.

(h) REDUCING IMPAIRED DRIVING RECIDIVISM.—

(1) STUDY.—The Secretary shall conduct a study on reducing the incidence of alcohol-related motor vehicle crashes and fatalities through research of advanced vehicle-based alcohol detection systems, including an assessment of the practicability and cost effectiveness of such systems.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

SEC. 2004. OCCUPANT PROTECTION INCENTIVE GRANTS.

(a) GENERAL AUTHORITY.—Section 405(a) of title 23, United States Code, is amended–

(1) in paragraph (2) by striking ''Transportation Equity Act for the 21st Century'' and inserting ''SAFETEA–LU'';

(2) in paragraph (3) by striking ''1997'' and inserting ''2003''; and

(3) in each of paragraphs (4)(A), (4)(B), and (4)(C) by inserting after ''years'' the following: ''beginning after September 30, 2003,''.

(c) GRANT AMOUNTS.—Section 405(c) of such title is amended–

(1) by striking ''25 percent'' and inserting ''100 percent''; and

(2) by striking ''1997'' and inserting ''2003''.

SEC. 2005. GRANTS FOR PRIMARY SAFETY BELT USE LAWS.

(a) IN GENERAL.—Section 406 of title 23, United States Code, is amended to read as follows:

''§ 406. Safety belt performance grants

''(a) IN GENERAL.—The Secretary shall make grants to States in accordance with the provisions of this section to encourage the enactment and enforcement of laws requiring the use of safety belts in passenger motor vehicles.

''(b) GRANTS FOR ENACTING PRIMARY SAFETY BELT USE LAWS.—

''(1) IN GENERAL.—The Secretary shall make a single grant to each State that either—

''(A) enacts for the first time after December 31, 2002, and has in effect and is enforcing a conforming primary safety belt use law for all passenger motor vehicles; or

''(B) in the case of a State that does not have such a primary safety belt use law, has after December 31, 2005, a State safety belt use rate of 85 percent or more for each of the 2 calendar years immediately preceding the fiscal year of a grant, as measured under criteria determined by the Secretary.

''(2) AMOUNT.—The amount of a grant available to a State in fiscal year 2006 or in a subsequent fiscal year under paragraph (1) shall equal 475 percent of the amount apportioned to the State under section 402(c) for fiscal year 2003.

''(3) JULY 1 CUT-OFF.—For the purpose of determining the eligibility of a State for a grant under paragraph (1)(A), a conforming primary safety belt use law enacted after June 30th of any year shall—

''(A) not be considered to have been enacted in the Federal fiscal year in which that June 30th falls; but

''(B) be considered as if it were enacted after October 1 of the next Federal fiscal year.

''(4) SHORTFALL.—If the total amount of grants provided for by this subsection for a fiscal year exceeds the amount of funds available for such grants for that fiscal year, the Secretary shall make grants under this subsection to States in the order in which—

''(A) the conforming primary safety belt use law came into effect; or

''(B) the State's safety belt use rate was 85 percent or more for 2 consecutive calendar years (as measured under by criteria determined by the Secretary), whichever first occurs.

''(5) CATCH-UP GRANTS.—The Secretary shall make a grant to any State eligible for a grant under this subsection that did not receive a grant for a fiscal year because of the application of paragraph (4), in the next fiscal year if the State's conforming primary safety belt use law remains in effect or its safety belt use rate is 85 percent or more for the 2 consecutive calendar years preceding such next fiscal year (subject to the condition in paragraph (4)).

''(c) GRANTS FOR PRE-2003 LAWS.—

''(1) IN GENERAL.—To the extent that amounts made available for grants under this section for any of fiscal years 2006 through 2009 exceed the total amount of grants to be awarded under subsection (b) for the fiscal year, including amounts to be awarded for catch-up grants under subsection (b)(5), the Secretary shall make a single grant to each State that enacted, has in effect, and is enforcing a conforming primary safety belt use law for all passenger motor vehicles that was in effect before January 1, 2003.

''(2) AMOUNT; INSTALLMENTS.—The amount of a grant available to a State under this subsection shall be equal to 200 percent of the amount of funds apportioned to the State under section 402(c) for fiscal year 2003. The Secretary may award the grant in annual installments.

''(d) ALLOCATION OF UNALLOCATED FUNDS.—

''(1) ADDITIONAL GRANTS.—The Secretary shall make additional grants under this section of any amounts made available for grants under this section that, on July 1, 2009, have not been allocated to States under this section.

''(2) ALLOCATION.—The additional grants made under this subsection shall be allocated among all States that, as of that date, have enacted, have in effect, and are enforcing conforming primary safety belt laws for all passenger motor vehicles. The allocations shall be made in accordance with the formula for apportioning funds among the States under section 402(c).

''(e) USE OF GRANT FUNDS.—

''(1) IN GENERAL.—Subject to paragraph (2), a State may use a grant under this section for any safety purpose under this title or for any project that corrects or improves a hazardous roadway location or feature or proactively addresses highway safety problems, including—

''(A) intersection improvements;

''(B) pavement and shoulder widening;

''(C) installation of rumble strips and other warning devices;

''(D) improving skid resistance;

''(E) improvements for pedestrian or bicyclist safety;

''(F) railway-highway crossing safety;

''(G) traffic calming;

''(H) the elimination of roadside obstacles;

''(I) improving highway signage and pavement marking;

''(J) installing priority control systems for emergency vehicles at signalized intersections;

''(K) installing traffic control or warning devices at locations with high accident potential;

''(L) safety-conscious planning; and

''(M) improving crash data collection and analysis.

''(2) SAFETY ACTIVITY REQUIREMENT.—Notwithstanding paragraph (1), the Secretary shall ensure that at least $1,000,000 of amounts received by States under this section are obligated for safety activities under this chapter.

''(3) SUPPORT ACTIVITY.—The Secretary or his designee may engage in activities with States and State legislators to consider proposals related to safety belt use laws.

''(f) CARRY-FORWARD OF EXCESS FUNDS.—If the amount available for grants under this section for any fiscal year exceeds the sum of the grants made under this section for that fiscal year, the excess amount and obligational authority shall be carried forward and made available for grants under this section in the succeeding fiscal year.

''(g) FEDERAL SHARE.—The Federal share payable for grants under this section shall be 100 percent.

''(h) PASSENGER MOTOR VEHICLE DEFINED.—In this section, the term 'passenger motor vehicle' means—

''(1) a passenger car;

''(2) a pickup truck; and

''(3) a van, minivan, or sport utility vehicle with a gross vehicle weight rating of less than 10,000 pounds.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 4 of such title is amended by striking the item relating to section 406 and inserting the following:

''406. Safety belt performance grants.''.

SEC. 2006. STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.

(a) IN GENERAL.—Section 408 of title 23, United States Code, is amended to read as follows:

''§ 408. State traffic safety information system improvements

''(a) GRANT AUTHORITY.—Subject to the requirements of this section, the Secretary shall make grants to eligible States to support the development and implementation of effective programs by such States to—

''(1) improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the safety data of the State that is needed to identify priorities for national, State, and local highway and traffic safety programs;

''(2) evaluate the effectiveness of efforts to make such improvements;

''(3) link the State data systems, including traffic records, with other data systems within the State, such as systems that contain medical, roadway, and economic data; and

''(4) improve the compatibility and interoperability of the data systems of the State with national data systems and data systems of other States and enhance the ability of the Secretary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

''(b) FIRST-YEAR GRANTS.—To be eligible for a first-year grant under this section in a fiscal year, a State shall demonstrate to the satisfaction of the Secretary that the State has—

''(1) established a highway safety data and traffic records coordinating committee with a multidisciplinary membership that includes, among others, managers, collectors, and users of traffic records and public health and injury control data systems; and

''(2) developed a multiyear highway safety data and traffic records system strategic plan—

''(A) that addresses existing deficiencies in the State's highway safety data and traffic records system;

''(B) that is approved by the highway safety data and traffic records coordinating committee;

''(C) that specifies how existing deficiencies in the State's highway safety data and traffic records system were identified;

''(D) that prioritizes, on the basis of the identified highway safety data and traffic records system deficiencies of the State, the highway safety data and traffic records system needs and goals of the State, including the activities under subsection (a);

''(E) that identifies performance-based measures by which progress toward those goals will be determined; and

''(F) that specifies how the grant funds and any other funds of the State are to be used to address needs and goals identified in the multiyear plan.

''(c) SUCCESSIVE YEAR GRANTS.—A State shall be eligible for a grant under this subsection in a fiscal year succeeding the first fiscal year in which the State receives a grant under subsection (b) if the State—

''(1) certifies to the Secretary that an assessment or audit of the State's highway safety data and traffic records system has been conducted or updated within the preceding 5 years;

''(2) certifies to the Secretary that its highway safety data and traffic records coordinating committee continues to operate and supports the multiyear plan;

''(3) specifies how the grant funds and any other funds of the State are to be used to address needs and goals identified in the multiyear plan;

''(4) demonstrates to the Secretary measurable progress toward achieving the goals and objectives identified in the multiyear plan; and

''(5) submits to the Secretary a current report on the progress in implementing the multiyear plan.

''(d) GRANT AMOUNT.—Subject to subsection (e)(3), the amount of a year grant made to a State for a fiscal year under this section shall equal the higher of—

''(1) the amount determined by multiplying—

''(A) the amount appropriated to carry out this section for such fiscal year, by

''(B) the ratio that the funds apportioned to the State under section 402 for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2003; or

''(2)(A) $300,000 in the case of the first fiscal year a grant is made to a State under this section after the date of enactment of this subparagraph; or

''(B) $500,000 in the case of a succeeding fiscal year a grant is made to the State under this section after such date of enactment.

''(e) ADDITIONAL REQUIREMENTS AND LIMITATIONS.—

''(1) MODEL DATA ELEMENTS.—The Secretary, in consultation with States and other appropriate parties, shall determine the model data elements that are useful for the observation and analysis of State and national trends in occurrences, rates, outcomes, and circumstances of motor vehicle traffic accidents. In order to be eligible for a grant under this section, a State shall submit to the Secretary a certification that the State has adopted and uses such model data elements, or a certification that the State will use grant funds provided under this section toward adopting and using the maximum number of such model data elements as soon as practicable.

''(2) DATA ON USE OF ELECTRONIC DEVICES.—The model data elements required under paragraph (1) shall include data elements, as determined appropriate by the Secretary, in consultation with the States and appropriate elements of the law enforcement community, on the impact on traffic safety of the use of electronic devices while driving.

''(3) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for highway safety data programs at or above the average level of such expenditures maintained by such State in the 2 fiscal years preceding the date of enactment of the SAFETEA–LU.

''(4) FEDERAL SHARE.—The Federal share of the cost of adopting and implementing in a fiscal year a State program described in subsection (a) may not exceed 80 percent.

''(5) LIMITATION ON USE OF GRANT PROCEEDS.—A State may use the proceeds of a grant received under this section only to implement the program described in subsection (a) for which the grant is made.

''(f) APPLICABILITY OF CHAPTER 1.—Section 402(d) of this title shall apply in the administration of this section.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 4 of such title is amended by striking the item relating to section 408 and inserting the following:

''408. State traffic safety information system improvements.''.

SEC. 2007. ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES.

(a) MAINTENANCE OF EFFORT.—Section 410(a)(2) of title 23, United States Code, is amended—

(1) by striking ''under this section'' and inserting ''under this subsection''; and

(2) by striking ''Transportation Equity Act for the 21st Century'' and inserting ''SAFETEA–LU''.

(b) REVISED GRANT AUTHORITY.—Section 410 of such title is amended—

(1) in subsection (a)—

(A) by striking paragraph (3);

(B) by redesignating paragraph (4) as paragraph (3); and

(C) in paragraph (3) (as so redesignated) by striking the second comma following ''sixth'';

(2) by redesignating subsections (e) and (f) as subsections (h) and (i), respectively;

(3) by striking subsections (b) through (d) and inserting the following:

''(b) ELIGIBILITY REQUIREMENTS.—To be eligible for a grant under subsection (a), a State shall—

''(1) have an alcohol related fatality rate of 0.5 or less per 100,000,000 vehicle miles traveled as of the date of the grant, as determined by the Secretary using the most recent Fatality Analysis Reporting System of the National Highway Traffic Safety Administration; or

''(2)(A) for fiscal year 2006 by carrying out 3 of the programs and activities under subsection (c);

''(B) for fiscal year 2007 by carrying out 4 of the programs and activities under subsection (c); or

''(C) for fiscal years 2008 and 2009 by carrying out 5 of the programs and activities under subsection (c).

''(c) STATE PROGRAMS AND ACTIVITIES.—The programs and activities referred to in subsection (b) are the following:

''(1) CHECK POINT, SATURATION PATROL PROGRAM.—A State program to conduct a series of high visibility, Statewide law enforcement campaigns in which law enforcement personnel monitor for impaired driving, either through the use of sobriety check points or saturation patrols, on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of the motor vehicles are driving while under the influence of alcohol—

''(A) if the State organizes the campaigns in cooperation with related periodic national campaigns organized by the National Highway Traffic Safety Administration, except that this subparagraph does not preclude a State from initiating sustained high visibility, Statewide law enforcement campaigns independently of the cooperative efforts; and

''(B) if, for each fiscal year, the State demonstrates to the Secretary that the State and the political subdivisions of the State that receive funds under this section have increased, in the aggregate, the total number of impaired driving law enforcement activities at high incident locations (or any other similar activity approved by the Secretary) initiated in such State during the preceding fiscal year by a factor that the Secretary determines meaningful for the State over the number of such activities initiated in such State during the preceding fiscal year.

''(2) PROSECUTION AND ADJUDICATION OUTREACH PROGRAM.—A State prosecution and adjudication program under which—

''(A) the State works to reduce the use of diversion programs by educating and informing prosecutors and judges through various outreach methods about the benefits and merits of prosecuting and adjudicating defendants who repeatedly commit impaired driving offenses;

''(B) the courts in a majority of the judicial jurisdictions of the State are monitored on the courts' adjudication of cases of impaired driving offenses; or

''(C) annual statewide outreach is provided for judges and prosecutors on innovative approaches to the prosecution and adjudication of cases of impaired driving offenses that have the potential for significantly improving the prosecution and adjudication of such cases.

''(3) TESTING OF BAC.—An effective system for increasing from the previous year the rate of blood alcohol concentration testing of motor vehicle drivers involved in fatal accidents.

''(4) HIGH RISK DRIVERS.—A law that establishes stronger sanctions or additional penalties for individuals convicted of operating a motor vehicle while under the influence of alcohol whose blood alcohol concentration is 0.15 percent or more than for individuals convicted of the same offense but with a lower blood alcohol concentration. For purposes of this paragraph, 'additional penalties' includes—

''(A) a 1 year suspension of a driver's license, but with the individual whose license is suspended becoming eligible after 45 days of such suspension to obtain a provisional driver's license that would permit the individual to drive—

''(i) only to and from the individual's place of employment or school; and

''(ii) only in an automobile equipped with a certified alcohol ignition interlock device; and

''(B) a mandatory assessment by a certified substance abuse official of whether the individual has an alcohol abuse problem with possible referral to counseling if the official determines that such a referral is appropriate.

''(5) PROGRAMS FOR EFFECTIVE ALCOHOL REHABILITATION AND DWI COURTS.—A program for effective inpatient and outpatient alcohol rehabilitation based on mandatory assessment and appropriate treatment for repeat offenders or a program to refer impaired driving cases to courts that specialize in driving while impaired cases that emphasize the close supervision of high-risk offenders.

''(6) UNDERAGE DRINKING PROGRAM.—An effective strategy, as determined by the Secretary, for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages and for preventing persons from making alcoholic beverages available to individuals under age 21. Such a strategy may include—

''(A) the issuance of tamper-resistant drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals age 21 or older; and

''(B) a program provided by a nonprofit organization for training point of sale personnel concerning, at a minimum—

''(i) the clinical effects of alcohol;

''(ii) methods of preventing second party sales of alcohol;

''(iii) recognizing signs of intoxication;

''(iv) methods to prevent underage drinking; and

''(v) Federal, State, and local laws that are relevant to such personnel; and

''(C) having a law in effect that creates a 0.02 percent blood alcohol content limit for drivers under 21 years old.

''(7) ADMINISTRATIVE LICENSE REVOCATION.—An administrative driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that—

''(A) in the case of an individual who, in any 5-year period beginning after the date of enactment of the Transportation Equity Act for the 21st Century, is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer, the State agency responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer—

''(i) suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender in such 5-year period; except that under such suspension an individual may operate a motor vehicle, after the 15-day period beginning on the date of the suspension, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual; and

''(ii) suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; except that such individual to operate a motor vehicle, after the 45-day period beginning on the date of the suspension or revocation, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual; and

''(B) the suspension and revocation referred to under clause (i) take effect not later than 30 days after the date on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State.

''(8) SELF SUSTAINING IMPAIRED DRIVING PREVENTION PROGRAM.—A program under which a significant portion of the fines or surcharges collected from individuals who are fined for operating a motor vehicle while under the influence of alcohol are returned to communities for comprehensive programs for the prevention of impaired driving.

''(d) USES OF GRANTS.—Subject to subsection (g)(2), grants made under this section may be

used for all programs and activities described in subsection (c), and to defray the following costs:

''(1) Labor costs, management costs, and equipment procurement costs for the high visibility, Statewide law enforcement campaigns under subsection (c)(1).

''(2) The costs of the training of law enforcement personnel and the procurement of technology and equipment, including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles.

''(3) The costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles.

''(4) The costs of public awareness, advertising, and educational campaigns that target impaired operation of motor vehicles by persons under 34 years of age.

''(5) The costs of the development and implementation of a State impaired operator information system.

''(6) The costs of operating programs that result in vehicle forfeiture or impoundment or license plate impoundment.

''(e) ADDITIONAL AUTHORITIES FOR CERTAIN AUTHORIZED USES.—

''(1) COMBINATION OF GRANT PROCEEDS.—Grant funds used for a campaign under subsection (d)(3) may be combined, or expended in coordination, with proceeds of grants under section 402.

''(2) COORDINATION OF USES.—Grant funds used for a campaign under paragraph (3) or (4) of subsection (d) may be expended—

''(A) in coordination with employers, schools, entities in the hospitality industry, and nonprofit traffic safety groups; and

''(B) in coordination with sporting events and concerts and other entertainment events.

''(f) ALLOCATION.—Subject to subsection (g), funds made available to carry out this section shall be allocated among States that meet the eligibility criteria in subsection (b) on the basis of the apportionment formula under section 402(c).

''(g) GRANTS TO HIGH FATALITY RATE STATES.—

''(1) IN GENERAL.—The Secretary shall make a separate grant under this section to each state that—

''(A) is among the 10 States with the highest impaired driving related fatalities as determined by the Secretary using the most recent Fatality Analysis Reporting System of the National Highway Traffic Safety Administration; and

''(B) prepares a plan for grant expenditures under this subsection that is approved by the Administrator of the National Highway Traffic Safety Administration.

''(2) REQUIRED USES.—At least one-half of the amounts allocated to States under this subsection may only be used for the program described in subsection (c)(1).

''(3) ALLOCATION.—Funds made available under this subsection shall be allocated among States described in paragraph (1) on the basis of the apportionment formula under section 402(c), except that no State shall be allocated more than 30 percent of the funds made available to carry out this subsection for a fiscal year.

''(4) FUNDING.—Not more than 15 percent per fiscal year of amounts made available to carry out this section for a fiscal year shall be made available by the Secretary for making grants under this subsection.''; and

(4) by adding at the end of subsection (i) (as redesignated by paragraph (2)) the following:

''(4) IMPAIRED OPERATOR.— The term 'impaired operator' means a person who, while operating a motor vehicle

''(A) has a blood alcohol content of 0.08 percent or higher; or

''(B) is under the influence of a controlled substance.

''(5) IMPAIRED DRIVING RELATED FATALITY RATE.—The term 'impaired driving related fatality rate' means the rate of alcohol related fatalities, as calculated in accordance with regulations which the Administrator of the National Highway Traffic Safety Administration shall prescribe.''.

(c) NHTSA TO ISSUE REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the National Highway Traffic Safety Administration shall issue guidelines to the States specifying the types and formats of data that States should collect relating to drivers who are arrested or convicted for violation of laws prohibiting the impaired operation of motor vehicles.

SEC. 2008. NHTSA ACCOUNTABILITY.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following:

''§ 412. Agency accountability

''(a) TRIENNIAL STATE MANAGEMENT REVIEWS.—At least once every 3 years the Secretary shall conduct a review of each State highway safety program. The review shall include a management evaluation of all grant programs funded under this chapter. The Secretary shall provide review-based recommendations on how each State could improve the management and oversight of its grant activities and may provide a management and oversight plan for such grant programs.

''(b) RECOMMENDATIONS BEFORE SUBMISSION.—In order to provide guidance to State highway safety agencies on matters that should be addressed in the goals and initiatives of the State highway safety program before the program is submitted for review, the Secretary shall provide data-based recommendations to each State at least 90 days before the date on which the program is to be submitted for approval.

''(c) STATE PROGRAM REVIEW.—The Secretary shall—

''(1) conduct a program improvement review of a highway safety program under this chapter of a State that does not make substantial progress over a 3-year period in meeting its priority program goals; and

''(2) provide technical assistance and safety program requirements to be incorporated in the State highway safety program for any goal not achieved.

''(d) REGIONAL HARMONIZATION.—The Secretary and the Inspector General of the Department of Transportation shall undertake an administrative review of the practices and procedures of the management reviews and program reviews of State highway safety programs under this chapter conducted by the regional offices of the National Highway Traffic Safety Administration and prepare a written report of best practices and procedures for use by the regional offices in conducting such reviews. The report shall be completed within 180 days after the date of enactment of this section.

''(e) BEST PRACTICES GUIDELINES.—

''(1) UNIFORM GUIDELINES.—The Secretary shall issue uniform management review guidelines and program review guidelines based on the report under subsection (d). Each regional office shall use the guidelines in executing its State administrative review duties under this section.

''(2) PUBLICATION.—The Secretary shall make publicly available on the Web site (or successor electronic facility) of the Administration the following documents upon their completion:

''(A) The Secretary's management review guidelines and program review guidelines.

''(B) All State highway safety programs submitted under this chapter.

''(C) State annual accomplishment reports.

''(D) The Administration's Summary Report of findings from Management Reviews and Improvement Plans.

''(3) REPORTS TO STATE HIGHWAY SAFETY AGENCIES.—The Secretary may not make publicly available a program, report, or review under paragraph (2) that is directed to a State highway safety agency until after the date on which the program, report, or review is submitted to that agency under this chapter.

''(f) GAO REVIEW.—

''(1) ANALYSIS.—The Comptroller General shall analyze the effectiveness of the Administration's oversight of traffic safety grants under this chapter by determining the usefulness of the Administration's advice to the States regarding administration and State activities under this chapter, the extent to which the States incorporate the Administration's recommendations into their highway safety programs, and the improvements that result in a State's highway safety program that may be attributable to the Administration's recommendations.

''(2) REPORT.—Not later than the September 30, 2008, the Comptroller General shall submit a report on the results of the analysis to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate..''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 4 of such title is amended by adding at the end the following:

''412. Agency accountability.''.

SEC. 2009. HIGH VISIBILITY ENFORCEMENT PROGRAM.

(a) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration shall establish and administer a program under which at least 2 high-visibility traffic safety law enforcement campaigns will be carried out for the purposes specified in subsection (b) in each of years 2006 through 2009.

(b) PURPOSE.—The purpose of each law enforcement campaign under this section shall be to achieve either or both of the following objectives:

(1) Reduce alcohol-impaired or drug-impaired operation of motor vehicles.

(2) Increase use of seat belts by occupants of motor vehicles.

(c) ADVERTISING.—The Administrator may use, or authorize the use of, funds available to carry out this section to pay for the development, production, and use of broadcast and print media advertising in carrying out traffic safety law enforcement campaigns under this section. Consideration shall be given to advertising directed at non-English speaking populations, including those who listen, read, or watch nontraditional media.

(d) COORDINATION WITH STATES.—The Administrator shall coordinate with the States in carrying out the traffic safety law enforcement campaigns under this section, including advertising funded under subsection (c), with a view to—

(1) relying on States to provide the law enforcement resources for the campaigns out of funding available under this section and sections 402, 405, 406, and 410 of title 23, United States Code; and

(2) providing out of National Highway Traffic Safety Administration resources most of the means necessary for national advertising and education efforts associated with the law enforcement campaigns.

(e) USE OF FUNDS.—Funds made available to carry out this section may only be used for activities described in subsections (a), (c), and (f).

(f) ANNUAL EVALUATION.—The Secretary shall conduct an annual evaluation of the effectiveness of campaigns referred to in subsection (a).

(g) STATE DEFINED.—The term ''State'' has the meaning such term has under section 401 of title 23, United States Code.

SEC. 2010. MOTORCYCLIST SAFETY.

(a) AUTHORITY TO MAKE GRANTS.—Subject to the requirements of this section, the Secretary shall make grants to States that adopt and implement effective programs to reduce the number of single- and multi-vehicle crashes involving motorcyclists.

(b) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in a fiscal

year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all the other sources for motorcyclist safety training programs and motorcyclist awareness programs at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of this Act.

(c) ALLOCATION.—The amount of a grant made to a State for a fiscal year under this section may not be less than $100,000 and may not exceed 25 percent of the amount apportioned to the State for fiscal year 2003 under section 402 of title 23, United States Code.

(d) GRANT ELIGIBILITY.—

(1) IN GENERAL.—A State becomes eligible for a grant under this section by adopting or demonstrating to the satisfaction of the Secretary—

(A) for the first fiscal year for which the State will receive a grant under this section, at least 1 of the 6 criteria listed in paragraph (2); and

(B) for the second, third, and fourth fiscal years for which the State will receive a grant under this section, at least 2 of the 6 criteria listed in paragraph (2).

(2) CRITERIA.—The criteria for eligibility for a grant under this section are the following:

(A) MOTORCYCLE RIDER TRAINING COURSES.—An effective motorcycle rider training course that is offered throughout the State, provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to motorcyclists and that may include innovative training opportunities to meet unique regional needs.

(B) MOTORCYCLISTS AWARENESS PROGRAM.—An effective statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists.

(C) REDUCTION OF FATALITIES AND CRASHES INVOLVING MOTORCYCLES.—A reduction for the preceding calendar year in the number of motorcycle fatalities and the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 motorcycle registrations).

(D) IMPAIRED DRIVING PROGRAM.—Implementation of a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation.

(E) REDUCTION OF FATALITIES AND ACCIDENTS INVOLVING IMPAIRED MOTORCYCLISTS.—A reduction for the preceding calendar year in the number of fatalities and the rate of reported crashes involving alcohol- or drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations).

(F) FEES COLLECTED FROM MOTORCYCLISTS.—All fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs will be used for motorcycle training and safety programs.

(e) ELIGIBLE USES.—

(1) IN GENERAL.—A State may use funds from a grant under this section only for motorcyclist safety training and motorcyclist awareness programs, including—

(A) improvements to motorcyclist safety training curricula;

(B) improvements in program delivery of motorcycle training to both urban and rural areas, including—

(i) procurement or repair of practice motorcycles;

(ii) instructional materials;

(iii) mobile training units; and

(iv) leasing or purchasing facilities for closed-course motorcycle skill training;

(C) measures designed to increase the recruitment or retention of motorcyclist safety training instructors; and

(D) public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, such as the ''share-the-road'' safety messages developed under subsection (g).

(2) SUBALLOCATIONS OF FUNDS.—An agency of a State that receives a grant under this section may suballocate funds from the grant to a nonprofit organization incorporated in that State to carry out under this section.

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

(1) MOTORCYCLIST SAFETY TRAINING.—The term ''motorcyclist safety training'' means a formal program of instruction that—

(A) is approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State.

(2) MOTORCYCLIST AWARENESS.—The term ''motorcyclist awareness'' means individual or collective awareness of—

(A) the presence of motorcycles on or near roadways; and

(B) safe driving practices that avoid injury to motorcyclists.

(3) MOTORCYCLIST AWARENESS PROGRAM.—The term ''motorcyclist awareness program'' means an informational or public awareness program designed to enhance motorcyclist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State.

(4) STATE.—The term ''State'' has the same meaning such term has in section 101(a) of title 23, United States Code.

(g) SHARE-THE-ROAD MODEL LANGUAGE.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Administrator of the National Highway Traffic Safety Administration, shall develop and provide to the States model language for use in traffic safety education courses, driver's manuals, and other driver's training materials instructing the drivers of motor vehicles on the importance of sharing the roads safely with motorcyclists.

SEC. 2011. CHILD SAFETY AND CHILD BOOSTER SEAT INCENTIVE GRANTS.

(a) GENERAL AUTHORITY.—Subject to the requirements of this section, the Secretary shall make grants to States that are enforcing a law requiring that any child riding in a passenger motor vehicle in the State who is too large to be secured in a child safety seat be secured in a child restraint that meets the requirements prescribed by the Secretary under section 3 of Anton's Law (49 U.S.C. 30127 note; 116 Stat. 2772).

(b) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in a fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for child safety seat and child restraint programs at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of this Act.

(c) FEDERAL SHARE.—The Federal share of the costs of activities funded using amounts from grants under this section shall not exceed—

(1) for the first 3 fiscal years for which a State receives a grant under this section, 75 percent; and

(2) for the fourth fiscal year for which a State receives a grant under this section, 50 percent.

(d) USE OF GRANT AMOUNTS.—

(1) ALLOCATIONS.—Of the amounts received by a State in grants under this section for a fiscal year not more than 50 percent shall be used to fund programs for purchasing and distributing child safety seats and child restraints to low-income families.

(2) REMAINING AMOUNTS.—Amounts received by a State in grants under this section, other than amounts subject to paragraph (1), shall be used to carry out child safety seat and and child restraint programs, including the following:

(A) A program to support enforcement of child restraint laws.

(B) A program to train child passenger safety professionals, police officers, fire and emergency medical personnel, educators, and parents concerning all aspects of the use of child safety seats and and child restraints.

(C) A program to educate the public concerning the proper use and installation of child safety seats and and child restraints.

(e) GRANT AMOUNT.—The amount of a grant to a State for a fiscal year under this section may not exceed 25 percent of the amount apportioned to the State for fiscal year 2003 under section 402 of title 23, United States Code.

(f) APPLICABILITY OF CHAPTER 1.—The provisions contained in section 402(d) of such title shall apply to this section.

(g) REPORT.—A State that receives a grant under this section shall transmit to the Secretary a report documenting the manner in which the grant amounts were obligated and expended and identifying the specific programs carried out using the grant funds. The report shall be in a form prescribed by the Secretary and may be combined with other State grant reporting requirements under of chapter 4 of title 23, United States Code.

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

(1) CHILD RESTRAINT.—The term ''child restraint'' means any product designed to provide restraint to a child (including booster seats and other products used with a lap and shoulder belt assembly) that meets applicable Federal motor vehicle safety standards prescribed by the National Highway Traffic Safety Administration.

(2) CHILD SAFETY SEAT.—The term ''child safety seat'' has the meaning such term has in section 405(f) of title 23, United States Code.

(3) PASSENGER MOTOR VEHICLE.—The term ''passenger motor vehicle'' has the meaning such term has in section 405(f) of such title.

(4) STATE.—The term ''State'' has the meaning such term has in section 101(a) of such title.

SEC. 2012. SAFETY DATA.

(a) IN GENERAL.—Using funds made available to carry out section 403 of title 23, United States Code, for fiscal years 2005 through 2009, the Secretary shall collect data and compile statistics on accidents involving motor vehicles being backed up that result in fatalities and injuries and that occur on public and nonpublic roads and residential and commercial driveways and parking facilities.

(b) REPORT.—Not later than January 1, 2009, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on accidents described in subsection (a), including the data collected and statistics compiled under subsection (a) and any recommendations regarding measures to be taken to reduce the number of such accidents and the resulting fatalities and injuries.

SEC. 2013. DRUG-IMPAIRED DRIVING ENFORCEMENT.

(a) ILLICIT DRUG.—In this section, the term ''illicit drug'' includes substances listed in schedules I through V of section 112(e) of the Controlled Substances Act (21 U.S.C. 812) not obtained by a legal and valid prescription.

(b) DUTIES.—The Secretary shall–

(1) advise and coordinate with other Federal agencies on how to address the problem of driving under the influence of an illegal drug; and

(2) conduct research on the prevention, detection, and prosecution of driving under the influence of an illegal drug.

(c) REPORT.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary, in cooperation with the National Institutes of Health, shall submit to Congress a report on the problem of drug-impaired driving.

(2) CONTENTS.—The report shall include, at a minimum, the following:

(A) An assessment of methodologies and technologies for measuring driver impairment resulting from use of the most common illicit drugs (including the use of such drugs in combination with alcohol).

(B) Effective and efficient methods for training law enforcement personnel, including drug recognition experts, to detect or measure the level of impairment of a driver who is under the influence of an illicit drug by the use of technology or otherwise.

(C) A description of the role of drugs as causal factor in traffic crashes and the extent of the problem of drug-impaired driving.

(D) A description and assessment of current State and Federal laws relating to drug-impaired driving.

(E) Recommendations for addressing the problem of drug-impaired driving, including recommendations on levels of impairment.

(F) Recommendations for developing a model statute relating to drug-impaired driving.

(d) MODEL STATUTE.—

(1) IN GENERAL.—The Secretary shall develop a model statute for States relating to drug-impaired driving.

(2) CONTENTS.—Based on recommendations and findings contained in the report submitted under subsection (c), the model statute may include–

(A) threshold levels of impairment for illicit drugs;

(B) practicable methods for detecting the presence of illicit drugs; and

(C) penalties for drug impaired driving.

(3) DATE.—The model statute shall be provided to States not later than 1 year after date of submission of the report under subsection (c).

(e) RESEARCH AND DEVELOPMENT.—Section 403(b) of title 23, United States Code, is amended by adding at the end the following:

''(5) Technology to detect drug use and enable States to efficiently process toxicology evidence.

''(6) Research on the effects of illicit drugs and the compound effects of alcohol and illicit drugs on impairment.''.

(f) FUNDING.—Out of amounts made available to carry out section 403 of title 23, United States Code, for each of fiscal years 2006 through 2009, the Secretary shall make available $1,200,000 for such fiscal year to carry out this section.

SEC. 2014. FIRST RESPONDER VEHICLE SAFETY PROGRAM.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Administrator of the National Highway Traffic Safety Administration, should—

(1) develop and implement a comprehensive program to promote compliance with State and local laws intended to increase the safe and efficient operation of first responder vehicles;

(2) compile a list of best practices by State and local governments to promote compliance with the laws described in paragraph (1);

(3) analyze State and local laws intended to increase the safe and efficient operation of first responder vehicles; and

(4) develop model legislation to increase the safe and efficient operation of first responder vehicles.

(b) PARTNERSHIPS.—The Secretary may enter into partnerships with qualified organizations to carry out this section.

(c) PUBLIC OUTREACH.—The Secretary shall use a variety of public outreach strategies to carry out this section, including public service announcements, publication of informational materials, and posting information on the Internet.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section for fiscal year 2006.

SEC. 2015. DRIVER PERFORMANCE STUDY.

(a) IN GENERAL.—Using funds made available to carry out section 403 of title 23, United States Code, for fiscal year 2005, the Secretary shall make $1,000,000 available to conduct a study on the risks associated with glare to oncoming drivers, including increased risks to drivers on 2-lane highways, increased risks to drivers over the age of 50, and the overall effects of glare on driver performance.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study and any recommendations regarding measures to reduce the risks associated with glare to oncoming drivers.

SEC. 2016. RURAL STATE EMERGENCY MEDICAL SERVICES OPTIMIZATION PILOT PROGRAM.

(a) IN GENERAL.—From funds made available to carry out section 403 of title 23, United States Code, for fiscal year 2006, the Secretary shall make $1,000,000 available to conduct a pilot program for optimizing emergency medical services in a rural State.

(b) COLLECTING DATA.—The pilot program shall focus on collecting geo-coded data for highway accidents and resulting injuries, analyzing data to develop injury patterns and distributions, and improving placement and management of emergency medical services resources and personnel.

(c) SELECTION.—The Secretary shall enter into an agreement with the State of Alaska to conduct the pilot program.

(d) REPORT.—Not later than 12 months after the completion of the pilot program, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the pilot program and recommendations for application to other rural States.

SEC. 2017. OLDER DRIVER SAFETY; LAW ENFORCEMENT TRAINING.

(a) IMPROVING OLDER DRIVER SAFETY.—

(1) IN GENERAL.—Of the funds made available to carry out section 403 of title 23, United States Code, the Secretary shall allocate $1,700,000 for each of fiscal years 2006 through 2009 to conduct a comprehensive research and demonstration program to improve traffic safety pertaining to older drivers.

(2) ELEMENTS OF PROGRAM.—The program shall—

(A) provide information and guidelines to assist older drivers, physicians, and other related medical personnel, families, licensing agencies, enforcement officers, and various public and transit agencies in enhancing the safety of older drivers;

(B) improve the scientific basis of medical standards and screenings strategies used in the licensing of all drivers in a non-discriminatory manner;

(C) conduct field tests to assess the safety benefits and mobility impacts of different driver licensing strategies and driver assessment and rehabilitation methods;

(D) assess the value and improve the safety potential of driver retraining courses of particular benefit to older drivers; and

(E) conduct other activities to accomplish the objectives of this section.

(3) FORMULATION OF PLAN.—After consultation with affected parties, the Secretary shall formulate an older driver traffic safety plan to guide the design and implementation of the program.

(4) SUBMISION OF PLAN TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit the plan to the Committee on Transportation and Infrastructure House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(b) LAW ENFORCEMENT TRAINING.—

(1) REQUIREMENT FOR PROGRAM.—The Secretary shall carry out a program to provide guidance and support to law enforcement agencies in police chase techniques that are consistent with the police chase guidelines issued by the International Association of Chiefs of Police.

(2) AMOUNT FOR PROGRAM.—Of the funds made available to carry out section 403 of title 23, United States Code, the Secretary shall allocate $500,000 in each of fiscal years 2006 through 2009 to carry out this subsection.

SEC. 2018. SAFE INTERSECTIONS.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following:

''§ 39. Traffic signal preemption transmitters

''(a) OFFENSES.—

''(1) SALE.—Whoever, in or affecting interstate or foreign commerce, knowingly sells a traffic signal preemption transmitter to a nonqualifying user shall be fined under this title, or imprisoned not more than 1 year, or both.

''(2) USE.—Whoever, in or affecting interstate or foreign commerce, being a nonqualifying user makes unauthorized use of a traffic signal preemption transmitter shall be fined under this title, or imprisoned not more than 6 months, or both.

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

''(1) TRAFFIC SIGNAL PREEMPTION TRANSMITTER.—The term 'traffic signal preemption transmitter' means any mechanism that can change or alter a traffic signal's phase time or sequence.

''(2) NONQUALIFYING USER.—The term 'nonqualifying user' means a person who uses a traffic signal preemption transmitter and is not acting on behalf of a public agency or private corporation authorized by law to provide fire protection, law enforcement, emergency medical services, transit services, maintenance, or other services for a Federal, State, or local government entity, but does not include a person using a traffic signal preemption transmitter for classroom or instructional purposes.''.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by adding at the end the following:

''39. Traffic signal preemption transmitters.''.

SEC. 2019. NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE TECHNICAL CORRECTION.

Section 404(d) of title 23, United States Code, is amended by striking ''Commerce'' and inserting ''Transportation''.

SEC. 2020. PRESIDENTIAL COMMISSION ON ALCOHOL-IMPAIRED DRIVING.

(a) FINDINGS.—Congress finds that—

(1) there has been considerable progress over the past 25 years in reducing the number and rate of alcohol-related highway facilities;

(2) the National Highway Traffic Safety Administration projects that fatalities in alcohol-related crashes declined in 2003 for the 2nd year in a row;

(3) in spite of this progress, an estimated 17,013 Americans died in 2003, in alcohol-related crashes;

(4) these fatalities comprise 40 percent of the annual total highway fatalities;

(5) about 250,000 are injured each year in alcohol-related crashes;

(6) the past 2 years of decreasing alcohol-related fatalities follows a 3-year increase;

(7) alcohol-impaired driving is the Nation's most frequently committed violent crime;

(8) the annual cost of alcohol-related crashes is over $100,000,000,000, including $9,000,000,000 in costs to employers;

(9) a Presidential Commission on Alcohol Impaired Driving in 1982 and 1983 helped to lead to substantial progress on this issue; and

(10) these facts point to the need to renew the national commitment to preventing these deaths and injuries.

(b) SENSE OF THE CONGRESS.—It is the sense of Congress that, in an effort to further change the culture of alcohol-impaired driving on our Nation's highways, the President should consider establishing a Presidential Commission on Alcohol-Impaired Driving—

(1) comprised of representatives of—

(A) State and local governments, including State legislators;

(B) law enforcement;

(C) traffic safety experts, including researchers;

(D) victims of alcohol-related crashes;

(E) affected industries, including the alcohol, insurance, motorcycle, and auto industries;

(F) the business community;

(G) labor;

(H) the medical community;

(I) public health; and

(J) Members of Congress; and

(2) that not later than September 30, 2006, would—

(A) conduct a full examination of alcohol-impaired driving issues; and

(B) make recommendations for a broad range of policy and program changes that would serve to further reduce the level of deaths and injuries caused by alcohol impaired driving.

SEC. 2021. SENSE OF THE CONGRESS IN SUPPORT OF INCREASED PUBLIC AWARENESS OF BLOOD ALCOHOL CONCENTRATION LEVELS AND DANGERS OF ALCOHOL-IMPAIRED DRIVING.

(a) FINDINGS.—Congress finds that—

(1) in 2003—

(A) 17,013 Americans died in alcohol-related traffic crashes;

(B) 40 percent of the persons killed in traffic crashes died in alcohol-related crashes; and

(C) drivers with blood alcohol concentration levels over 0.15 were involved in 58 percent of alcohol-related traffic fatalities;

(2) research shows that 77 percent of Americans think they have received enough information about alcohol-impaired driving and the way in which alcohol affects individual blood alcohol levels; and

(3) only 28 percent of the American public can correctly identify the legal limit of blood alcohol concentration of the State in which they reside.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the National Highway Traffic Safety Administration should work with State and local governments and independent organizations to increase public awareness of—

(1) State legal limits on blood alcohol concentration levels; and

(2) the dangers of alcohol-impaired driving.

SEC. 2022. EFFECTIVE DATE.

Sections 2002 through 2007 of this title (and the amendments and repeals made by such sections) shall take effect October 1, 2005.

TITLE III—PUBLIC TRANSPORTATION

SEC. 3001. SHORT TITLE.

This title may be cited as the ''Federal Public Transportation Act of 2005''.

SEC. 3002. AMENDMENTS TO TITLE 49, UNITED STATES CODE; UPDATED TERMINOLOGY.

(a) AMENDMENTS TO TITLE 49.—Except as otherwise specifically 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 of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

(b) UPDATED TERMINOLOGY.—Chapter 53 is amended—

(1) in the chapter heading by striking ''**MASS**'' and inserting ''**PUBLIC**'';

(2) in section 5310(h) by striking ''Mass'' and inserting ''Public'';

(3) in the subsection heading for section 5331(b) by striking ''MASS'' and inserting ''PUBLIC''; and

(4) by striking ''mass'' each place the term appears before ''transportation'' and inserting ''public'', except in sections 5301(f), 5302(a)(7), 5315, and 5323(a)(1).

(c) TABLE OF CHAPTERS.—The table of chapters for subtitle III is amended in the item relating to chapter 53 by striking ''**Mass**'' and inserting ''**Public**''.

SEC. 3003. POLICIES, FINDINGS, AND PURPOSES.

(a) IN GENERAL.—Section 5301(a) is amended to read as follows:

''(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—It is in the interest of the United States, including its economic interest, to foster the development and revitalization of public transportation systems that—

''(1) maximize the safe, secure, and efficient mobility of individuals;

''(2) minimize environmental impacts; and

''(3) minimize transportation-related fuel consumption and reliance on foreign oil.''.

(b) GENERAL FINDINGS.—Section 5301(b)(1) is amended—

(1) by striking ''70 percent'' and inserting ''two-thirds''; and

(2) by striking ''urban areas'' and inserting ''urbanized areas''.

(c) PRESERVING THE ENVIRONMENT.—Section 5301(e) is amended—

(1) by striking ''an urban'' and inserting ''a''; and

(2) by striking ''under sections 5309 and 5310 of this title''.

(d) GENERAL PURPOSES.—Section 5301(f) is amended—

(1) in paragraph (1)—

(A) by striking ''mass'' the first place it appears and inserting ''public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''both public transportation companies and private companies engaged in public transportation'';

(2) in paragraph (2)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public and private mass transportation companies'' and inserting ''both public transportation companies and private companies engaged in public transportation'';

(3) in paragraph (3)—

(A) by striking ''urban mass'' and inserting ''public''; and

(B) by striking ''public or private mass transportation companies'' and inserting ''public transportation companies or private companies engaged in public transportation''; and

(4) in paragraph (5) by striking ''urban mass'' and inserting ''public''.

SEC. 3004. DEFINITIONS.

(a) LEAD-IN.—Section 5302(a) is amended in the matter preceding paragraph (1) by striking ''In this chapter'' and inserting ''Except as otherwise specifically provided, in this chapter''.

(b) CAPITAL PROJECT.—Section 5302(a)(1) is amended—

(1) in subparagraph (G) by inserting ''construction, renovation, and improvement of intercity bus and intercity rail stations and terminals,'' before ''and the renovation and improvement of historic transportation facilities,'';

(2) in subparagraph (G)(ii) by inserting ''(other than an intercity bus station or terminal)'' after ''commercial revenue-producing facility'';

(3) in subparagraph (H) by striking ''or'' at the end;

(4) in subparagraph (I) by striking the period at the end and inserting a semicolon; and

(5) by adding at the end the following:

''(J) crime prevention and security—

''(i) including—

''(I) projects to refine and develop security and emergency response plans;

''(II) projects aimed at detecting chemical and biological agents in public transportation;

''(III) the conduct of emergency response drills with public transportation agencies and local first response agencies; and

''(IV) security training for public transportation employees; but

''(ii) excluding all expenses related to operations, other than such expenses incurred in conducting activities described in clauses (i)(III) and (i)(IV);

''(K) establishing a debt service reserve, made up of deposits with a bondholder's trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter; or

''(L) mobility management—

''(i) consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental entity, under this chapter (other than section 5309); but

''(ii) excluding operating public transportation services.''.

(c) INDIVIDUAL WITH A DISABILITY.—Section 5302(a)(5) is amended—

(1) in the paragraph heading by striking ''HANDICAPPED INDIVIDUAL'' and inserting ''INDIVIDUAL WITH A DISABILITY''; and

(2) by striking ''handicapped individual'' and inserting ''individual with a disability''.

(d) MASS TRANSPORTATION.—Section 5302(a)(7) is amended to read as follows:

''(7) MASS TRANSPORTATION.—The term 'mass transportation' means public transportation.''.

(e) PUBLIC TRANSPORTATION.—Section 5302(a)(10) is amended to read as follows:

''(10) PUBLIC TRANSPORTATION.—The term 'public transportation' means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity).''.

(f) URBANIZED AREA.—Section 5302(a)(17) is amended to read as follows:

''(17) URBANIZED AREA.—The term 'urbanized area' means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an 'urbanized area' by the Secretary of Commerce.''.

(g) AUTHORITY TO MODIFY DEFINITION.—Section 5302(b) is amended—

(1) in the subsection heading by striking ''HANDICAPPED INDIVIDUAL'' and inserting ''INDIVIDUAL WITH A DISABILITY''; and

(2) by striking ''handicapped individual'' and inserting ''individual with a disability''.

SEC. 3005. METROPOLITAN TRANSPORTATION PLANNING.

(a) IN GENERAL.—Section 5303 is amended to read as follows:

''§5303. Metropolitan transportation planning

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

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

''(2) encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 5304(d).

''(b) DEFINITIONS.—In this section and section 5304, the following definitions apply:

''(1) METROPOLITAN PLANNING AREA.—The term 'metropolitan planning area' means the geographic area determined by agreement between

the metropolitan planning organization for the area and the Governor under subsection (e).

''(2) METROPOLITAN PLANNING ORGANIZATION.—The term 'metropolitan planning organization' means the policy board of an organization created as a result of the designation process in subsection (d).

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

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

''(5) TIP.—The term 'TIP' means a transportation improvement program developed by a metropolitan planning organization under subsection (j).

''(6) URBANIZED AREA.—The term 'urbanized area' means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

''(c) GENERAL REQUIREMENTS.—

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

''(2) CONTENTS.—The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

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

''(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

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

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

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

''(2) STRUCTURE.—Each metropolitan planning organization that serves an area designated as a transportation management area, when designated or redesignated under this subsection, shall consist of—

''(A) local elected officials;

''(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

''(C) appropriate State officials.

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

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

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

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

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

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

''(e) METROPOLITAN PLANNING AREA BOUNDARIES.—

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

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

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

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

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

''(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the Federal Public Transportation Act of 2005, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained; except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (d)(5).

''(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of the Federal Public Transportation Act of 2005 as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

''(A) shall be established in the manner described in subsection (d)(1);

''(B) shall encompass the areas described in paragraph (2)(A);

''(C) may encompass the areas described in paragraph (2)(B); and

''(D) may address any nonattainment area identified under the Clean Air Act for ozone or carbon monoxide.

''(f) COORDINATION IN MULTISTATE AREAS.—

''(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

''(2) INTERSTATE COMPACTS.—The consent of Congress is granted to any 2 or more States—

''(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

''(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

''(3) LAKE TAHOE REGION.—

''(A) DEFINITION.—In this paragraph, the term 'Lake Tahoe region' has the meaning given the term 'region' in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

''(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

''(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

''(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 5304.

''(C) INTERSTATE COMPACT.—

''(i) IN GENERAL.—Subject to clause (ii), and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

''(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

''(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

''(II) FUNDING.—In addition to funds made available to the metropolitan planning organization for the Lake Tahoe region under other provisions of this chapter and title 23, 1 percent of the funds allocated under section 202 of title 23 shall be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

''(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

''(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

''(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of such title.

''(4) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

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

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

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

''(3) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities. Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by—

''(A) recipients of assistance under this chapter;

''(B) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

''(C) recipients of assistance under section 204 of title 23.

''(h) SCOPE OF PLANNING PROCESS.—

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

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

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

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

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

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

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

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation of the existing transportation system.

''(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

''(i) DEVELOPMENT OF TRANSPORTATION PLAN.—

''(1) IN GENERAL.—Each metropolitan planning organization shall prepare a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection. The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

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

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

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

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

''(A) IDENTIFICATION OF TRANSPORTATION FACILITIES.—An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as such factors relate to a 20-year forecast period.

''(B) MITIGATION ACTIVITIES.—

''(i) IN GENERAL.—A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

''(ii) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

''(C) FINANCIAL PLAN.—A financial plan that demonstrates how the adopted transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

''(D) OPERATIONAL AND MANAGEMENT STRATEGIES.—Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

''(E) CAPITAL INVESTMENT AND OTHER STRATEGIES.—Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

''(F) TRANSPORTATION AND TRANSIT ENHANCEMENT ACTIVITIES.—Proposed transportation and transit enhancement activities.

''(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

''(4) CONSULTATION.—

''(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

''(B) ISSUES.—The consultation shall involve, as appropriate—

''(i) comparison of transportation plans with State conservation plans or maps, if available; or

''(ii) comparison of transportation plans to inventories of natural or historic resources, if available.

''(5) PARTICIPATION BY INTERESTED PARTIES.—

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

''(B) CONTENTS OF PARTICIPATION PLAN.—A participation plan—

''(i) shall be developed in consultation with all interested parties; and

''(ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

''(C) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

''(6) PUBLICATION.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

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

''(j) METROPOLITAN TIP.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the area for which the organization is designated.

''(B) OPPORTUNITY FOR COMMENT.—In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

''(C) FUNDING ESTIMATES.—For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

''(D) UPDATING AND APPROVAL.—The TIP shall be updated at least once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

''(2) CONTENTS.—

''(A) PRIORITY LIST.—The TIP shall include a priority list of proposed federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

''(B) FINANCIAL PLAN.—The TIP shall include a financial plan that—

''(i) demonstrates how the TIP can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

''(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

''(C) DESCRIPTIONS.—Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

''(3) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER THIS CHAPTER AND TITLE 23.—A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under this chapter and chapter 1 of title 23.

''(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

''(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-range transportation plan developed under subsection (i) for the area.

''(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(4) NOTICE AND COMMENT.—Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

''(5) SELECTION OF PROJECTS.—

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

''(i) by—

''(I) in the case of projects under title 23, the State; and

''(II) in the case of projects under this chapter, the designated recipients of public transportation funding; and

''(ii) in cooperation with the metropolitan planning organization.

''(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.

''(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

''(B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.

''(7) PUBLICATION.—

''(A) PUBLICATION OF TIPS.—A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

''(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the TIP.

''(C) RULEMAKING.—Not later than 180 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations setting standards for the listing required by subparagraph (B) and specifying the types of data to be included in such list, including sufficient information about each project to identify its type, location, and amount obligated.

''(k) TRANSPORTATION MANAGEMENT AREAS.—

''(1) IDENTIFICATION AND DESIGNATION.—

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

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

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

''(3) CONGESTION MANAGEMENT PROCESS.—Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this chapter and title 23 through the use of travel demand reduction and operational management strategies. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than one year after the identification of a transportation management area.

''(4) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under this chapter shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

''(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under title 23 shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall—

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

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

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

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

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

''(C) EFFECT OF FAILURE TO CERTIFY.—

''(i) WITHHOLDING OF PROJECT FUNDS.—If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this chapter and title 23.

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

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

''(l) ABBREVIATED PLANS FOR CERTAIN AREAS.—

''(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

''(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act.

''(m) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

''(1) IN GENERAL.—Notwithstanding any other provisions of this chapter or title 23, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

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

''(n) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this chapter or title 23.

''(o) FUNDING.—Funds set aside under section 5305(g) of this title or section 104(f) of title 23 shall be available to carry out this section.

''(p) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning

plans and TIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a plan or TIP described in this section shall not be considered to be a Federal action subject to review under such Act.''.

(b) SCHEDULE FOR IMPLEMENTATION.—The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States and metropolitan planning organizations. The Secretary shall not require a State or metropolitan planning organization to deviate from its established planning update cycle to implement changes made by this section. Beginning July 1, 2007, State or metropolitan planning organization plan or program updates shall reflect changes made by this section.

(c) CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5303 and inserting the following:

''5303. Metropolitan transportation planning.''.

SEC. 3006. STATEWIDE TRANSPORTATION PLANNING.

(a) IN GENERAL.—Section 5304 is amended to read as follows:

''§ 5304. Statewide transportation planning

''(a) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To accomplish the objectives stated in section 5303(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State, subject to section 5303.

''(2) CONTENTS.—The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation and the policies stated in section 5303(a), and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—A State shall—

''(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 5303 for metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

''(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(c) INTERSTATE AGREEMENTS.—

''(1) IN GENERAL.—The consent of Congress is granted to 2 or more States entering into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

''(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

''(d) SCOPE OF PLANNING PROCESS.—

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

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

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

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

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

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

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

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation of the existing transportation system.

''(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, the transportation improvement program, a project or strategy, or the certification of a planning process.

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

''(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

''(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

''(3) coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

''(f) LONG-RANGE STATEWIDE TRANSPORTATION PLAN.—

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

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN AREAS.—The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The Secretary shall not review or approve the consultation process in each State.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

''(i) IN GENERAL.—The long-range transportation plan shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

''(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve comparison of transportation plans to State and tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

''(3) PARTICIPATION BY INTERESTED PARTIES.—

''(A) IN GENERAL.—In developing the statewide transportation plan, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed plan.

''(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

''(4) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A long-range transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

''(5) FINANCIAL PLAN.—The statewide transportation plan may include a financial plan that demonstrates how the adopted statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (5).

''(7) EXISTING SYSTEM.—The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

''(8) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—Each State shall develop a statewide transportation improvement program for all areas of the State. Such program shall cover a period of 4 years and be updated every 4 years or more frequently if the Governor elects to update more frequently.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the program shall be developed in cooperation with the

metropolitan planning organization designated for the metropolitan area under section 5303.

''(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The Secretary shall not review or approve the specific consultation process in the State.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the tribal government and the Secretary of the Interior.

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

''(4) INCLUDED PROJECTS.—

''(A) IN GENERAL.—A transportation improvement program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

''(B) LISTING OF PROJECTS.—An annual listing of projects for which funds have been obligated in the preceding year in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

''(C) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

''(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project shall be—

''(i) consistent with the statewide transportation plan developed under this section for the State;

''(ii) identical to the project or phase of the project as described in an approved metropolitan transportation plan; and

''(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act, if the project is carried out in an area designated as nonattainment for ozone, particulate matter, or carbon monoxide under that Act.

''(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The transportation improvement program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(F) FINANCIAL PLAN.—The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the transportation improvement program, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

''(ii) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved transportation improvement program.

''(H) PRIORITIES.—The transportation improvement program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this chapter and title 23.

''(5) PROJECT SELECTION FOR AREAS OF LESS THAN 50,000 POPULATION.—Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under title 23 or sections 5310, 5311, 5316, and 5317 of this title) by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation. Projects carried out in areas with populations of less than 50,000 individuals on the National Highway System or under the bridge program or the Interstate maintenance program under title 23 or sections 5310, 5311, 5316, and 5317 of this title shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

''(6) TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

''(7) PLANNING FINDING.—A finding shall be made by the Secretary at least every 4 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 5303.

''(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

''(h) FUNDING.—Funds set aside pursuant to section 5305(g) of this title and section 104(i) of title 23 shall be available to carry out this section.

''(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT PROCESSES.—For purposes of this section and section 5303, and sections 134 and 135 of title 23, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process under this section and section 5303, and sections 134 and 135 of title 23, if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of this section, section 5303, and sections 134 and 135 of title 23, as appropriate.

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

(b) SCHEDULE FOR IMPLEMENTATION.—The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States and metropolitan planning organizations. The Secretary shall not require a State or metropolitan planning organization to deviate from its established planning update cycle to implement changes made by this section. Beginning July 1, 2007, State or metropolitan planning organization plan or program updates shall reflect changes made by this section.

(c) CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5304 and inserting the following:

''5304. Statewide transportation planning.''.

SEC. 3007. PLANNING PROGRAMS.

(a) IN GENERAL.—Section 5305 is amended to read as follows:

''§ 5305. Planning programs

''(a) STATE DEFINED.—In this section, the term 'State' means a State of the United States, the District of Columbia, and Puerto Rico.

''(b) GENERAL AUTHORITY.—

''(1) GRANTS AND AGREEMENTS.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities, and make agreements with other departments, agencies, or instrumentalities of the Government to—

''(A) develop transportation plans and programs;

''(B) plan, engineer, design, and evaluate a public transportation project; and

''(C) conduct technical studies relating to public transportation.

''(2) ELIGIBLE ACTIVITIES.—Activities eligible under paragraph (1) include the following:

''(A) Studies related to management, planning, operations, capital requirements, and economic feasibility.

''(B) Evaluating previously financed projects.

''(C) Peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners.

''(D) Other similar and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment.

''(c) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated or made available under section 5338 to carry out this section and sections 5303, 5304, and 5306 are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

''(d) METROPOLITAN PLANNING PROGRAM.—

''(1) APPORTIONMENT TO STATES.—

''(A) IN GENERAL.—The Secretary shall apportion 80 percent of the amounts made available under subsection (g)(1) among the States to carry out sections 5303 and 5306 in the ratio that—

''(i) the population of urbanized areas in each State, as shown by the latest available decennial census of population; bears to

''(ii) the total population of urbanized areas in all States, as shown by that census.

''(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), a State may not receive less than 0.5 percent of the amount apportioned under this paragraph.

''(2) ALLOCATION TO MPO'S.—Amounts apportioned to a State under paragraph (1) shall be made available, not later than 30 days after the date of apportionment, to metropolitan planning organizations in the State designated under this section under a formula that—

''(A) considers population of urbanized areas;

''(B) provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section;

''(C) the State develops in cooperation with the metropolitan planning organizations; and

''(D) the Secretary approves.

''(3) SUPPLEMENTAL AMOUNTS.—

''(A) IN GENERAL.—The Secretary shall apportion 20 percent of the amounts made available under subsection (g)(1) among the States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

''(B) FORMULA.—The Secretary shall apportion amounts referred to in subparagraph (A) under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities under sections 5303 and 5306 in certain urbanized areas.

''(e) STATE PLANNING AND RESEARCH PROGRAM.—

''(1) APPORTIONMENT TO STATES.—

''(A) IN GENERAL.—The Secretary shall apportion the amounts made available under subsection (g)(2) among the States for grants and contracts to carry out this section and sections 5304, 5306, 5315, and 5322 in the ratio that—

''(i) the population of urbanized areas in each State, as shown by the latest available decennial census; bears to

''(ii) the population of urbanized areas in all States, as shown by that census.

''(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), a State may not receive less than 0.5 percent of the amount apportioned under this paragraph.

''(2) SUPPLEMENTAL AMOUNTS.—A State, as the State considers appropriate, may authorize part of the amount made available under this subsection to be used to supplement amounts made available under subsection (d).

''(f) GOVERNMENT'S SHARE OF COSTS.—The Government's share of the cost of an activity funded using amounts made available under this section may not exceed 80 percent of the cost of the activity unless the Secretary determines that it is in the interests of the Government not to require a State or local match.

''(g) ALLOCATION OF FUNDS.—Of the funds made available by or appropriated to carry out this section under section 5338(c) for fiscal years 2005 through 2009—

''(1) 82.72 percent shall be available for the metropolitan planning program under subsection (d); and

''(2) 17.28 percent shall be available to carry out subsection (e).

''(h) AVAILABILITY OF FUNDS.—Funds apportioned under this section to a State that have not been obligated in the 3-year period beginning after the last day of the fiscal year for which the funds are authorized shall be reapportioned among the States.''.

(b) CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5305 and inserting the following:

''5305. Planning programs.''.

SEC. 3008. PRIVATE ENTERPRISE PARTICIPATION.

Section 5306(a) is amended by inserting '', as determined by local policies, criteria, and decisionmaking,'' after ''feasible''.

SEC. 3009. URBANIZED AREA FORMULA GRANTS.

(a) TECHNICAL AMENDMENTS.—Section 5307 is amended—

(1) by striking subsections (h), (j) and (k); and

(2) by redesignating subsections (i), (l), (m), and (n) as subsections (h), (i), (j), and (k), respectively.

(b) DEFINITIONS.—

(1) ASSOCIATED CAPITAL MAINTENANCE ITEMS.—Section 5307(a)(1) is amended—

(A) by striking ''means equipment, tires,'' and inserting ''means—

''(A) equipment, tires,'';

(B) in subparagraph (A) (as so designated) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(B) reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.''.

(2) DESIGNATED RECIPIENT.—Section 5307(a)(2)(A) is amended to read as follows:

''(A) an entity designated, in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 that are attributable to transportation management areas identified under section 5303; or''.

(c) GENERAL AUTHORITY.—Section 5307(b) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) GRANTS.—The Secretary may make grants under this section for—

''(A) capital projects and associated capital maintenance items;

''(B) planning;

''(C) transit enhancements;

''(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of less than 200,000;

''(E) operating costs of equipment and facilities for use in public transportation in a portion or portions of an urbanized area with a population of at least 200,000, but not more than 225,000, if—

''(i) the urbanized area includes parts of more than one State;

''(ii) the portion of the urbanized area includes only one State;

''(iii) the population of the portion of the urbanized area is less than 30,000; and

''(iv) the grants will not be used to provide public transportation outside of the portion of the urbanized area; and

''(F) operating costs of equipment and facilities for use in public transportation for local governmental authorities in areas which adopted transit operating and financing plans that became a part of the Houston, Texas, urbanized area as a result of the 2000 decennial census of population, but lie outside the service area of the principal public transportation agency that serves the Houston urbanized area.'';

(2) by striking paragraph (2) and inserting the following:

''(2) SPECIAL RULE FOR FISCAL YEARS 2005 THROUGH 2007.—

''(A) INCREASED FLEXIBILITY.—The Secretary may award grants under this section, from funds made available to carry out this section for each of the fiscal years 2005 through 2007, to finance the operating cost of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000, as determined by the 2000 decennial census of population, if—

''(i) the urbanized area had a population of less than 200,000, as determined by the 1990 decennial census of population;

''(ii) a portion of the urbanized area was a separate urbanized area with a population of less than 200,000, as determined by the 1990 decennial census of population;

''(iii) the area was not designated as an urbanized area, as determined by the 1990 decennial census of population; or

''(iv) a portion of the area was not designated as an urbanized area, as determined by the 1990 decennial census, and received assistance under section 5311 in fiscal year 2002.

''(B) MAXIMUM AMOUNTS IN FISCAL YEAR 2005.—In fiscal year 2005—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than the amount the portion of the area received under section 5311 for fiscal year 2002.

''(C) MAXIMUM AMOUNTS IN FISCAL YEAR 2006.—In fiscal year 2006—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 50 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 50 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less 50 percent of the amount the portion of the area received under section 5311 for fiscal year 2002.

''(D) MAXIMUM AMOUNTS IN FISCAL YEAR 2007.—In fiscal year 2007—

''(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 25 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

''(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 25 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

''(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than 25 percent of the amount the portion of the area received under section 5311 in fiscal year 2002.''; and

(3) by striking paragraph (4).

(d) GRANT RECIPIENT REQUIREMENTS.—Section 5307(d)(1) is amended—

(1) in subparagraph (A) by inserting '', including safety and security aspects of the program'' after ''program'';

(2) in subparagraph (E)—

(A) by striking ''and'' at the end of clause (ii);

(B) by inserting ''and'' at the end of clause (iii); and

(C) by adding at the end the following:

''(iv) will comply with sections 5323 and 5325;'';

(3) in subparagraph (H) by striking ''sections 5301(a) and (d), 5303–5306, and 5310(a)–(d) of this title'' and inserting ''section 5301(a), section 5301(d), and sections 5303 through 5306'';

(4) in subparagraph (I) by striking ''and'' at the end;

(5) by adding at the end the following:

''(K) in the case of a recipient for an urbanized area with a population of at least 200,000—

''(i) will expend not less than 1 percent of the amount the recipient receives each fiscal year under this section for transit enhancements, as defined in section 5302(a); and

''(ii) will submit an annual report listing projects carried out in the preceding fiscal year with those funds; and''.

(e) GOVERNMENT'S SHARE OF COSTS.—Section 5307(e) is amended to read as follows:

''(e) GOVERNMENT'S SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—A grant for a capital project (including associated capital maintenance items) under this section shall be for 80 percent of the net project cost of the project. The recipient may provide additional local matching amounts.

''(2) OPERATING EXPENSES.—A grant for operating expenses under this section may not exceed 50 percent of the net project cost of the project.

''(3) REMAINING COSTS.—Subject to paragraph (4), the remainder of the net project cost shall be provided—

''(A) in cash from non-Government sources other than revenues from providing public transportation services;

''(B) from revenues derived from the sale of advertising and concessions;

''(C) from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital; and

''(D) from amounts received under a service agreement with a State or local social service agency or private social service organization.

''(4) USE OF CERTAIN FUNDS.—The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to the remainder.''.

(f) UNDERTAKING PROJECTS IN ADVANCE.—Section 5307(g) is amended by striking paragraph (4).

(g) RELATIONSHIP TO OTHER LAWS.—Section 5307(k) (as redesignated by subsection (a)(2) of this section) is amended to read as follows:

''(k) RELATIONSHIP TO OTHER LAWS.—

''(1) APPLICABLE PROVISIONS.—Sections 5301, 5302, 5303, 5304, 5306, 5315(c), 5318, 5319, 5323, 5325, 5327, 5329, 5330, 5331, 5332, 5333, and 5335 apply to this section and to any grant made under this section.

''(2) INAPPLICABLE PROVISIONS.—

''(A) IN GENERAL.—Except as provided by this section, no other provision of this chapter applies to this section or to a grant made under this section.

''(B) TITLE 5.—The provision of assistance under this chapter shall not be construed as bringing within the application of chapter 15 of title 5 any nonsupervisory employee of a public transportation system (or any other agency or entity performing related functions) to which such chapter is otherwise inapplicable.''.

(h) TREATMENT.—Section 5307 is amended by adding at the end the following:

''(l) TREATMENT.—For the purposes of this section, the United States Virgin Islands shall be treated as an urbanized area, as defined in section 5302.''.

(i) CONTRACTED PARATRANSIT PILOT.—

(1) IN GENERAL.—Notwithstanding section 5302(a)(1)(I) of title 49, United States Code, for fiscal years 2005 through 2009, a recipient of assistance under section 5307 of such title in urbanized areas with a population of 558,329 or 747,003 according to the 2000 decennial census of population may use not more than 20 percent of such recipient's annual formula apportionment under section 5307 of such title for the provision of nonfixed route paratransit services in accordance with section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143), but only if the grant recipient is in compliance with applicable requirements of that Act, including both fixed route and demand responsive service and the service is acquired by contract.

(2) REPORT.—Not later than January 1, 2009, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the implementation of this subsection and any recommendations of the Secretary regarding the application of this subsection.

SEC. 3010. CLEAN FUELS GRANT PROGRAM.

(a) IN GENERAL.—Section 5308 is amended to read as follows:

''§ 5308. Clean fuels grant program

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

''(1) CLEAN FUEL BUS.—The term 'clean fuel bus' means a passenger vehicle used to provide public transportation that—

''(A) is powered by—

''(i) compressed natural gas;

''(ii) liquefied natural gas;

''(iii) biodiesel fuels;

''(iv) batteries;

''(v) alcohol-based fuels;

''(vi) hybrid electric;

''(vii) fuel cell;

''(viii) clean diesel, to the extent allowed under this section; or

''(ix) other low or zero emissions technology; and

''(B) the Administrator of the Environmental Protection Agency has certified sufficiently reduces harmful emissions.

''(2) ELIGIBLE PROJECT.—The term 'eligible project'—

''(A) means a project in a nonattainment or maintenance area described in paragraph (4)(A) for—

''(i) purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure;

''(ii) constructing or leasing clean fuel buses or electrical recharging facilities and related equipment for such buses; or

''(iii) constructing new or improving existing public transportation facilities to accommodate clean fuel buses; and

''(B) at the discretion of the Secretary, may include a project located in a nonattainment or maintenance area described in paragraph (4)(A) relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

''(3) MAINTENANCE AREA.—The term 'maintenance area' has the meaning such term has under section 101 of title 23.

''(4) RECIPIENT.—

''(A) IN GENERAL.—The term 'recipient' means a designated recipient (as defined in section 5307(a)(2)) for an area that, and a recipient for an urbanized area with a population of less than 200,000 that—

''(i) is designated as a nonattainment area for ozone or carbon monoxide under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or

''(ii) is a maintenance area for ozone or carbon monoxide.

''(B) SMALLER URBANIZED AREAS.—In the case of an urbanized area with a population of less than 200,000, the State in which the area is located shall act as the recipient for the area under this section.

''(b) AUTHORITY.—The Secretary shall make grants in accordance with this section to recipients to finance eligible projects.

''(c) CLEAN DIESEL BUSES.—Not more than 25 percent of the amount made available by or appropriated under section 5338 in each fiscal year to carry out this section may be made available to fund clean diesel buses.

''(d) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant under this section shall be subject to the requirements of section 5307.

''(2) GOVERNMENT'S SHARE OF COSTS FOR CERTAIN PROJECTS.—Section 5323(i) applies to projects carried out under this section.

''(e) AVAILABILITY OF FUNDS.—Any amount made available or appropriated under this section—

''(1) shall remain available to a project for 2 years after the fiscal year for which the amount is made available or appropriated; and

''(2) that remains unobligated at the end of the period described in paragraph (1) shall be added to the amount made available in the following fiscal year.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 53 is amended by striking the item relating to section 5308 and inserting the following:

''5308. Clean fuels grant program.''.

SEC. 3011. CAPITAL INVESTMENT GRANTS.

(a) IN GENERAL.—Section 5309 is amended to read as follows:

''§ 5309. Capital investment grants

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

''(1) ALTERNATIVES ANALYSIS.—The term 'alternatives analysis' means a study conducted as part of the transportation planning process required under sections 5303 and 5304, which includes—

''(A) an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea;

''(B) sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under this section;

''(C) the selection of a locally preferred alternative; and

''(D) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303.

''(2) MAJOR NEW FIXED GUIDEWAY CAPITAL PROJECT.—The term 'major new fixed guideway capital project' means a new fixed guideway capital project for which the Federal assistance provided or to be provided under this section is $75,000,000 or more.

''(3) NEW FIXED GUIDEWAY CAPITAL PROJECT.—The term 'new fixed guideway capital project' means a minimum operable segment of a capital project for a new fixed guideway system or extension to an existing fixed guideway system.

''(b) GENERAL AUTHORITY.—The Secretary may make grants under this section to assist State and local governmental authorities in financing—

''(1) new fixed guideway capital projects under subsections (d) and (e), including the acquisition of real property, the initial acquisition of rolling stock for the systems, the acquisition of rights of way, and relocation, for fixed guideway corridor development for projects in the advanced stages of alternatives analysis or preliminary engineering;

''(2) capital projects to modernize existing fixed guideway systems;

''(3) capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, including programs of bus and bus-related projects for assistance to subrecipients that are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and

''(4) the development of corridors to support new fixed guideway capital projects under subsections (d) and (e), including protecting rights of way through acquisition, construction of dedicated bus and high occupancy vehicle lanes and park and ride lots, and other nonvehicular capital improvements that the Secretary may decide would result in increased public transportation usage in the corridor.

''(c) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary may not approve a grant for a project under this section unless the Secretary determines that—

''(A) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306; and

''(B) the applicant has, or will have—

''(i) the legal, financial, and technical capacity to carry out the project, including safety and security aspects of the project;

''(ii) satisfactory continuing control over the use of the equipment or facilities; and

''(iii) the capability and willingness to maintain the equipment or facilities.

''(2) CERTIFICATION.—An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (H) of section 5307(d)(1) shall be deemed to have provided sufficient information upon which the Secretary may make the determinations required under this subsection.

''(3) GRANTEE REQUIREMENTS.—The Secretary shall require that any grant awarded under this section to a recipient be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in the value of real property resulting from the project assisted under this section.

''(d) MAJOR CAPITAL INVESTMENT GRANTS OF $75,000,000 OR MORE.—

''(1) FULL FUNDING GRANT AGREEMENT.—

''(A) IN GENERAL.—A major new fixed guideway capital project shall be carried out through a full funding grant agreement.

''(B) CRITERIA.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under this subsection, with each grantee receiving assistance for a major new fixed guideway capital project that—

''(i) is authorized for final design and construction; and

''(ii) has been rated as medium, medium-high, or high, in accordance with paragraph (5)(B).

''(2) APPROVAL OF GRANTS.—The Secretary may approve a grant under this section for a major new fixed guideway capital project only if the Secretary, based upon evaluations and considerations set forth in paragraph (3), determines that the project is—

''(A) based on the results of an alternatives analysis and preliminary engineering;

''(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use policies and future patterns; and

''(C) supported by an acceptable degree of local financial commitment (including evidence of stable and dependable financing sources) to construct, maintain, and operate the system or extension, and maintain and operate the entire public transportation system without requiring a reduction in existing public transportation services or level of service to operate the proposed project.

''(3) EVALUATION OF PROJECT JUSTIFICATION.—In making the determinations under paragraph (2)(B) for a major capital investment grant, the Secretary shall analyze, evaluate, and consider—

''(A) the results of the alternatives analysis and preliminary engineering for the proposed project;

''(B) the reliability of the forecasting methods used to estimate costs and utilization made by the recipient and the contractors to the recipient;

''(C) the direct and indirect costs of relevant alternatives;

''(D) factors such as—

''(i) congestion relief;

''(ii) improved mobility;

''(iii) air pollution;

''(iv) noise pollution;

''(v) energy consumption; and

''(vi) all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;

''(E) reductions in local infrastructure costs and other benefits achieved through compact land use development, such as positive impacts on the capacity, utilization, or longevity of other surface transportation assets and facilities;

''(F) the cost of suburban sprawl;

''(G) the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development;

''(H) population density and current transit ridership in the transportation corridor;

''(I) the technical capability of the grant recipient to construct the project;

''(J) any adjustment to the project justification necessary to reflect differences in local land, construction, and operating costs; and

''(K) other factors that the Secretary determines to be appropriate to carry out this subsection.

''(4) EVALUATION OF LOCAL FINANCIAL COMMITMENT.—

''(A) IN GENERAL.—In evaluating a project under paragraph (2)(C), the Secretary shall require that—

''(i) the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases;

''(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

''(iii) local resources are available to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels without requiring a reduction in existing public transportation services or level of service to operate the proposed project.

''(B) EVALUATION CRITERIA.—In assessing the stability, reliability, and availability of proposed sources of local financing under paragraph (2)(C), the Secretary shall consider—

''(i) the reliability of the forecasting methods used to estimate costs and utilization made by the recipient and the contractors to the recipient;

''(ii) existing grant commitments;

''(iii) the degree to which financing sources are dedicated to the proposed purposes;

''(iv) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose; and

''(v) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project.

''(C) CONSIDERATION OF FISCAL CAPACITY OF STATE AND LOCAL GOVERNMENTS.—If the Secretary gives priority to financing projects under this subsection that include more than the non-Federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

''(5) PROJECT ADVANCEMENT AND RATINGS.—

''(A) PROJECT ADVANCEMENT.—A proposed project under this subsection shall not advance from alternatives analysis to preliminary engineering or from preliminary engineering to final design and construction unless the Secretary determines that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements.

''(B) RATINGS.—In making a determination under subparagraph (A), the Secretary shall evaluate and rate the project on a 5-point scale (high, medium-high, medium, medium-low, or low) based on the results of the alternatives analysis, the project justification criteria, and the degree of local financial commitment, as required under this subsection. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established by regulation.

''(6) POLICY GUIDANCE.—

''(A) PUBLICATION.—The Secretary shall publish policy guidance regarding the new fixed guideway capital project review and evaluation process and criteria—

''(i) not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2005; and

''(ii) each time significant changes are made by the Secretary to the process and criteria, but not less frequently than once every 2 years.

''(B) PUBLIC COMMENT AND RESPONSE.—The Secretary shall—

''(i) invite public comment to the policy guidance published under subparagraph (A); and

''(ii) publish a response to the comments received under clause (i).

''(e) CAPITAL INVESTMENT GRANTS LESS THAN $75,000,000.—

''(1) IN GENERAL.—

''(A) APPLICABILITY OF REQUIREMENTS.—Except as provided by subparagraph (B), a new fixed guideway capital project shall be subject to the requirements of this subsection if the Federal assistance provided or to be provided under this section for the project is less than $75,000,000 and the total estimated net capital cost of the project is less than $250,000,000.

''(B) PROJECTS RECEIVING LESS THAN $25,000,000 IN FEDERAL ASSISTANCE.—If the assistance provided under this section with respect to a new fixed guideway capital project is less than $25,000,000, the requirements of this subsection shall not apply to the project until such date as the final regulation to be issued under paragraph (9) takes effect.

''(2) SELECTION CRITERIA.—The Secretary may provide Federal assistance under this subsection with respect to a proposed project only if the Secretary finds that the project is—

''(A) based on the results of planning and alternatives analysis;

''(B) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

''(C) supported by an acceptable degree of local financial commitment.

''(3) PLANNING AND ALTERNATIVES.—In evaluating a project under paragraph (2)(A), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

''(4) PROJECT JUSTIFICATION.—For purposes of making the finding under paragraph (2)(B), the Secretary shall—

''(A) determine the degree to which the project is consistent with local land use policies and is likely to achieve local developmental goals;

''(B) determine the cost effectiveness of the project at the time of the initiation of revenue service;

''(C) determine the degree to which the project will have a positive effect on local economic development;

''(D) consider the reliability of the forecasting methods used to estimate costs and ridership associated with the project; and

''(E) consider other factors that the Secretary determines appropriate to carry out this subsection.

''(5) LOCAL FINANCIAL COMMITMENT.—

''(A) IN GENERAL.—For purposes of paragraph (2)(C), the Secretary shall require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

''(B) CONSIDERATION OF FISCAL CAPACITY OF STATE AND LOCAL GOVERNMENTS.—If the Secretary gives priority to financing projects under this subsection that include more than the non-Federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

''(6) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.—

''(A) GENERAL RULE.—A proposed project under this subsection may advance from planning and alternatives analysis to project development and construction only if the Secretary finds that the project meets the requirements of this subsection and there is a reasonable likelihood that the project will continue to meet such requirements.

''(B) EVALUATION.—In making the findings under subparagraph (A), the Secretary shall

evaluate and rate the project as high, medium-high, medium, medium-low, or low based on the results of the analysis of the project justification criteria and the degree of local financial commitment, as required by this subsection.

''(7) CONTENTS OF PROJECT CONSTRUCTION GRANT AGREEMENT.—A project construction grant agreement under this subsection shall specify the scope of the project to be constructed, the estimated net project cost of the project, the schedule under which the project shall be constructed, the maximum amount of funding to be obtained under this subsection, the proposed schedule for obligation of future Federal grants, and the sources of funding from other than the Government. The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

''(8) LIMITATION ON ENTRY INTO CONSTRUCTION GRANT AGREEMENT.—The Secretary may enter into a project construction grant agreement for a project under this subsection only if the project is authorized for construction and has been rated as high, medium-high, or medium under this subsection.

''(9) REGULATIONS.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations establishing an evaluation and rating process for proposed projects under this subsection that is based on the results of project justification and local financial commitment, as required under this subsection.

''(10) FIXED GUIDEWAY CAPITAL PROJECT.—In this subsection, the term 'fixed guideway capital project' includes a corridor-based bus capital project if—

''(A) a substantial portion of the project operates in a separate right-of-way dedicated for public transit use during peak hour operations; or

''(B) the project represents a substantial investment in a defined corridor as demonstrated by features such as park-and-ride lots, transit stations, bus arrival and departure signage, intelligent transportation systems technology, traffic signal priority, off-board fare collection, advanced bus technology, and other features that support the long-term corridor investment.

''(11) IMPACT REPORT.—

''(A) IN GENERAL.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2005, the Federal Transit Administration shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the methodology to be used in evaluating the land use and economic development impacts of non-fixed guideway or partial fixed guideway projects.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall address any qualitative and quantitative differences between fixed guideway and non-fixed guideway projects with respect to land use and economic development impacts.

''(f) PREVIOUSLY ISSUED LETTER OF INTENT OR FULL FUNDING GRANT AGREEMENT.—Subsections (d) and (e) do not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2005. Subsection (e) also does not apply to projects for which the Secretary has received an application for final design before such date of enactment.

''(g) LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.—

''(1) LETTERS OF INTENT.—

''(A) AMOUNTS INTENDED TO BE OBLIGATED.—The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project. When a letter is issued for fixed guideway projects, the amount shall be sufficient to complete at least an operable segment.

''(B) TREATMENT.—The issuance of a letter under subparagraph (A) is deemed not to be an obligation under sections 1108(c), 1108(d), 1501, and 1502(a) of title 31 or an administrative commitment.

''(2) FULL FUNDING GRANT AGREEMENTS.—

''(A) TERMS.—The Secretary may make a full funding grant agreement with an applicant. The agreement shall—

''(i) establish the terms of participation by the Government in a project under this section;

''(ii) establish the maximum amount of Government financial assistance for the project;

''(iii) cover the period of time for completing the project, including a period extending beyond the period of an authorization; and

''(iv) make timely and efficient management of the project easier according to the law of the United States.

''(B) SPECIAL FINANCIAL RULES.—

''(i) IN GENERAL.—A full funding grant agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law.

''(ii) STATEMENT OF CONTINGENT COMMITMENT.—The agreement shall state that the contingent commitment is not an obligation of the Government.

''(iii) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

''(iv) COMPLETION OF OPERABLE SEGMENT.—The amount stipulated in an agreement under this paragraph for a fixed guideway project shall be sufficient to complete at least an operable segment.

''(C) BEFORE AND AFTER STUDY.—

''(i) IN GENERAL.—A full funding grant agreement under this paragraph shall require the applicant to conduct a study that—

''(I) describes and analyzes the impacts of the new fixed guideway capital project on transit services and transit ridership;

''(II) evaluates the consistency of predicted and actual project characteristics and performance; and

''(III) identifies sources of differences between predicted and actual outcomes.

''(ii) INFORMATION COLLECTION AND ANALYSIS PLAN.—

''(I) SUBMISSION OF PLAN.—Applicants seeking an agreement under this paragraph shall submit a complete plan for the collection and analysis of information to identify the impacts of the new fixed guideway capital project and the accuracy of the forecasts prepared during the development of the project. Preparation of this plan shall be included in the full funding grant agreement as an eligible activity.

''(II) CONTENTS OF PLAN.—The plan submitted under subclause (I) shall provide for—

''(aa) the collection of data on the current transit system regarding transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics;

''(bb) documentation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

''(cc) collection of data on the transit system 2 years after the opening of the new fixed guideway capital project, including analogous information on transit service levels and ridership patterns and information on the as-built scope and capital costs of the project; and

''(dd) analysis of the consistency of predicted project characteristics with the after data.

''(D) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant agreement under this paragraph, recipients shall have collected data on the current system, according to the plan required, before the beginning of construction of the proposed new start project. Collection of this data shall be included in the full funding grant agreement as an eligible activity.

''(3) EARLY SYSTEM WORK AGREEMENTS.—

''(A) CONDITIONS.—The Secretary may make an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

''(i) a full funding grant agreement for the project will be made; and

''(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

''(B) CONTENTS.—

''(i) IN GENERAL.—A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary decides are appropriate to make efficient, long-term project management easier.

''(ii) PERIOD COVERED.—A work agreement under this paragraph shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization.

''(iii) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

''(iv) FAILURE TO CARRY OUT PROJECT.—If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

''(4) LIMITATION ON AMOUNTS.—

''(A) MAJOR CAPITAL INVESTMENT GRANTS CONTINGENT COMMITMENT AUTHORITY.—The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, and early systems work agreements under this subsection for major new fixed guideway capital projects may be not more than the greater of the amount authorized under sections 5338(a)(3) and 5338(c) for such projects or an amount equivalent to the last 3 fiscal years of funding allocated under subsections (m)(1)(A) and (m)(2)(A)(ii) for such projects, less an amount the Secretary reasonably estimates is necessary for grants under this section for those of such projects that are not covered by a letter or agreement. The total amount covered by new letters and contingent commitments included in full funding grant agreements and early systems work agreements for such projects may be not more than a limitation specified in law.

''(B) OTHER CONTINGENT COMMITMENT AUTHORITY.—The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all

project construction grant agreements and early system work agreements under this subsection for small capital projects described in subsection (e) may be not more than the greater of the amount allocated under subsection (m)(2)(A)(i) for such projects or an amount equivalent to the last fiscal year of funding allocated under such subsection for such projects, less an amount the Secretary reasonably estimates is necessary for grants under this section for those of such projects that are not covered by an agreement. The total amount covered by new contingent commitments included in project construction grant agreements and early systems work agreements for such projects may be not more than a limitation specified in law.

''(C) INCLUSION OF CERTAIN COMMITMENTS.—Future obligations of the Government and contingent commitments made against the contingent commitment authority under section 3032(g)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (106 Stat. 2125) for the San Francisco BART to the Airport project for fiscal years 2002, 2003, 2004, 2005, and 2006 shall be charged against section 3032(g)(2) of that Act.

''(D) APPROPRIATION REQUIRED.—An obligation may be made under this subsection only when amounts are appropriated for the obligation.

''(5) NOTIFICATION OF CONGRESS.—At least 60 days before issuing a letter of intent or entering into a full funding grant agreement or project construction grant agreement under this section, the Secretary shall notify, in writing, the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

''(h) GOVERNMENT'S SHARE OF NET PROJECT COST.—

''(1) IN GENERAL.—Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost. A grant for the project shall be for 80 percent of the net capital project cost, unless the grant recipient requests a lower grant percentage.

''(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net project cost of a new fixed guideway capital project evaluated under subsections (d) and (e) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

''(3) MAXIMUM GOVERNMENT SHARE.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

''(A) the Secretary determines that the net project cost of the project is not more than 10 percent higher than the net project cost estimated at the time the project was approved for advancement into preliminary engineering; and

''(B) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.

''(4) REMAINDER OF NET PROJECT COST.—The remainder of net project costs shall be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

''(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section, including paragraph (1) and subsections (d)(4)(B)(v) and (e)(5), shall be construed as authorizing the Secretary to require a non-Federal financial commitment for a project that is more than 20 percent of the net capital project cost.

''(6) SPECIAL RULE FOR ROLLING STOCK COSTS.—In addition to amounts allowed pursuant to paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant satisfies the Secretary that only amounts other than amounts of the Government were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

''(7) LIMITATION ON APPLICABILITY.—This subsection does not apply to projects for which the Secretary has entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2005.

''(i) UNDERTAKING PROJECTS IN ADVANCE.—

''(1) IN GENERAL.—The Secretary may pay the Government's share of the net capital project cost to a State or local governmental authority that carries out any part of a project described in this section without the aid of amounts of the Government and according to all applicable procedures and requirements if—

''(A) the State or local governmental authority applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section.

''(2) FINANCING COSTS.—

''(A) IN GENERAL.—The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the State or local governmental authority to the extent proceeds of the bonds are expended in carrying out the part.

''(B) LIMITATION ON AMOUNT OF INTEREST.—The amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing.

''(C) CERTIFICATION.—The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

''(j) AVAILABILITY OF AMOUNTS.—

''(1) IN GENERAL.—An amount made available or appropriated under section 5338(a)(3)(C)(iii), 5338(a)(3)(C)(iv), 5338(b)(2)(E), or 5338(c) for replacement, rehabilitation, and purchase of buses and related equipment and construction of bus-related facilities or for new fixed guideway capital projects shall remain available for 3 fiscal years, including the fiscal year in which the amount is made available or appropriated. Any of such amounts that are unobligated at the end of the 3-fiscal-year period may be used by the Secretary for any purpose under this section.

''(2) USE OF DEOBLIGATED AMOUNTS.—An amount available under this section that is deobligated may be used for any purpose under this section.

''(k) REPORTS ON NEW STARTS.—

''(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate a report that includes—

''(A) a proposal of allocations of amounts to be available to finance grants for new fixed guideway capital projects among applicants for these amounts;

''(B) evaluations and ratings, as required under subsections (d) and (e), for each such project that is authorized by the Federal Public Transportation Act of 2005; and

''(C) recommendations of such projects for funding based on the evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 fiscal years based on information currently available to the Secretary.

''(2) ANNUAL GAO REVIEW.—The Comptroller General shall—

''(A) conduct an annual review of—

''(i) the processes and procedures for evaluating, rating, and recommending new fixed guideway capital projects; and

''(ii) the Secretary's implementation of such processes and procedures; and

''(B) report to Congress on the results of such review by May 31 of each year.

''(l) OTHER REPORTS.—

''(1) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each year, the Secretary shall submit to the committees referred to in subsection (k)(1) a report containing a summary of the results of the studies conducted under subsection (g)(2)(C).

''(2) CONTRACTOR PERFORMANCE ASSESSMENT REPORT.—

''(A) IN GENERAL.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2005, and each year thereafter, the Secretary shall submit to the committees referred to in subsection (k)(1) a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing new fixed guideway capital projects.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall compare the cost and ridership estimates made at the time projects are approved for entrance into preliminary engineering with—

''(i) estimates made at the time projects are approved for entrance into final design;

''(ii) costs and ridership when the project commences revenue operation; and

''(iii) costs and ridership when the project has been in operation for 2 years.

''(C) CONSIDERATIONS.—In making comparisons under subparagraph (B), the Secretary shall consider factors having an impact on costs and ridership not under the control of the contractor. The Secretary shall also consider the role taken by each contractor in the development of the project.

''(3) CONTRACTOR PERFORMANCE INCENTIVE REPORT.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2005, the Secretary shall submit to the committees referred to in subsection (k)(1) a report on the suitability of allowing contractors to public transportation agencies that undertake new fixed guideway capital projects under this section to receive performance incentive awards if a project is completed for less than the original estimated cost.

''(m) ALLOCATING AMOUNTS.—

''(1) FISCAL YEAR 2005.—Of the amounts made available or appropriated for fiscal year 2005 under section 5338(a)(3)—

''(A) $1,437,829,600 shall be allocated for new fixed capital projects under subsection (d);

''(B) $1,204,684,800 shall be allocated for capital projects for fixed guideway modernization; and

''(C) $669,600,000 shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(2) FISCAL YEARS 2006 THROUGH 2009.—The amounts made available or appropriated for fiscal years 2006 through 2009 under sections 5338(b) and 5338(c) shall be allocated as follows:

''(A) MAJOR CAPITAL PROJECTS.—Of the amounts appropriated under section 5338(c) for major capital projects—

''(i) $200,000,000 for each of fiscal years 2007 through 2009 shall be allocated for projects for new fixed guideway capital projects of less than $75,000,000 in accordance with subsection (e); and

''(ii) the remainder shall be allocated for major new fixed guideway capital projects in accordance with subsection (d).

''(B) FIXED GUIDEWAY MODERNIZATION.—The amounts made available under section 5338(b)(2)(D) shall be allocated for capital projects for fixed guideway modernization.

''(C) BUSES AND BUS-RELATED EQUIPMENT AND FACILITIES.—The amounts made available under section 5338(b)(2)(E) shall be allocated for capital projects for buses and bus-related equipment and facilities.

''(3) FIXED GUIDEWAY MODERNIZATION.—The amounts made available for fixed guideway modernization under section 5338(b)(2)(D) for fiscal year 2006 and each fiscal year thereafter shall be allocated in accordance with section 5337.

''(4) PRELIMINARY ENGINEERING AND ALTERNATIVES ANALYSIS.—Not more that 8 percent of the allocation described in paragraph (1)(A) may be expended on alternatives analysis and preliminary engineering.

''(5) PRELIMINARY ENGINEERING.—Not more than 8 percent of the allocation described in paragraph (2)(A) may be expended on preliminary engineering.

''(6) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A)—

''(A) $10,400,000 shall be available in fiscal year 2005 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals;

''(B) $15,000,000 shall be available in each of fiscal years 2006 through 2009 for capital projects in Alaska and Hawaii for new fixed guideway ferry systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals; and

''(C) $5,000,000 shall be available for each of fiscal years 2006 though 2009 for payments to the Denali Commission under the terms of section 307(e) of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) for docks, waterfront development projects, and related transportation infrastructure.

''(7) BUS AND BUS FACILITY GRANTS.—The amounts made available under paragraphs (1)(C) and (2)(C) shall be allocated as follows:

''(A) FERRY BOAT SYSTEMS.—$10,000,000 shall be available in each of fiscal years 2006 through 2009 for ferry boats or ferry terminal facilities. Of such funds, the following amounts shall be set aside for each fiscal year:

''(i) $2,500,000 for the San Francisco Water Transit Authority.

''(ii) $2,500,000 for the Massachusetts Bay Transportation Authority Ferry System.

''(iii) $1,000,000 for the Camden, New Jersey Ferry System.

''(iv) $1,000,000 for the Governor's Island, New York Ferry System

''(v) $1,000,000 for the Philadelphia Penn's Landing Ferry Terminal.

''(vi) $1,000,000 for the Staten Island Ferry.

''(vii) $650,000 for the Maine State Ferry Service, Rockland.

''(viii) $350,000 for the Swans Island, Maine Ferry Service.

''(B) FUEL CELL BUS PROGRAM.—The following amounts shall be set aside for the national fuel cell bus technology development program under section 3039 of the Federal Public Transportation Act of 2005:

''(i) $11,250,000 for fiscal year 2006.

''(ii) $11,500,000 for fiscal year 2007.

''(iii) $12,750,000 for fiscal year 2008.

''(iv) $13,500,000 for fiscal year 2009.

''(C) PROJECTS NOT IN URBANIZED AREAS.—Not less than 5.5 percent shall be available in each fiscal year for projects that are not in urbanized areas.

''(D) INTERMODAL TERMINALS.—Not less than $35,000,000 shall be available in each fiscal year for intermodal terminal projects, including the intercity bus portion of such projects.

''(E) BUS TESTING.—$3,000,000 shall be available in each fiscal year for bus testing under section 5318.

''(8) BUS AND BUS FACILITY GRANT CONSIDERATIONS.—In making grants under paragraphs (1)(C) and (2)(C), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities.''.

(b) CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5309 and inserting the following:

''5309. Capital investment grants.''.

(c) PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM.—

(1) ESTABLISHMENT.—The Secretary may establish and implement a pilot program to demonstrate the advantages and disadvantages of public-private partnerships for certain new fixed guideway capital projects.

(2) LIMITATION ON THE NUMBER OF FACILITIES.—The Secretary may permit the establishment of 3 public-private partnerships for new fixed guideway capital projects.

(3) ELIGIBILITY.—To be eligible to participate in the public-private partnership program, a recipient shall submit to the Secretary an application that contains, at a minimum, the following:

(A) An identification of the new fixed guideway capital project that has not entered into a full funding grant agreement or project construction grant agreement with the Federal Transit Administration.

(B) A schedule and finance plan for the construction of and operation of the proposed project.

(C) An analysis of the costs, benefits, and efficiencies of the proposed public-private partnership agreement.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a recipient under this subsection if the Secretary determines that—

(A) State and local laws permit public-private agreements for all phases of project development, construction, and operation of the project;

(B) the recipient is unable to advance the project due to fiscal constraints; and

(C) the plan implementing the public-private partnership is justified.

(5) PROGRAM TERM.—The Secretary may approve an application of a recipient for a public-private partnership for fiscal years 2006 through 2009.

(6) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing an assessment of the costs, benefits, and efficiencies of a public-private partnership program for new fixed guideway capital projects.

(d) RESTRICTIONS ON USE OF BUS CATEGORY FUNDS FOR FIXED GUIDEWAY PROJECTS.—Funds provided to grantees under the bus and bus facility category for fixed guideway ferry and gondola projects in the Department of Transportation and Related Agencies Appropriations Acts for any of fiscal years 1998 through 2005, or accompanying committee reports, that remain available and unobligated may be used for new fixed guideway capital projects under section 5309 of title 49, United States Code. Funds made available to the same grantees for similar projects under the bus and bus facility category of section 5309 of title 49, United States Code, in fiscal years 2006 through 2009 may be used for fixed guideway projects under that section.

(e) MIAMI METRORAIL.—The Secretary shall credit funds provided by the Florida department of transportation for the extension of the Miami Metrorail System from Earlington Heights to the Miami Intermodal Center to satisfy the matching requirements of section 5309(h)(4) of title 49, United Stated Code, for the Miami North Corridor and Miami East-West Corridor projects.

(f) ADJUSTMENTS.—The adjustments made in the Federal Transit Administrator's Dear Colleague letter of April 29, 2005, to require a ''medium'' for the cost-effectiveness rating, in order for fixed guideway projects to be recommended for funding by the Federal Transit Administration, shall not apply to the following:

(1) San Francisco Muni—Third Street LRT Phase I/II.

(2) Santa Clara Valley Transit Authority—Silicon Valley Rapid Transit Corridor.

(3) Washington County, Oregon—Wilsonville to Beaverton Commuter Rail.

(4) Dulles Corridor Metrorail Project—Extension to Wiehle Avenue.

SEC. 3012. FORMULA GRANTS FOR SPECIAL NEEDS OF ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES.

(a) IN GENERAL.—Section 5310 is amended to read as follows:

''§5310. Formula grants for special needs of elderly individuals and individuals with disabilities

''(a) GENERAL AUTHORITY.—

''(1) GRANTS.—The Secretary may make grants to States and local governmental authorities under this section for public transportation capital projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities.

''(2) SUBRECIPIENTS.—A State that receives a grant under this section may allocate the amounts provided under the grant to—

''(A) a private nonprofit organization, if the public transportation service provided under paragraph (1) is unavailable, insufficient, or inappropriate; or

''(B) a governmental authority that—

''(i) is approved by the State to coordinate services for elderly individuals and individuals with disabilities; or

''(ii) certifies that there are not any nonprofit organizations readily available in the area to provide the services described under paragraph (1).

''(3) ACQUIRING PUBLIC TRANSPORTATION SERVICES.—A public transportation capital project under this section may include acquisition of public transportation services as an eligible capital expense.

''(4) ADMINISTRATIVE EXPENSES.—A State or local governmental authority may use not more than 10 percent of the amounts apportioned to the State under this section to administer, plan, and provide technical assistance for a project funded under this section.

''(b) APPORTIONMENT AND TRANSFERS.—

''(1) FORMULA.—The Secretary shall apportion amounts made available to carry out this section under a formula the Secretary administers that considers the number of elderly individuals and individuals with disabilities in each State.

''(2) TRANSFER OF FUNDS.—Any funds apportioned to a State under paragraph (1) may be transferred by the State to the apportionments made under sections 5311(c) and 5336 if such funds are only used for eligible projects selected under this section.

''(c) GOVERNMENT'S SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—

''(A) IN GENERAL.—A grant for a capital project under this section shall be for 80 percent of the net capital costs of the project, as determined by the Secretary.

''(B) EXCEPTION.—A State described in section 120(b) of title 23 shall receive an increased Government share in accordance with the formula under that section.

''(2) REMAINDER.—The remainder of the net project costs—

''(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital;

''(B) may be derived from amounts appropriated or otherwise made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation; and

''(C) notwithstanding subparagraph (B), may be derived from amounts made available to carry out the Federal lands highway program established by section 204 of title 23.

''(3) USE OF CERTAIN FUNDS.—For purposes of paragraph (2)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(d) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant under this section shall be subject to all requirements of a grant under section 5307 to the extent the Secretary determines appropriate.

''(2) CERTIFICATION REQUIREMENTS.—

''(A) FUND TRANSFERS.—A grant recipient under this section that transfers funds to a project funded under section 5336 in accordance with subsection (b)(2) shall certify that the project for which the funds are requested has been coordinated with private nonprofit providers of services under this section.

''(B) PROJECT SELECTION AND PLAN DEVELOPMENT.—Beginning in fiscal year 2007, each grant recipient under this section shall certify that—

''(i) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

''(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

''(C) ALLOCATIONS TO SUBRECIPIENTS.—Each grant recipient under this section shall certify that allocations of the grant to subrecipients, if any, are distributed on a fair and equitable basis.

''(e) STATE PROGRAM OF PROJECTS.—

''(1) IN GENERAL.—Amounts made available to carry out this section may be used for transportation projects to assist in providing transportation services for elderly individuals and individuals with disabilities that are included in a State program of projects.

''(2) SUBMISSION AND APPROVAL.—A State shall submit to the Secretary annually for approval a program of projects. The program shall contain an assurance that the program provides for maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other Government sources.

''(f) LEASING VEHICLES.—Vehicles acquired under this section may be leased to local governmental authorities to improve transportation services designed to meet the special needs of elderly individuals and individuals with disabilities.

''(g) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.—Public transportation service providers receiving assistance under this section or section 5311(c) may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

''(h) TRANSFERS OF FACILITIES AND EQUIPMENT.—With the consent of the recipient in possession of a facility or equipment acquired with a grant under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.''.

(b) ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES PILOT PROGRAM.—

(1) IN GENERAL.—In fiscal year 2006, the Secretary shall establish a pilot program that will allow Wisconsin, Alaska, Minnesota, Oregon, and 3 other States selected by the Secretary to use not more than 33 percent of the funds apportioned to each State to carry out section 5310 of title 49, United States Code, for operating costs associated with public transportation projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities under such section. The Secretary may base the selection of participating States on a State's exemplary coordination of public transit-human services transportation. The Secretary may require participants to collect data necessary to support the report to Congress required by paragraph (7).

(2) PLANNING COORDINATION.—Recipients of funds made available consistent with this subsection shall certify that—

(A) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

(B) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

(3) GOVERNMENT'S SHARE OF COSTS.—Operating assistance under this subsection may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary. The credit for any non-Federal share provided under this subsection shall not reduce nor replace State funds required to match Federal funds for formula grants for the special needs of elderly individuals and individuals with disabilities program authorized under section 5310 of title 49, United States Code.

(4) REMAINDER.—The remainder of the net project costs—

(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

(B) may be derived from amounts appropriated to or made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation.

(5) USE OF CERTAIN FUNDS.—For purposes of paragraph (4)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

(6) ELIGIBLE ACTIVITIES.—Projects eligible under the pilot program may include the collection of data necessary to support the report to Congress required by paragraph (7).

(7) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the pilot program, which may include—

(A) the extent to which funds were used to subsidize existing paratransit service provided in compliance with the Americans with Disabilities Act of 1990;

(B) whether States participating in the pilot program use the funds to provide services to persons with disabilities that exceed those services required by the Americans with Disabilities Act of 1990 differently than States not in the pilot program;

(C) whether States participating in this pilot program use the funds to provide services to individuals with disabilities that exceed those services required by the Americans with Disabilities Act of 1990 to the detriment of other eligible projects;

(D) the percentage of funds used to assist elderly individuals;

(E) the percentage of funds used to assist individuals with disabilities;

(F) the extent to which States participating in this pilot program serve a wider range of elderly, low income, and persons with disabilities populations;

(G) whether the pilot program improves services to elderly individuals and individuals with disabilities;

(H) the extent to which States participating in the pilot program were able to expand the range of transportation alternatives available to elderly individuals and individuals with disabilities; and

(I) whether the pilot program facilitates or discourages coordination with or integration of other funding sources.

(8) SUNSET.—This subsection shall cease to be effective on September 30, 2009.

(c) CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5310 and inserting the following:

''5310. Formula grants for special needs of elderly individuals and individuals with disabilities.''.

SEC. 3013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

(a) DEFINITIONS.—Section 5311(a) is amended to read as follows:

''(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) RECIPIENT.—The term 'recipient' means a State or Indian tribe that receives a Federal transit program grant directly from the Federal Government.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or an operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.''.

(b) GENERAL AUTHORITY.—Section 5311(b) is amended to read as follows:

''(b) GENERAL AUTHORITY.—

''(1) GRANTS AUTHORIZED.—Except as provided by paragraph (2), the Secretary may award grants under this section to recipients located in areas other than urbanized areas for—

''(A) public transportation capital projects;

''(B) operating costs of equipment and facilities for use in public transportation; and

''(C) the acquisition of public transportation services, including service agreements with private providers of public transportation services.

''(2) STATE PROGRAM.—

''(A) IN GENERAL.—A project eligible for a grant under this section shall be included in a State program for public transportation service projects, including agreements with private providers of public transportation service.

''(B) SUBMISSION TO SECRETARY.—Each State shall submit to the Secretary annually the program described in subparagraph (A).

''(C) APPROVAL.—The Secretary may not approve the program unless the Secretary determines that—

''(i) the program provides a fair distribution of amounts in the State, including Indian reservations; and

''(ii) the program provides the maximum feasible coordination of public transportation service assisted under this section with transportation service assisted by other Federal sources.

''(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

''(A) IN GENERAL.—The Secretary shall carry out a rural transportation assistance program in other than urbanized areas.

''(B) GRANTS AND CONTRACTS.—In carrying out this paragraph, the Secretary may use not more than 2 percent of the amount made available to carry out this section to make grants and contracts for transportation research, technical assistance, training, and related support services in other than urbanized areas.

''(C) PROJECTS OF A NATIONAL SCOPE.—Not more than 15 percent of the amounts available under subparagraph (B) may be used by the Secretary to carry out projects of a national scope, with the remaining balance provided to the States.

''(4) DATA COLLECTION.—Each recipient under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

''(A) total annual revenue;

''(B) sources of revenue;

''(C) total annual operating costs;

''(D) total annual capital costs;

''(E) fleet size and type, and related facilities;

''(F) revenue vehicle miles; and

''(G) ridership.''.

(c) APPORTIONMENTS.—Section 5311(c) is amended to read as follows:

''(c) APPORTIONMENTS.—

''(1) PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(G) of section 5338, the following amounts shall be apportioned for grants to Indian tribes for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

''(A) $8,000,000 for fiscal year 2006.

''(B) $10,000,000 for fiscal year 2007.

''(C) $12,000,000 for fiscal year 2008.

''(D) $15,000,000 for fiscal year 2009.

''(2) REMAINING AMOUNTS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(G) of section 5338 that are not apportioned under paragraph (1)—

''(A) 20 percent shall be apportioned to the States in accordance with paragraph (3); and

''(B) 80 percent shall be apportioned to the States in accordance with paragraph (4).

''(3) APPORTIONMENTS BASED ON LAND AREA IN NONURBANIZED AREAS.—

''(A) IN GENERAL.—Subject to subparagraph (B), each State shall receive an amount that is equal to the amount apportioned under paragraph (2)(A) multiplied by the ratio of the land area in areas other than urbanized areas in that State and divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(B) MAXIMUM APPORTIONMENT.—No State shall receive more than 5 percent of the amount apportioned under this paragraph.

''(4) APPORTIONMENTS BASED ON POPULATION IN NONURBANIZED AREAS.—Each State shall receive an amount equal to the amount apportioned under paragraph (2)(B) multiplied by the ratio of the population of areas other than urbanized areas in that State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.''.

(d) USE FOR ADMINISTRATION, PLANNING, AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—

(1) in the subsection heading by inserting '', PLANNING,'' after ''ADMINISTRATION'';

(2) by striking ''(1) The Secretary'' and inserting ''The Secretary'';

(3) by striking paragraph (2); and

(4) by striking ''recipient'' and inserting ''subrecipient''.

(e) INTERCITY BUS TRANSPORTATION.—Section 5311(f) is amended—

(1) in paragraph (1)—

(A) by striking ''(1) A State'' and inserting the following:

''(1) IN GENERAL.—A State'';

(B) by striking ''after September 30, 1993,''; and

(C) by moving subparagraphs (A) through (D) 2 ems to the right; and

(2) in paragraph (2)—

(A) by striking ''(2) A State'' and inserting the following:

''(2) CERTIFICATION.—A State''; and

(B) by striking ''Secretary of Transportation'' and inserting ''Secretary, after consultation with affected intercity bus service providers,''.

(f) GOVERNMENT SHARE OF COSTS.—Section 5311(g) is amended to read as follows:

''(g) GOVERNMENT SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—

''(A) IN GENERAL.—Except as provided by subparagraph (B), a grant awarded under this section for any purpose other than operating assistance shall be for 80 percent of the net capital costs of the project, as determined by the Secretary.

''(B) EXCEPTION.—A State described in section 120(b) of title 23 shall receive a Government share of the net capital costs in accordance with the formula under that section.

''(2) OPERATING ASSISTANCE.—

''(A) IN GENERAL.—Except as provided by subparagraph (B), a grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

''(B) EXCEPTION.—A State described in section 120(b) of title 23 shall receive a Government share of the net operating costs equal to 62.5 percent of the Government share provided for under paragraph (1)(B).

''(3) REMAINDER.—The remainder of net project costs—

''(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital;

''(B) may be derived from amounts appropriated or otherwise made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation; and

''(C) notwithstanding subparagraph (B), may be derived from amounts made available to carry out the Federal lands highway program established by section 204 of title 23.

''(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(5) LIMITATION ON OPERATING ASSISTANCE.—A State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.''.

(g) RELATIONSHIP TO OTHER LAWS.—Section 5311 is amended—

(1) by striking subsection (h); and

(2) by redesignating subsections (i) and (j) as subsections (h) and (i), respectively.

(h) WAIVER CONDITION.—Section 5311(j)(1) is amended by striking ''but the Secretary of Labor may waive the application of section 5333(b)'' and inserting ''if the Secretary of Labor utilizes a special warranty that provides a fair and equitable arrangement to protect the interests of employees''.

(i) CORRECTION TO CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5311 and inserting the following:

''5311. Formula grants for other than urbanized areas.''.

SEC. 3014. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

(a) IN GENERAL.—Section 5312(a) is amended to read as follows:

''(a) RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.—

''(1) IN GENERAL.—The Secretary may make grants, contracts, cooperative agreements, and other agreements (including agreements with departments, agencies, and instrumentalities of the United States Government) for research, development, demonstration, and deployment projects, and evaluation of technology of national significance to public transportation, that the Secretary determines will improve public transportation service or help public transportation service meet the total transportation needs at a minimum cost.

''(2) INFORMATION.—The Secretary may request and receive appropriate information from any source.

''(3) SAVINGS PROVISION.—This subsection does not limit the authority of the Secretary under any other law.''.

(b) JOINT PARTNERSHIP PROGRAM FOR DEPLOYMENT OF INNOVATION.—Section 5312 is amended by striking subsections (b) and (c) and redesignating subsections (d) and (e) as subsections (b) and (c), respectively.

(c) INTERNATIONAL MASS TRANSPORTATION PROGRAM.—Section 5312(c)(2) (as redesignated by subsection (b) of this section) is amended by striking ''public and private'' and inserting ''public or private''.

(d) FUNDING.—Section 5312(c)(3) (as redesignated by subsection (b) of this section) is amended by striking ''shall be accounted for separately within the Mass Transit Account of the Highway Trust Fund and''.

(e) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—Section 5312 is amended by striking the section heading and inserting the following:

''§ 5312. Research, development, demonstration, and deployment projects''.

(2) CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5312 and inserting the following:

''5312. Research, development, demonstration, and deployment projects.''.

SEC. 3015. TRANSIT COOPERATIVE RESEARCH PROGRAM.

(a) IN GENERAL.—Section 5313 is amended—

(1) by striking subsection (b);

(2) in subsection (a)—

(A) in paragraph (1) by striking ''(1) The amounts made available under paragraphs (1) and (2)(C)(ii) of section 5338(c) of this title'' and inserting ''The amounts made available under subsections (a)(5)(C)(iii) and (d)(1) of section 5338''; and

(B) in paragraph (2) by striking ''(2) The Secretary'' and inserting the following:

''(b) FEDERAL ASSISTANCE.—The Secretary''; and

(3) by striking subsection (c) and inserting the following:

''(c) GOVERNMENT'S SHARE.—If there would be a clear and direct financial benefit to an entity under a grant or contract financed under this section, the Secretary shall establish a Government share consistent with that benefit.''.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—Section 5313 is amended by striking the section heading and inserting the following:

''§ 5313. Transit cooperative research program''.

(2) CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5313 and inserting the following:

''5313. Transit cooperative research program.''.

SEC. 3016. NATIONAL RESEARCH AND TECHNOLOGY PROGRAMS.

(a) IN GENERAL.—Section 5314 is amended—

(1) by striking the section heading and inserting the following:

''§ 5314. National research programs'';

(2) in subsection (a)(1)—

(A) by striking ''subsections (d) and (h)(7) of section 5338 of this title'' and inserting ''section 5338(d)'';

(B) by striking ''and contracts'' and inserting '', contracts, cooperative agreements, or other agreements'';

(C) by striking ''5303–5306,''; and

(D) by striking ''5317,'';

(3) in subsection (a)(2) by striking ''Of the amounts'' and all that follows through ''$3,000,000 to'' and inserting ''The Secretary shall'';

(4) by striking subsection (a)(4)(B);

(5) by redesignating subsection (a)(4)(C) as subsection (a)(4)(B);

(6) by adding at the end of subsection (a) the following:

''(6) MEDICAL TRANSPORTATION DEMONSTRATION GRANTS.—

''(A) GRANTS AUTHORIZED.—The Secretary may award demonstration grants, from funds made available under paragraph (1), to eligible entities to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

''(B) ELIGIBLE ENTITIES.—An entity shall be eligible to receive a grant under this paragraph if the entity—

''(i) meets the conditions described in section 501(c)(3) of the Internal Revenue Code of 1986; or

''(ii) is an agency of a State or unit of local government.

''(C) USE OF FUNDS.—Grant funds received under this paragraph may be used to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

''(D) APPLICATION.—

''(i) IN GENERAL.—Each eligible entity desiring a grant under this paragraph shall submit an application to the Secretary at such time, at such place, and containing such information as the Secretary may reasonably require.

''(ii) SELECTION OF GRANTEES.—In awarding grants under this paragraph, the Secretary shall give preference to eligible entities from communities with—

''(I) high incidence of renal disease; and

''(II) limited access to dialysis facilities.

''(E) RULEMAKING.—The Secretary shall issue regulations to implement and administer the grant program established under this paragraph.

''(F) REPORT.—The Secretary shall submit a report on the results of the demonstration projects funded under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.''.

(7) in subsection (b) by striking ''or contract'' and all that follows through ''section,'' and inserting '', contract, cooperative agreement, or other agreement under subsection (a) or section 5312,''; and

(b) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION.—Section 5314 is amended by adding at the end the following:

''(c) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION.—

''(1) ESTABLISHMENT.—The Secretary shall award grants to a national not-for-profit organization for the establishment and maintenance of a national technical assistance center.

''(2) ELIGIBILITY.—An organization shall be eligible to receive a grant under paragraph (1) if the organization—

''(A) focuses significantly on serving the needs of the elderly;

''(B) has demonstrated knowledge and expertise in senior transportation policy and planning issues;

''(C) has affiliates in a majority of the States;

''(D) has the capacity to convene local groups to consult on operation and development of senior transportation programs; and

''(E) has established close working relationships with the Federal Transit Administration and the Administration on Aging.

''(3) USE OF FUNDS.—The national technical assistance center established under this section shall—

''(A) gather best practices from throughout the Nation and provide such practices to local communities that are implementing senior transportation programs;

''(B) work with teams from local communities to identify how the communities are successfully meeting the transportation needs of senior citizens and any gaps in services in order to create a plan for an integrated senior transportation program;

''(C) provide resources on ways to pay for senior transportation services;

''(D) create a web site to publicize and circulate information on senior transportation programs;

''(E) establish a clearinghouse for print, video, and audio resources on senior mobility; and

''(F) administer the demonstration grant program established under paragraph (4).

''(4) GRANTS AUTHORIZED.—

''(A) IN GENERAL.—The national technical assistance center established under this section, in consultation with the Federal Transit Administration, shall award senior transportation demonstration grants to—

''(i) local transportation organizations;

''(ii) State agencies;

''(iii) units of local government; and

''(iv) nonprofit organizations.

''(B) USE OF FUNDS.—Grant funds received under this paragraph may be used to—

''(i) evaluate the state of transportation services for senior citizens;

''(ii) recognize barriers to mobility that senior citizens encounter in their communities;

''(iii) establish partnerships and promote coordination among community stakeholders, including public, not-for-profit, and for-profit providers of transportation services for senior citizens;

''(iv) identify future transportation needs of senior citizens within local communities; and

''(v) establish strategies to meet the unique needs of healthy and frail senior citizens.

''(C) SELECTION OF GRANTEES.—The Secretary shall select grantees under this paragraph based on a fair representation of various geographical locations throughout the United States.''.

(c) ALTERNATIVE FUELS STUDY.—

(1) STUDY.—The Secretary shall conduct a study of the actions necessary to facilitate the purchase of increased volumes of alternative fuels (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) for use in public transit vehicles.

(2) SCOPE OF STUDY.—The study conducted under this subsection shall focus on the incentives necessary to increase the use of alternative fuels in public transit vehicles, including buses, fixed guideway vehicles, and ferries.

(3) CONTENTS.—The study shall consider—

(A) the environmental benefits of increased use of alternative fuels in transit vehicles;

(B) existing opportunities available to transit system operators that encourage the purchase of alternative fuels for transit vehicle operation;

(C) existing barriers to transit system operators that discourage the purchase of alternative fuels for transit vehicle operation, including situations where alternative fuels that do not require capital improvements to transit vehicles are disadvantaged over fuels that do require such improvements; and

(D) the necessary levels and type of support necessary to encourage additional use of alternative fuels for transit vehicle operation.

(4) RECOMMENDATIONS.—The study shall recommend regulatory and legislative alternatives that will result in the increased use of alternative fuels in transit vehicles.

(5) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report containing the results of the study completed under this subsection.

(d) CONFORMING AMENDMENT.—The analysis for chapter 53 is amended by striking the item relating to section 5314 and inserting the following:

''5314. National research programs.''.

SEC. 3017. NATIONAL TRANSIT INSTITUTE.

(a) ESTABLISHMENT AND DUTIES.—Section 5315 is amended by striking subsections (a) and (b) and inserting the following:

''(a) ESTABLISHMENT.—The Secretary shall award grants to Rutgers University to conduct a national transit institute.

''(b) DUTIES.—

''(1) IN GENERAL.—In cooperation with the Federal Transit Administration, State transportation departments, public transportation authorities, and national and international entities, the institute established under subsection (a) shall develop and conduct training and educational programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid public transportation work.

''(2) TRAINING AND EDUCATIONAL PROGRAMS.—The training and educational programs developed under paragraph (1) may include courses in recent developments, techniques, and procedures related to—

''(A) intermodal and public transportation planning;

''(B) management;

''(C) environmental factors;

''(D) acquisition and joint use rights of way;

''(E) engineering and architectural design;

''(F) procurement strategies for public transportation systems;

''(G) turnkey approaches to delivering public transportation systems;

''(H) new technologies;

''(I) emission reduction technologies;

''(J) ways to make public transportation accessible to individuals with disabilities;

''(K) construction, construction management, insurance, and risk management;

''(L) maintenance;

''(M) contract administration;

''(N) inspection;

''(O) innovative finance;

''(P) workplace safety; and

''(Q) public transportation security.''.

(b) AVAILABILITY OF AMOUNTS.—Section 5315(d) is amended by striking ''mass'' each place it appears.

SEC. 3018. JOB ACCESS AND REVERSE COMMUTE FORMULA GRANTS.

(a) IN GENERAL.—Chapter 53 is amended by inserting after section 5315 the following:

''§5316. Job access and reverse commute formula grants

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

''(1) ACCESS TO JOBS PROJECT.—The term 'access to jobs project' means a project relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including—

''(A) transportation projects to finance planning, capital, and operating costs of providing access to jobs under this chapter;

''(B) promoting public transportation by low-income workers, including the use of public transportation by workers with nontraditional work schedules;

''(C) promoting the use of transit vouchers for welfare recipients and eligible low-income individuals; and

''(D) promoting the use of employer-provided transportation, including the transit pass benefit program under section 132 of the Internal Revenue Code of 1986.

''(2) ELIGIBLE LOW-INCOME INDIVIDUAL.—The term 'eligible low-income individual' means an individual whose family income is at or below 150 percent of the poverty line (as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section) for a family of the size involved.

''(3) RECIPIENT.—The term 'recipient' means a designated recipient (as defined in section 5307(a)(2)) and a State that receives a grant under this section directly.

''(4) REVERSE COMMUTE PROJECT.—The term 'reverse commute project' means a public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities, including any projects to—

''(A) subsidize the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urbanized areas and other than urbanized areas to suburban workplaces;

''(B) subsidize the purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace; or

''(C) otherwise facilitate the provision of public transportation services to suburban employment opportunities.

''(5) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, nonprofit organization, or operator of public transportation services that receives a grant under this section indirectly through a recipient.

''(6) WELFARE RECIPIENT.—The term 'welfare recipient' means an individual who has received assistance under a State or tribal program funded under part A of title IV of the Social Security Act at any time during the 3-year period before the date on which the applicant applies for a grant under this section.

''(b) GENERAL AUTHORITY.—

''(1) GRANTS.—The Secretary may make grants under this section to a recipient for access to jobs and reverse commute projects carried out by the recipient or a subrecipient.

''(2) ADMINISTRATIVE EXPENSES.—A recipient may use not more than 10 percent of the amounts apportioned to the recipient under this section to administer, plan, and provide technical assistance for a project funded under this section.

''(c) APPORTIONMENTS.—

''(1) FORMULA.—The Secretary shall apportion amounts made available for a fiscal year to carry out this section as follows:

''(A) 60 percent of the funds shall be apportioned among designated recipients (as defined in section 5307(a)(2)) for urbanized areas with a population of 200,000 or more in the ratio that—

''(i) the number of eligible low-income individuals and welfare recipients in each such urbanized area; bears to

''(ii) the number of eligible low-income individuals and welfare recipients in all such urbanized areas.

''(B) 20 percent of the funds shall be apportioned among the States in the ratio that—

''(i) the number of eligible low-income individuals and welfare recipients in urbanized areas with a population of less than 200,000 in each State; bears to

''(ii) the number of eligible low-income individuals and welfare recipients in urbanized areas with a population of less than 200,000 in all States.

''(C) 20 percent of the funds shall be apportioned among the States in the ratio that—

''(i) the number of eligible low-income individuals and welfare recipients in other than urbanized areas in each State; bears to

''(ii) the number of eligible low-income individuals and welfare recipients in other than urbanized areas in all States.

''(2) USE OF APPORTIONED FUNDS.—Except as provided in paragraph (3)—

''(A) funds apportioned under paragraph (1)(A) shall be used for projects serving urbanized areas with a population of 200,000 or more;

''(B) funds apportioned under paragraph (1)(B) shall be used for projects serving urbanized areas with a population of less than 200,000; and

''(C) funds apportioned under paragraph (1)(C) shall be used for projects serving other than urbanized areas.

''(3) EXCEPTIONS.—A State may use funds apportioned under paragraphs (1)(B) and (1)(C)—

''(A) for projects serving areas other than the area specified in paragraph (2)(B) or (2)(C), as the case may be, if the Governor of the State certifies that all of the objectives of this section are being met in the specified area; or

''(B) for projects anywhere in the State if the State has established a statewide program for meeting the objectives of this section.

''(d) COMPETITIVE PROCESS FOR GRANTS TO SUBRECIPIENTS.—

''(1) AREAWIDE SOLICITATIONS.—A recipient of funds apportioned under subsection (c)(1)(A) shall conduct, in cooperation with the appropriate metropolitan planning organization, an areawide solicitation for applications for grants to the recipient and subrecipients under this section.

''(2) STATEWIDE SOLICITATION.—A recipient of funds apportioned under subsection (c)(1)(B) or (c)(1)(C) shall conduct a statewide solicitation for applications for grants to the recipient and subrecipients under this section.

''(3) APPLICATION.—Recipients and subrecipients seeking to receive a grant from funds apportioned under subsection (c) shall submit to the recipient an application in the form and in accordance with such requirements as the recipient shall establish.

''(4) GRANT AWARDS.—The recipient shall award grants under paragraphs (1) and (2) on a competitive basis.

''(e) TRANSFERS.—

''(1) IN GENERAL.—A State may transfer any funds apportioned to it under subsection (c)(1)(B) or (c)(1)(C), or both, to an apportionment under section 5311(c) or 5336, or both.

''(2) LIMITED TO ELIGIBLE PROJECTS.—Any apportionment transferred under this subsection shall be made available only for eligible job access and reverse commute projects as described in this section.

''(3) CONSULTATION.—A State may make a transfer of an amount under this subsection only after consulting with responsible local officials and publicly owned operators of public transportation in each area for which the amount originally was awarded under subsection (d)(4).

''(f) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant under this section shall be subject to the requirements of section 5307.

''(2) FAIR AND EQUITABLE DISTRIBUTION.—A recipient of a grant under this section shall certify to the Secretary that allocations of the grant to subrecipients are distributed on a fair and equitable basis.

''(g) COORDINATION.—

''(1) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

''(2) WITH NONPROFIT PROVIDERS.—A State that transfers funds to an apportionment under section 5336 pursuant to subsection (e) shall certify to the Secretary that any project for which the funds are requested under this section has been coordinated with nonprofit providers of services.

''(3) PROJECT SELECTION AND PLANNING.—A recipient of funds under this section shall certify to the Secretary that—

''(A) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

''(B) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

''(h) GOVERNMENT'S SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(2) OPERATING ASSISTANCE.—A grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

''(3) REMAINDER.—The remainder of the net project costs—

''(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

''(B) may be derived from amounts appropriated to or made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation.

''(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(5) LIMITATION ON OPERATING ASSISTANCE.—A recipient carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.

''(i) PROGRAM EVALUATION.—

''(1) COMPTROLLER GENERAL.—Beginning one year after the date of enactment of the Federal Public Transportation Act of 2005, and every 2 years thereafter, the Comptroller General shall—

''(A) conduct a study to evaluate the grant program authorized by this section; and

''(B) transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the results of the study under subparagraph (A).

''(2) DEPARTMENT OF TRANSPORTATION.—Not later than 3 years after the date of enactment of Federal Public Transportation Act of 2005, the Secretary shall—

''(A) conduct a study to evaluate the effectiveness of the grant program authorized by this section and the effectiveness of recipients making grants to subrecipients under this section; and

''(B) transmit to the committees referred to in paragraph (1)(B) a report describing the results of the study under subparagraph (A).''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 53 is amended by inserting after the item relating to section 5315 the following:

''5316. Job access and reverse commute formula grants.''.

(c) REPEAL.—Effective October 1, 2005, section 3037 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note; 112 Stat. 387) is repealed.

SEC. 3019. NEW FREEDOM PROGRAM.

(a) IN GENERAL.—Chapter 53 is amended by inserting after section 5316 the following:

''§ 5317. New freedom program

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

''(1) RECIPIENT.—The term 'recipient' means a designated recipient (as defined in section 5307(a)(2)) and a State that receives a grant under this section directly.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, nonprofit organization, or operator of public transportation services that receives a grant under this section indirectly through a recipient.

''(b) GENERAL AUTHORITY.—

''(1) GRANTS.—The Secretary may make grants under this section to a recipient for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

''(2) ADMINISTRATIVE EXPENSES.—A recipient may use not more than 10 percent of the amounts apportioned to the recipient under this section to administer, plan, and provide technical assistance for a project funded under this section.

''(c) APPORTIONMENTS.—

''(1) FORMULA.—The Secretary shall apportion amounts made available to carry out this section as follows:

''(A) 60 percent of the funds shall be apportioned among designated recipients (as defined in section 5307(a)(2)) for urbanized areas with a population of 200,000 or more in the ratio that—

''(i) the number of individuals with disabilities in each such urbanized area; bears to

''(ii) the number of individuals with disabilities in all such urbanized areas.

''(B) 20 percent of the funds shall be apportioned among the States in the ratio that—

''(i) the number of individuals with disabilities in urbanized areas with a population of less than 200,000 in each State; bears to

''(ii) the number of individuals with disabilities in urbanized areas with a population of less than 200,000 in all States.

''(C) 20 percent of the funds shall be apportioned among the States in the ratio that—

''(i) the number of individuals with disabilities in other than urbanized areas in each State; bears to

''(ii) the number of individuals with disabilities in other than urbanized areas in all States.

''(2) USE OF APPORTIONED FUNDS.—Funds apportioned under paragraph (1) shall be used for projects as follows:

''(A) Funds apportioned under paragraph (1)(A) shall be used for projects serving urbanized areas with a population of 200,000 or more.

''(B) Funds apportioned under paragraph (1)(B) shall be used for projects serving urbanized areas with a population of less than 200,000.

''(C) Funds apportioned under paragraph (1)(C) shall be used for projects serving other than urbanized areas.

''(3) TRANSFERS.—

''(A) IN GENERAL.—A State may transfer any funds apportioned to it under paragraph (1)(B) or (1)(C), or both, to an apportionment under section 5311(c) or 5336, or both.

''(B) LIMITED TO ELIGIBLE PROJECTS.—Any funds transferred pursuant to this paragraph shall be made available only for eligible projects selected under this section.

''(C) CONSULTATION.—A State may make a transfer of an amount under this subsection only after consulting with responsible local officials and publicly owned operators of public transportation in each area for which the amount originally was awarded under subsection (d)(4).

''(d) COMPETITIVE PROCESS FOR GRANTS TO SUBRECIPIENTS.—

''(1) AREAWIDE SOLICITATIONS.—A recipient of funds apportioned under subsection (c)(1)(A) shall conduct, in cooperation with the appropriate metropolitan planning organization, an areawide solicitation for applications for grants to the recipient and subrecipients under this section.

''(2) STATEWIDE SOLICITATION.—A recipient of funds apportioned under subsection (c)(1)(B) or (c)(1)(C) shall conduct a statewide solicitation for applications for grants to the recipient and subrecipients under this section.

''(3) APPLICATION.—Recipients and subrecipients seeking to receive a grant from funds apportioned under subsection (c) shall submit to the recipient an application in the form and in accordance with such requirements as the recipient shall establish.

''(4) GRANT AWARDS.—The recipient shall award grants under paragraphs (1) and (2) on a competitive basis.

''(e) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant under this section shall be subject to all the requirements of section 5310 to the extent the Secretary considers appropriate.

''(2) FAIR AND EQUITABLE DISTRIBUTION.—A recipient of a grant under this section shall certify that allocations of the grant to subrecipients are distributed on a fair and equitable basis.

''(f) COORDINATION.—

''(1) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

''(2) WITH NONPROFIT PROVIDERS.—A recipient that transfers funds to an apportionment under section 5336 pursuant to subsection (c)(2) shall certify that the project for which the funds are requested under this section has been coordinated with nonprofit providers of services.

''(3) PROJECT SELECTION AND PLANNING.—Beginning in fiscal year 2007, a recipient of funds under this section shall certify that—

''(A) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

''(B) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

''(g) GOVERNMENT'S SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

''(2) OPERATING ASSISTANCE.—A grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

''(3) REMAINDER.—The remainder of the net project costs—

''(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

''(B) may be derived from amounts appropriated to or made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation.

''(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(5) LIMITATION ON OPERATING ASSISTANCE.—A recipient carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 53 is amended by inserting after the item relating to section 5316 the following:

''5317. New freedom program.''.

SEC. 3020. BUS TESTING FACILITY.

(a) FACILITY.—Section 5318(a) is amended to read as follows:

''(a) FACILITY.—The Secretary shall maintain one facility for testing a new bus model for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.''.

(b) AVAILABILITY OF AMOUNTS TO PAY FOR TESTING.—Section 5318(d) is amended by striking ''under section 5309(m)(1)(C) of this title'' and inserting ''to carry out this section''.

(c) ACQUIRING NEW BUS MODELS.—Section 5318(e) is amended to read as follows:

''(e) ACQUIRING NEW BUS MODELS.—Amounts appropriated or made available under this chapter may be obligated or expended to acquire a new bus model only if a bus of that model has been tested at the facility maintained by the Secretary under subsection (a).''.

SEC. 3021. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS.

(a) IN GENERAL.—Chapter 53 is amended by striking section 5320 and inserting the following:

''§ 5320. Alternative transportation in parks and public lands

''(a) IN GENERAL.—

''(1) AUTHORIZATION.—

''(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may award a grant or enter into a contract, cooperative agreement, interagency agreement, intraagency agreement, or other agreement to carry out a qualified project under this section to enhance the protection of national parks and public lands and increase the enjoyment of those visiting the parks and public lands by—

''(i) ensuring access to all, including persons with disabilities;

''(ii) improving conservation and park and public land opportunities in urban areas through partnering with State and local governments; and

''(iii) improving park and public land transportation infrastructure.

''(B) CONSULTATION WITH OTHER AGENCIES.—To the extent that projects are proposed or funded in eligible areas that are not within the jurisdiction of the Department of the Interior, the Secretary of the Interior shall consult with the heads of the relevant Federal land management agencies in carrying out the responsibilities under this section.

''(2) USE OF FUNDS.—A grant, cooperative agreement, interagency agreement, intraagency agreement, or other agreement for a qualified project under this section shall be available to finance the leasing of equipment and facilities for use in public transportation, subject to any regulation that the Secretary may prescribe limiting the grant or agreement to leasing arrangements that are more cost-effective than purchase or construction.

''(3) ALTERNATIVE TRANSPORTATION FACILITIES AND SERVICES.—Projects receiving assistance under this section shall provide alternative transportation facilities and services that complement and enhance existing transportation services in national parks and public lands in a manner that is consistent with Department of Interior and other public land management policies regarding private automobile access to and in such parks and lands.

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

''(1) ELIGIBLE AREA.—The term 'eligible area' means any federally owned or managed park, refuge, or recreational area that is open to the general public, including—

''(A) a unit of the National Park System;

''(B) a unit of the National Wildlife Refuge System;

''(C) a recreational area managed by the Bureau of Land Management;

''(D) a recreation area managed by the Bureau of Reclamation; and

''(E) a unit of the National Forest System.

''(2) FEDERAL LAND MANAGEMENT AGENCY.—The term 'Federal land management agency' means a Federal agency that manages an eligible area.

''(3) ALTERNATIVE TRANSPORTATION.—The term 'alternative transportation' means transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service. Such term also includes a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft).

''(4) QUALIFIED PARTICIPANT.—The term 'qualified participant' means—

''(A) a Federal land management agency; or

''(B) a State, tribal, or local governmental authority with jurisdiction over land in the vicinity of an eligible area acting with the consent of the Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or nongovernmental participant.

''(5) QUALIFIED PROJECT.—The term 'qualified project' means a planning or capital project in or in the vicinity of an eligible area that—

''(A) is an activity described in section 5302(a)(1)(A), 5303, 5304, 5305, or 5309(b);

''(B) involves—

''(i) the purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on the date of enactment of the Federal Public Transportation Act of 2005 with clean fuel vehicles; or

''(ii) the deployment of alternative transportation vehicles that introduce innovative technologies or methods;

''(C) relates to the capital costs of coordinating the Federal land management agency public transportation systems with other public transportation systems;

''(D) provides a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft);

''(E) provides waterborne access within or in the vicinity of an eligible area, as appropriate to and consistent with this section; or

''(F) is any other alternative transportation project that—

''(i) enhances the environment;

''(ii) prevents or mitigates an adverse impact on a natural resource;

''(iii) improves Federal land management agency resource management;

''(iv) improves visitor mobility and accessibility and the visitor experience;

''(v) reduces congestion and pollution (including noise pollution and visual pollution); or

''(vi) conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

''(c) FEDERAL AGENCY COOPERATIVE ARRANGEMENTS.—The Secretary shall develop cooperative arrangements with the Secretary of the Interior that provide for—

''(1) technical assistance in alternative transportation;

''(2) interagency and multidisciplinary teams to develop Federal land management agency alternative transportation policy, procedures, and coordination; and

''(3) the development of procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of the program of projects in accordance with this section.

''(d) LIMITATION ON USE OF AVAILABLE AMOUNTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may use not more than 10 percent of the amount made available for a fiscal year under section 5338(b)(2)(J) to carry out planning, research, and technical assistance under this section, including the development of technology appropriate for use in a qualified project.

''(2) ADDITIONAL AMOUNTS.—Amounts made available under this subsection are in addition to amounts otherwise available to the Secretary to carry out planning, research, and technical assistance under this chapter or any other provision of law.

''(3) MAXIMUM AMOUNT.—No qualified project shall receive more than 25 percent of the total amount made available to carry out this section under section 5338(b)(2)(J) for any fiscal year.

''(e) PLANNING PROCESS.—In undertaking a qualified project under this section—

''(1) if the qualified participant is a Federal land management agency—

''(A) the Secretary, in cooperation with the Secretary of the Interior, shall develop transportation planning procedures that are consistent with—

''(i) the metropolitan planning provisions under section 5303;

''(ii) the statewide planning provisions under section 5304; and

''(iii) the public participation requirements under section 5307(d); and

''(B) in the case of a qualified project that is at a unit of the National Park System, the planning process shall be consistent with the general management plans of the unit of the National Park System; and

''(2) if the qualified participant is a State or local governmental authority, or more than one State or local governmental authority in more than one State, the qualified participant shall—

''(A) comply with the metropolitan planning provisions under section 5303;

''(B) comply with the statewide planning provisions under section 5304;

''(C) comply with the public participation requirements under section 5307(d); and

''(D) consult with the appropriate Federal land management agency during the planning process.

''(f) COST SHARING.—

''(1) GOVERNMENT'S SHARE.—The Secretary, in cooperation with the Secretary of the Interior, shall establish the Government's share of the net project cost to be provided to a qualified participant under this section.

''(2) CONSIDERATIONS.—In establishing the Government's share of the net project cost to be provided under this section, the Secretary shall consider—

''(A) visitation levels and the revenue derived from user fees in the eligible area in which the qualified project is carried out;

''(B) the extent to which the qualified participant coordinates with a public transportation authority or private entity engaged in public transportation;

''(C) private investment in the qualified project, including the provision of contract services, joint development activities, and the use of innovative financing mechanisms;

''(D) the clear and direct benefit to the qualified participant; and

''(E) any other matters that the Secretary considers appropriate to carry out this section.

''(3) SPECIAL RULE.—Notwithstanding any other provision of law, funds appropriated to any Federal land management agency may be counted toward the remainder of the net project cost.

''(g) SELECTION OF QUALIFIED PROJECTS.—

''(1) IN GENERAL.—The Secretary of the Interior, after consultation with and in cooperation with the Secretary, shall determine the final selection and funding of an annual program of qualified projects in accordance with this section.

''(2) CONSIDERATIONS.—In determining whether to include a project in the annual program of qualified projects, the Secretary of the Interior shall consider—

''(A) the justification for the qualified project, including the extent to which the qualified project would conserve resources, prevent or mitigate adverse impact, and enhance the environment;

''(B) the location of the qualified project, to ensure that the selected qualified projects—

''(i) are geographically diverse nationwide; and

''(ii) include qualified projects in eligible areas located in both urban areas and rural areas;

''(C) the size of the qualified project, to ensure that there is a balanced distribution;

''(D) the historical and cultural significance of a qualified project;

''(E) safety;

''(F) the extent to which the qualified project would—

''(i) enhance livable communities;

''(ii) reduce pollution (including noise pollution, air pollution, and visual pollution);

''(iii) reduce congestion; and

''(iv) improve the mobility of people in the most efficient manner; and

''(G) any other matters that the Secretary of the Interior considers appropriate to carry out this section, including—

''(i) visitation levels;

''(ii) the use of innovative financing or joint development strategies; and

''(iii) coordination with gateway communities.

''(h) QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.—

''(1) IN GENERAL.—When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary, in consultation with the Secretary of the Interior, may pay the share of the net capital project cost of a qualified project if—

''(A) the qualified participant applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.

''(2) FINANCING COSTS.—

''(A) IN GENERAL.—The cost of carrying out part of a qualified project under paragraph (1) includes the amount of interest earned and payable on bonds issued by a State or local governmental authority, to the extent that proceeds of the bond are expended in carrying out that part.

''(B) LIMITATION ON AMOUNT OF INTEREST.—The rate of interest under this paragraph may not exceed the most favorable rate reasonably available for the qualified project at the time of borrowing.

''(C) CERTIFICATION.—The qualified participant shall certify, in a manner satisfactory to the Secretary, that the qualified participant has exercised reasonable diligence in seeking the most favorable interest rate.

''(i) RELATIONSHIP TO OTHER LAWS.—

''(1) SECTION 5307.—A qualified participant under this section shall be subject to the requirements of sections 5307 and 5333(a) to the extent the Secretary determines to be appropriate.

''(2) OTHER REQUIREMENTS.—A qualified participant under this section shall be subject to any other requirements that the Secretary determines to be appropriate to carry out this section, including requirements for the distribution of proceeds on disposition of real property and equipment resulting from a qualified project assisted under this section.

''(3) PROJECT MANAGEMENT PLAN.—If the amount of assistance anticipated to be required for a qualified project under this section is not less than $25,000,000—

''(A) the qualified project shall, to the extent the Secretary considers appropriate, be carried out through a full funding grant agreement in accordance with section 5309(g); and

''(B) the qualified participant shall prepare a project management plan in accordance with section 5327(a).

''(j) ASSET MANAGEMENT.—The Secretary, in consultation with the Secretary of the Interior, may transfer the interest of the Department of Transportation in, and control over, all facilities and equipment acquired under this section to a qualified participant for use and disposition in accordance with any property management regulations that the Secretary determines to be appropriate.

''(k) COORDINATION OF RESEARCH AND DEPLOYMENT OF NEW TECHNOLOGIES.—

''(1) GRANTS AND OTHER ASSISTANCE.—The Secretary, in cooperation with the Secretary of the Interior, may undertake, or make grants, cooperative agreements, contracts (including agreements with departments, agencies, and instrumentalities of the Federal Government) or other agreements for research, development, and deployment of new technologies in eligible areas that will—

''(A) conserve resources;

''(B) prevent or mitigate adverse environmental impact;

''(C) improve visitor mobility, accessibility, and enjoyment; and

''(D) reduce pollution (including noise pollution and visual pollution).

''(2) INFORMATION.—The Secretary may request and receive appropriate information from any source.

''(3) FUNDING.—Grants, cooperative agreements, contracts, and other agreements under paragraph (1) shall be awarded from amounts allocated under subsection (d)(1).

''(l) INNOVATIVE FINANCING.—A qualified project receiving financial assistance under this section shall be eligible for funding through a

State infrastructure bank or other innovative financing mechanism available to finance an eligible project under this chapter.

''(m) REPORTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall annually submit a report on the allocation of amounts made available to assist qualified projects under this section to—

''(A) the Committee on Banking, Housing, and Urban Affairs of the Senate;

''(B) the Committee on Transportation and Infrastructure of the House of Representatives; and

''(C) the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

''(2) ANNUAL REPORTS.—The report required under paragraph (1) shall be included in the report submitted under section 5309(k)(1).''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 53 is amended by striking the item relating to section 5320 and inserting the following:

''5320. Alternative transportation in parks and public lands.''.

SEC. 3022. HUMAN RESOURCES PROGRAMS.

Section 5322 is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The Secretary''; and

(2) by adding at the end the following:

''(b) FELLOWSHIPS.—

''(1) AUTHORITY TO MAKE GRANTS.—The Secretary may make grants to States, local governmental authorities, and operators of public transportation systems to provide fellowships to train personnel employed in managerial, technical, and professional positions in the public transportation field.

''(2) TERMS.—

''(A) PERIOD OF TRAINING.—A fellowship under this subsection may be for not more than one year of training in an institution that offers a program applicable to the public transportation industry.

''(B) SELECTION OF INDIVIDUALS.—A recipient of a grant for a fellowship under this subsection shall select an individual on the basis of demonstrated ability and for the contribution the individual reasonably can be expected to make to an efficient public transportation operation.

''(C) AMOUNT.—A grant for a fellowship under this subsection may not be more than the lesser of $65,000 or 75 percent of the sum of—

''(i) tuition and other charges to the fellowship recipient;

''(ii) additional costs incurred by the training institution and billed to the grant recipient; and

''(iii) the regular salary of the fellowship recipient for the period of the fellowship to the extent the salary is actually paid or reimbursed by the grant recipient.''.

SEC. 3023. GENERAL PROVISIONS ON ASSISTANCE.

(a) INTERESTS IN PROPERTY.—Section 5323(a) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or to buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to operate a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if—

''(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306;

''(B) the Secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and

''(C) just compensation under State or local law will be paid to the company for its franchise or property.''; and

(2) in paragraph (2) by striking ''(2) A governmental authority'' and inserting the following:

''(2) LIMITATION.—A governmental authority''.

(b) NOTICE AND PUBLIC HEARING.—Section 5323(b) is amended to read as follows:

''(b) NOTICE AND PUBLIC HEARING.—

''(1) IN GENERAL.—For a capital project that will substantially affect a community, or the public transportation service of a community, an applicant shall—

''(A) provide an adequate opportunity for public review and comment on the project;

''(B) after providing notice, hold a public hearing on the project if the project affects significant economic, social, or environmental interests;

''(C) consider the economic, social, and environmental effects of the project; and

''(D) find that the project is consistent with official plans for developing the community.

''(2) NOTICE.—Notice of a hearing under this subsection—

''(A) shall include a concise description of the proposed project; and

''(B) shall be published in a newspaper of general circulation in the geographic area the project will serve.

''(3) APPLICATION REQUIREMENTS.—An application for a grant under this chapter for a capital project described in paragraph (1) shall include—

''(A) a certification that the applicant has complied with the requirements of this subsection; and

''(B) in the environmental record for the project, evidence that the applicant has complied with the requirements of this subsection.''.

(c) FARES NOT REQUIRED.—Section 5323(c) is amended to read as follows:

''(c) FARES NOT REQUIRED.—This chapter does not require that elderly individuals and individuals with disabilities be charged a fare.''.

(d) CONDITION ON CHARTER BUS TRANSPORTATION SERVICE.—Section 5323(d) is amended—

(1) by striking ''(1) Financial assistance'' and inserting the following:

''(1) AGREEMENTS.—Financial assistance''; and

(2) by striking paragraph (2) and inserting the following:

''(2) VIOLATIONS.—

''(A) INVESTIGATIONS.—On receiving a complaint about a violation of the agreement required under paragraph (1), the Secretary shall investigate and decide whether a violation has occurred.

''(B) ENFORCEMENT OF AGREEMENTS.—If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement.

''(C) ADDITIONAL REMEDIES.—In addition to any remedy specified in the agreement, the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the agreement.''.

(e) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—Section 5323(e) is amended to read as follows:

''(e) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

''(1) USE AS LOCAL MATCHING FUNDS.—Notwithstanding any other provision of law, a recipient of assistance under section 5307 or 5309 may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

''(2) MAINTENANCE OF EFFORT.—The Secretary shall approve of the use of the proceeds from the issuance of revenue bonds for the remainder of the net project cost only if the Secretary finds that the aggregate amount of financial support for public transportation in the urbanized area provided by the State and affected local governmental authorities during the next 3 fiscal years, as programmed in the State transportation improvement program under section 5304, is not less than the aggregate amount provided by the State and affected local governmental authorities in the urbanized area during the preceding 3 fiscal years.

''(3) DEBT SERVICE RESERVE.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient establishes pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5309.

''(4) PILOT PROGRAM FOR URBANIZED AREAS.—

''(A) IN GENERAL.—The Secretary shall establish a pilot program to reimburse not to exceed 10 eligible recipients for deposits of bond proceeds in a debt service reserve that the recipient establishes pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307.

''(B) REPORT.—Not later than July 31, 2008, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status and effectiveness of the pilot program established under subparagraph (A).''.

(f) SCHOOLBUS TRANSPORTATION.—Section 5323(f) is amended—

(1) by striking ''(1) Financial assistance'' and inserting the following:

''(1) AGREEMENTS.—Financial assistance'';

(2) in paragraph (1) by moving subparagraphs (A), (B), and (C) 2 ems to the right; and

(3) by striking paragraph (2) and inserting the following:

''(2) VIOLATIONS.—If the Secretary finds that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate.''.

(g) BUYING BUSES UNDER OTHER LAWS.—Section 5323(g) is amended by striking ''103(e)(4) and 142(a) or (c)'' each place it appears and inserting ''133 and 142''.

(h) GOVERNMENT'S SHARE OF COSTS FOR CERTAIN PROJECTS.—Section 5323(i) is amended—

(1) in the subsection heading by striking ''GOVERNMENT'' and inserting ''GOVERNMENT'S'';

(2) by striking ''A grant'' and inserting the following:

''(1) EQUIPMENT FOR ADA AND CLEAN AIR ACT COMPLIANCE.—A grant'';

(3) by inserting ''or facilities'' after ''equipment'' each place it appears; and

(4) by adding at the end the following:

''(2) CERTAIN STATE OWNED RAILROADS.—The Government share for financial assistance under this chapter to a State-owned railroad (as defined in section 603 of the Rail Safety and Service Improvement Act of 1982 (45 U.S.C. 1202)) shall be the same as the Government share under section 120(b) of title 23 for Federal-aid highway funds apportioned to the State in which the railroad operates.''.

(i) BUY AMERICA.—

(1) PUBLIC INTEREST WAIVER.—Section 5323(j) is amended—

(A) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8), respectively; and

(B) by inserting after paragraph (2) the following:

''(3) WRITTEN JUSTIFICATION FOR PUBLIC INTEREST WAIVER.—When issuing a waiver based on a public interest determination under paragraph (2)(A), the Secretary shall issue a detailed written justification as to why the waiver is in the public interest. The Secretary shall publish such justification in the Federal Register and provide the public with a reasonable period of time for notice and comment.''.

(2) INELIGIBILITY FOR CONTRACTS.—Section 5323(j)(6) (as so redesignated) is amended by striking ''Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914)'' and inserting ''Federal Public Transportation Act of 2005''.

(3) ADMINISTRATIVE REVIEW.—Section 5323(j) is amended by adding at the end the following:

''(9) ADMINISTRATIVE REVIEW.—A party adversely affected by an agency action under this subsection shall have the right to seek review under section 702 of title 5.''.

(4) REPEAL OF GENERAL WAIVER.—Subsections (b) and (c) of Appendix A of section 661.7 of title 49, Code of Federal Regulations, shall cease to be in effect beginning on the date of enactment of this Act.

(5) RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Secretary shall issue a final rule on implementation of the requirements of section 5323(j) of title 49, United States Code (in this paragraph referred to as the ''Buy America requirements''). The purposes of the regulations shall be as follows:

(A) MICROPROCESSOR WAIVER.—To clarify that any waiver from the Buy America requirements issued under section 5323(j)(2) of such title for a microprocessor, computer, or microcomputer applies only to a device used solely for the purpose of processing or storing data and does not extend to a product containing a microprocessor, computer, or microcomputer.

(B) DEFINITIONS.—To define the terms ''end product'', ''negotiated procurement'', and ''contractor'' for purposes of part 661 of title 49, Code of Federal Regulations. In defining the terms, the Secretary shall develop a list of representative items that are subject to the Buy America requirements, and shall address the procurement of systems under the definition to ensure that major system procurements are not used to circumvent the Buy America requirements.

(C) POST-AWARD WAIVERS.—To permit a grantee to request a non-availability waiver from the Buy America requirements under section 661.7c of title 49, Code of Federal Regulations, after contract award in any case in which the contractor has made a certification of compliance with the requirements in good faith.

(D) CERTIFICATION UNDER NEGOTIATED PROCUREMENT PROCESS.—In any case in which a negotiated procurement process is used, compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer.

(j) RELATIONSHIP TO OTHER LAWS.—Section 5323(l) is amended to read as follows:

''(l) RELATIONSHIP TO OTHER LAWS.—Section 1001 of title 18 applies to a certificate, submission, or statement provided under this chapter. The Secretary may terminate financial assistance under this chapter and seek reimbursement directly, or by offsetting amounts, available under this chapter if the Secretary determines that a recipient of such financial assistance has made a false or fraudulent statement or related act in connection with a Federal transit program.''.

(k) PREAWARD AND POSTDELIVERY REVIEW OF ROLLING STOCK PURCHASES.—Section 5323(m) is amended by adding at the end the following: ''Rolling stock procurements of 20 vehicles or fewer made for the purpose of serving other than urbanized areas and urbanized areas with populations of 200,000 or fewer shall be subject to the same requirements as established for procurements of 10 or fewer buses under the postdelivery purchaser's requirements certification process under section 663.37(c) of title 49, Code of Federal Regulations.''.

(l) GRANT REQUIREMENTS.—Section 5323(o) is amended by striking ''the Transportation Infrastructure Finance and Innovation Act of 1998'' and inserting ''chapter 6 (other than section 609) of title 23''.

(m) ALTERNATIVE FUELING FACILITIES.—Section 5323 is amended by adding at the end the following:

''(p) ALTERNATIVE FUELING FACILITIES.—A recipient of assistance under this chapter may allow the incidental use of Federally funded alternative fueling facilities and equipment by nontransit public entities and private entities if—

''(1) the incidental use does not interfere with the recipient's public transportation operations;

''(2) all costs related to the incidental use are fully recaptured by the recipient from the nontransit public entity or private entity;

''(3) the recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

''(4) private entities pay all applicable excise taxes on fuel.''.

SEC. 3024. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.

(a) IN GENERAL.—Section 5324 is amended to read as follows:

''§ 5324. Special provisions for capital projects

''(a) RELOCATION AND REAL PROPERTY REQUIREMENTS.—The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) shall apply to financial assistance for capital projects under this chapter.

''(b) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

''(1) COOPERATION AND CONSULTATION.—In carrying out the policy of section 5301(e), the Secretary shall cooperate and consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.

''(2) PUBLIC PARTICIPATION IN ENVIRONMENTAL REVIEWS.—In performing environmental reviews, the Secretary shall review each transcript of a hearing submitted under section 5323(b) to establish that an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest in the project, and that the project application includes a record of—

''(A) the environmental impact of the proposal;

''(B) adverse environmental effects that cannot be avoided;

''(C) alternatives to the proposal; and

''(D) irreversible and irretrievable impacts on the environment.

''(3) APPROVAL OF APPLICATIONS FOR ASSISTANCE.—

''(A) FINDINGS BY THE SECRETARY.—The Secretary may approve an application for financial assistance for a capital project in accordance with this chapter only if the Secretary makes written findings, after reviewing the application and the transcript of any hearing held before a State or local governmental authority under section 5323(b), that—

''(i) an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest;

''(ii) the preservation and enhancement of the environment and the interest of the community in which the project is located were considered; and

''(iii) no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.

''(B) HEARING.—If a hearing has not been conducted or the Secretary decides that the record of the hearing is inadequate for making the findings required by this subsection, the Secretary shall conduct a hearing on an environmental issue raised by the application after giving adequate notice to interested persons.

''(C) AVAILABILITY OF FINDINGS.—The Secretary's findings under subparagraph (A) shall be made a matter of public record.

''(c) RAILROAD CORRIDOR PRESERVATION.—

''(1) IN GENERAL.—The Secretary may assist an applicant to acquire railroad right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

''(2) ENVIRONMENTAL REVIEWS.—Railroad right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.''.

(b) CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5324 and inserting the following:

''5324. Special provisions for capital projects.''.

SEC. 3025. CONTRACT REQUIREMENTS.

(a) IN GENERAL.—Section 5325 is amended to read as follows:

''§ 5325. Contract requirements

''(a) COMPETITION.—Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

''(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—

''(1) PROCEDURES FOR AWARDING CONTRACT.—A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent qualifications-based requirement of a State.

''(2) EFFECT OF STATE LAWS.—Paragraph (1) does not apply to the extent a State has adopted by law, before the date of enactment of the Federal Public Transportation Act of 2005, an equivalent State qualifications-based requirement for contracting for architectural, engineering, and design services.

''(3) ADDITIONAL REQUIREMENTS.—When awarding a contract described in paragraph (1), recipients of assistance under this chapter shall comply with the following requirements:

''(A) PERFORMANCE OF AUDITS.—Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

''(B) INDIRECT COST RATES.—A recipient of funds under a contract or subcontract awarded under this chapter shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

''(C) APPLICATION OF RATES.—After a firm's indirect cost rates are accepted under subparagraph (B), the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto ceilings.

''(D) PRENOTIFICATION; CONFIDENTIALITY OF DATA.—A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

''(c) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chapter to other than the lowest bidder if the award furthers an objective consistent with the

purposes of this chapter, including improved long-term operating efficiency and lower long-term costs.

''(d) DESIGN-BUILD PROJECTS.—

''(1) TERM DEFINED.—In this subsection, the term 'design-build project'—

''(A) means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build a public transportation system, or an operable segment of such system, that meets specific performance criteria; and

''(B) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

''(2) FINANCIAL ASSISTANCE FOR CAPITAL COSTS.—Federal financial assistance under this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

''(e) MULTIYEAR ROLLING STOCK.—

''(1) CONTRACTS.—A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for not more than 5 years after the date of the original contract.

''(2) COOPERATION AMONG RECIPIENTS.—The Secretary shall allow at least 2 recipients to act on a cooperative basis to procure rolling stock in compliance with this subsection and other Government procurement requirements.

''(f) ACQUIRING ROLLING STOCK.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

''(1) based on—

''(A) initial capital costs; or

''(B) performance, standardization, life cycle costs, and other factors; or

''(2) with a party selected through a competitive procurement process.

''(g) EXAMINATION OF RECORDS.—Upon request, the Secretary and the Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made under this chapter.

''(h) GRANT PROHIBITION.—A grant awarded under this chapter or the Federal Public Transportation Act of 2005 may not be used to support a procurement that uses an exclusionary or discriminatory specification.

''(i) BUS DEALER REQUIREMENTS.—No State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter.

''(j) AWARDS TO RESPONSIBLE CONTRACTORS.—

''(1) IN GENERAL.—Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

''(2) CRITERIA.—Before making an award to a contractor under paragraph (1), a recipient shall consider—

''(A) the integrity of the contractor;

''(B) the contractor's compliance with public policy;

''(C) the contractor's past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(l)(2); and

''(D) the contractor's financial and technical resources.''.

(b) CONFORMING AMENDMENT.—Section 5326 and the item relating to section 5326 in the analysis for chapter 53 are repealed.

SEC. 3026. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—Section 5327(a) is amended—

(1) in paragraph (11) by striking ''and'' at the end;

(2) in paragraph (12) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(13) safety and security management.''.

(b) LIMITATIONS.—Section 5327(c) is amended to read as follows:

''(c) LIMITATIONS.—

''(1) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Of the amounts made available to carry out this chapter for a fiscal year, the Secretary may use not more than the following amounts to make contracts for the activities described in paragraph (2):

''(A) 0.5 percent of amounts made available to carry out section 5305.

''(B) 0.75 percent of amounts made available to carry out section 5307.

''(C) 1 percent of amounts made available to carry out section 5309.

''(D) 0.5 percent of amounts made available to carry out section 5310.

''(E) 0.5 percent of amounts made available to carry out section 5311.

''(F) 0.5 percent of amounts made available to carry out section 5320.

''(2) ACTIVITIES.—Paragraph (1) shall apply to the following:

''(A) Activities to oversee the construction of a major project.

''(B) Activities to review and audit the safety and security, procurement, management, and financial compliance of a recipient or subrecipient of funds under sections 5305, 5307, 5309, 5310, 5311, and 5320.

''(C) Activities to provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section.

''(3) LIMITATIONS ON APPLICABILITY.—Subsections (a), (b), and (e) do not apply to contracts under this section for activities described in paragraphs (2)(B) and (2)(C).

''(4) GOVERNMENT'S SHARE OF COSTS.—The Government shall pay the entire cost of carrying out a contract under this subsection.

''(5) AVAILABILITY OF CERTAIN FUNDS.—Beginning in fiscal year 2006, funds available under paragraph (1)(C) shall be made available to the Secretary before allocating the funds appropriated to carry out any project under a full funding grant agreement or project construction grant agreement.''.

SEC. 3027. PROJECT REVIEW.

Section 5328(a) is amended—

(1) in paragraph (1) by striking ''(1) When the Secretary of Transportation allows a new fixed guideway project to advance into the alternatives analysis stage of project review, the Secretary shall cooperate with the applicant in'' and inserting the following:

''(1) ALTERNATIVES ANALYSIS.—The Secretary shall cooperate with an applicant undertaking an alternatives analysis required by subsections (d) and (e) of section 5309 in the''; and

(2) in paragraph (2)—

(A) by striking ''(2) After'' and inserting the following:

''(2) ADVANCEMENT TO PRELIMINARY ENGINEERING STAGE.—After''; and

(B) by striking ''is consistent with section 5309(e)'' and inserting ''meets the requirements of subsection (d) or (e) of section 5309'';

(3) in paragraph (3)—

(A) by striking ''(3) The Secretary'' and inserting the following:

''(3) RECORD OF DECISION.—The Secretary'';

(B) by striking ''of construction''; and

(C) by adding before the period at the end the following: ''if the Secretary determines that the project meets the requirements of subsection (d) or (e) of section 5309''; and

(4) by striking paragraph (4) and inserting the following:

''(4) FUNDING AGREEMENTS.—The Secretary shall enter into a full funding grant agreement or project construction grant agreement, as appropriate, between the Government and the project sponsor if the Secretary determines that the project meets the requirements of subsection (d) or (e) of section 5309.''.

SEC. 3028. INVESTIGATIONS OF SAFETY HAZARDS AND SECURITY RISKS.

(a) IN GENERAL.—Section 5329 is amended to read as follows:

''§ 5329. Investigations of safety hazards and security risks

''(a) IN GENERAL.—The Secretary may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it.

''(b) SUBMISSION OF CORRECTIVE PLAN.—If the Secretary establishes that a safety hazard or security risk warrants further protective measures, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for eliminating, mitigating, or correcting it.

''(c) WITHHOLDING FINANCIAL ASSISTANCE.—Financial assistance under this chapter, in an amount to be determined by the Secretary, may be withheld until a plan is approved and carried out.''.

(b) PUBLIC TRANSPORTATION SECURITY.—

(1) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, the Secretary shall execute an annex to the memorandum of understanding between the Secretary and the Secretary of Homeland Security, dated September 28, 2004, to define and clarify the respective roles and responsibilities of the Department of Transportation and the Department of Homeland Security relating to public transportation security.

(2) CONTENTS.—The annex to be executed under paragraph (1) shall—

(A) establish a process to develop security standards for public transportation agencies;

(B) create a method of direct coordination with public transportation agencies on security matters;

(C) address any other issues determined to be appropriate by the Secretary and the Secretary of Homeland Security; and

(D) include a formal and permanent mechanism to ensure coordination and involvement by the Department of Transportation, as appropriate, in public transportation security.

(c) RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Secretary and the Secretary of Homeland Security shall issue jointly final regulations to establish the characteristics of and requirements for public transportation security grants, including funding priorities, eligible activities, methods for awarding grants, and limitations on administrative expenses.

(d) CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5329 and inserting the following:

''5329. Investigations of safety hazards and security risks.''.

SEC. 3029. STATE SAFETY OVERSIGHT.

(a) IN GENERAL.—Section 5330 is amended—

(1) by striking the section heading and all that follows through subsection (a) and inserting the following:

''§ 5330. State safety oversight

''(a) APPLICATION.—This section shall only apply to—

''(1) States that have rail fixed guideway public transportation systems that are not subject to regulation by the Federal Railroad Administration; and

''(2) States that are designing rail fixed guideway public transportation systems that will not be subject to regulation by the Federal Railroad Administration.'';

(2) in subsection (d) by striking ''may'' and inserting ''shall ensure uniform safety standards and enforcement or shall''; and

(3) by striking subsection (f).

(b) CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5330 and inserting the following:

''5330. State safety oversight.''.

SEC. 3030. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

(a) DEFINITIONS.—Section 5331(a)(3) is amended by striking the period at the end and inserting the following: ''or section 2303a, 7101(i), or 7302(e) of title 46. The Secretary may also decide that a form of public transportation is covered adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or the Coast Guard.''.

(b) TECHNICAL CORRECTIONS.—Subsections (b)(1) and (g) of section 5331 are each amended by striking ''or section 103(e)(4) of title 23''.

(c) REGULATIONS.—Section 5331(f) is amended by striking paragraph (3).

SEC. 3031. EMPLOYEE PROTECTIVE ARRANGEMENTS.

Section 5333(b) is amended—

(1) in paragraph (1) by striking ''5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(b)'' each place it appears and inserting ''5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b)''; and

(2) by adding at the end the following:

''(4) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance to purchase like-kind equipment or facilities, and grant amendments which do not materially revise or amend existing assistance agreements, shall be certified without referral.

''(5) When the Secretary is called upon to issue fair and equitable determinations involving assurances of employment when one private transit bus service contractor replaces another through competitive bidding, such decisions shall be based on the principles set forth in the Department of Labor's decision of September 21, 1994, as clarified by the supplemental ruling of November 7, 1994, with respect to grant NV–90–X021. This paragraph shall not serve as a basis for objections under section 215.3(d) of title 29, Code of Federal Regulations.''.

SEC. 3032. ADMINISTRATIVE PROCEDURES.

Section 5334 is amended—

(1) in subsection (a)—

(A) in paragraph (9) by striking ''and'' at the end;

(B) in paragraph (10) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(11) issue regulations as necessary to carry out the purposes of this chapter.'';

(2) by striking subsection (i);

(3) by redesignating subsections (b) through (h) as subsections (c) through (i), respectively;

(4) by inserting after subsection (a) the following:

''(b) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—

''(1) IN GENERAL.—Except for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter, nor may the Secretary regulate the rates, fares, tolls, rentals, or other charges prescribed by any provider of public transportation.

''(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to prevent the Secretary from requiring a recipient of funds under this chapter to comply with the terms and conditions of its Federal assistance agreement.''; and

(5) by striking subsection (c)(4) (as redesignated by paragraph (3) of this subsection) and inserting the following:

''(4) The Secretary of Transportation shall comply with this section (except subsection (i)) and sections 5318(e), 5323(a)(2), 5325(a), 5325(b), and 5325(f) when proposing or carrying out a regulation governing an activity under this chapter, except for a routine matter or a matter with no significant impact.''; and

(6) by adding at the end the following:

''(k) NOTIFICATION OF PENDING DISCRETIONARY GRANTS.—Not less than 3 full business days before announcement of award by the Secretary of any discretionary grant, letter of intent, or full funding grant agreement totaling $1,000,000 or more, the Secretary shall notify the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate and Committees on Transportation and Infrastructure and Appropriations of the House of Representatives.

''(l) AGENCY STATEMENTS.—

''(1) IN GENERAL.—The Administrator of the Federal Transit Administration shall follow applicable rulemaking procedures under section 553 of title 5 before the Federal Transit Administration issues a statement that imposes a binding obligation on recipients of Federal assistance under this chapter.

''(2) BINDING OBLIGATION DEFINED.—In this subsection, the term 'binding obligation' means a substantive policy statement, rule, or guidance document issued by the Federal Transit Administration that grants rights, imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy.''.

SEC. 3033. NATIONAL TRANSIT DATABASE.

(a) IN GENERAL.—Section 5335 is amended—

(1) by striking the section heading and inserting the following:

''§ 5335. National transit database'';

(2) by striking subsection (b); and

(3) in subsection (a)—

(A) in paragraph (1), by striking ''(1)''; and

(B) in paragraph (2), by striking ''(2) The Secretary may make a grant under section 5307 of this title'' and inserting the following:

''(b) REPORTING AND UNIFORM SYSTEMS.—The Secretary may award a grant under section 5307 or 5311''.

(b) CHAPTER ANALYSIS.—The analysis for chapter 53 is amended by striking the item relating to section 5335 and inserting the following:

''5335. National transit database.''.

SEC. 3034. APPORTIONMENTS OF FORMULA GRANTS.

(a) APPORTIONMENTS.—Section 5336 is amended—

(1) by striking subsections (d), (h), and (k);

(2) by redesignating subsections (e), (f), (g), (i), and (j) as subsections (d), (e), (f), (g), and (h), respectively;

(3) by adding at the end the following:

''(i) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(vi) and (b)(2)(B) of section 5338—

''(1) one percent shall be apportioned, in fiscal year 2006 and each fiscal year thereafter, to certain urbanized areas with populations of less than 200,000 in accordance with subsection (j); and

''(2) any amount not apportioned under paragraph (1) shall be apportioned to urbanized areas in accordance with subsections (a) through (c).''; and

(4) in subsection (a) by striking ''Of the amount made available or appropriated under section 5338(a) of this title'' and inserting ''Of the amount apportioned under subsection (i)(2)''.

(b) SMALL TRANSIT INTENSIVE CITIES FORMULA.—Section 5336 is amended by adding at the end the following:

''(j) SMALL TRANSIT INTENSIVE CITIES FORMULA.—

''(1) DEFINITIONS.—In this subsection, the following definitions apply:

''(A) ELIGIBLE AREA.—The term 'eligible area' means an urbanized area with a population of less than 200,000 that meets or exceeds in one or more performance categories the industry average for all urbanized areas with a population of at least 200,000 but not more than 999,999, as determined by the Secretary in accordance with subsection (c)(2).

''(B) PERFORMANCE CATEGORY.—The term 'performance category' means each of the following:

''(i) Passenger miles traveled per vehicle revenue mile.

''(ii) Passenger miles traveled per vehicle revenue hour.

''(iii) Vehicle revenue miles per capita.

''(iv) Vehicle revenue hours per capita.

''(v) Passenger miles traveled per capita.

''(vi) Passengers per capita.

''(2) APPORTIONMENT.—

''(A) APPORTIONMENT FORMULA.—The amount to be apportioned under subsection (i)(1) shall be apportioned among eligible areas in the ratio that—

''(i) the number of performance categories for which each eligible area meets or exceeds the industry average in urbanized areas with a population of at least 200,000 but not more than 999,999; bears to

''(ii) the aggregate number of performance categories for which all eligible areas meet or exceed the industry average in urbanized areas with a population of at least 200,000 but not more than 999,999.

''(B) DATA USED IN FORMULA.—The Secretary shall calculate apportionments under this subsection for a fiscal year using data from the national transit database used to calculate apportionments for that fiscal year under this section.''.

(c) STUDY ON INCENTIVES IN FORMULA PROGRAMS.—Section 5336 is amended by adding at the end the following:

''(c) STUDY ON INCENTIVES IN FORMULA PROGRAMS.—

''(1) STUDY.—The Secretary shall conduct a study to assess the feasibility and appropriateness of developing and implementing an incentive funding system under sections 5307 and 5311 for operators of public transportation.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 2 years after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall submit a report on the results of the study conducted under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

''(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

''(i) an analysis of the availability of appropriate measures to be used as a basis for the distribution of incentive payments;

''(ii) the optimal number and size of any incentive programs;

''(iii) what types of systems should compete for various incentives;

''(iv) how incentives should be distributed; and

''(v) the likely effects of the incentive funding system.''.

(d) TECHNICAL AMENDMENTS.—Section 5336 is amended—

(1) in subsection (a) by striking ''of this title'' and inserting ''to carry out section 5307'';

(2) in paragraph (2) by inserting before the period at the end the following: '', except that the amount apportioned to the Anchorage urbanized area under subsection (b) shall be available to the Alaska Railroad for any costs related to its passenger operations'';

(3) in subsection (b)(1) by inserting ''and, beginning in fiscal year 2006, 60 percent of the directional route miles attributable to the Alaska Railroad passenger operations'' after ''recipient''; and

(4) in subsection (h) by striking ''a grant made under'' each place it appears and inserting ''a grant made with funds apportioned under''.

SEC. 3035. APPORTIONMENTS BASED ON FIXED GUIDEWAY FACTORS.

(a) IN GENERAL.—Section 5337 is amended—

(1) by striking the section designation and heading and inserting the following:

"§ 5337. Apportionment based on fixed guideway factors"*; and*

(2) by adding at the end the following:

''(f) ADJUSTMENT.—For purposes of this section, an urbanized area with a population of 55,997, according to the most recent decennial census, shall be treated as an urbanized area eligible for assistance under section 5336(b)(2)(A) to which amounts were apportioned under this section for fiscal year 1997. For the purposes of paragraph (e)(1), the number of fixed guideway revenue vehicle miles of service and number of fixed guideway route miles for that urbanized area as of the date of enactment of the Federal Public Transportation Act of 2005 shall be considered to have been used to determine apportionments for fiscal year 1997.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 53 is amended by striking the item relating to section 5337 and inserting the following:

''5337. Apportionment based on fixed guideway factors.''.

SEC. 3036. AUTHORIZATIONS.

Section 5338 is amended to read as follows:

"§ 5338. Authorizations

''(a) FISCAL YEAR 2005.—

''(1) FORMULA GRANTS.—

''(A) TRUST FUND.—For fiscal year 2005, $3,499,927,776 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5308, 5310, and 5311 and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there is authorized to be appropriated $499,989,824 for fiscal year 2005 to carry out sections 5307, 5308, 5310, and 5311 and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $4,811,150 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

''(ii) $5,208,000 shall be available to provide over-the-road bus accessibility grants under section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note) to operators of intercity, fixed-route over-the-road buses;

''(iii) $1,686,400 shall be available to provide over-the-road bus accessibility grants under section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note) to operators of over-the-road buses providing other than intercity, fixed-route service;

''(iv) $94,526,689 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

''(v) $250,889,588 shall be available to provide financial assistance for other than urbanized areas under section 5311;

''(vi) $3,593,195,773 shall be available to provide financial assistance for urbanized areas under section 5307; and

''(vii) $49,600,000 shall be available to carry out the clean fuels program under section 5308.

''(2) JOB ACCESS AND REVERSE COMMUTE.—

''(A) TRUST FUND.—For fiscal year 2005, $108,500,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 3037 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note).

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there is authorized to be appropriated $15,500,000 for fiscal year 2005 to carry out section 3037 of the Transportation Equity Act of the 21st Century (49 U.S.C. 5309 note).

''(3) CAPITAL PROGRAM GRANTS.—

''(A) TRUST FUND.—For fiscal year 2005, $2,898,100,224 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there is authorized to be appropriated $414,014,176 for fiscal year 2005 to carry out sections 5308, 5309, and 5318 and section 3015(b) of the Transportation Equity Act for the 21st Century (112 Stat. 361).

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $49,600,000 shall be available to carry out the clean fuels program under section 5308;

''(ii) $669,600,000 shall be available for capital projects to replace, rehabilitate, and purchase bus and related equipment and to construct bus-related facilities under section 5309;

''(iii) $1,204,684,800 shall be available for fixed guideway modernization under section 5309;

''(iv) $1,437,829,600 shall be available for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems under section 5309;

''(v) $10,213,632 shall be available for capital projects in Alaska and Hawaii under section 5309;

''(vi) $2,976,000 shall be available to carry out bus testing under section 5318; and

''(vii) $4,811,200 shall be available to carry out the fuel cell bus and bus facilities program under section 3015(b) of the Transportation Equity Act for the 21st Century (112 Stat. 361).

''(4) PLANNING.—

''(A) TRUST FUND.—For fiscal year 2005, $63,364,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5303, 5304, 5305, and 5313(b), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2005.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there is authorized to be appropriated $9,052,000 for fiscal year 2005 to carry out sections 5303, 5304, 5305, and 5313(b), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2005.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) 82.72 percent shall be allocated for metropolitan planning under section 5305; and

''(ii) 17.28 percent shall be allocated for State planning under section 5305.

''(5) RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2005, $47,740,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322.

''(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there is authorized to be appropriated $6,820,000 for fiscal year 2005 to carry out sections 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322.

''(C) ALLOCATION OF FUNDS.—Of the funds made available or appropriated under this paragraph—

''(i) not less than $3,968,000 shall be available to carry out programs under the National Transit Institute under section 5315, of which not more than $992,000 shall be available to carry out section 5315(a)(16);

''(ii) not less than $5,208,000 shall be available to provide rural transportation assistance under section 5311(b)(2);

''(iii) not less than $8,184,000 shall be available to carry out transit cooperative research programs under section 5313(a);

''(iv) not less than $2,976,000 shall be available to carry out Project Action under section 5312; and

''(v) the remainder shall be available to carry out national research and technology programs under sections 5312, 5314, and 5322.

''(6) UNIVERSITY TRANSPORTATION RESEARCH.—

''(A) TRUST FUND.—For fiscal year 2005, $5,208,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5505.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there is authorized to be appropriated $744,000 for fiscal year 2005 to carry out sections 5505.

''(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

''(i) $1,984,000 shall be available for grants under section 5505(d) to the center identified in section 5505(j)(4)(A), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2005; and

''(ii) $1,984,000 shall be available for grants under section 5505(d) to the center identified in section 5505(j)(4)(F), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2005.

''(D) SPECIAL RULE.—Nothing in this paragraph shall be construed to limit the transportation research conducted by the centers receiving financial assistance under this section.

''(7) ADMINISTRATION.—

''(A) TRUST FUND.—For fiscal year 2005, $67,704,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334.

''(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there is authorized to be appropriated $9,672,000 for fiscal year 2005 to carry out section 5334.

''(8) AVAILABILITY OF AMOUNTS.—Amounts made available or appropriated under paragraphs (1) through (6) shall remain available until expended.

''(b) FORMULA AND BUS GRANTS.—

''(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5305, 5307, 5308, 5309, 5310, 5311, 5316, 5317, 5320, 5335, 5339, and 5340 and section 3038 of the Federal Transit Act of 1998 (112 Stat. 387 et seq.)—

''(A) $6,979,931,000 for fiscal year 2006;

''(B) $7,262,775,000 for fiscal year 2007;

''(C) $7,872,893,000 for fiscal year 2008; and

''(D) $8,360,565,000 for fiscal year 2009.

''(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1)—

''(A) $95,000,000 for fiscal year 2006, $99,000,000 for fiscal year 2007, $107,000,000 for fiscal year 2008, and $113,500,000 for fiscal year 2009 shall be available to carry out section 5305;

''(B) $3,466,681,000 for fiscal year 2006, $3,606,175,000 for fiscal year 2007, $3,910,843,000 for fiscal year 2008, and $4,160,365,000 for fiscal year 2009 shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307;

''(C) $43,000,000 for fiscal year 2006, $45,000,000 for fiscal year 2007, $49,000,000 for fiscal year 2008, and $51,500,000 for fiscal year 2009 shall be available to carry out section 5308;

''(D) $1,391,000,000 for fiscal year 2006, $1,448,000,000 for fiscal year 2007, $1,570,000,000 for fiscal year 2008, and $1,666,500,000 for fiscal year 2009 shall be allocated in accordance with section 5337 to provide financial assistance under section 5309(m)(2)(B); and

''(E) $822,250,000 for fiscal year 2006, $855,500,000 for fiscal year 2007, $927,750,000 for fiscal year 2008, and $984,000,000 for fiscal year 2009 shall be available to carry out section 5309(m)(2)(C).

''(F) $112,000,000 for fiscal year 2006, $117,000,000 for fiscal year 2007, $127,000,000 for fiscal year 2008, and $133,500,000 for fiscal year 2009 shall be available to provide financial assistance for services for elderly persons and persons with disabilities under section 5310;

''(G) $388,000,000 for fiscal year 2006, $404,000,000 for fiscal year 2007, $438,000,000 for

fiscal year 2008, and $465,000,000 for fiscal year 2009 shall be available to provide financial assistance for other than urbanized areas under section 5311;

''(H) $138,000,000 for fiscal year 2006, $144,000,000 for fiscal year 2007, $156,000,000 for fiscal year 2008, and $164,500,000 for fiscal year 2009 shall be available to carry out section 5316;

''(I) $78,000,000 for fiscal year 2006, $81,000,000 for fiscal year 2007, $87,500,000 for fiscal year 2008, and $92,500,000 for fiscal year 2009 shall be available to carry out section 5317;

''(J) $22,000,000 for fiscal year 2006, $23,000,000 for fiscal year 2007, $25,000,000 for fiscal year 2008, and $26,900,000 for fiscal year 2009 shall be available to carry out section 5320;

''(K) $3,500,000 in fiscal year 2006; $3,500,000 in fiscal year 2007; $3,500,000 in fiscal year 2008; and $3,500,000 in fiscal year 2009 shall be available to carry out section 5335;

''(L) $25,000,000 in fiscal year 2006; $25,000,000 in fiscal year 2007; $25,000,000 in fiscal year 2008; and $25,000,000 in fiscal year 2009 shall be available to carry out section 5339;

''(M) $388,000,000 for fiscal year 2006, $404,000,000 for fiscal year 2007, $438,000,000 for fiscal year 2008, and $465,000,000 for fiscal year 2009 shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311; and

''(N) $7,500,000 for fiscal year 2006, $7,600,000 for fiscal year 2007, $8,300,000 for fiscal year 2008, and $8,800,000 for fiscal year 2009 shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

''(c) MAJOR CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309(m)(2)(A)—

''(1) $1,503,000,000 for fiscal year 2006;

''(2) $1,566,000,000 for fiscal year 2007;

''(3) $1,700,000,000 for fiscal year 2008; and

''(4) $1,809,250,000 for fiscal year 2009.

''(d) RESEARCH AND UNIVERSITY RESEARCH CENTERS.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out transit cooperative research programs under section 5313, the National Transit Institute under section 5315, university research centers under section 5506, and national research programs under sections 5312, 5313, 5314, and 5322 $58,000,000 for fiscal year 2006, $61,000,000 for fiscal year 2007, $65,500,000 for fiscal year 2008, and $69,750,000 for fiscal year 2009, of which—

''(A) $9,000,000 for fiscal year 2006, $9,300,000 for fiscal year 2007, $9,600,000 for fiscal year 2008, and $10,000,000 for fiscal year 2009 shall be allocated to carry out transit cooperative research programs under section 5313;

''(B) $4,300,000 shall be allocated for each fiscal year to carry out programs under the National Transit Institute under section 5315, of which not more than $1,000,000 for each fiscal year shall be used to carry out section 5315(a)(16);

''(C) $7,000,000 shall be allocated for each fiscal year to carry out the university centers program under section 5506;

''(D) $3,000,000 shall be allocated for each fiscal year to carry out Project Action under section 5314(a)(2);

''(E) $1,000,000 shall be allocated for each fiscal year to carry out the National Technical Assistance Center under section 5314(c); and

''(F) any funds made available under this paragraph that are not allocated under subparagraphs (A) through (E) shall be allocated to carry out national research programs under sections 5312, 5313, 5314, and 5322.

''(2) UNIVERSITY CENTERS PROGRAM.—

''(A) ALLOCATION.—Of the amounts allocated under paragraph (1)(C), the following amounts shall be available to provide transportation research, training, and curriculum development:

''(i) $2,000,000 for each of fiscal years 2006 through 2009 for the University of Tennessee—Knoxville National Transportation Research Center.

''(ii) $1,500,000 for each of fiscal years 2006 through 2009 for Texas A&M University—Texas Transportation Institute.

''(iii) $1,000,000 for each of fiscal years 2006 through 2009 for Morgan State University.

''(iv) $400,000 for each of fiscal years 2006 and 2007 for the Small Urban & Rural Transit Center at North Dakota State University.

''(v) $550,000 for each of fiscal years 2006 and 2007 and $650,000 for each of fiscal years 2008 and 2009 for the University Transportation Center at the University of Alabama.

''(vi) $450,000 for each of fiscal years 2006 and 2007 and $550,000 for each of fiscal years 2008 and 2009 for the Injury Control Research Center at the University of Alabama Birmingham.

''(vii) $550,000 for each of fiscal years 2006 and 2007 and $650,000 for each of fiscal years 2008 and 2009 for the Jackson State University Intermodal Transportation Institute at the Jackson State University.

''(viii) $550,000 for each of fiscal years 2006 and 2007 and $650,000 for each of fiscal years 2008 and 2009 for the University Transportation Center at the University of Denver/Mississippi State University.

''(B) REQUIREMENTS.—The universities specified in subparagraph (A) shall be considered to be university transportation centers under section 5506 and shall be subject to the requirements of subsections (b), (h), (i), (k), (l), and (m) of such section.

''(e) ADMINISTRATION.—There is authorized to be appropriated to carry out section 5334—

''(1) $82,000,000 for fiscal year 2006;

''(2) $85,000,000 for fiscal year 2007;

''(3) $92,500,000 for fiscal year 2008; and

''(4) $98,500,000 for fiscal year 2009.

''(f) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(1) GRANTS FINANCED FROM HIGHWAY TRUST FUND.—A grant or contract that is approved by the Secretary and financed with amounts made available from the Mass Transit Account of the Highway Trust Fund pursuant to this section is a contractual obligation of the Government to pay the Federal share of the cost of the project.

''(2) GRANTS FINANCED FROM GENERAL FUND.—A grant or contract that is approved by the Secretary and financed with amounts appropriated in advance from the General Fund of the Treasury pursuant to this section is a contractual obligation of the Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated for such purpose by an Act of Congress.

''(g) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under subsections (b), (c), and (d) shall remain available until expended.''.

SEC. 3037. ALTERNATIVES ANALYSIS PROGRAM.

(a) IN GENERAL.—Section 5339 is amended to read as follows:

''§ 5339. Alternatives analysis program

''(a) GRANTS AND AGREEMENTS.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities to develop alternatives analyses as defined by section 5309(a)(1).

''(b) GOVERNMENT'S SHARE OF COSTS.—The Government's share of the cost of an activity funded using amounts made available under this section may not exceed 80 percent of the cost of the activity.

''(c) AVAILABILITY OF FUNDS.—An amount made available or appropriated under section 5338(b)(2)(L) for this section shall remain available for 3 fiscal years, including the fiscal year in which the amount is made available or appropriated. Any of such amounts that are unobligated at the end of the 3-fiscal-year period may be used by the Secretary for any purpose under this section.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 53 is amended by striking the item relating to section 5339 and inserting the following:

''5339. Alternatives analysis program.''.

(c) PROJECTS.—For each of fiscal years 2006 and 2007, of the funds authorized under this section, funds shall be made available to the following projects in not less than the amounts specified:

(1) Minnesota Red Rock Corridor/Rush Line/Central Corridors studies, $2,000,000.

(2) Trans-Hudson Midtown corridor study, $1,500,000.

(3) Lane County, Oregon Bus Rapid Transit Phase II corridor study, $500,000.

(4) Portland Streetcar, Oregon corridor study, $1,500,000.

(5) San Gabriel Valley-Gold Line Foothill Extension corridor study, $1,250,000.

(6) Monmouth-Ocean-Middlesex Counties, New Jersey corridor study, $1,250,000.

(7) Metra BNSF Naperville to Aurora corridor study, $1,250,000.

(8) Madison and Dane Counties, Wisconsin Transport 2020 corridor study, $750,000.

(9) Sound Transit I–90 Long-Range Plan corridor studies, $750,000.

(10) Middle Rio Grande Coalition of governments, Albuquerque to Santa Fe corridor study, $500,000.

(11) Piedmont Authority Regional Transportation East-West corridor study, $1,000,000.

(12) Baltimore Red Line/Green Line Transit Project study, $1,500,000.

(13) Metra-West Line Extension, Elgin to Rockford study, $1,000,000.

(14) Madison-Ridgeland Transportation Commission, Mississippi, Madison Light Rail Transportation Corridor study, $350,000.

(15) South Carolina Department of Transportation Light Rail study, $300,000.

(16) Provo Orem BRT study, $500,000.

(17) Sevierville County Transportation Board, Sevier County BRT study, $500,000.

(18) New Jersey Transit Midtown Project study, $2,500,000.

SEC. 3038. APPORTIONMENTS BASED ON GROWING STATES FORMULA FACTORS.

(a) IN GENERAL.—Chapter 53 is amended by adding at the end the following:

''§ 5340. Apportionments based on growing States and high density States formula factors

''(a) DEFINITION.—In this section, the term 'State' shall mean each of the 50 States of the United States.

''(b) ALLOCATION.—Of the amounts made available for each fiscal year under section 5338(b)(2)(M), the Secretary shall apportion—

''(1) 50 percent to States and urbanized areas in accordance with subsection (c); and

''(2) 50 percent to States and urbanized areas in accordance with subsection (d).

''(c) GROWING STATE APPORTIONMENTS.—

''(1) APPORTIONMENT AMONG STATES.—The amounts apportioned under subsection (b)(1) shall provide each State with an amount equal to the total amount apportioned multiplied by a ratio equal to the population of that State forecast for the year that is 15 years after the most recent decennial census, divided by the total population of all States forecast for the year that is 15 years after the most recent decennial census. Such forecast shall be based on the population trend for each State between the most recent decennial census and the most recent estimate of population made by the Secretary of Commerce.

''(2) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts to each State under paragraph (1) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in

that State divided by the total forecast population of that State. In making the apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (A) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(3) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under paragraph (2)(A) so that each urbanized area receives an amount equal to the amount apportioned under paragraph (2)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.

''(d) HIGH DENSITY STATE APPORTIONMENTS.—Amounts to be apportioned under subsection (b)(2) shall be apportioned as follows:

''(1) ELIGIBLE STATES.—The Secretary shall designate as eligible for an apportionment under this subsection all States with a population density in excess of 370 persons per square mile.

''(2) STATE URBANIZED LAND FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to—

''(A) the total land area of the State (in square miles); multiplied by

''(B) 370; multiplied by

''(C)(i) the population of the State in urbanized areas; divided by

''(ii) the total population of the State.

''(3) STATE APPORTIONMENT FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the difference between the total population of the State less the amount calculated in paragraph (2).

''(4) STATE APPORTIONMENT.—Each State qualifying for an apportionment under paragraph (1) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for the State under paragraph (3) divided by the sum of the amounts calculated under paragraph (3) for all States qualifying for an apportionment under paragraph (1).

''(5) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to each State under paragraph (4) so that each urbanized area receives an amount equal to the amount apportioned under paragraph (4) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 53 is amended by adding at the end the following:

''5340. Apportionments based on growing States and high density States formula factors.''.

SEC. 3039. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.

(a) IN GENERAL.—Section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note; 112 Stat. 392) is amended—

(1) by striking the section heading and inserting the following:

''SEC. 3038. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.'';

(2) by striking subsection (e) and inserting the following:

''(e) FEDERAL SHARE OF COSTS.—The Federal share of costs under this section shall be provided from funds made available to carry out this section and shall be determined in accordance with section 5323(i) of title 49, United States Code.''; and

(3) by striking subsection (g) and inserting the following:

''(g) FUNDING.—

''(1) INTERCITY, FIXED ROUTE OVER-THE-ROAD BUS SERVICE.—Of the amounts made available to carry out this section in each fiscal year, 75 percent shall be available for operators of over-the-road buses used substantially or exclusively in intercity, fixed-route over-the-road bus service to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses. Such amounts shall remain available until expended.

''(2) OTHER OVER-THE-ROAD BUS SERVICE.—Of the amounts made available to carry out this section in each fiscal year, 25 percent shall be available for operators of other over-the-road bus service to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses. Such amounts shall remain available until expended.''.

(b) CONFORMING AMENDMENTS.—The table of contents contained in section 1(b) of the Transportation Equity Act for the 21st Century (112 Stat. 107) is amended by striking the item relating to section 3038 and inserting the following:

''3038. Over-the-road bus accessibility program.''.

SEC. 3040. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Mass Transit Account of the Highway Trust Fund by, and amounts appropriated under, subsections (a) through (f) of section 5338 of title 49, United States Code, shall not exceed—

(1) $7,646,336,000 for fiscal year 2005, of which not more than $6,690,544,000 shall be from the Mass Transit Account;

(2) $8,622,931,000 for fiscal year 2006, of which not more than $6,979,931,000 shall be from the Mass Transit Account;

(3) $8,974,775,000 for fiscal year 2007, of which not more than $7,262,775,000 shall be from the Mass Transit Account;

(4) $9,730,893,000 for fiscal year 2008, of which not more than $7,871,895,000 shall be from the Mass Transit Account; and

(5) $10,338,065,000 for fiscal year 2009, of which not more than $8,360,565,000 shall be from the Mass Transit Account.

SEC. 3041. ADJUSTMENTS FOR FISCAL YEAR 2005.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall ensure that the total apportionments and allocations made for fiscal year 2005 to each grant recipient under the Federal Transit Administration programs shall not exceed the amount made available under section 5338 of title 49, United States Code, as amended by this title, for fiscal year 2005 plus prior year balances.

(b) FIXED GUIDEWAY MODERNIZATION ADJUSTMENT.—In making the apportionments described in subsection (a), the Secretary shall adjust the amount apportioned for fiscal year 2005 to each urbanized area for fixed guideway modernization to reflect the apportionment method set forth in section 5337(a) of title 49, United States Code.

(c) RECONCILIATION.—Funds authorized by or made available under section 5338, as amended by this title, for fiscal year 2005—

(1) shall not be subject to the across-the-board rescissions in section 122 of division J of Public Law 108–477;

(2) shall be transferred or made available for the purposes as indicated in division H of Public Law 108–477, as amended by Public Law 109–13; and

(3) shall be administered consistent with the applicable formula authorized under Public Law 105–178, as amended.

SEC. 3042. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION SYSTEMS.

(a) IN GENERAL.—Section 1993 of title 18, United States Code, is amended—

(1) in the section heading by striking ''***mass***'' and inserting ''***public***'';

(2) by striking ''mass'' each place the term appears and inserting ''public'';

(3) in subsection (a)(5) by inserting ''controlling,'' after ''operating,''; and

(4) in subsection (c)(5) by striking ''5302(a)(7) of title 49, United States Code,'' and inserting ''5302(a) of title 49,''.

(b) CHAPTER ANALYSIS.—The analysis for chapter 97 of title 18, United States Code, is amended by striking the item relating to section 1993 and inserting the following:

''1993. Terrorist attacks and other acts of violence against public transportation systems.''.

SEC. 3043. PROJECT AUTHORIZATIONS FOR NEW FIXED GUIDEWAY CAPITAL PROJECTS.

(a) EXISTING FULL FUNDING GRANT AGREEMENTS.—The following projects are authorized for final design and construction for existing full funding grant agreements in not less than the amount specified for each fiscal year:

(1) Atlanta—North Springs Extension $263,287 for fiscal year 2005.

(2) Baltimore—Central LRT Double Tracking $28,777,920 for fiscal year 2005 and $12,655,664 for fiscal year 2006.

(3) Charlotte—South Corridor LRT $29,760,000 for fiscal year 2005, $55,000,000 for fiscal year 2006, and $69,405,565 for fiscal year 2007.

(4) Chicago—Chicago Transit Authority Douglas Branch Reconstruction $84,320,000 for fiscal year 2005 and $45,825,190 for fiscal year 2006.

(5) Chicago—Chicago Transit Authority Ravenswood Expansion Project $39,680,000 for fiscal year 2005, $40,000,000 for fiscal year 2006, $40,000,000 for fiscal year 2007, $40,000,000 for fiscal year 2008, and $65,152,615 for fiscal year 2009.

(6) Cleveland—Euclid Corridor Transportation Project $24,800,000 for fiscal year 2005 and $24,774,513 for fiscal year 2006.

(7) Denver Southeast Corridor LRT $79,360,000 for fiscal year 2005, $80,000,000 for fiscal year 2006, $80,000,000 for fiscal year 2007, and $77,192,758 for fiscal year 2008.

(8) Fort Lauderdale—Tri-Rail Commuter Rail Upgrade $11,210,695 for fiscal year 2005.

(9) Los Angeles—Metro Gold Line Eastside Extension $59,520,000 for fiscal year 2005, $80,000,000 for fiscal year 2006, $100,000,000 for fiscal year 2007, $80,000,000 for fiscal year 2008, and $80,000,000 for fiscal year 2009.

(10) Los Angeles—North Hollywood MOS–3 $663,339 in fiscal year 2005.

(11) Metra North Central Corridor Commuter Rail $24,084,000 for fiscal year 2005 and $16,529,452 for fiscal year 2006.

(12) Metra South West Corridor Commuter Rail $15,500,000 for fiscal year 2005 and $11,781,395 for fiscal year 2006.

(13) Metra Union Pacific West Line Extension $12,000,000 for fiscal year 2005 and $14,285,749 for fiscal year 2006.

(14) Minneapolis—Hiawatha Corridor LRT $33,111,257 for fiscal year 2005.

(15) New Jersey Urban Core—Hudson-Bergen LRT $313,896.

(16) New Jersey Urban Core—Hudson-Bergen LRT MOS–2 $99,200,000 for fiscal year 2005, $100,000,000 for fiscal year 2006, $100,000,000 for fiscal year 2007, and $53,202,995 for fiscal year 2008.

(17) New Jersey Urban Core—Newark-Elizabeth Rail Link MOS–1 $1,342,076 for fiscal year 2005.

(18) New Orleans MOS–1 Canal Street $16,455,206 for fiscal year 2005.

(19) Phoenix—Central Phoenix/East Valley LRT $74,400,000 for fiscal year 2005, $90,000,000 for fiscal year 2006, $90,000,000 for fiscal year 2007, $90,000,000 for fiscal year 2008, and $90,000,000 for fiscal year 2009.

(20) Pittsburgh—North Shore LRT Connector $54,560,000 in fiscal year 2005, $55,000,000 in fiscal year 2006, $55,000,000 in fiscal year 2007, and $14,421,944 in fiscal year 2008.

(21) Pittsburgh—Stage II LRT Reconstruction $1,120,854 for fiscal year 2005.

(22) Portland—Interstate MAX LRT Extension $23,292,160 fiscal year 2005 and $18,292,550 for fiscal year 2006.

(23) St. Louis—Metrolink Extension St. Clair County, IL $53,383 for fiscal year 2005.

(24) Salt Lake City—CBD to University LRT $1,127,405 for fiscal year 2005.

(25) Salt Lake City—Medical Center $8,682,141 for fiscal year 2005.

(26) San Diego—Mission Valley East LRT Extension $80,986,880 for fiscal year 2005 and $8,353,424 for fiscal year 2006.

(27) San Diego—Oceanside Escondido Rail Corridor $54,560,000 fiscal year 2005 and $12,651,061 for fiscal year 2006.

(28) San Francisco—BART Extension to San Francisco Airport $99,200,000 fiscal year 2005 and $82,655,680 for fiscal year 2006.

(29) San Juan—Tren Urbano $44,263,040 fiscal year 2005 and $10,555,900 for fiscal year 2006.

(30) Seattle—Central Link Initial Segment LRT $79,360,000 for fiscal year 2005, $80,000,000 for fiscal year 2006, $80,000,000 for fiscal year 2007, $70,000,000 for fiscal year 2008, and $24,028,149 for fiscal year 2009.

(31) Washington DC/MD—Largo Metrorail Extension $75,432,887 for fiscal year 2005.

(b) FINAL DESIGN AND CONSTRUCTION.—The following projects are authorized for final design and construction for fiscal years 2005 through 2009 under paragraphs (1)(A) and (2)(A) of section 5309(m) of title 49, United States Code:

(1) Baltimore—MARC Commuter Rail Improvements.

(2) Boston—Silver Line BRT Phase III.

(3) Central Florida Commuter Rail System.

(4) Charlotte—South Corridor LRT.

(5) Dallas Area Rapid Transit—Northwest-Southeast LRT Extension.

(6) Delaware—Wilmington-Newark Commuter Rail Improvements.

(7) Denver—West Corridor LRT.

(8) El Paso—Rapid Transit (SMART) Starter Line.

(9) Harrisburg—Corridor One Commuter Rail (MOS–1).

(10) Houston Advanced Transit Program Light Rail.

(11) Kansas City, Missouri—Southtown BRT.

(12) Las Vegas—Resort Corridor Downtown Extension Project.

(13) Los Angeles MTA—Exposition LRT.

(14) Miami-Dade Transit—North Corridor.

(15) Minneapolis—North Star Corridor.

(16) Nashua—Commuter Rail.

(17) Nashville, Tennessee Commuter Rail.

(18) New Britain-Hartford Busway Project.

(19) New Orleans—Desire Corridor Streetcar.

(20) New York—Long Island Railroad East Side Access Project.

(21) New York—Second Avenue Subway.

(22) Norfolk Light Rail.

(23) Northern Virginia—Dulles Corridor Extension to Wiehle Avenue (Phase 1).

(24) Orange County, California—Rapid Transit Project.

(25) Philadelphia—Schuylkill Valley Metro-Rail.

(26) Pittsburgh—North Shore Connector.

(27) Portland, Oregon—South Corridor I–205/Portland Mall LRT.

(28) Providence—South County Commuter Rail.

(29) Sacramento—South Corridor LRT Extension (Phase 2), Meadowview to Consumnes River College.

(30) Salt Lake City—Weber County to Salt Lake City Commuter Rail.

(31) San Diego—Mid-Coast Extension.

(32) San Francisco Muni—Third Street LRT-Phase I/II.

(33) San Gabriel Valley—Gold Line Foothill Extension Phase I/PhaseII, Los Angeles to Montclair.

(34) Santa Clara Valley Transit Authority—Silicon Valley Rapid Transit Corridor.

(35) Tampa Bay—Regional Rail.

(36) Triangle Transit Authority, North Carolina—Regional Rail Project.

(37) Washington County, Oregon—Wilsonville to Beaverton Commuter Rail.

(38) Wasilla-Girdwood, Alaska—Commuter Rail.

(c) PRELIMINARY ENGINEERING.—The following projects are authorized for preliminary engineering for fiscal years 2005 through 2009 under paragraphs (1)(A) and (2)(A) of section 5309(m) of title 49, United States Code:

(1) Alameda, California—Fixed Guideway Corridor Project.

(2) Alameda, California—Transit Improvements and Multimodal Center.

(3) Albuquerque—High Capacity Corridor.

(4) Ann Arbor/Downtown Detroit—Transit Improvement Project.

(5) Atlanta—East Line 1–20 Corridor Project.

(6) Atlanta—MARTA Memorial Drive Bus Rapid Transit.

(7) Atlanta—GRTA I–75 Corridor, Downtown Atlanta—Cherokee County.

(8) Atlanta—Interstate 285 Transit Corridor.

(9) Atlanta—Georgia 400 North Line Corridor Project.

(10) Atlanta—Belt Line C–Loop.

(11) Atlanta—I–20 East Line I–20 Corridor Project.

(12) Atlanta—West Line I–20 Corridor Project.

(13) Austin—San Antonio I–35 Commuter Rail.

(14) Austin—Rapid Bus Project.

(15) Austin—Urban Commuter Rail.

(16) Baltimore Red Line/Green Line Transit Project.

(17) Baton Rouge—Bus Rapid Transit.

(18) Bayonne, New Jersey—Hudson Bergen LRT Extension to NY Harbor.

(19) Bernalillo-Santa Fe—New Mexico Commuter Rail.

(20) Birmingham, Alabama—Transit Corridor.

(21) Boise—Downtown Circulator.

(22) Boise, Idaho—Valley Regional Transit Rail Corridor Preservation.

(23) Boston—Assembly Square Orange Line Station.

(24) Boston—Lechmere Transit Improvement to Somerville and Medford.

(25) Boston—North Shore Corridor and Blue Line Extension.

(26) Boston—North/South Rail Link.

(27) Boston—Urban Ring BRT.

(28) Bridgeport, Connecticut—Bridgeport Intermodal Facility.

(29) Broward County, Florida—Bus Rapid Transit.

(30) Camden, New Jersey—North Ferry Terminal.

(31) Carrollton, Texas—Regional Intermodal Passenger Rail Facility Project.

(32) Cedar Rapids, Iowa—River Rail Project.

(33) Central Phoenix—East Valley Corridor LRT Extensions.

(34) Charlotte—Charlotte Multimodal Station.

(35) Charlotte—North Corridor Project.

(36) Charlotte—Northeast Corridor Project.

(37) Charlotte—South Corridor LRT extension to Rock Hill, South Carolina.

(38) Charlotte—Southeast Corridor Project.

(39) Charlotte—West Corridor Project.

(40) Charlotte—Center City Streetcar Project.

(41) Chicago—Cermack Road BRT.

(42) Chicago CTA—Red Line Extension.

(43) Chicago CTA—Chicago Transit Hub (Circle Line-Ogden Streetcar).

(44) Chicago CTA—Orange Line Extension (Midway Airport to Ford City).

(45) Chicago CTA—Yellow Line Extension (Dempster-Old Orchard).

(46) Chicago—Ogden Avenue Corridor.

(47) Chicago—Pace Golf Road Bus Rapid Transit.

(48) Chula Vista, California—Bus Rapid Transit.

(49) Clark County, Washington—MAX Extension.

(50) Cleveland-Akron-Canton (Northeast Ohio) Commuter Rail.

(51) Columbia, South Carolina—Light Rail.

(52) Columbus—North Corridor LRT Project.

(53) Contra-Costa—BART Extension.

(54) Corpus Christi—Downtown Rail Trolley.

(55) Dallas Area Rapid Transit—Dallas Central Business District.

(56) Dallas Area Rapid Transit—Rowlett LRT Extension.

(57) Dallas Area Rapid Transit—Beltline to DFW Airport.

(58) Dayton—Aviation Heritage Corridor Streetcar Project.

(59) Dayton—Aviation Heritage Corridor Streetcar Project Phase I.

(60) Denton County Transportation Authority, Texas—Fixed Guideway Project.

(61) Denver—Gold Line Extension to Arvada.

(62) Denver—RR Right of Way Acquisition.

(63) Denver—United States Route 36 Transit Corridor.

(64) Denver—North Metro Corridor to Thornton.

(65) Denver—East Corridor to DIA Airport.

(66) Denver—I–225 Transit Corridor.

(67) Denver—Southeast Corridor Extension to Lone-Tree/Ridgegate.

(68) Denver—Southwest Corridor Extension to C470/Lucent Boulevard.

(69) Detroit—Center City Loop.

(70) Detroit—Woodward Corridor.

(71) District of Columbia—Light Rail Starter Line.

(72) Erie, Pennsylvania—Ferry Acquisition.

(73) Fitchburg, Massachusetts—Commuter Rail Extensions and Improvements.

(74) Florence-Myrtle Beach, South Carolina—Transit Corridor.

(75) Fort Lauderdale—Downtown Rail Link.

(76) Fort Lauderdale—Transit Project from NW 215th and 79th Streets.

(77) Fort Worth—Cottonbelt Commuter Rail to DFW.

(78) Fort Worth—Trinity Railway Express Commuter Rail Extensions.

(79) Galveston—Rail Trolley Extension.

(80) Glendale, California—Downtown Streetcar.

(81) Grand Rapids—Fixed Guideway Corridor Project.

(82) Guam—Tumon Bay-Airport Light Rail.

(83) Harrisburg, Pennsylvania—Corridor One MOS–2 (East Mechanicsburg to Carlisle).

(84) Harrison County, Mississippi—Canal Road Intermodal Connector.

(85) Henderson-Las Vegas-North Las Vegas—Regional Fixed Guideway Project.

(86) Honolulu—Rapid Transit Project.

(87) Houston—Commuter Rail Service in Harris & Fort Bend Counties.

(88) Houston—Advanced Transportation Technology System.

(89) Indianapolis—System of Metropolitan Area Rapid Transit.

(90) Jacksonville—East-Southwest BRT.

(91) Jacksonville—North-Southeast BRT.

(92) Kansas City, Missouri-Lawrence, Kansas—Commuter Rail.

(93) Kenosha-Racine-Milwaukee Metra Commuter Rail Extension (Wisconsin).

(94) Kenosha, Wisconsin Streetcar Expansion Project.

(95) King County, Washington—I–405 Corridor Bus Rapid Transit.

(96) Lake Tahoe—Passenger Ferry Service.

(97) Lakeville, Minnesota—Cedar Avenue Corridor Bus Rapid Transit.

(98) Lane County, Oregon—Bus Rapid Transit, Phase 2.

(99) Las Vegas—Boulder Highway MAX Bus Rapid Transit.
(100) Little Rock—River Rail Streetcar Extensions.
(101) Little Rock—West Little Rock Commuter Rail.
(102) Livermore, California—BART Rail Extension to Livermore.
(103) Long Island Railroad—Nassau Hub.
(104) Lorain-Cleveland Commuter Rail.
(105) LOSSAN Del Mar-San Diego—Rail Corridor Improvements.
(106) Lovejoy to Griffin, Georgia Commuter Rail.
(107) Madison, Wisconsin—Madison Streetcar.
(108) Madison, Wisconsin—Light Rail Transportation.
(109) Madison and Dane Counties, Wisconsin—Transport 2020 Commuter Rail.
(110) Maryland—I–270 Corridor Cities Transitway.
(111) Maryland—Route 5 Corridor to Waldorf.
(112) Maryland—Silver Spring Capacity Improvements.
(113) Massachusetts—Commuter Rail Extensions to Worcester and New Bedford.
(114) Memphis—Downtown Airport Corridor.
(115) Memphis—Intermodal Terminal.
(116) Memphis Regional Rail Plan.
(117) Metra BNSF Naperville to Aurora Corridor Extension and Improvements.
(118) Metra South Suburban Airport Commuter Rail Extension.
(119) Metra SouthEast Service Line Commuter Rail.
(120) Metra STAR Line Inter-Suburban Commuter Rail.
(121) Metra UP Northwest Line Core Capacity Upgrades.
(122) Metra UP West Line Core Capacity Upgrades.
(123) Metra-West Line Extension, Elgin to Rockford.
(124) Miami-Dade Transit—Douglas Road Extension.
(125) Miami-Dade Transit—East-West Corridor.
(126) Miami-Dade Transit—Kendall Corridor.
(127) Miami-Dade Transit—Northeast Corridor.
(128) Miami-Dade Transit—South Dade Corridor.
(129) Miami-Dade Transit—Miami Intermodal Center to Earlington Heights.
(130) Miami—Downtown Streetcar Project.
(131) Middletown-South Fallsburg, New York, Passenger Rail.
(132) Milwaukee—Downtown Dedicated Guideway Transit Connector.
(133) Minneapolis—Northwest Corridor Busway.
(134) Minneapolis-St. Paul—Central Corridor Transit Project.
(135) Minneapolis-St. Paul-Hinckley, Minnesota—Rush Line Corridor.
(136) Missouri/Kansas—Interstate 35 Transit Corridor.
(137) Monterey County, California—Commuter Rail.
(138) Montgomery and Prince George's Counties, Maryland—Bi-County Transitway (Purple Line).
(139) Nashua-Manchester—Commuter Rail Extension.
(140) Nashville—Area Transit Corridors.
(141) Nashville—Southeast Rail Corridor.
(142) Nashville Tennessee Commuter Rail.
(143) Nassau and Queens Counties, New York—LIRR Main Line Third Track Project.
(144) New Bedford-Fall River, Massachusetts—Commuter Rail Extension.
(145) New Haven, Connecticut-Hartford, Connecticut-Springfield, Massachusetts Commuter Line.
(146) New Jersey Trans-Hudson Midtown Corridor.
(147) New Jersey Transit—Northeast Corridor Trans-Hudson Commuter Rail Improvements.
(148) New Jersey Transit—Morris/Essex/Boonton Trans-Hudson Commuter Rail Improvements.
(149) New Jersey Transit—New York Susquehanna and Western RR Commuter Extension.
(150) New Jersey Transit—Phillipsburg Extension.
(151) New Jersey Transit—West Trenton Line Commuter Line Service Extension.
(152) New Jersey-Pennsylvania Lackawanna Cutoff Rail Restoration.
(153) New Jersey Urban Core.
(154) New Orleans—Airport-CBD Commuter Rail.
(155) New Orleans—Riverfront Streetcar Downriver Extension.
(156) New Orleans—Riverfront Streetcar Upriver Extension.
(157) New York—Governors Island Transportation Access.
(158) New York—Long Island Sound (Long Island) Ferry Service.
(159) New York—Long Island Sound (Westchester) Ferry Service.
(160) New York—NYC Bus Rapid Transit.
(161) New York—NYC Highline.
(162) New York—Penn Station Access Project.
(163) New York—Rockaway-Brooklyn Army Terminal-Manhattan Ferry Service.
(164) New York—Staten Island to Manhattan High-Speed Ferry Service Extension.
(165) New York—Stewart Airport Rail Access.
(166) New York—Tappan Zee I–287 Corridor.
(167) New York—West Harlem Waterfront Ferry Improvements.
(168) Newburg, New York—LRT System.
(169) Northern Indiana—Commuter District Line.
(170) Northern Indiana—West Lake Commuter Rail Link (South Shore Commuter Rail).
(171) Norfolk—Naval Station Corridor.
(172) Norfolk-Petersburg—United States Route 460 Commuter Rail Project.
(173) Northern Virginia—Crystal City Potomac Yards Transit.
(174) Northern Virginia—Columbia Pike Rapid Transit Project.
(175) Northern Virginia—Dulles Corridor Extension, Phase 2.
(176) Northern Virginia—Richmond Highway (Route 1) Rapid Transit Project.
(177) Oakland—Telegraph Avenue/International Blvd/East 14th Street BRT.
(178) Ogden—Intermodal-Weber State University Transit Connection.
(179) Orange County, California—Bus Rapid Transit.
(180) Orlando-Orange County, Florida—Light Rail Project.
(181) Ottawa, Illinois—Illinois Valley Commuter Rail Extension.
(182) Pawtucket, Rhode Island—Commuter Rail Station.
(183) Philadelphia—Elwyn to Wawa Train Service Restoration.
(184) Philadelphia—Navy Yard Transit Extension.
(185) Philadelphia—52nd Street City Connector Project.
(186) Philadelphia—Route 100 Rapid Trolley Extension.
(187) Philadelphia—Broad Street Subway Line Extension.
(188) Piedmont Authority Regional Transportation—East-West Rail Transit Corridor Project.
(189) Pinellas Mobility Initiative Bus Rapid Transit.
(190) Pittsburgh—Keystone West Passenger Rail Corridor in Blair, Cambria, West Moreland, and Allegheny Counties.
(191) Pittsburgh—East-West Corridor Rapid Transit.
(192) Pittsburgh—Martin Luther King, Jr. Busway Extension.
(193) Pittsburgh—Oakland Technology Corridor.
(194) Portland Streetcar Extensions.
(195) Portland-Yarmouth-Brunswick-Lewiston/Auburn Passenger Rail.
(196) Providence—South County Commuter Rail Phase II.
(197) Provo-Orem Utah—Bus Rapid Transit.
(198) Quakertown-Stoney Creek, Pennsylvania—Rail Restoration.
(199) Raritan Valley, New Jersey—Commuter Rail.
(200) Reno, Nevada—Virginia Street Bus Rapid Transit Project.
(201) Riverside County, California—Perris Valley Line Metrolink Extension.
(202) Roaring Fork Valley, Colorado—Bus Rapid Transit.
(203) Rock Island, Illinois—Quad Cities Rapid Transit System.
(204) Sacramento—Downtown Streetcar Project.
(205) Sacramento—Regional Rail, Auburn to Oakland.
(206) Sacramento—Downtown/Natomas Airport Transit Corridor.
(207) Salt Lake City—Airport to University LRT.
(208) Salt Lake City—Delta Center to Gateway Intermodal Center LRT Extension.
(209) Salt Lake City—Draper to Sandy LRT Extension.
(210) Salt Lake-Provo—Commuter Rail Extension.
(211) Salt Lake City—TRAX Capacity Improvements.
(212) Salt Lake City—West Valley City LRT Extension.
(213) Salt Lake City—West Valley City 3500 South BRT.
(214) Salt Lake City—West Jordan LRT extension.
(215) Salt Lake City to South Davis Transit Connection.
(216) San Antonio—Bus Rapid Transit.
(217) San Diego—First Bus Rapid Transit.
(218) San Diego—San Diego Imperial County Mag-Lev Rail Airport Corridor Project.
(219) San Diego—Sprinter Rail Line Extension Project.
(220) San Francisco—BART Extension to Livermore.
(221) San Francisco—BART Extension to Oakland International Airport.
(222) San Francisco—MUNI Geary Boulevard Bus Rapid Transit.
(223) San Francisco—Oyster Point Ferry Terminal.
(224) San Francisco—Transbay Terminal/Caltrain Downtown Extension Project.
(225) San Joaquin, California—Regional Rail Commission Central Valley Rail Service.
(226) San Joaquin Regional Rail Commission Commuter Rail (Altamont Commuter Express).
(227) San Juan Tren Urbano—Extension from Rio Piedras to Carolina.
(228) San Juan—Tren Urbano Minillas Extension.
(229) Santa Fe—El Dorado Rail Link.
(230) Seattle—Monorail Project Post—Green Line Extensions.
(231) Seattle—Link LRT Extensions.
(232) Seattle—Sound Transit Commuter Rail.
(233) Seattle—Sound Transit Regional Express Bus.
(234) Sevierville to Pigeon Ford, Tennessee—Bus Rapid Transit.
(235) Sonoma/Marin (SMART) Commuter Rail, California.
(236) Southern California High Speed Regional Transit.
(237) Southern New Jersey to Philadelphia Transit Project.
(238) St. Louis Metro Link—Scott AFB to Mid America Airport.
(239) St. Louis—East/West Gateway.
(240) St. Louis—Metro Link Northside Daniel Boone Project.
(241) St. Louis—Metro South Corridor.
(242) St. Louis—University Downtown Trolley.
(243) St. Paul—Red Rock Corridor Commuter Rail Project.

(244) Stamford, Connecticut—Boston Post Road Intermodal Center and Capacity Expansion Project.
(245) Stamford, Connecticut—Urban Transitway Phase II.
(246) Tampa—Bus Rapid Transit Improvements.
(247) Tampa—Streetcar Extension to Downtown Tampa.
(248) Toledo, Ohio—CBD to Zoo.
(249) Toledo, Ohio—University Corridor.
(250) Trenton Trolley.
(251) Tri-Rail Dolphin Extension.
(252) Tri-Rail Florida East Coast Commuter Rail Extension.
(253) Tri-Rail Jupiter Extension.
(254) Tri-Rail Scripps Corridor Extension Project.
(255) Tucson—Old Pueblo Trolley Expansion.
(256) Vancouver—Interstate MAX Extension to Clark County, Washington.
(257) Virginia Beach—Bus Rapid Transit.
(258) Virginia Railway Express Capacity Improvements.
(259) Washington, D.C.—Woodrow Wilson Bridge Transit Projects.
(260) Washington State Ferries and Ferry Facilities.
(261) Washington State—Issaquah Valley Trolley Project.
(262) Williamsburg-Newport News—Peninsula Rail Transit.
(263) Wilmington, Delaware—Commuter Rail to Middletown.
(264) Winston-Salem—Downtown Streetcar System.

(d) PROJECT AUTHORIZATIONS.—Subject to the requirements of sections 5309(d) and 5309(e) of title 49, United States Code, the following projects are authorized for the following amounts:
(1) Ann Arbor/Downtown Detroit Transit Improvement Project, $100,000,000.
(2) Baltimore Red Line/Green Line Transit Project, $102,300,000.
(3) Bernalillo-Santa Fe-New Mexico Commuter Rail, $75,000,000.
(4) Birmingham-Jefferson Transit Authority—I-65 South BRT, $100,000,000.
(5) Boston—Assembly Square Orange Line Station, $25,000,000.
(6) Boston—Silver Line BRT Phase II, $20,000,000.
(7) Bridgeport, Connecticut—Bridgeport Intermodal Transit Center, $28,000,000.
(8) Dallas Area Rapid Transit—NW/SW Light Rail Transit Minimal Operable Segment, $260,000,000.
(9) Delaware—Wilmington-Newark Commuter Rail Improvements, $14,000,000.
(10) Denver Regional Transit District—West Corridor, $270,000,000.
(11) Grand Rapids—Fixed Guideway Corridor Project, $14,400,000.
(12) Harrison County, Mississippi HOV/BRT Canal Road Intermodal Connector, $70,000,000.
(13) Henderson-Las Vegas-North Las Vegas—Regional Fixed Guideway Project, $32,000,000.
(14) Houston—Advanced Transportation Technology System in Harris County, $245,000,000.
(15) Kenosha-Racine-Milwaukee Metra Commuter Rail Extension (Wisconsin), $80,000,000.
(16) Lake Tahoe—Passenger Ferry Service, $8,000,000.
(17) Lane County, Oregon—Bus Rapid Transit, Phase 2, $31,000,000.
(18) Las Vegas—Boulder Highway MAX Bus Rapid Transit, $12,000,000.
(19) Las Vegas—Resort Corridor Downtown Extension Project, $16,000,000.
(20) Long Island Railroad—Nassau Hub, $10,000,000.
(21) Los Angeles County Metropolitan Transportation Authority (LACMTA): Mid-City/Exposition Light Rail Transit Project, $11,000,000.
(22) Metro Gold Line Foothill Extension Construction Authority: Gold Line Foothill Light Rail Transit Project, $6,000,000.
(23) Miami—Downtown Streetcar Project, $50,000,000.
(24) Minneapolis—North Star Corridor, $80,000,000.
(25) Mississippi—I–69 HOV/BRT, $70,000,000.
(26) Nashville—Commuter Rail, $6,200,000.
(27) New Bedford-Fall River, Massachusetts—Commuter Rail Extension, $10,000,000.
(28) New Britain-Hartford Busway Project, $55,000,000.
(29) New Jersey Transit—Northeast Corridor Trans-Hudson Commuter Rail Improvements, $80,000,000.
(30) New Orleans—Airport-CBD Commuter Rail, $5,000,000.
(31) New Orleans—Desire Corridor Streetcar, $69,700,000.
(32) New York—Penn Station Access Project, $15,000,000.
(33) New York—Stewart Airport Rail Access, $40,000,000.
(34) Providence—South County Commuter Rail, Phase II, $60,000,000.
(35) Providence—South County Commuter Rail, $36,000,000.
(36) Pennsylvania—New Jersey Lackawanna Cutoff Rail Restoration, $120,000,000.
(37) Philadelphia—Schuylkill Valley Metro, $250,000,000.
(38) Reno, Nevada—Virginia Street Bus Rapid Transit, $12,000,000.
(39) Sacramento—South Corridor LRT Extension (Phase 2), Meadowview to Consumnes River College, $11,000,000.
(40) Sacramento Regional Transit District: Downtown Natoma Airport Transit Corridor, $5,000,000.
(41) San Diego—Mid-Coast Light Rail Transit Extension, $11,000,000.
(42) San Francisco Muni Third St. Light Rail Transit-Phase I/II, $15,000,000
(43) Santa Clara Valley Transportation Authority—Silicon Valley Rapid Transit Corridor Project, $11,000,000.
(44) Santa Fe-El Dorado Rail Link, $5,400,000.
(45) Sonoma Marin Area Rail Transit (SMART) Project, $5,000,000.
(46) St. Louis—Metro South Corridor Metrolink Light Rail Extension, $135,000,000.
(47) St. Louis—North Side and Daniel Boone Corridors Metrolink Light Rail Extensions, $275,000,000.
(48) Stamford, Connecticut Urban Transitway Phase II, $22,800,000.
(49) Tampa—Streetcar Extension to Downtown Tampa, $3,000,000.
(50) Utah—Regional Commuter Rail, $200,000,000.
(51) Washington State Ferries, $25,000,000.
(52) Wilmington, Delaware—Commuter Rail to Middletown, $24,900,000.

(e) RULES RELATING TO FUNDING.—
(1) SUBSECTION (a) PROJECTS.—
(A) IN GENERAL.—The Secretary is authorized to expend funds made available under section 5309(m) of title 49, United States Code, for final design and construction of projects authorized by subsection (a) as existing full funding grant agreements.
(B) MINIMUM FUNDING LEVELS.—The Secretary shall make available not less than the following amounts for projects authorized by subsection (a): $1,157,400,426 for fiscal year 2005, $838,360,578 for fiscal year 2006, $614,405,565 for fiscal year 2007, $424,817,697 for fiscal year 2008, and $259,180,764 for fiscal year 2009.
(2) SUBSECTION (b) PROJECTS.—
(A) IN GENERAL.—Projects authorized by subsection (b) for final design and construction are also authorized for alternatives analysis and preliminary engineering.
(B) MINIMUM FUNDING LEVELS.—The Secretary shall make available not less than the following amounts for projects authorized by subsection (b): $165,402,806 for fiscal year 2005, $544,399,422 for fiscal year 2006, $826,314,435 for fiscal year 2007, $1,139,182,303 for fiscal year 2008, and $1,405,329,236 for fiscal year 2009.
(C) PRIORITY.—In making funds available under subparagraph (B), the Secretary shall first make such funds available for any full funding grant agreement executed by the Secretary in fiscal year 2005 after the date of enactment of this Act and for any full funding grant agreement executed by the Secretary in the amount indicated in fiscal years 2005 through 2009 in the amount indicated in the ''Schedule of Federal Funds for the Project'' included in such agreement.
(3) SUBSECTION (c) PROJECTS.—
(A) IN GENERAL.—Effective October 1, 2007, projects authorized by subsection (c) for preliminary engineering are also authorized for final design and construction.
(B) MAXIMUM FUNDING LEVELS.—The Secretary shall make available not more than the following amounts for projects authorized by subsection (c): $115,026,368 for fiscal year 2005, $120,240,000 for fiscal year 2006, and $125,280,000 in fiscal year 2007.
(C) MAXIMUM FUNDING LEVELS FOR PRELIMINARY ENGINEERING.—In fiscal years 2008 and 2009, the Secretary shall make available not more than the following amounts for projects authorized by subsection (b), and projects authorized by subsection (c), to conduct preliminary engineering activities: $136,000,000 in fiscal year 2008 and $144,740,000 in fiscal year 2009.

(f) NEW JERSEY URBAN CORE PROJECT.—Section 3031(d) of the Intermodal Surface Transportation Efficiency Act of 1991 (112 Stat. 380; 105 Stat. 2122) is amended—
(1) by striking ''associated components to and at the contiguous New Jersey Meadowlands Sports Complex),'' and inserting ''to and at the contiguous New Jersey Meadowlands Sports Complex), including a connection to the Hudson River Waterfront Transportation System, the Lackawanna Cutoff,''; and
(2) by striking ''in Lakewood to Freehold to Matawan or Jamesburg, New Jersey, as described in section 3035(p) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2131)'' and inserting ''from Lakehurst to the Northeast Corridor or the New Jersey Coast Line''.

(g) NEW JERSEY TRANS-HUDSON MIDTOWN CORRIDOR.—Not later than 90 days after the date of enactment of this Act, the Secretary shall permit New Jersey Transit to enter into preliminary engineering on the New Jersey Trans-Hudson Midtown Corridor project. When evaluating the local share of such project in the new starts rating process, the Secretary shall give consideration to project elements of the New Jersey Trans-Hudson Midtown Corridor advanced with 100 percent non-Federal funds, including the purchase of bi-level rail equipment and the New Jersey Transit Light Rail River Line. Based upon the project's evaluations and ratings required under section 5309(d) of title 49, United States Code, the Secretary shall give strong consideration to the project for a full funding grant agreement.

(h) HOUSTON METRO.—
(1) LOCAL SHARE.—Notwithstanding any other provision of law, for the purpose of calculating the non-Federal share of the net project cost of any new fixed guideway capital project currently included in the Advanced Transit Program (''Metro Solutions Plan'') sponsored by the Metropolitan Transit Authority of Harris County, Texas, the Secretary shall include $324,000,000 in State and local funds expended for the design and construction of the Red Line Light Rail Transit system that operates in Harris County, Texas.
(2) SPECIAL RULE.—No provision of this Act shall be construed to override or nullify the will of the voters who approved the Metro Solutions Plan as described on the ballot and in the accompanying Board resolutions, nor shall any provision of this Act be construed to override or nullify the terms and conditions of Metro Board Resolution No. 2003–77 or any applicable provision of State law or the charter of the city of

Houston as in effect as of the date of enactment of this Act.

(3) AMENDMENT.—Section 178 of Public Law 108–447, division H (118 Stat. 3230), is amended by striking ''49 USC 5309(e)(1)(A), 23 CFR 771.123, and 49 CFR 611.7.'' and inserting ''49 U.S.C. 5309 and 49 C.F.R. 611.7: Provided, That such projects shall retain their status in preliminary engineering should bus rapid transit be chosen as the locally preferred alternative during that phase.''.

(i) EXEMPTION.—The Metra BNSF Naperville to Aurora Extension Project authorized under subsection (c) shall be exempted from all requirements related to criteria for grants for new fixed guideway capital projects under section 5309(d) of title 49, United States Code, and from regulations required under that section.

(j) RAIL CARS.—The project authorized by subsection (a)(31) includes an additional 52 rapid rail cars and project scope changes from amounts authorized by the Transportation Equity Act for the 21st Century.

SEC. 3044. PROJECTS FOR BUS AND BUS-RELATED FACILITIES AND CLEAN FUELS GRANT PROGRAM.

(a) PROJECTS.—Of the amounts made available to carry out section 5309(m)(2)(C) of title 49, United States Code, for each of fiscal years 2006 through 2009, the Secretary shall make funds available for the following projects in not less than the amounts specified for the fiscal year:

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(b) CLEAN FUELS GRANTS PROGRAM PROJECTS.—

(1) FUNDING.—Notwithstanding subsection (a), the Secretary shall make funds available for the projects listed in item numbers 497, 517, 519, 557, 575, 578, 605, 611, 612, 614, 631, 638, 640, 641, 648, and 659 in the table contained in subsection (a), in the amounts specified, from amounts made available to carry out section 5308 of title 49, United States Code.

(2) PURCHASE OF BUSES UNDER SUPPLEMENTAL ENVIRONMENTAL PROJECT.—With respect to the project numbered 605, purchases of buses procured under a supplemental environmental project executed by the Rhode Island Public Transit Authority and the Environmental Protection Agency are eligible for assistance under section 5308 of such title.

(c) SPECIAL RULE.—Notwithstanding any other provision of law, the Secretary shall pay the Federal share of the net project cost to a State or local governmental authority that carries out or has carried out any part of the bus and bus-related facilities projects numbered 258 and 347 under subsection (a).

SEC. 3045. NATIONAL FUEL CELL BUS TECHNOLOGY DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a national fuel cell bus technology development program (in this section referred to as the ''program'') to facilitate the development of commercially viable fuel cell bus technology and related infrastructure.

(b) GENERAL AUTHORITY.—The Secretary may enter into grants, contracts, and cooperative agreements with no more than 3 geographically diverse nonprofit organizations and recipients under chapter 53 of title 49, United States Code, to conduct fuel cell bus technology and infrastructure projects under the program.

(c) GRANT CRITERIA.—In selecting applicants for grants under the program, the Secretary shall consider the applicant's—

(1) ability to contribute significantly to furthering fuel cell technology as it relates to transit bus operations, including hydrogen production, energy storage, fuel cell technologies, vehicle systems integration, and power electronics technologies;

(2) financing plan and cost share potential;

(3) fuel cell technology to ensure that the program advances different fuel cell technologies, including hydrogen-fueled and methanol-powered liquid-fueled fuel cell technologies, that may be viable for public transportation systems; and

(4) other criteria that the Secretary determines are necessary to carry out the program.

(d) COMPETITIVE GRANT SELECTION.—The Secretary shall conduct a national solicitation for applications for grants under the program. Grant recipients shall be selected on a competitive basis. The Secretary shall give priority consideration to applicants that have successfully managed advanced transportation technology projects, including projects related to hydrogen and fuel cell public transportation operations for a period of not less than 5 years.

(e) FEDERAL SHARE.—The Federal share of costs of the program shall be provided from funds made available to carry out this section. The Federal share of the cost of a project carried out under the program shall not exceed 50 percent of such cost. The cost of a project carried out under the program shall not include the cost of a fuel cell power unit.

(f) GRANT REQUIREMENTS.—A grant under this section shall be subject to—

(1) all terms and conditions applicable to a grant made under section 5309 of title 49, United States Code; and

(2) such other terms and conditions as are determined by the Secretary.

SEC. 3046. ALLOCATIONS FOR NATIONAL RESEARCH AND TECHNOLOGY PROGRAMS.

(a) IN GENERAL.—Amounts appropriated pursuant to section 5338(d) of title 49, United States Code, for national research and technology programs under sections 5312, 5314, and 5322 of such title shall be allocated by the Secretary as follows:

(1) PUBLIC TRANSPORTATION NATIONAL SECURITY STUDY.—

(A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary shall enter into an agreement with the National Academy of Sciences to conduct a study and evaluation of the value major public transportation systems in the United States serving the 38 urbanized areas that have a population of more than 1,000,000 individuals provide to the Nation's security and the ability of such systems to accommodate the evacuation, egress or ingress of people to or from critical locations in times of emergency.

(B) ALTERNATIVE ROUTES.—For each system described in subparagraph (A) the study shall identify—

(i) potential alternative routes for evacuation using other transportation modes such as highway, air, marine, and pedestrian activities; and

(ii) transit routes that, if disrupted, do not have sufficient transit alternatives available.

(C) REPORT.—Not later than 24 months after the date of entry into the agreement, the Academy shall submit to the Secretary and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate a final report on the results of the study and evaluation, together with such recommendations as the Academy considers appropriate.

(D) FUNDING.—For each of fiscal years 2006 and 2007 $250,000 shall be available to carry out this paragraph.

(2) CENTER FOR TRANSIT-ORIENTED DEVELOPMENT.—For each of fiscal years 2006 through 2009, not less than $1,000,000 shall be made available by the Secretary for establishment and operation of the Center for Transit-Oriented Development—

(A) to develop standards and definitions for transit-oriented development adjacent to public transportation facilities;

(B) to develop system planning guidance, performance criteria, and modeling techniques for metropolitan planning agencies and public transportation agencies to maximize ridership through land use planning and adjacent development; and

(C) to provide research support and technical assistance to public transportation agencies, metropolitan planning agencies, and other persons regarding transit-oriented development.

(3) TRANSPORTATION EQUITY RESEARCH PROGRAM.—For each of fiscal years 2006 through 2009, not less than $1,000,000 shall be made available by the Secretary for research and demonstration activities that focus on the impacts that transportation planning, investment, and operations have on low-income and minority populations that are transit dependent. Such activities shall include the development of strategies to advance economic and community development in low-income and minority communities and the development of training programs that promote the employment of low-income and minority community residents on Federal-aid transportation projects constructed in their communities.

(4) COGNITIVE IMPAIRMENT STUDY.—For fiscal year 2006, $1,000,000 shall be made available by the Secretary for research and demonstration activities that focus on the capacity and resources of Oregon public transportation systems to address the needs, barriers, and desires for travel of people with cognitive impairments.

(5) TRANSIT CAREER LADDER TRAINING PROGRAM.—For each fiscal years 2006 through 2009, not less than $1,000,000 shall be available for a nationwide career ladder job training partnership program for public transportation employees to respond to technological changes in the public transportation industry, especially in the area of maintenance. Such program shall be carried out by the Secretary through a contract with a national nonprofit organization with a demonstrated capacity to develop and provide such programs.

(6) PILOT PROGRAM FOR REMOTE INFRARED AUDIBLE SIGNS.—

(A) IN GENERAL.—For each of fiscal years 2006 through 2009, not less than $500,000 shall be made available by the Secretary to carry out a pilot program to determine the benefits of remote infrared audible signage technology for provision of wayfinding and information to people who are visually, cognitively, or learning disabled.

(B) REPORT.—

(i) IN GENERAL.—Not later than September 30, 2009, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the pilot program carried out under this section.

(ii) CONTENTS.—The report—

(I) shall include—

(aa) an evaluation of the effect of the pilot program on multimodal accessibility in public transportation;

(bb) an evaluation of the effect of the program on operators of public transportation and their passengers;

(cc) an evaluation of the effect of making public transportation accessible to people with visual, cognitive, and learning disabilities on ridership of public transportation and use of paratransit; and

(dd) an evaluation of the effect of the program on the education, community integration, work life, and general quality of life of the targeted populations.

(7) HYDROGEN FUEL CELL SHUTTLE DEPLOYMENT DEMONSTRATION PROJECT.—To demonstrate the utility of hydrogen fuel cell vehicles in daily shuttle service, $800,000 in each of fiscal years 2006 and 2007 shall be provided for hydrogen fuel cell employee shuttle vans, related equipment, operations, public education and outreach in Allentown, Pennsylvania.

(8) WISCONSIN SUPPLEMENTAL TRANSPORTATION RURAL ASSISTANCE PROGRAM (STRAP).—

(A) IN GENERAL.—For capital projects, operations, purchase or lease of vehicles, and integration, planning and coordination of public transportation services in the State of Wisconsin that will supplement and expand existing rural and special public transportation services in that State, $2,000,000 in each of fiscal years 2006, 2007, 2008, and 2009 shall be provided to the State of Wisconsin Department of Transportation.

(B) PURPOSE.—Funds received under this program may be used to supplement public transportation programs for rural populations for activities authorized under sections 5310, 5311, and 5316 of title 49, United States Code. Funds made available under this program are subject to the requirements of section 5311 of title 49, United States Code, except that funds may be made available for up to 80 percent of net operating costs. In awarding grants made available under this program, the State shall consider—

(i) rural population in the area to be served by the applicant;

(ii) extent to which the applicant demonstrates coordination of existing transportation services or proposed public transportation services;

(iii) need for additional services in the area being serviced by the applicant and the extent to which the proposed services will address those needs and provide accessibility for non-ambulatory recipients;

(iv) extent to which the applicant demonstrates an innovative approach that is responsive to the identified service needs of the rural population; and

(v) extent to which the applicant demonstrates that the communities being served have been consulted in the planning process.

(9) HUMAN SERVICES TRANSPORTATION COORDINATION.—

(A) IN GENERAL.—For the management of a program to improve and enhance the coordination of Federal resources for human services transportation with those of the Department of Transportation, $1,600,000 in each of fiscal years 2006, 2007, 2008, and 2009 shall be provided to a national non-profit organization that is competitively selected by the Secretary. Such organization shall have demonstrated expertise in issues of transportation coordination and in providing technical assistance to local transportation organizations.

(B) ELIGIBLE ACTIVITIES.—Under this program, the organization selected by the Secretary shall—

(i) establish an advisory panel consisting of federal, state and local officials and organizations;

(ii) prepare an inventory of human service transportation agencies operating in the United States;

(iii) prepare an inventory of Federal transportation spending;

(iv) develop a program of technical assistance and training for human services transportation organizations that shall include on-site technical assistance, a resource clearinghouse, and preparation of technical manuals;

(v) prepare an annual report for the Secretary on activities under this program and make recommendations for improving coordination.

(10) PORTLAND, OREGON STREETCAR PROTOTYPE PURCHASE AND DEPLOYMENT.—Not less than $1,000,000 shall be made available in each of fiscal years 2006, 2007, 2008, and 2009 by the Secretary to TriMet for the purchase and deployment of a domestically manufactured streetcar.

(11) PUBLIC TRANSPORTATION PARTICIPATION PILOT PROGRAM.—

(A) IN GENERAL.—Of the funds allocated under this section for each of fiscal years 2006 through 2009, $1,000,000 for each fiscal year shall be made available by the Secretary to establish a pilot program to support planning and public participation activities related to public transportation projects.

(B) ELIGIBLE ACTIVITIES.—Activities eligible to be carried out under the pilot program may include the following:

(i) Improving data collection analysis and transportation access for all users of the public transportation systems.

(ii) Supporting public participation through the project development phases.

(iii) Using innovative techniques to improve the coordination of transportation alternatives.

(iv) Enhancing the coordination of public transportation benefits and services.

(v) Contracting with stakeholders to focus on the delivery of transportation plans and programs.

(vi) Measuring and reporting on the annual performance of the transportation systems.

(12) TRANSPORTATION HYBRID ELECTRIC VEHICLE AND FUEL CELL RESEARCH.—$500,000 in each of fiscal years 2006 through 2009 for a transportation hybrid electric vehicle and fuel cell research program at the University of Alabama.

(13) TRAUMA CARE SYSTEM RESEARCH AND DEVELOPMENT.—$500,000 in each of fiscal years 2006 through 2009 for trauma care system research and development at the University of Alabama in Birmingham.

(14) TRANSPORTATION INFRASTRUCTURE AND LOGISTICS RESEARCH.—$500,000 in each of fiscal years 2006 through 2009 for transportation infrastructure and logistics research at the University of Alabama in Huntsville.

(15) NATIONAL BUS RAPID TRANSIT INSTITUTE.—$1,750,000 in each of fiscal years 2006 though 2009 for the National Bus Rapid Transit Institute at the University of South Florida.

(16) APPLICATION OF INFORMATION TECHNOLOGY TO TRANSPORTATION LOGISTICS AND SECURITY.—$400,000 in each of fiscal years 2006 through 2009 for research on the application of information technology to transportation logistics and security at the Northern Kentucky University.

(17) INTELLIGENT TRANSPORTATION SYSTEM PILOT PROJECT.—$465,000 in each of fiscal years 2006 through 2009 for an intelligent transportation system pilot project with the National Consortium on Remote Sensing in Transportation Flows at the Ohio State University.

(18) REGIONAL PUBLIC SAFETY TRAINING CENTER.—$500,000 in each of fiscal years 2006 through 2009 for a regional public safety training center at the Lehigh-Carbon Community College.

(19) TRANSIT SECURITY TRAINING FACILITY.—$750,000 in each of fiscal years 2006 though 2009 for a transit security training facility at the Chester County Community College.

(20) SMALL URBAN AND RURAL TRANSIT CENTER.—$800,000 in fiscal year 2006, $800,000 in fiscal year 2007, $1,200,000 in fiscal year 2008, and $1,200,000 in fiscal year 2009 for the Small Urban and Rural Transit Center at North Dakota State University.

(21) ADVANCED TECHNOLOGY BUS RAPID TRANSIT PROJECT.— $500,000 in fiscal year 2006, $540,000 in fiscal year 2007, $550,000 in fiscal year 2008, and $625,000 in fiscal year 2009 for the Southeastern Connecticut Advanced Technology Bus Rapid Transit Project.

(22) GREATER NEW HAVEN TRANSIT DISTRICT FUEL CELL-POWERED BUS RESEARCH.—$500,000 in fiscal year 2006, $540,000 in fiscal year 2007, $550,000 in fiscal year 2008, and $625,000 in fiscal year 2009 for the Greater New Haven Transit District Fuel Cell-Powered Bus Research.

(23) CENTER FOR ADVANCED TRANSPORTATION INITIATIVES.—$500,000 in fiscal year 2006, $540,000 in fiscal year 2007, $540,000 in fiscal year 2008, and $625,000 in fiscal year 2009 for the Rutgers Center for Advanced Transportation Initiatives (CAIT).

(24) INSTITUTE OF TECHNOLOGY'S TRANSPORTATION, ECONOMIC, AND LAND USE SYSTEM.—$500,000 in fiscal year 2006, $540,000 in fiscal year 2007, $540,000 in fiscal year 2008, and $625,000 in fiscal year 2009 for the New Jersey Institute of Technology's Transportation, Economic, and Land Use System program (TELUS).

(25) REGIONAL TRANSIT TRAINING CONSORTIUM PILOT PROGRAM.—$270,000 in fiscal year 2006, $380,000 in fiscal year 2007, $380,000 in fiscal year 2008, and $450,000 in fiscal year 2009 for the Southern California Regional Transit Training Consortium Pilot Program.

(b) REMAINDER.—After making allocations under subsection (a), the remainder of funds made available by section 5338(d) of title 49, United States Code, for national research and technology programs under sections 5312, 5314, and 5322 for a fiscal year shall be allocated at the discretion of the Secretary to other transit research, development, demonstration and deployment projects authorized by sections 5312, 5314, and 5322 of such title.

SEC. 3047. FORGIVENESS OF GRANT AGREEMENT.

(a) LANE COUNTY TRANSIT DISTRICT.—Notwithstanding any other provision of law (including any regulation), any outstanding balances on the following grant agreements made to the Lane County Transit District, Oregon, do not have to be repaid:

(1) Federal Contract Number OR–03–0087.

(2) Federal Contract Number OR–90–X094.

(b) PEE DEE REGIONAL TRANSIT AUTHORITY.—The debt identified in the 2000 Triennial Review of the Pee Dee Regional Transit Authority as owed to the Federal Transit Administration by the Pee Dee Regional Transit Authority does not have to be repaid.

SEC. 3048. COOPERATIVE PROCUREMENT.

Not later than 6 months after the date of enactment of this Act, the Secretary shall undertake a 30-day review of efforts to use cooperative procurement to determine whether benefits are sufficient to formally incorporate cooperative procurement into the mass transit program. In particular, the Secretary shall review the progress made under the pilot program authorized under section 166 of division F of the Consolidated Appropriations Act, 2004 (49 U.S.C. 5397 note; 118 Stat. 309), based on experience to date in the pilot program and any available reports to Congress submitted under such section 166. The Secretary shall also consider information gathered from grantees about cooperative procurement, whether or not related to the pilot program.

SEC. 3049. TRANSPORTATION FRINGE BENEFITS.

(a) TRANSIT PASS TRANSPORTATION FRINGE BENEFITS.—

(1) IN GENERAL.—Effective as of the first day of the next fiscal year beginning after the date of the enactment of this Act, each covered agency shall implement a program under which all qualified Federal employees serving in or under such agency shall be offered transit pass transportation fringe benefits, as described in paragraph (2).

(2) BENEFITS DESCRIBED.—The benefits described in this paragraph are the transit pass transportation fringe benefits which, under section 2 of Executive Order 13150, are required to be offered by Federal agencies in the National Capital Region on the date of the enactment of this Act.

(3) DEFINITIONS.—In this subsection—

(A) the term ''covered agency'' means any agency, to the extent of its facilities in the National Capital Region;

(B) the term ''agency'' means any agency (as defined by 7905(a)(2) of title 5, United States Code), the Postal Rate Commission, and the Smithsonian Institution;

(C) the term ''National Capital Region'' includes the District of Columbia and every county or other geographic area covered by section 2 of Executive Order 13150;

(D) the term ''Executive Order 13150'' refers to Executive Order 13150 (5 U.S.C. 7905 note);

(E) the term ''Federal agency'' is used in the same way as under section 2 of Executive Order 13150; and

(F) any determination as to whether or not one is a ''qualified Federal employee'' shall be made applying the same criteria as would apply under section 2 of Executive Order 13150.

(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be considered to require that a covered agency—

(A) terminate any program or benefits in existence on the date of the enactment of this Act, or postpone any plans to implement (before the effective date referred to in paragraph (1)) any program or benefits permitted or required under any other provision of law; or

(B) discontinue (on or after the effective date referred to in paragraph (1)) any program or benefits referred to in subparagraph (A), so long as such program or benefits satisfy the requirements of paragraphs (1) through (3).

(b) AUTHORITY TO TRANSPORT FEDERAL EMPLOYEES BETWEEN THEIR PLACE OF EMPLOYMENT AND MASS TRANSIT FACILITIES.—

(1) IN GENERAL.—Section 1344 of title 31, United States Code, is amended—

(A) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(B) by inserting after subsection (f) the following:

''(g)(1) If and to the extent that the head of a Federal agency, in his or her sole discretion, deems it appropriate, a passenger carrier may be used to transport an officer or employee of a Federal agency between the officer's or employee's place of employment and a mass transit facility (whether or not publicly owned) in accordance with succeeding provisions of this subsection.

''(2) Notwithstanding section 1343, a Federal agency that provides transportation services under this subsection (including by passenger carrier) may absorb the costs of such services

using any funds available to such agency, whether by appropriation or otherwise.

''(3) In carrying out this subsection, a Federal agency, to the maximum extent practicable and consistent with sound budget policy, should—

''(A) use alternative fuel vehicles for the provision of transportation services;

''(B) to the extent consistent with the purposes of this subsection, provide transportation services in a manner that does not result in additional gross income for Federal income tax purposes; and

''(C) coordinate with other Federal agencies to share, and otherwise avoid duplication of, transportation services provided under this subsection.

''(4) For purposes of any determination under chapter 81 of title 5 or chapter 171 of title 28, an individual shall not be considered to be in the 'performance of duty' or 'acting within the scope of his or her office or employment' by virtue of the fact that such individual is receiving transportation services under this subsection. Nor shall any time during which an individual uses such services be considered when calculating the hours of work or employment for that individual for purposes of title 5 of the United States Code, including chapter 55 of that title.

''(5)(A) The Administrator of General Services, after consultation with the appropriate agencies, shall prescribe any regulations necessary to carry out this subsection.

''(B) Transportation services under this subsection shall be subject neither to the last sentence of subsection (d)(3) nor to any regulations under the last sentence of subsection (e)(1).

''(6) In this subsection, the term 'passenger carrier' means a passenger motor vehicle or similar means of transportation that is owned, leased, or provided pursuant to contract by the United States Government.''.

(2) FUNDS FOR MAINTENANCE, REPAIR, ETC.—Subsection (a) of section 1344 of title 31, United States Code, is amended by adding at the end the following:

''(3) For purposes of paragraph (1), the transportation of an individual between such individual's place of employment and a mass transit facility pursuant to subsection (g) is transportation for an official purpose.''.

(3) COORDINATION.—The authority to provide transportation services under section 1344(g) of title 31, United States Code (as amended by paragraph (1)) shall be in addition to any authority otherwise available to the agency involved.

SEC. 3050. COMMUTER RAIL.

(a) IN GENERAL.—The Federal Transit Administration shall approve final design for the projects authorized under section 3030(c)(1)(A)(xliv) of the Federal Transit Act of 1998 and section 1214(g) of the Transportation Equity Act for the 21st Century (16 U.S.C. 668dd note) in the absence of an access agreement with the owner of the railroad right of way.

(b) TIMELY RESOLUTION OF ISSUES.—The Secretary shall timely resolve any issues delaying the completion of the projects authorized under section 1214(g) of the Transportation Equity Act for the 21st Century (16 U.S.C. 668dd note) and section 3030(c)(1)(A)(xliv) of the Federal Transit Act of 1998.

SEC. 3051. PARATRANSIT SERVICE IN ILLINOIS.

In the State of Illinois, a regional or State agency, or another transit agency, may be responsible for providing the complementary paratransit services that would otherwise be provided by a transit agency under the Americans with Disabilities Act of 1990. Where a regional or State agency, or another transit agency, undertakes to provide such services, either by agreement or pursuant to State legislation, the Secretary may audit the paratransit services provided, make recommendations, and take appropriate enforcement action directed to such regional, State, or transit agency providing the services, to ensure that the requirements of the Americans with Disabilities Act of 1990 are met. Nothing in this Act shall be construed to conflict with the requirements of the Americans with Disabilities Act of 1990 and its implementing regulations.

TITLE IV—MOTOR CARRIER SAFETY

SECTION 4001. SHORT TITLE.

This title may be cited as the ''Motor Carrier Safety Reauthorization Act of 2005''.

Subtitle A—Commercial Motor Vehicle Safety

SEC. 4101. AUTHORIZATION OF APPROPRIATIONS.

(a) MOTOR CARRIER SAFETY GRANTS.—Section 31104(a) of title 49, United States Code, is amended to read as follows:

''(a) IN GENERAL.—Subject to subsection (f), there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31102—

''(1) $188,480,000 for fiscal year 2005;

''(2) $188,000,000 for fiscal year 2006;

''(3) $197,000,000 for fiscal year 2007;

''(4) $202,000,000 for fiscal year 2008; and

''(5) $209,000,000 for fiscal year 2009.''.

(b) ADMINISTRATIVE EXPENSES.—Section 31104 of such title is amended by adding the following at the end:

''(i) ADMINISTRATIVE EXPENSES.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to pay administrative expenses of the Federal Motor Carrier Safety Administration—

''(A) $254,849,000 for fiscal year 2005;

''(B) $213,000,000 for fiscal year 2006;

''(C) $223,000,000 for fiscal year 2007;

''(D) $228,000,000 for fiscal year 2008; and

''(E) $234,000,000 for fiscal year 2009.

''(2) USE OF FUNDS.—The funds authorized by this subsection shall be used for personnel costs; administrative infrastructure; rent; information technology; programs for research and technology, information management, regulatory development, the administration of the performance and registration information system management, and outreach and education; other operating expenses; and such other expenses as may from time to time become necessary to implement statutory mandates of the Administration not funded from other sources.

''(j) AVAILABILITY OF FUNDS; CONTRACT AUTHORITY.—

''(1) PERIOD OF AVAILABILITY.—The amounts made available under this section shall remain available until expended.

''(2) INITIAL DATE OF AVAILABILITY.—Authorizations from the Highway Trust Fund (other than the Mass Transit Account) by this section shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

''(3) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under this section imposes upon the United States a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.''.

(c) GRANT PROGRAMS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) the following sums for the following Federal Motor Carrier Safety Administration programs:

(1) COMMERCIAL DRIVER'S LICENSE PROGRAM IMPROVEMENT GRANTS.—For commercial driver's license program improvement grants under section 31313 of title 49, United States Code $25,000,000 for each of fiscal years 2006 through 2009.

(2) BORDER ENFORCEMENT GRANTS.—For border enforcement grants under section 31107 of such title $32,000,000 for each of fiscal years 2006, 2007, 2008, and 2009.

(3) PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT GRANT PROGRAM.—For the performance and registration information system management grant program under section 31109 of such title $5,000,000 for each of fiscal years 2006, 2007, 2008, and 2009.

(4) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS DEPLOYMENT.—For carrying out the commercial vehicle information systems and networks deployment program under section 4126 of this Act, $25,000,000 for each of fiscal years 2006 through 2009.

(5) SAFETY DATA IMPROVEMENT GRANTS.—For safety data improvement grants under section 4128 of this Act $2,000,000 for fiscal year 2006 and $3,000,000 for each of fiscal years 2007 through 2009.

(d) PERIOD OF AVAILABILITY.—The amounts made available under subsection (b) of this section shall remain available until expended.

(e) INITIAL DATE OF AVAILABILITY.—Amounts authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) by subsection (b) shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

(f) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under subsection (b) imposes upon the United States a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.

SEC. 4102. INCREASED PENALTIES FOR OUT-OF-SERVICE VIOLATIONS AND FALSE RECORDS.

(a) RECORDKEEPING AND REPORTING VIOLATIONS.—Section 521(b)(2)(B) of title 49, United States Code, is amended—

(1) in clause (i) by striking ''$500'' and inserting ''$1,000''; and

(2) by striking ''$5,000'' each place it appears and inserting ''$10,000''.

(b) VIOLATIONS OF OUT-OF-SERVICE ORDERS.—Section 31310(i)(2) of title 49, United States Code, is amended—

(1) by striking ''Not later than December 18, 1992, the'' and inserting ''The'';

(2) in subparagraph (A)—

(A) by striking ''90 days'' and inserting ''180 days''; and

(B) by striking ''$1,000'' and inserting ''$2,500'';

(3) in subparagraph (B)—

(A) by striking ''one year'' and inserting ''2 years''; and

(B) by striking ''$1,000; and'' and inserting ''$5,000;'';

(4) in subparagraph (C) by striking ''$10,000.'' and inserting ''$25,000; and''; and

(5) by adding at the end the following:

''(D) an employer that knowingly and willfully allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall, upon conviction, be subject for each offense to imprisonment for a term not to exceed one year or a fine under title 18, or both.''.

SEC. 4103. PENALTY FOR DENIAL OF ACCESS TO RECORDS.

Section 521(b) of title 49, United States Code, is amended—

(1) by striking ''(b)(1)(A) If the Secretary'' and inserting the following:

''(b) VIOLATIONS RELATING TO COMMERCIAL MOTOR VEHICLE SAFETY REGULATION AND OPERATORS.—

''(1) NOTICE.—

''(A) IN GENERAL.—If the Secretary''; and

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

''(E) COPYING OF RECORDS AND ACCESS TO EQUIPMENT, LANDS, AND BUILDINGS.—A person subject to chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI who fails to allow promptly, upon demand, the Secretary (or an employee designated by the Secretary) to inspect and copy any record or inspect and examine equipment,

lands, buildings and other property in accordance with sections 504(c), 5121(c), and 14122(b) shall be liable to the United States for a civil penalty not to exceed $1,000 for each offense. Each day the Secretary is denied the right to inspect and copy any record or inspect and examine equipment, lands, buildings and other property shall constitute a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $10,000. It shall be a defense to such penalty that the records did not exist at the time of the Secretary's request or could not be timely produced without unreasonable expense or effort. Nothing in this subparagraph amends or supersedes any remedy available to the Secretary under section 502(d), section 507(c), or any other provision of this title.''.

SEC. 4104. REVOCATION OF OPERATING AUTHORITY.

Section 13905(e) of title 49, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) PROTECTION OF SAFETY.—Notwithstanding subchapter II of chapter 5 of title 5, the Secretary—

''(A) may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with requirements of the Secretary pursuant to section 13904(c) or 13906 or an order or regulation of the Secretary prescribed under those sections; and

''(B) shall revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements of section 31144.'';

(2) in paragraph (2) by striking ''may suspend a registration'' and inserting ''shall revoke the registration''; and

(3) by striking paragraph (3) and inserting the following:

''(3) NOTICE; PERIOD OF SUSPENSION.—The Secretary may suspend or revoke under this subsection the registration only after giving notice of the suspension or revocation to the registrant. A suspension remains in effect until the registrant complies with the applicable sections or, in the case of a suspension under paragraph (2), until the Secretary revokes the suspension.''.

SEC. 4105. STATE LAWS RELATING TO VEHICLE TOWING.

(a) STATE LAWS RELATING TO VEHICLE TOWING.—Section 14501(c) of title 49, United States Code, is amended by adding at the end the following:

''(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to prevent a State from requiring that, in the case of a motor vehicle to be towed from private property without the consent of the owner or operator of the vehicle, the person towing the vehicle have prior written authorization from the property owner or lessee (or an employee or agent thereof) or that such owner or lessee (or an employee or agent thereof) be present at the time the vehicle is towed from the property, or both.''.

(b) PREDATORY TOW TRUCK OPERATIONS.—

(1) STUDY.—The Secretary shall conduct a study—

(A) to identify issues related to the protection of the rights of individuals whose motor vehicles are towed;

(B) to establish the scope and geographic reach of any issues so identified, and

(C) to identify potential remedies for those issues.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the study.

SEC. 4106. MOTOR CARRIER SAFETY GRANTS.

(a) STATE PLAN CONTENTS.—Section 31102(b)(1) of title 49, United States Code, is amended—

(1) by striking subparagraph (A) and inserting the following:

''(A) implements performance-based activities, including deployment of technology to enhance the efficiency and effectiveness of commercial motor vehicle safety programs;'';

(2) by striking subparagraph (E) and inserting the following:

''(E) provides that the total expenditure of amounts of the State and its political subdivisions (not including amounts of the Government) for commercial motor vehicle safety programs for enforcement of commercial motor vehicle size and weight limitations, drug interdiction, and State traffic safety laws and regulations under subsection (c) of this section will be maintained at a level at least equal to the average level of that expenditure for the 3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year.'';

(3) by striking subparagraph (Q) and inserting the following:

''(Q) provides that the State has established a program to ensure that—

''(i) accurate, complete, and timely motor carrier safety data is collected and reported to the Secretary; and

''(ii) the State will participate in a national motor carrier safety data correction system prescribed by the Secretary;'';

(4) by aligning subparagraph (R) with subparagraph (S);

(5) by striking ''and'' at the end of subparagraph (S);

(6) by striking the period at the end of subparagraph (T) and inserting a semicolon; and

(7) by adding at the end the following:

''(U) provides that the State will include in the training manual for the licensing examination to drive a noncommercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of noncommercial and commercial motor vehicles;

''(V) provides that the State will enforce the registration requirements of section 13902 by prohibiting the operation of any vehicle discovered to be operated by a motor carrier without a registration issued under such section or to operate beyond the scope of such registration;

''(W) provides that the State will conduct comprehensive and highly visible traffic enforcement and commercial motor vehicle safety inspection programs in high-risk locations and corridors; and

''(X) except in the case of an imminent or obvious safety hazard, ensures that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.''.

(b) USE OF GRANTS TO ENFORCE OTHER LAWS.—Section 31102 of such title is amended—

(1) by striking subsection (c) and inserting the following:

''(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a)—

''(1) for the following activities if the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations:

''(A) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States; and

''(B) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle; and

''(2) for documented enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles, including documented enforcement of such laws and regulations relating to noncommercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles if the number of motor carrier safety activities (including roadside safety inspections) conducted in the State is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2003, 2004, and 2005; except that the State may not use more than 5 percent of the basic amount the State receives under the grant under subsection (a) for enforcement activities relating to noncommercial motor vehicles described in this paragraph unless the Secretary determines a higher percentage will result in significant increases in commercial motor vehicle safety.''; and

(2) by adding at the end the following:

''(e) ANNUAL REPORT.—The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate an annual report that—

''(1) analyzes commercial motor vehicle safety trends among the States and documents the most effective commercial motor vehicle safety programs implemented with grants under this section; and

''(2) describes the effect of activities carried out with grants made under this section on commercial motor vehicle safety.''.

SEC. 4107. HIGH PRIORITY ACTIVITIES AND NEW ENTRANTS AUDITS.

(a) HIGH PRIORITY ACTIVITIES.—Section 31104 of title 49, United States Code (as amended by section 4101 of this Act), is amended by adding at the end the following:

''(k) HIGH-PRIORITY ACTIVITIES.—

''(1) CRITERIA.—The Secretary shall establish safety performance criteria to be used to distribute high priority program funds under this subsection.

''(2) SET ASIDE.—The Secretary may set aside from amounts made available by subsection (a) up to $15,000,000 for each of fiscal years 2006 through 2009 for States, local governments, and organizations representing government agencies or officials described in paragraph (3) for carrying out high priority activities and projects that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations (including activities and projects that are national in scope), increase public awareness and education, demonstrate new technologies, and reduce the number and rate of accidents involving commercial motor vehicles.

''(3) DESCRIPTION OF RECIPIENTS.—Amounts set aside under this subsection shall be allocated by the Secretary only to State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

''(4) LIMITATION.—At least 90 percent of the amounts set aside for a fiscal year under this subsection shall be awarded in grants to State agencies and local government agencies.''.

(b) NEW ENTRANT AUDITS.—Section 31104 of such title is amended—

(1) by redesignating the second subsection as subsection (f); and

(2) by adding at the end of such subsection the following:

''(5) NEW ENTRANT AUDITS.—

''(A) GRANTS.—The Secretary may make grants to States and local governments for new

entrant motor carrier audits under this subsection without requiring a matching contribution from such States and local governments.

''(B) SET ASIDE.—The Secretary shall set aside from amounts made available by section 31104(a) up to $29,000,000 per fiscal year for audits of new entrant motor carriers conducted pursuant to this paragraph.

''(C) DETERMINATION.—If the Secretary determines that a State or local government is not able to use government employees to conduct new entrant motor carrier audits, the Secretary may use the funds set aside under this paragraph to conduct audits for such States or local governments.''.

SEC. 4108. DATA QUALITY IMPROVEMENT.

(a) IN GENERAL.—Section 31106(a)(3) of title 49, United States Code, is amended—

(1) by striking ''and'' at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting a semicolon; and

(3) by adding at the end the following:

''(F) ensure, to the maximum extent practical, all the data is complete, timely, and accurate across all information systems and initiatives; and

''(G) establish and implement a national motor carrier safety data correction system.''.

(b) REPORT ON STATUS OF SAFETY FITNESS RATING SYSTEM REVISION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of revision of the safety fitness rating system of motor carriers.

SEC. 4109. PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT.

(a) DESIGN AND CONDITIONS FOR PARTICIPATION.—Section 31106(b) of title 49, United States Code, is amended by striking paragraphs (2), (3), and (4) and inserting the following:

''(2) DESIGN.—The program shall link Federal motor carrier safety information systems with State commercial vehicle registration and licensing systems and shall be designed to enable a State to—

''(A) determine the safety fitness of a motor carrier or registrant when licensing or registering the registrant or motor carrier or while the license or registration is in effect; and

''(B) deny, suspend, or revoke the commercial motor vehicle registrations of a motor carrier or registrant that has been issued an operations out-of-service order by the Secretary.

''(3) CONDITIONS FOR PARTICIPATION.—The Secretary shall require States, as a condition of participation in the program, to—

''(A) comply with the uniform policies, procedures, and technical and operational standards prescribed by the Secretary under subsection (a)(4);

''(B) possess or seek the authority to possess for a time period no longer than determined reasonable by the Secretary, to impose sanctions relating to commercial motor vehicle registration on the basis of a Federal safety fitness determination; and

''(C) establish and implement a process to cancel the motor vehicle registration and seize the registration plates of a vehicle when an employer is found liable under section 31310(i)(2)(C) for knowingly allowing or requiring an employee to operate such a commercial motor vehicle in violation of an out-of-service order.

''(4) GRANTS.—From the funds authorized by section 31104(i), the Secretary may make a grant in a fiscal year to a State to implement the performance and registration information system management requirements of this subsection.''.

(b) PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT GRANTS.—

(1) IN GENERAL.—Subchapter I of chapter 311 of title 49, United States Code, is further amended by adding at the end the following:

''§ 31109. Performance and registration information System management

''The Secretary of Transportation may make a grant to a State to implement the performance and registration information system management requirements of section 31106(b).''.

(2) CONFORMING AMENDMENT.—The analysis for such subchapter is amended by adding at the end the following:

''31109. Performance and registration information system management.''.

SEC. 4110. BORDER ENFORCEMENT GRANTS.

(a) IN GENERAL.—Chapter 311 of title 49, United States Code, is amended—

(1) by striking the heading for subchapter I and inserting the following:

''SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS''; and

(2) by striking section 31107 and inserting the following:

''§ 31107. Border enforcement grants

''(a) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant in a fiscal year to an entity or State that shares a land border with another country for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

''(b) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of amounts from the United States, for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years of the State or the Federal Government ending before October 1, 2005, whichever the State designates.

''(c) GOVERNMENTS SHARE OF COSTS.—The Secretary shall reimburse a State under a grant made under this section an amount that is not more than 100 percent of the costs incurred by the State in a fiscal year for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

''(d) AVAILABILITY AND REALLOCATION OF AMOUNTS.—Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the next fiscal year. Amounts not expended by a State during those 2 fiscal years are available to the Secretary for reallocation under this section.''.

(b) CLERICAL AMENDMENTS.—

(1) ITEM RELATING TO SUBCHAPTER I.—The analysis for such chapter is amended by striking the item relating to subchapter I and inserting the following:

''SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS''.

(2) ITEM RELATING TO SECTION 31107.—The analysis for such chapter is amended by striking the item relating to section 31107 and inserting the following:

''31107. Border enforcement grants.''.

SEC. 4111. MOTOR CARRIER RESEARCH AND TECHNOLOGY PROGRAM.

(a) IN GENERAL.—Section 31108 of title 49, United States Code, is amended to read as follows:

''§ 31108. Motor carrier research and technology program

''(a) RESEARCH, TECHNOLOGY, AND TECHNOLOGY TRANSFER ACTIVITIES.—

''(1) ESTABLISHMENT.—The Secretary of Transportation shall establish and carry out a motor carrier and motor coach research and technology program.

''(2) MULTIYEAR PLAN.—The program must include a multi-year research plan that focuses on nonredundant innovative research and shall be coordinated with other research programs or projects ongoing or planned within the Department of Transportation, as appropriate.

''(3) RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—The Secretary may carry out under the program research, development, technology, and technology transfer activities with respect to—

''(A) the causes of accidents, injuries, and fatalities involving commercial motor vehicles;

''(B) means of reducing the number and severity of accidents, injuries, and fatalities involving commercial motor vehicles;

''(C) improving the safety and efficiency of commercial motor vehicles through technological innovation and improvement;

''(D) improving technology used by enforcement officers when conducting roadside inspections and compliance reviews to increase efficiency and information transfers; and

''(E) increasing the safety and security of hazardous materials transportation.

''(4) TESTS AND DEVELOPMENT.—The Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process related to the research and technology program.

''(5) TRAINING.—The Secretary may use the funds made available to carry out this section for training or education of commercial motor vehicle safety personnel, including training in accident reconstruction and detection of controlled substances or other contraband and stolen cargo or vehicles.

''(6) PROCEDURES.—The Secretary may carry out this section—

''(A) independently;

''(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories; or

''(C) by making grants to, or entering into contracts and cooperative agreements with, any Federal laboratory, State agency, authority, association, institution, for-profit or nonprofit corporation, organization, foreign country, or person.

''(7) DEVELOPMENT AND PROMOTION OF USE OF PRODUCTS.—The Secretary shall use funds made available to carry out this section to develop, administer, communicate, and promote the use of products of research, technology, and technology transfer programs under this section.

''(b) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

''(1) IN GENERAL.—To advance innovative solutions to problems involving commercial motor vehicle and motor carrier safety, security, and efficiency, and to stimulate the deployment of emerging technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

''(A) non-Federal entities, including State and local governments, foreign governments, colleges and universities, corporations, institutions, partnerships, and sole proprietorships that are incorporated or established under the laws of any State; and

''(B) Federal laboratories.

''(2) COOPERATIVE AGREEMENTS.—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)).

''(3) COST SHARING.—

''(A) FEDERAL SHARE.—The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent; except that, if there is substantial public interest or benefit associated with any such activity, the Secretary may approve a greater Federal share.

''(B) TREATMENT OF DIRECTLY INCURRED NON-FEDERAL COSTS.—All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware or software development

costs, shall be credited toward the non-Federal share of the cost of the activities described in subparagraph (A).

''(4) USE OF TECHNOLOGY.—The research, development, or use of a technology under a cooperative research and development agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 311 of such title is amended by striking the item relating to section 31108 and inserting the following:

''31108. Motor carrier research and technology program.''.

SEC. 4112. NEBRASKA CUSTOM HARVESTERS LENGTH EXEMPTION.

(a) IN GENERAL.—Section 31112(c) of title 49, United States Code, is amended by adding at the end the following:

''(5) Nebraska may allow the operation of a truck tractor and 2 trailers or semitrailers not in actual lawful operation on a regular or periodic basis on June 1, 1991, if the length of the property-carrying units does not exceed 81 feet 6 inches and such combination is used only to transport equipment utilized by custom harvesters under contract to agricultural producers to harvest one or more of wheat, soybeans, and milo during the harvest months for such crops, as defined by the State of Nebraska.''.

(b) CONFORMING AMENDMENT.—Such section 31112(c) is amended by striking the subsection designation and heading and inserting the following:

''(c) SPECIAL RULES FOR WYOMING, OHIO, ALASKA, IOWA, AND NEBRASKA.—''.

SEC. 4113. PATTERN OF SAFETY VIOLATIONS BY MOTOR CARRIER MANAGEMENT.

(a) DUTIES OF EMPLOYERS AND EMPLOYEES.—Section 31135 of title 49, United States Code, is amended—

(1) by inserting ''(a) In General.—'' before ''Each''; and

(2) by adding at the end the following:

''(b) PATTERN OF NONCOMPLIANCE.—If the Secretary finds that an officer of a motor carrier engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety prescribed under this subchapter, while serving as an officer of any motor carrier, the Secretary may suspend, amend, or revoke any part of the motor carrier's registration under section 13905.

''(c) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall by regulation establish standards to implement subsection (b).

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

''(1) MOTOR CARRIER.—The term 'motor carrier' has the meaning such term has under section 13102.

''(2) OFFICER.—The term 'officer' means an owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier.''.

(b) CROSS REFERENCE.—Section 13902(a)(1)(B) of such title is amended to read as follows:

''(B)(i) any safety regulations imposed by the Secretary;

''(ii) the duties of employers and employees established by the Secretary under section 31135; and

''(iii) the safety fitness requirements established by the Secretary under section 31144; and''.

SEC. 4114. INTRASTATE OPERATIONS OF INTERSTATE MOTOR CARRIERS.

(a) IN GENERAL.—Section 31144(a) of title 49, United States Code, is amended to read as follows:

''(a) IN GENERAL.—The Secretary shall—

''(1) determine whether an owner or operator is fit to operate safely commercial motor vehicles, utilizing among other things the accident record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of such owner or operator—

''(A) in operations that affect interstate commerce within the United States; and

''(B) in operations in Canada and Mexico if the owner or operator also conducts operations within the United States;

''(2) periodically update such safety fitness determinations;

''(3) make such final safety fitness determinations readily available to the public; and

''(4) prescribe by regulation penalties for violations of this section consistent with section 521.''.

(b) PROHIBITED TRANSPORTATION.—The first subsection (c) of section 31144 of such title is amended by adding at the end the following:

''(5) TRANSPORTATION AFFECTING INTERSTATE COMMERCE.—Owners or operators of commercial motor vehicles prohibited from operating in interstate commerce pursuant to paragraphs (1) through (3) of this section may not operate any commercial motor vehicle that affects interstate commerce until the Secretary determines that such owner or operator is fit.''.

(c) DETERMINATION OF UNFITNESS BY STATE.—Section 31144 of such title is amended—

(1) by redesignating subsections (d), (e), and the second subsection (c) as subsections (e), (f), and (g), respectively; and

(2) by inserting after subsection (c) the following:

''(d) DETERMINATION OF UNFITNESS BY STATE.—If a State that receives motor carrier safety assistance program funds under section 31102 determines, by applying the standards prescribed by the Secretary under subsection (b), that an owner or operator of a commercial motor vehicle that has its principal place of business in that State and operates in intrastate commerce is unfit under such standards and prohibits the owner or operator from operating such vehicle in the State, the Secretary shall prohibit the owner or operator from operating such vehicle in interstate commerce until the State determines that the owner or operator is fit.''.

SEC. 4115. TRANSFER PROVISION.

(a) IN GENERAL.—Title II of the Motor Carrier Safety Improvement Act of 1999 (113 Stat. 1748–1773) is amended by inserting after section 228—

(1) the following:

''SEC. 229. CERTAIN EXEMPTIONS.''; and

(2) the text of section 345 of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note).

(b) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 228 the following:

''Sec. 229. Certain exemptions.''.

(c) CONFORMING AMENDMENT.—Section 229 of such Act (as added by this section) is amended by striking subsection (f).

(d) CONFORMING REPEAL.—Section 345 of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note; 109 Stat. 613) is repealed.

SEC. 4116. MEDICAL PROGRAM.

(a) IN GENERAL.—Subchapter III of chapter 311 of title 49, United States Code, is amended by adding at the end the following:

''§ 31149. Medical program

''(a) MEDICAL REVIEW BOARD.—

''(1) ESTABLISHMENT AND FUNCTION.—The Secretary of Transportation shall establish a Medical Review Board to provide the Federal Motor Carrier Safety Administration with medical advice and recommendations on medical standards and guidelines for the physical qualifications of operators of commercial motor vehicles, medical examiner education, and medical research.

''(2) COMPOSITION.—The Medical Review Board shall be appointed by the Secretary and shall consist of 5 members selected from medical institutions and private practice. The membership shall reflect expertise in a variety of medical specialties relevant to the driver fitness requirements of the Federal Motor Carrier Safety Administration.

''(b) CHIEF MEDICAL EXAMINER.—The Secretary shall appoint a chief medical examiner who shall be an employee of the Federal Motor Carrier Safety Administration and who shall hold a position under section 3104 of title 5, United States Code, relating to employment of specially qualified scientific and professional personnel, and shall be paid under section 5376 of title 5, United States Code, relating to pay for certain senior-level positions.

''(c) MEDICAL STANDARDS AND REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary, with the advice of the Medical Review Board and the chief medical examiner, shall—

''(A) establish, review, and revise—

''(i) medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely;

''(ii) requirements for periodic physical examinations of such operators performed by medical examiners who have, at a minimum, self-certified that they have completed training in physical and medical examination standards and are listed on a national registry maintained by the Department of Transportation; and

''(B) require each such operator to have a current valid medical certificate;

''(C) conduct periodic reviews of a select number of medical examiners on the national registry to ensure that proper examinations of such operators are being conducted;

''(D) develop, as appropriate, specific courses and materials for medical examiners listed in the national registry established under this section, and require those medical examiners to, at a minimum, self-certify that they have completed specific training, including refresher courses, to be listed in the registry;

''(E) require medical examiners to transmit the name of the applicant and numerical identifier, as determined by the Administrator of the Federal Motor Carrier Safety Administration, for any completed medical examination report required under section 391.43 of title 49, Code of Federal Regulations, electronically to the chief medical examiner on monthly basis; and

''(F) periodically review a representative sample of the medical examination reports associated with the name and numerical identifiers of applicants transmitted under subparagraph (E) for errors, omissions, or other indications of improper certification.

''(2) MONITORING PERFORMANCE.—The Secretary shall investigate patterns of errors or improper certification by a medical examiner. If the Secretary finds that a medical examiner has issued a medical certificate to an operator of a commercial motor vehicle who fails to meet the applicable standards at the time of the examination or that a medical examiner has falsely claimed to have completed training in physical and medical examination standards as required by this section, the Secretary may remove such medical examiner from the registry and may void the medical certificate of the applicant or holder.

''(d) NATIONAL REGISTRY OF MEDICAL EXAMINERS.—The Secretary, acting through the Federal Motor Carrier Safety Administration—

''(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform examinations and issue medical certificates;

''(2) shall remove from the registry the name of any medical examiner that fails to meet or maintain the qualifications established by the Secretary for being listed in the registry or otherwise does not meet the requirements of this section or regulation issued under this section;

''(3) shall accept as valid only medical certificates issued by persons on the national registry of medical examiners; and

''(4) may make participation of medical examiners in the national registry voluntary if such a change will enhance the safety of operators of commercial motor vehicles.

''(e) REGULATIONS.—The Secretary such regulations as may be necessary to carry out this section.''.

(b) MEDICAL EXAMINERS.—Section 31136(a)(3) of such title is amended to read as follows:

''(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely and the periodic physical examinations required of such operators are performed by medical examiners who have received training in physical and medical examination standards and, after the national registry maintained by the Department of Transportation under section 31149(d) is established, are listed on such registry; and''.

(c) DEFINITION OF MEDICAL EXAMINER.—Section 31132 of such title is amended—

(1) by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively; and

(2) by inserting after paragraph (5) the following:

''(6) 'medical examiner' means an individual licensed, certified, or registered in accordance with regulations issued by the Federal Motor Carrier Safety Administration as a medical examiner.''.

(d) FUNDING.—Amounts made available pursuant to section 31104(i) of title 49, United States Code, shall be used by the Secretary to carry out section 31149 of title 49, United States Code.

(e) CLERICAL AMENDMENT.—The analysis for such subchapter is amended by inserting after the item relating to section 31148 the following:

''31149. Medical program.''.

(f) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 365th day following the date of enactment of this Act.

SEC. 4117. SAFETY PERFORMANCE HISTORY SCREENING.

(a) IN GENERAL.—Subchapter III of chapter 311 of title 49, United States Code (as amended by section 4116 of this Act), is amended by adding at the end the following:

''§ 31150. Safety performance history screening

''(a) IN GENERAL.—The Secretary of Transportation shall provide persons conducting preemployment screening services for the motor carrier industry electronic access to the following reports contained in the Motor Carrier Management Information System:

''(1) Commercial motor vehicle accident reports.

''(2) Inspection reports that contain no driver-related safety violations.

''(3) Serious driver-related safety violation inspection reports.

''(b) CONDITIONS ON PROVIDING ACCESS.—Before providing a person access to the Motor Carrier Management Information System under subsection (a), the Secretary shall—

''(1) ensure that any information that is released to such person will be in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and all other applicable Federal law;

''(2) ensure that such person will not conduct a screening without the operator-applicant's written consent;

''(3) ensure that any information that is released to such person will not be released to any person or entity, other than the motor carrier requesting the screening services or the operator-applicant, unless expressly authorized or required by law; and

''(4) provide a procedure for the operator-applicant to correct inaccurate information in the System in a timely manner.

''(c) DESIGN.—The process for providing access to the Motor Carrier Management Information System under subsection (a) shall be designed to assist the motor carrier industry in assessing an individual operator's crash and serious safety violation inspection history as a preemployment condition. Use of the process shall not be mandatory and may only be used during the preemployment assessment of an operator-applicant.

''(d) SERIOUS DRIVER-RELATED SAFETY VIOLATION DEFINED.—In this section, the term 'serious driver-related violation' means a violation by an operator of a commercial motor vehicle that the Secretary determines will result in the operator being prohibited from continuing to operate a commercial motor vehicle until the violation is corrected.''.

(b) CLERICAL AMENDMENT.—The analysis for such subchapter (as amended by section 4116 of this Act) is amended by adding at the end the following:

''31150. Safety performance history screening.''.

SEC. 4118. ROADABILITY.

(a) IN GENERAL.—Subchapter III of chapter 311 of title 49, United States Code (as amended by sections 4116 and 4117 of this Act) is amended by adding at the end the following:

''§ 31151. Roadability

''(a) INSPECTION, REPAIR, AND MAINTENANCE OF INTERMODAL EQUIPMENT.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary of Transportation, after providing notice and opportunity for comment, shall issue regulations establishing a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.

''(2) INTERMODAL EQUIPMENT SAFETY REGULATIONS.—The Secretary shall issue the regulations under this section as a subpart of the Federal motor carry safety regulations.

''(3) CONTENTS.—The regulations issued under this section shall include, at a minimum—

''(A) a requirement to identify intermodal equipment providers responsible for the inspection and maintenance of intermodal equipment that is interchanged or intended for interchange to motor carriers in intermodal transportation;

''(B) a requirement to match intermodal equipment readily to an intermodal equipment provider through a unique identifying number;

''(C) a requirement that an intermodal equipment provider identified under subparagraph (A) systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, intermodal equipment described in subparagraph (A) that is intended for interchange with a motor carrier;

''(D) a requirement to ensure that each intermodal equipment provider identified under subparagraph (A) maintains a system of maintenance and repair records for such equipment;

''(E) requirements that—

''(i) a specific list of intermodal equipment components or items be identified for the visual or audible inspection of which a driver is responsible before operating the equipment over the road; and

''(ii) the inspection under clause (i) be conducted as part of the Federal requirement in effect on the date of enactment of this Act that a driver be satisfied that the intermodal equipment components are in good working order before the equipment is operated over the road;

''(F) a requirement that a facility at which an intermodal equipment provider regularly makes intermodal equipment available for interchange have an operational process and space readily available for a motor carrier to have an equipment defect identified pursuant to subparagraph (E) repaired or the equipment replaced prior to departure;

''(G) a program for the evaluation and audit of compliance by intermodal equipment providers with applicable Federal motor carrier safety regulations;

''(H) a civil penalty structure consistent with section 521(b) of title 49, United States Code, for intermodal equipment providers that fail to attain satisfactory compliance with applicable Federal motor carrier safety regulations; and

''(I) a prohibition on intermodal equipment providers from placing intermodal equipment in service on the public highways to the extent such providers or their equipment are found to pose an imminent hazard;

''(J) a process by which motor carriers and agents of motor carriers shall be able to request the Federal Motor Carrier Safety Administration to undertake an investigation of an intermodal equipment provider identified under subparagraph (A) that is alleged to be not in compliance with the regulations under this section;

''(K) a process by which equipment providers and agents of equipment providers shall be able to request the Administration to undertake an investigation of a motor carrier that is alleged to be not in compliance with the regulations issued under this section;

''(L) a process by which a driver or motor carrier transporting intermodal equipment is required to report to the intermodal equipment provider or the provider's designated agent any actual damage or defect in the intermodal equipment of which the driver or motor carrier is aware at the time the intermodal equipment is returned to the intermodal equipment provider or the provider's designated agent;

''(M) a requirement that any actual damage or defect identified in the process established under subparagraph (L) be repaired before the equipment is made available for interchange to a motor carrier and that repairs of equipment made pursuant to the requirements of this subparagraph and reports made pursuant to the subparagraph (L) process be documented in the maintenance records for such equipment; and

''(N) a procedure under which motor carriers, drivers and intermodal equipment providers may seek correction of their motor carrier safety records through the deletion from those records of violations of safety regulations attributable to deficiencies in the intermodal chassis or trailer for which they should not have been held responsible.

''(4) DEADLINE FOR RULEMAKING PROCEEDING.—Not later than 120 days after the date of enactment of this section, the Secretary shall initiate a rulemaking proceeding for issuance of the regulations under this section.

''(b) INSPECTION, REPAIR, AND MAINTENANCE OF INTERMODAL EQUIPMENT.—The Secretary or an employee of the Department of Transportation designated by the Secretary may inspect intermodal equipment, and copy related maintenance and repair records for such equipment, on demand and display of proper credentials.

''(c) OUT-OF-SERVICE UNTIL REPAIR.—Any intermodal equipment that is determined under this section to fail to comply with applicable Federal safety regulations may be placed out of service by the Secretary or a Federal, State, or government official designated by the Secretary and may not be used on a public highway until the repairs necessary to bring such equipment into compliance have been completed. Repairs of equipment taken out of service shall be documented in the maintenance records for such equipment.

''(d) PREEMPTION GENERALLY.—Except as provided in subsection (e), a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to commercial motor vehicle safety is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed under or pursuant to this section.

''(e) PRE-EXISTING STATE REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a State requirement for the periodic

inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, shall remain in effect only until the date on which requirements prescribed under this section take effect.

''(2) NONPREEMPTION DETERMINATIONS.—

''(A) IN GENERAL.—Notwithstanding subsection (d), a State requirement described in paragraph (1) is not preempted by a Federal requirement prescribed under this section if the Secretary determines that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce.

''(B) APPLICATION REQUIRED.—Subparagraph (A) applies to a State requirement only if the State applies to the Secretary for a determination under this paragraph with respect to the requirement before the date on which the regulations issued under this section take effect. The Secretary shall make a determination with respect to any such application within 6 months after the date on which the Secretary receives the application.

''(C) AMENDED STATE REQUIREMENTS.—Any amendment to a State requirement not preempted under this subsection because of a determination by the Secretary under subparagraph (A) may not take effect unless—

''(i) it is submitted to the Secretary before the effective date of the amendment; and

''(ii) the Secretary determines that the amendment would not cause the State requirement to be less effective than the Federal requirement and would not unduly burden interstate commerce.

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

''(1) INTERMODAL EQUIPMENT.—The term 'intermodal equipment' means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.

''(2) INTERMODAL EQUIPMENT INTERCHANGE AGREEMENT.—The term 'intermodal equipment interchange agreement' means the Uniform Intermodal Interchange and Facilities Access Agreement or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

''(3) INTERMODAL EQUIPMENT PROVIDER.—The term 'intermodal equipment provider' means any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

''(4) INTERCHANGE.—The term 'interchange'—

''(A) means the act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider; but

''(B) does not include the leasing of equipment to a motor carrier for primary use in the motor carrier's freight hauling operations.''.

(b) CLERICAL AMENDMENT.—The analysis for such subchapter (as amended by sections 4116 and 4117 of this Act) is amended by adding at the end the following:

''31151. Roadability.''.

SEC. 4119. INTERNATIONAL COOPERATION.

(a) IN GENERAL.—Chapter 311 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER IV—MISCELLANEOUS

''§ 31161. International cooperation

''The Secretary of Transportation is authorized to use funds made available by section 31104(i) to participate and cooperate in international activities to enhance motor carrier, commercial motor vehicle, driver, and highway safety by such means as exchanging information, conducting research, and examining needs, best practices, and new technology.''.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by adding at the end the following:

''SUBCHAPTER IV—MISCELLANEOUS

''31161. International cooperation.''.

SEC. 4120. FINANCIAL RESPONSIBILITY FOR PRIVATE MOTOR CARRIERS.

(a) TRANSPORTATION OF PASSENGERS.—

(1) GENERAL REQUIREMENT.—Section 31138(a) of title 49, United States Code, is amended—

(A) by striking ''for compensation''; and

(B) by inserting ''commercial'' before ''motor vehicle''.

(2) OTHER PERSONS.—Section 31138(c) of such title is amended by adding at the end the following:

''(4) OTHER PERSONS.—The Secretary may require a person, other than a motor carrier (as defined in section 13102), transporting passengers by commercial motor vehicle to file with the Secretary the evidence of financial responsibility specified in subsection (c)(1) in an amount not less than the greater of the amount required by subsection (b)(1) or the amount required for such person to transport passengers under the laws of the State or States in which the person is operating; except that the amount of the financial responsibility must be sufficient to pay not more than the amount of the financial responsibility for each final judgment against the person for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of the commercial motor vehicle, or for loss or damage to property, or both.''.

(b) TRANSPORTATION OF PROPERTY.—Section 31139 of such title is amended—

(1) in subsection (b)(1)—

(A) by striking ''for compensation''; and

(B) by inserting ''commercial'' before ''motor vehicle'';

(2) by redesignating subsections (c) through (g) as subsections (d) through (h), respectively; and

(3) by inserting after subsection (b) the following:

''(c) FILING OF EVIDENCE OF FINANCIAL RESPONSIBILITY.—The Secretary may require a motor private carrier (as defined in section 13102) to file with the Secretary the evidence of financial responsibility specified in subsection (b) in an amount not less than the greater of the minimum amount required by this section or the amount required for such motor private carrier to transport property under the laws of the State or States in which the motor private carrier is operating; except that the amount of the financial responsibility must be sufficient to pay not more than the amount of the financial responsibility for each final judgment against the motor private carrier for bodily injury to, or death of, an individual resulting from negligent operation, maintenance, or use of the commercial motor vehicle, or for loss or damage to property, or both.''.

SEC. 4121. DEPOSIT OF CERTAIN CIVIL PENALTIES INTO HIGHWAY TRUST FUND.

Sections 31138(d)(5) and 31139(f)(5) of title 49, United States Code, are each amended by striking ''Treasury as miscellaneous receipts'' and inserting ''Highway Trust Fund (other than the Mass Transit Account)''.

SEC. 4122. CDL LEARNER'S PERMIT PROGRAM.

Chapter 313 of title 49, United States Code, is amended—

(1) in section 31302 by inserting ''and may have only 1 learner's permit at any time'' after ''time'';

(2) in section 31308—

(A) by inserting after ''license'' the first place it appears ''and learner's permits'' ;

(B) by striking ''licenses.'' and inserting ''licenses and permits.'';

(C) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(D) by inserting after paragraph (1) the following:

''(2) before a commercial driver's license learner's permit may be issued to an individual, the individual must pass a written test, that complies with the minimum standards prescribed by the Secretary under section 31305(a), on the operation of the commercial motor vehicle that the individual will be operating under the permit;''; and

(E) in paragraphs (3) and (4) of section 31308 (as so redesignated) and in section 31309 (b) by inserting after ''license'' each place it appears ''or learner's permit''.

SEC. 4123. COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM MODERNIZATION.

(a) MODERNIZATION PLAN.—Section 31309 of title 49, United States Code, is amended by adding at the end the following:

''(e) MODERNIZATION PLAN.—

''(1) IN GENERAL.—Not later than 120 days after the date of enactment of this subsection, the Secretary shall develop and publish a comprehensive national plan to modernize the information system under this section that—

''(A) complies with applicable Federal information technology security standards;

''(B) provides for the electronic exchange of all information including the posting of convictions;

''(C) contains self auditing features to ensure that data is being posted correctly and consistently by the States;

''(D) integrates the commercial driver's license and the medical certificate; and

''(E) provides a schedule for modernization of the system.

''(2) CONSULTATION.—The plan shall be developed in consultation with representatives of the motor carrier industry, State safety enforcement agencies, and State licensing agencies designated by the Secretary.

''(3) STATE FUNDING OF FUTURE EFFORTS.—The plan shall specify that States will fund future efforts to modernize the commercial driver's information system.

''(4) DEADLINE FOR STATE PARTICIPATION.—

''(A) IN GENERAL.—The Secretary shall establish in the plan a date by which all States must be operating commercial driver's license information systems that are compatible with the modernized information system under this section.

''(B) FACTORS TO CONSIDER.—In establishing the date under subparagraph (A), the Secretary shall consider the following:

''(i) Availability and cost of technology and equipment needed to comply with subparagraph (A).

''(ii) Time necessary to install, and test the operation of, such technology and equipment.

''(5) IMPLEMENTATION.—The Secretary shall implement the plan developed under subsection (a) and modernize the information system under this section to meet the requirements of the plan.

''(f) FUNDING.—At the Secretary's discretion, a State may use the funds made available to the State under section 31318 to modernize its commercial driver's license information system to be compatible with the modernized information system under this section.''.

(b) STATE PARTICIPATIONS.—Section 31311(a) of such title is amended—

(1) in paragraph (15) by striking ''(g)(1)(A), and (g)(2)'' and inserting ''(i)(1)(A) and (i)(2)'';

(2) in paragraph (17) by striking ''section 31310(h)'' and inserting ''as 31310(j)''; and

(3) by adding at the end the following:

''(21) By the date established by the Secretary under section 31309(e)(4), the State shall be operating a commercial driver's license information system that is compatible with the modernized commercial driver's license information system under section 31309.''.

(c) GRANTS.—

(1) IN GENERAL.—The Secretary may make a grant to a State or organization representing agencies and officials of a State in a fiscal year to modernize the commercial driver's license information system of the State to be compatible with the modernized commercial driver's license information system under section 31309 of title 49, United States Code, if the State is in substantial compliance with the requirements of section 31311 of such title and this section, as determined by the Secretary.

(2) CRITERIA.—The Secretary shall establish criteria for the distribution of grants and notify each State annually of such criteria.

(3) USE OF GRANT.—A State may use a grant under this subsection only to implement improvements that are consistent with the modernization plan developed by the Secretary.

(4) GOVERNMENT SHARE.—A grant under this subsection to a State or organization may not be for more than 80 percent of the costs incurred by the State or organization in a fiscal year in modernizing the commercial driver's license information system of the State to be compatible with the modernized commercial driver's license information system under section 31309 of title 49, United States Code. In determining these costs, the Secretary shall include in-kind contributions of the State.

(d) FUNDING.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section—

(1) $5,000,000 for fiscal year 2006;

(2) $7,000,000 for fiscal year 2007;

(3) $8,000,000 for fiscal year 2008; and

(4) $8,000,000 for fiscal year 2009.

(e) CONTRACT AUTHORITY AND AVAILABILITY.—

(1) PERIOD OF AVAILABILITY.—The amounts made available under subsection (d) shall remain available until expended.

(2) INITIAL DATE OF AVAILABILITY.—Amounts authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) by subsection (d) shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

(3) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under subsection (d) imposes upon the United States a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.

(f) BASELINE AUDIT.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Inspector General of the Department of Transportation, shall perform a baseline audit of the information system maintained under section 31309 of title 49, United States Code. The audit shall include—

(1) an assessment of the validity of data in the information system on a State-by-State basis;

(2) an assessment of the extent to which convictions are validly posted on a driver's record;

(3) recommendations to the Secretary on how to update the baseline audit annually to ensure that any shortcomings in the information system are addressed, and a methodology for conducting the update;

(4) identification, on a State-by-State basis, of any actions that the Inspector General finds necessary to improve the integrity of data collected by the system and to ensure the proper posting of convictions; and

(5) an analysis of amounts and use of the revenues derived from fees charged for use of the commercial driver's license information system.

SEC. 4124. COMMERCIAL DRIVER'S LICENSE IMPROVEMENTS.

(a) STATE GRANTS.—Chapter 313 of title 49, United States Code, is amended by inserting after section 31312 the following:

"§ 31313. Grants for commercial driver's license program improvements

"(a) GRANTS FOR COMMERCIAL DRIVER'S LICENSE PROGRAM IMPROVEMENTS.—

"(1) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant to a State in a fiscal year—

"(A) to comply with the requirements of section 31311; and

"(B) in the case of a State that is making a good faith effort toward substantial compliance with the requirements of section 31311 and this section, to improve its implementation of its commercial driver's license program.

"(2) PURPOSES FOR WHICH GRANTS MAY BE USED.—

"(A) IN GENERAL.—A State may use grants under paragraphs (1)(A) and (1)(B) only for expenses directly related to its compliance with section 31311; except that a grant under paragraph (1)(B) may be used for improving implementation of the State's commercial driver's license program, including expenses for computer hardware and software, publications, testing, personnel, training, and quality control. The grant may not be used to rent, lease, or buy land or buildings.

"(B) PRIORITY.—In making grants under paragraph (1)(B), the Secretary shall give priority to States that will use such grants to achieve compliance with the requirements of the Motor Carrier Safety Improvement Act of 1999, including the amendments made by such Act.

"(3) APPLICATION.—In order to receive a grant under this section, a State shall submit an application for such grant that is in such form, and contains such information, as the Secretary may require. The application shall include the State's assessment of its commercial drivers license program.

"(4) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this subsection only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of amounts from the United States, for the State's commercial driver's license program will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years of the State ending before the date of enactment of the this section.

"(5) GOVERNMENT SHARE.—The Secretary shall reimburse a State under a grant made under this subsection an amount that is not more than 100 percent of the costs incurred by the State in a fiscal year in complying with section 31311 and improving its implementation of its commercial driver's license program. In determining such costs, the Secretary shall include in-kind contributions by the State. Amounts required to be expended by the State under paragraph (4) may not be included as part of the non-Federal share of such costs.

"(b) HIGH-PRIORITY ACTIVITIES.—

"(1) GRANTS FOR NATIONAL CONCERNS.—The Secretary may make a grant to a State agency, local government, or other person for 100 percent of the costs of research, development, demonstration projects, public education, and other special activities and projects relating to commercial driver licensing and motor vehicle safety that are of benefit to all jurisdictions of the United States or are designed to address national safety concerns and circumstances.

"(2) FUNDING.—The Secretary may deduct up to 10 percent of the amounts made available to carry out this section for a fiscal year to make grants under this subsection.

"(c) EMERGING ISSUES.—The Secretary may designate up to 10 percent of the amounts made available to carry out this section for a fiscal year for allocation to a State agency, local government, or other person at the discretion of the Secretary to address emerging issues relating to commercial driver's license improvements.

"(d) APPORTIONMENT.—Except as otherwise provided in subsection (c), all amounts made available to carry out this section for a fiscal year shall be apportioned to States according to criteria prescribed by the Secretary.".

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by inserting after the item relating to section 31312 the following:

"31313. Grants for commercial driver's license program improvements.".

(c) AMOUNTS WITHHELD.—Subsections (a) and (b) of section 31314 of such title are each amended by inserting "up to" after "withhold".

SEC. 4125. HOBBS ACT.

(a) JURISDICTION OF COURT OF APPEALS OVER COMMERCIAL MOTOR VEHICLE SAFETY REGULATION AND OPERATORS AND MOTOR CARRIER SAFETY.—Section 2342(3)(A) of title 28, United States Code, is amended by inserting before "of title 49" the following: ", subchapter III of chapter 311, chapter 313, or chapter 315".

(b) JUDICIAL REVIEW.—Section 351(a) of title 49, United States Code, is amended by striking "Federal Highway Administration" and inserting "Federal Motor Carrier Safety Administration".

(c) AUTHORITY TO CARRY OUT CERTAIN TRANSFERRED DUTIES AND POWERS.—Section 352 of title 49, United States Code, is amended by striking "Federal Highway Administration" and inserting "Federal Motor Carrier Safety Administration".

SEC. 4126. COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS DEPLOYMENT.

(a) IN GENERAL.—The Secretary shall carry out a commercial vehicle information systems and networks program to—

(1) improve the safety and productivity of commercial vehicles and drivers; and

(2) reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements.

(b) PURPOSE.—The program shall advance the technological capability and promote the deployment of intelligent transportation system applications for commercial vehicle operations, including commercial vehicle, commercial driver, and carrier-specific information systems and networks.

(c) CORE DEPLOYMENT GRANTS.—

(1) IN GENERAL.—The Secretary shall make grants to eligible States for the core deployment of commercial vehicle information systems and networks.

(2) AMOUNT OF GRANTS.—The maximum aggregate amount the Secretary may grant to a State for the core deployment of commercial vehicle information systems and networks under this subsection and sections 5001(a)(5) and 5001(a)(6) of the Transportation Equity Act for the 21st Century (112 Stat. 420) may not exceed $2,500,000.

(3) USE OF FUNDS.—Funds from a grant under this subsection may only be used for the core deployment of commercial vehicle information systems and networks. An eligible State that has either completed the core deployment of commercial vehicle information systems and networks or completed such deployment before grant funds are expended under this subsection may use the grant funds for the expanded deployment of commercial vehicle information systems and networks in the State.

(d) EXPANDED DEPLOYMENT GRANTS.—

(1) IN GENERAL.—For each fiscal year, from the funds remaining after the Secretary has made grants under subsection (c), the Secretary may make grants to each eligible State, upon request, for the expanded deployment of commercial vehicle information systems and networks.

(2) ELIGIBILITY.—Each State that has completed the core deployment of commercial vehicle information systems and networks in such State is eligible for an expanded deployment grant under this subsection.

(3) AMOUNT OF GRANTS.—Each fiscal year, the Secretary may distribute funds available for expanded deployment grants equally among the

eligible States, but not to exceed $1,000,000 per State.

(4) USE OF FUNDS.—A State may use funds from a grant under this subsection only for the expanded deployment of commercial vehicle information systems and networks.

(e) ELIGIBILITY.—To be eligible for a grant under this section, a State—

(1) shall have a commercial vehicle information systems and networks program plan approved by the Secretary that describes the various systems and networks at the State level that need to be refined, revised, upgraded, or built to accomplish deployment of core capabilities;

(2) shall certify to the Secretary that its commercial vehicle information systems and networks deployment activities, including hardware procurement, software and system development, and infrastructure modifications—

(A) are consistent with the national intelligent transportation systems and commercial vehicle information systems and networks architectures and available standards; and

(B) promote interoperability and efficiency to the extent practicable; and

(3) shall agree to execute interoperability tests developed by the Federal Motor Carrier Safety Administration to verify that its systems conform with the national intelligent transportation systems architecture, applicable standards, and protocols for commercial vehicle information systems and networks.

(f) FEDERAL SHARE.—The Federal share of the cost of a project payable from funds made available to carry out this section shall not exceed 50 percent. The total Federal share of the cost of a project payable from all eligible Federal sources shall not exceed 80 percent.

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

(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term ''commercial vehicle information systems and networks'' means the information systems and communications networks that provide the capability to—

(A) improve the safety of commercial motor vehicle operations;

(B) increase the efficiency of regulatory inspection processes to reduce administrative burdens by advancing technology to facilitate inspections and increase the effectiveness of enforcement efforts;

(C) advance electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information;

(D) enhance the safe passage of commercial motor vehicles across the United States and across international borders; and

(E) promote the communication of information among the States and encourage multistate cooperation and corridor development.

(2) COMMERCIAL MOTOR VEHICLE OPERATIONS.—The term ''commercial motor vehicle operations''—

(A) means motor carrier operations and motor vehicle regulatory activities associated with the commercial motor vehicle movement of goods, including hazardous materials, and passengers; and

(B) with respect to the public sector, includes the issuance of operating credentials, the administration of motor vehicle and fuel taxes, and roadside safety and border crossing inspection and regulatory compliance operations.

(3) CORE DEPLOYMENT.—The term ''core deployment'' means the deployment of systems in a State necessary to provide the State with the following capabilities:

(A) Safety information exchange to—

(i) electronically collect and transmit commercial motor vehicle and driver inspection data at a majority of inspection sites in the State;

(ii) connect to the safety and fitness electronic records system for access to interstate carrier and commercial motor vehicle data, summaries of past safety performance, and commercial motor vehicle credentials information; and

(iii) exchange carrier data and commercial motor vehicle safety and credentials information within the State and connect to such system for access to interstate carrier and commercial motor vehicle data.

(B) Interstate credentials administration to—

(i) perform end-to-end processing, including carrier application, jurisdiction application processing, and credential issuance, of at least the international registration plan and international fuel tax agreement credentials and extend this processing to other credentials, including intrastate registration, vehicle titling, oversize vehicle permits, overweight vehicle permits, carrier registration, and hazardous materials permits;

(ii) connect to such plan and agreement clearinghouses; and

(iii) have at least 10 percent of the credentialing transaction volume in the State handled electronically and have the capability to add more carriers and to extend to branch offices where applicable.

(C) Roadside electronic screening to electronically screen transponder-equipped commercial vehicles at a minimum of one fixed or mobile inspection site in the State and to replicate this screening at other sites in the State.

(4) EXPANDED DEPLOYMENT.—The term ''expanded deployment'' means the deployment of systems in a State that exceed the requirements of a core deployment of commercial vehicle information systems and networks, improve safety and the productivity of commercial motor vehicle operations, and enhance transportation security.

SEC. 4127. OUTREACH AND EDUCATION.

(a) IN GENERAL.—The Secretary shall conduct, through any combination of grants, contracts, or cooperative agreements, an outreach and education program to be administered by the Federal Motor Carrier Safety Administration and the National Highway Traffic Safety Administration.

(b) PROGRAM ELEMENTS.—The program shall include, at a minimum, the following:

(1) A program to promote a more comprehensive and national effort to educate commercial motor vehicle drivers and passenger vehicle drivers about how commercial motor vehicle drivers and passenger vehicle drivers can more safely share the road with each other.

(2) A program to promote enhanced traffic enforcement efforts aimed at reducing the incidence of the most common unsafe driving behaviors that cause or contribute to crashes involving commercial motor vehicles and passenger vehicles.

(3) A program to establish a public-private partnership to provide resources and expertise for the development and dissemination of information relating to sharing the road referred to in paragraphs (1) and (2) to each partner's constituents and to the general public through the use of brochures, videos, paid and public advertisements, the Internet, and other media.

(c) FEDERAL SHARE.—The Federal share of a program or activity for which a grant is made under this section shall be 100 percent of the cost of such program or activity.

(d) ANNUAL REPORT.—The Secretary shall prepare and transmit to Congress an annual report on the programs and activities carried out under this section. The final annual report shall be submitted not later than September 30, 2009.

(e) FUNDING.—From amounts made available under section 31104(i) of title 49, United States Code, the Secretary shall make available $1,000,000 to the Federal Motor Carrier Safety Administration, and $3,000,000 to the National Highway Traffic Safety Administration, for each of fiscal years 2006, 2007, 2008, and 2009 to carry out this section (other than subsection (f)).

(f) STUDY.—The Comptroller General shall update the Government Accountability Office's evaluation of the ''Share the Road Safely'' program to determine if it has achieved reductions in the number and severity of commercial motor vehicle crashes, including reductions in the number of deaths and the severity of injuries sustained in these crashes and shall report its updated evaluation to Congress no later than June 30, 2006.

SEC. 4128. SAFETY DATA IMPROVEMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall make grants to States for projects and activities to improve the accuracy, timeliness, and completeness of commercial motor vehicle safety data reported to the Secretary.

(b) ELIGIBILITY.—A State shall be eligible for a grant under this section in a fiscal year if the Secretary determines that the State has—

(1) conducted a comprehensive audit of its commercial motor vehicle safety data system within the preceding 2 years;

(2) developed a plan that identifies and prioritizes its commercial motor vehicle safety data needs and goals; and

(3) identified performance-based measures to determine progress toward those goals.

(c) FEDERAL SHARE.—The Federal share of a grant under this section shall be 80 percent of the cost of the activities for which the grant is made.

(d) BIENNIAL REPORT.—Not later 2 years after the date of enactment of this Act, and biennially thereafter, the Secretary shall transmit to Congress a report on the activities and results of the program carried out under this section, together with any recommendations the Secretary determines appropriate.

SEC. 4129. OPERATION OF COMMERCIAL MOTOR VEHICLES BY INDIVIDUALS WHO USE INSULIN TO TREAT DIABETES MELLITUS.

(a) REVISION OF FINAL RULE.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall begin revising the final rule published in the Federal Register on September 3, 2003, relating to persons with diabetes, to allow individuals who use insulin to treat their diabetes to operate commercial motor vehicles in interstate commerce. The revised final rule shall provide for the individual assessment of applicants who use insulin to treat their diabetes and who are, except for their use of insulin, otherwise qualified under the Federal motor carrier safety regulations. The revised final rule shall be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305 note) and shall conclude the rulemaking process in the Federal Motor Carrier Safety Administration docket relating to qualifications of drivers with diabetes.

(b) NO PERIOD OF COMMERCIAL DRIVING WHILE USING INSULIN REQUIRED FOR QUALIFICATION.—After the earlier of the date of issuance of the revised final rule under subsection (a) or the 90th day following the date of enactment of this Act, the Secretary may not require individuals with insulin-treated diabetes mellitus who are applying for an exemption from the physical qualification standards to have experience operating commercial motor vehicles while using insulin in order to be exempted from the physical qualification standards to operate a commercial motor vehicle in interstate commerce.

(c) MINIMUM PERIOD OF INSULIN USE.—Subject to subsection (b), the Secretary shall require individuals with insulin-treated diabetes mellitus to have a minimum period of insulin use to demonstrate stable control of diabetes before operating a commercial motor vehicle in interstate commerce. Such demonstration shall be consistent with the findings reported in July 2000, by the expert medical panel established by the Secretary, in ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate Commercial Motor Vehicles in Interstate Commerce as Directed by the Transportation Equity Act for the 21st Century''. For individuals

who have been newly diagnosed with type 1 diabetes, the minimum period of insulin use may not exceed 2 months, unless directed by the treating physician. For individuals who have type 2 diabetes and are converting to insulin use, the minimum period of insulin use may not exceed 1 month, unless directed by the treating physician.

(d) LIMITATIONS.—Insulin-treated individuals may not be held by the Secretary to a higher standard of physical qualification in order to operate a commercial motor vehicle in interstate commerce than other individuals applying to operate, or operating, a commercial motor vehicle in interstate commerce; except to the extent that limited operating, monitoring, and medical requirements are deemed medically necessary under regulations issued by the Secretary.

SEC. 4130. OPERATORS OF VEHICLES TRANSPORTING AGRICULTURAL COMMODITIES AND FARM SUPPLIES.

(a) AGRICULTURAL EXEMPTION.—Section 229(a)(1) of the Federal Motor Carrier Safety Improvement Act of 1999 (as added by section 4115 of this Act), is amended to read as follows:

''(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Regulations prescribed by the Secretary under sections 31136 and 31502 regarding maximum driving and on-duty time for drivers used by motor carriers shall not apply during planting and harvest periods, as determined by each State, to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies.''.

(b) REVIEW BY THE SECRETARY.—Section 229(c) of such Act is amended by striking ''paragraph (2)'' and inserting ''paragraph (1), (2), or (4)''.

(c) DEFINITIONS.—Section 229(e) of such Act is amended by adding at the end the following:

''(7) AGRICULTURAL COMMODITY.—The term 'agricultural commodity' means any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in section 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) and insects).

''(8) FARM SUPPLIES FOR AGRICULTURAL PURPOSES.—The term 'farm supplies for agricultural purposes' means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed at any time of the year.''.

SEC. 4131. MAXIMUM HOURS OF SERVICE FOR OPERATORS OF GROUND WATER WELL DRILLING RIGS.

Section 229(a)(2) of the Motor Carrier Safety Improvement Act of 1999 (as added by section 4115 of this Act), is amended by adding at the end the following: ''Except as required in section 395.3 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this sentence, no additional off-duty time shall be required in order to operate such vehicle.''.

SEC. 4132. HOURS OF SERVICE FOR OPERATORS OF UTILITY SERVICE VEHICLES.

Section 229 of the Federal Motor Carrier Safety Improvements Act of 1999 (as added by section 4115 of this Act), is amended—

(1) in subsection (a) by striking paragraph (4) and inserting the following:

''(4) OPERATORS OF UTILITY SERVICE VEHICLES.—

''(A) INAPPLICABILITY OF FEDERAL REGULATIONS.—Such regulations shall not apply to a driver of a utility service vehicle.

''(B) PROHIBITION ON STATE REGULATIONS.—A State, a political subdivision of a State, an interstate agency, or other entity consisting of 2 or more States, shall not enact or enforce any law, rule, regulation, or standard that imposes requirements on a driver of a utility service vehicle that are similar to the requirements contained in such regulations.''; and

(2) in subsection (b) by striking ''Nothing'' and inserting ''Except as provided in subsection (a)(4), nothing''.

SEC. 4133. HOURS OF SERVICE RULES FOR OPERATORS PROVIDING TRANSPORTATION TO MOVIE PRODUCTION SITES .

Notwithstanding sections 31136 and 31502 of title 49, United States Code, and any other provision of law, the maximum daily hours of service for an operator of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site located within a 100 air mile radius of the work reporting location of such operator shall be those in effect under the regulations in effect under such sections on April 27, 2003.

SEC. 4134. GRANT PROGRAM FOR COMMERCIAL MOTOR VEHICLE OPERATORS.

(a) ESTABLISHMENT.—The Secretary shall establish a grant program for persons to train operators of commercial motor vehicles (as defined in section 31301 of title 49, United States Code). The purpose of the program shall be to train operators and future operators in the safe use of such vehicles.

(b) FEDERAL SHARE.—The Federal share of the cost for which a grant is made under this section shall be 80 percent.

(c) FUNDING.—From amounts made available under section 31104(i) of title 49, United States Code, the Secretary shall make available $1,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 4135. CDL TASK FORCE.

(a) IN GENERAL.—The Secretary shall convene a task force to study and address current impediments and foreseeable challenges to the commercial driver's license program's effectiveness and measures needed to realize the full safety potential of the commercial driver's license program, including such issues as—

(1) State enforcement practices;

(2) operational procedures to detect and deter fraud;

(3) needed improvements for seamless information sharing between States;

(4) effective methods for accurately sharing electronic data between States;

(5) adequate proof of citizenship;

(6) updated technology; and

(7) timely notification from judicial bodies concerning traffic and criminal convictions of commercial drivers license holders.

(b) MEMBERSHIP.—Members of the task force should include State motor vehicle administrators, organizations representing government agencies or officials, members of the Judicial Conference, representatives of the trucking industry, representatives of labor organizations, safety advocates, and other significant stakeholders.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary, on behalf of the task force, shall complete a report of the task forces findings and recommendations for legislative, regulatory, and enforcement changes to improve the commercial drivers license program and submit such the report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(d) FUNDING.—From the funds amounts made available by section 4101(c)(1), $200,000 shall be available for each of fiscal years 2006 and 2007 to carry out this section.

SEC. 4136. INTERSTATE VAN OPERATIONS.

The Federal motor carrier safety regulations that apply to interstate operations of commercial motor vehicles designed to transport between 9 and 15 passengers (including the driver) shall apply to all interstate operations of such carriers regardless of the distance traveled.

SEC. 4137. DECALS.

The Commercial Vehicle Safety Alliance may not restrict the sale of any inspection decal to the Federal Motor Carrier Safety Administration unless the Administration fails to meet its responsibilities under its memorandum of understanding with the Alliance (other than a failure due to the Administration's compliance with Federal law).

SEC. 4138. HIGH RISK CARRIER COMPLIANCE REVIEWS.

From the funds authorized by section 31104(i) of title 49, United States Code, the Secretary shall ensure that compliance reviews are completed on motor carriers that have demonstrated through performance data that they pose the highest safety risk. At a minimum, a compliance review shall be conducted whenever a motor carrier is rated as category A or B for 2 consecutive months.

SEC. 4139. FOREIGN COMMERCIAL MOTOR VEHICLES.

(a) OPERATING AUTHORITY ENFORCEMENT ASSISTANCE FOR STATES.—

(1) TRAINING AND OUTREACH.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Motor Carrier Safety Administration shall conduct outreach and provide training as necessary to State personnel engaged in the enforcement of Federal motor carrier safety regulations to ensure their awareness of the process to be used for verification of the operating authority of motor carriers, including motor carriers of passengers, and to ensure proper enforcement when motor carriers are found to be in violation of operating authority requirements.

(2) ASSESSMENT.—The Inspector General of the Department of Transportation may periodically assess the implementation and effectiveness of the training and outreach program.

(b) STUDY OF FOREIGN COMMERCIAL MOTOR VEHICLES.—

(1) REVIEW.—Not later than 1 year after the date of enactment of this Act, the Administrator shall conduct a review to determine the degree to which Canadian and Mexican commercial motor vehicles, including motor carriers of passengers, currently operating or expected to operate in the United States comply with the Federal motor vehicle safety standards.

(2) REPORTS.—Not later than 1 year after the date of enactment, the Adminstrator shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives containing the findings and conclusions of the review. Not later than 4 months after the date on which the report is submitted to the Committees, the Inspector General of the Department shall provide comments and observations to the Committees on the scope and methodology of the review.

SEC. 4140. SCHOOL BUS DRIVER QUALIFICATIONS AND ENDORSEMENT KNOWLEDGE TEST.

(a) RECOGNITION OF TEST.—The Secretary shall recognize any driver who passes a test approved by the Federal Motor Carrier Safety Administration as meeting the knowledge test requirement for a school bus endorsement under section 383.123 of title 49, Code of Federal Regulations.

(b) DRIVER QUALIFICATIONS.— Section 383.123 of such title (as in effect on the date of enactment of this Act) shall not be in effect during the period beginning on the date of enactment of this Act and ending on September 30, 2006.

SEC. 4141. DRIVEAWAY SADDLEMOUNT VEHICLES.

(a) DEFINITION.—Section 31111(a) of tile 49, United States Code, is amended by adding at the end of the following:

''(4) DRIVE-AWAY SADDLEMOUNT WITH FULLMOUNT VEHICLE TRANSPORTER COMBINATION.—The term 'drive-away saddlemount with fullmount vehicle transporter combination' means a vehicle combination designed and specifically used to tow up to 3 trucks or truck tractors, each connected by a saddle to the

frame or fifth-wheel of the forward vehicle of the truck or truck tractor in front of it.''.

(b) GENERAL LIMITATIONS.—Section 31111(b)(1) of such title is amended

(1) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively; and

(2) by inserting after subparagraph (C) the following:

''(D) imposes a vehicle length limitation of not less than or more than 97 feet on a driveaway saddlemount with fullmount vehicle transporter combinations;''.

SEC. 4142. REGISTRATION OF MOTOR CARRIERS AND FREIGHT FORWARDERS.

(a) DEFINITIONS RELATING TO MOTOR CARRIERS.—Paragraphs (6), (7), (12), and (13) of section 13102 of title 49, United States Code, are each amended by striking ''motor vehicle'' and inserting ''commercial motor vehicle (as defined in section 31132)''.

(b) FREIGHT FORWARDERS.—Section 13903(a) of such title is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(1) HOUSEHOLD GOODS.—The Secretary'';

(2) by inserting ''of household goods'' after ''freight forwarder''; and

(3) by adding at the end the following:

''(2) OTHERS.—The Secretary may register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder (other than a freight forwarder of household goods) if the Secretary finds that such registration is needed for the protection of shippers and that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary and Board.''.

(c) BROKERS.—Section 13904(a) of such title is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(1) HOUSEHOLD GOODS.—The Secretary'';

(2) by inserting ''of household goods'' after ''broker''; and

(3) by adding at the end the following:

''(2) OTHERS.—The Secretary may register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a broker (other than a broker of household goods) if the Secretary finds that such registration is needed for the protection of shippers and that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary and Board.''.

SEC. 4143. AUTHORITY TO STOP COMMERCIAL MOTOR VEHICLES.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following:

''§ 39. Commercial motor vehicles required to stop for inspections

''(a) A driver of a commercial motor vehicle (as defined in section 31132 of title 49) shall stop and submit to inspection of the vehicle, driver, cargo, and required records when directed to do so by an authorized employee of the Federal Motor Carrier Safety Administration of the Department of Transportation, at or in the vicinity of an inspection site. The driver shall not leave the inspection site until authorized to do so by an authorized employee.

''(b) A driver of a commercial motor vehicle, as defined in subsection (a), who knowingly fails to stop for inspection when directed to do so by an authorized employee of the Administration at or in the vicinity of an inspection site, or leaves the inspection site without authorization, shall be fined under this title or imprisoned not more than 1 year, or both.''.

(b) AUTHORITY OF FMCSA.—Chapter 203 of such title is amended by adding at the end the following:

''§ 3064. Powers of Federal Motor Carrier Safety Administration

''Authorized employees of the Federal Motor Carrier Safety Administration may direct a driver of a commercial motor vehicle (as defined in section 31132 of title 49) to stop for inspection of the vehicle, driver, cargo, and required records at or in the vicinity of an inspection site.''.

(c) CLERICAL AMENDMENTS.—

(1) The analysis for chapter 2 of such title is amended by inserting after the item relating to section 38 the following:

''39. Commercial motor vehicles required to stop for inspections.''.

(2) The analysis for chapter 203 of such title is amended by inserting after the item relating to section 3063 the following:

''3064. Powers of Federal Motor Carrier Safety Administration.''.

SEC. 4144. MOTOR CARRIER SAFETY ADVISORY COMMITTEE.

(a) ESTABLISHMENT AND DUTIES.—The Secretary shall establish in the Federal Motor Carrier Safety Administration a motor carrier safety advisory committee. The committee shall—

(1) provide advice and recommendations to the Administrator of the Federal Motor Carrier Safety Administration about needs, objectives, plans, approaches, content, and accomplishments of the motor carrier safety programs carried out by the Administration; and

(2) provide advice and recommendations to the Administrator on motor carrier safety regulations.

(b) MEMBERS, CHAIRMAN, PAY, AND EXPENSES.—

(1) IN GENERAL.—The committee shall be composed of not more than 20 members appointed by the Administrator from among individuals who are not employees of the Administration and who are specially qualified to serve on the committee because of their education, training, or experience. The members shall include representatives of the motor carrier industry, safety advocates, and safety enforcement officials. Representatives of a single enumerated interest group may not constitute a majority of the members of the advisory committee.

(2) CHAIRMAN.—The Administrator shall designate the chairman of the committee.

(3) PAY.—A member of the committee shall serve without pay; except that the Administrator may allow a member, when attending meetings of the committee or a subcommittee of the committee, expenses authorized under section 5703 of title 5, relating to per diem, travel, and transportation expenses.

(c) SUPPORT STAFF, INFORMATION, AND SERVICES.—The Administrator shall provide support staff for the committee. On request of the committee, the Administrator shall provide information, administrative services, and supplies that the Administrator considers necessary for the committee to carry out its duties and powers.

(d) TERMINATION DATE.—Notwithstanding the Federal Advisory Committee Act (5 U.S.C. App.), the advisory committee shall terminate on September 30, 2010.

SEC. 4145. TECHNICAL CORRECTIONS.

(a) INTERMODAL TRANSPORTATION ADVISORY BOARD.—Section 5502(b) of title 49, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting ''; and''; and

(3) by adding at the end the following:

''(6) the Federal Motor Carrier Safety Administration.''.

(b) REFERENCE TO AGENCY.—Section 31502(e) of such title is amended—

(1) in paragraph (2) by striking ''Regional Director of the Federal Highway Administration'' and inserting ''Field Administrator of the Federal Motor Carrier Safety Administration''; and

(2) in paragraph (3) by striking ''Regional Director'' and inserting ''Field Administrator''.

SEC. 4146. EXEMPTION DURING HARVEST PERIODS.

Regulations issued by the Secretary under sections 31136 and 31502 of title 49, United States Code, regarding maximum driving and on-duty time for a driver used by a motor carrier, shall not apply, beginning on the date of enactment of this Act and ending at the end of fiscal year 2009, for the transportation of grapes west of Interstate 81 in the State of New York if such transportation—

(1) is during a harvesting period, as determined by the State; and

(2) is limited to a 150-air mile radius from where the grapes are picked or distributed.

SEC. 4147. EMERGENCY CONDITION REQUIRING IMMEDIATE RESPONSE.

Section 229 of the Motor Carrier Safety Improvement Act of 1999 (as added and amended by section 4115 of this Act) is amended by adding at the end the following:

''(f) EMERGENCY CONDITION REQUIRING IMMEDIATE RESPONSE.—

''(1) PROPANE OR PIPELINE EMERGENCY.—A regulation prescribed under section 31136 or 31502 of title 49, United States Code, shall not apply to a driver of a commercial motor vehicle which is used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency if such regulations would prevent the driver from responding to an emergency condition requiring immediate response.

''(2) DEFINITION.—An emergency condition requiring immediate response is any condition that, if left unattended, is reasonably likely to result in immediate serious bodily harm, death, or substantial damage to property. In the case of propane such conditions shall include (but are not limited to) the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real or suspected damage to a propane gas system following a severe storm or flooding. An 'emergency condition requiring an immediate response' does not include requests to re-fill empty gas tanks. In the case of pipelines such conditions include (but are not limited to) indication of an abnormal pressure event, leak, release or rupture.''.

SEC. 4148. SUBSTANCE ABUSE PROFESSIONALS.

The Secretary shall conduct a rulemaking to permit a State licensed or certified marriage and family therapist, to act as a substance abuse professional under subpart O of part 40 of title 49, Code of Federal Regulations.

SEC. 4149. OFFICE OF INTERMODALISM.

Section 5503 of title 49, United States Code, is amended—

(1) in subsection (e) by inserting ''Amounts reserved under section 5504(d) not awarded to States as grants may be used by the Director to provide technical assistance under this subsection.'' after ''organizations.'';

(2) by redesignating subsection (f) as subsection (h); and

(3) by inserting after subsection (e) the following:

''(f) NATIONAL INTERMODAL SYSTEM IMPROVEMENT PLAN.—

''(1) IN GENERAL.—The Director, in consultation with the advisory board established under section 5502 and other public and private transportation interests, shall develop a plan to improve the national intermodal transportation system. The plan shall include—

''(A) an assessment and forecast of the national intermodal transportation system's impact on mobility, safety, energy consumption, the environment, technology, international trade, economic activity, and quality of life in the United States;

''(B) an assessment of the operational and economic attributes of each passenger and freight mode of transportation and the optimal role of each mode in the national intermodal transportation system;

''(C) a description of recommended intermodal and multi-modal research and development projects;

''(D) a description of emerging trends that have an impact on the national intermodal transportation system;

''(E) recommendations for improving intermodal policy, transportation decision-making, and financing to maximize mobility and the return on investment of Federal spending on transportation;

''(F) an estimate of the impact of current Federal and State transportation policy on the national intermodal transportation system; and

''(G) specific near and long-term goals for the national intermodal transportation system.

''(2) PROGRESS REPORTS.—The Director shall submit an initial report on the plan to improve the national intermodal transportation system 2 years after the date of enactment of the Surface Transportation Safety Improvement Act of 2005, and a follow-up report 2 years after that, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. The progress report shall—

''(A) describe progress made toward achieving the plan's goals;

''(B) describe challenges and obstacles to achieving the plan's goals;

''(C) update the plan to reflect changed circumstances or new developments; and

''(D) make policy and legislative recommendations the Director believes are necessary and appropriate to achieve the goals of the plan.

''(3) PLAN DEVELOPMENT FUNDING.—Such sums as may be necessary from the administrative expenses of the Research and Innovative Technology Administration shall be reserved by the Secretary of Transportation each year for the purpose of completing and updating the plan to improve the national intermodal transportation plan.

''(g) IMPACT MEASUREMENT METHODOLOGY; IMPACT REVIEW.—The Director and the Director of the Bureau of Transportation Statistics shall jointly—

''(1) develop, in consultation with the modal administrations, and State and local planning organizations, common measures to compare transportation investment decisions across the various modes of transportation; and

''(2) formulate a methodology for measuring the impact of intermodal transportation on—

''(A) the environment;

''(B) public health and welfare;

''(C) energy consumption;

''(D) the operation and efficiency of the transportation system;

''(E) congestion, including congestion at the Nation's ports; and

''(F) the economy and employment.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Transportation such sums as may be necessary for fiscal years 2006 through 2009 to carry out this chapter.''.

Subtitle B—Household Goods Transportation

SEC. 4201. SHORT TITLE.

This subtitle may be cited as the ''Household Goods Mover Oversight Enforcement and Reform Act of 2005''

SEC. 4202. DEFINITIONS; APPLICATION OF PROVISIONS.

(a) TERMS USED IN THIS CHAPTER.—In this subtitle, the terms ''carrier'', ''household goods'', ''motor carrier'', ''Secretary'', and ''transportation'' have the meaning given to such terms in section 13102 of title 49, United States Code.

(b) HOUSEHOLD GOODS MOTOR CARRIER AND INDIVIDUAL SHIPPER IN PART B OF SUBTITLE IV OF TITLE 49.—Section 13102 of title 49, United States Code (as amended by section 4141 of this Act) is amended by redesignating paragraphs (12) through (24) as paragraphs (14) through (26) and by inserting after paragraph (11) the following:

''(12) HOUSEHOLD GOODS MOTOR CARRIER.—

''(A) IN GENERAL.—The term 'household goods motor carrier' means a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

''(i) Binding and nonbinding estimates.

''(ii) Inventorying.

''(iii) Protective packing and unpacking of individual items at personal residences.

''(iv) Loading and unloading at personal residences.

''(B) INCLUSION.—The term includes any person that is considered to be a household goods motor carrier under regulations, determinations, and decisions of the Federal Motor Carrier Safety Administration that are in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

''(C) LIMITED SERVICE EXCLUSION.—The term does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier).

''(13) INDIVIDUAL SHIPPER.—The term 'individual shipper' means any person who—

''(A) is the shipper, consignor, or consignee of a household goods shipment;

''(B) is identified as the shipper, consignor, or consignee on the face of the bill of lading;

''(C) owns the goods being transported; and

''(D) pays his or her own tariff transportation charges.''.

(c) APPLICATION OF CERTAIN PROVISIONS OF LAW.—The provisions of title 49, United States Code, and this subtitle (including any amendments made by this subtitle), that relate to the transportation of household goods apply only to a household goods motor carrier (as defined in section 13102 of title 49, United States Code).

SEC. 4203. PAYMENT OF RATES.

Section 13707(b) of title 49, United States Code, is amended by adding at the end the following:

''(3) SHIPMENTS OF HOUSEHOLD GOODS.—

''(A) IN GENERAL.—A carrier providing transportation of a shipment of household goods shall give up possession of the household goods being transported at the destination upon payment of—

''(i) 100 percent of the charges contained in a binding estimate provided by the carrier;

''(ii) not more than 110 percent of the charges contained in a nonbinding estimate provided by the carrier; or

''(iii) in the case of a partial delivery of the shipment, the prorated percentage of the charges calculated in accordance with subparagraph (B).

''(B) CALCULATION OF PRORATED CHARGES.—For purposes of subparagraph (A)(iii), the prorated percentage of the charges shall be the percentage of the total charges due to the carrier as described in clause (i) or (ii) of subparagraph (A) that is equal to the percentage of the weight of that portion of the shipment delivered to the total weight of the shipment.

''(C) POST-CONTRACT SERVICES.—Subparagraph (A) does not apply to additional services requested by a shipper after the contract of service is executed that were not included in the estimate.

''(D) IMPRACTICABLE OPERATIONS.—Subparagraph (A) does not apply to impracticable operations, as defined by the applicable carrier tariff, except that the charges collected at delivery for such operations shall not exceed 15 percent of all other charges due at delivery. Any remaining charges due shall be paid within 30 days after the carrier presents its freight bill.''.

SEC. 4204. ADDITIONAL REGISTRATION REQUIREMENTS FOR MOTOR CARRIERS OF HOUSEHOLD GOODS.

Section 13902(a) of title 49, United States Code, is amended—

(1) by striking paragraphs (2) and (3);

(2) by redesignating paragraph (4) as paragraph (5);

(3) by inserting after paragraph (1) the following:

''(2) ADDITIONAL REGISTRATION REQUIREMENTS FOR HOUSEHOLD GOODS MOTOR CARRIERS.—In addition to meeting the requirements of paragraph (1), the Secretary may register a person to provide transportation of household goods as a household goods motor carrier only after that person—

''(A) provides evidence of participation in an arbitration program and provides a copy of the notice of the arbitration program as required by section 14708(b)(2);

''(B) identifies its tariff and provides a copy of the notice of the availability of that tariff for inspection as required by section 13702(c);

''(C) provides evidence that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage; and

''(D) discloses any relationship involving common stock, common ownership, common management, or common familial relationships between that person and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the proposed date of registration.

''(3) CONSIDERATION OF EVIDENCE; FINDINGS.—The Secretary shall consider, and, to the extent applicable, make findings on any evidence demonstrating that the registrant is unable to comply with any applicable requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2).

''(4) WITHHOLDING.—If the Secretary determines that a registrant under this section does not meet, or is not able to meet, any requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2), the Secretary shall withhold registration.''; and

(4) by adding at the end of paragraph (5) (as redesignated by paragraph (2) of this section) ''In the case of a registration for the transportation of household goods as a household goods motor carrier, the Secretary may also hear a complaint on the ground that the registrant fails or will fail to comply with the requirements of paragraph (2) of this subsection.''.

SEC. 4205. HOUSEHOLD GOODS CARRIER OPERATIONS.

Section 14104(b) of title 49, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by striking paragraph (1) and inserting the following:

''(1) REQUIRED TO BE IN WRITING.—

''(A) IN GENERAL.—Except as otherwise provided in this subsection, every motor carrier providing transportation of household goods described in section 13102(10)(A) as a household goods motor carrier and subject to jurisdiction under subchapter I of chapter 135 shall conduct a physical survey of the household goods to be transported on behalf of a prospective individual shipper and shall provide the shipper with a written estimate of charges for the transportation and all related services.

''(B) WAIVER.—A shipper may elect to waive a physical survey under this paragraph by written agreement signed by the shipper before the shipment is loaded. A copy of the waiver agreement must be retained as an addendum to the bill of lading and shall be subject to the same record inspection and preservation requirements of the Secretary as are applicable to bills of lading.

''(C) ESTIMATE.—

''(i) IN GENERAL.—Notwithstanding a waiver under subparagraph (B), a carrier's statement of charges for transportation must be submitted to the shipper in writing and must indicate whether it is binding or nonbinding. The written estimate shall be based on a physical survey of the household goods if the household goods are located within a 50-mile radius of the location of the carrier's household goods agent preparing the estimate.

''(ii) BINDING.—A binding estimate under this paragraph must indicate that the carrier and

shipper are bound by such charges. The carrier may impose a charge for providing a written binding estimate.

''(iii) NONBINDING.—A nonbinding estimate under this paragraph must indicate that the actual charges will be based upon the actual weight of the individual shipper's shipment and the carrier's lawful tariff charges. The carrier may not impose a charge for providing a nonbinding estimate.

''(2) OTHER INFORMATION.—At the time that a motor carrier provides the written estimate required by paragraph (1), the motor carrier shall provide the shipper a copy of the Department of Transportation publication FMCSA-ESA-03–005 (or its successor publication) entitled 'Ready to Move?'. Before the execution of a contract for service, the motor carrier shall provide the shipper copy of the Department of Transportation publication OCE 100, entitled 'Your Rights and Responsibilities When You Move' required by section 375.213 of title 49, Code of Federal Regulations (or any successor regulation). ''.

SEC. 4206. ENFORCEMENT OF REGULATIONS RELATED TO TRANSPORTATION OF HOUSEHOLD GOODS.

(a) NONPREEMPTION OF INTRASTATE TRANSPORTATION OF HOUSEHOLD GOODS.—Section 14501(c)(2)(B) of title 49, United States Code, is amended by inserting ''intrastate'' before ''transportation''.

(b) ENFORCEMENT OF FEDERAL LAW WITH RESPECT TO INTERSTATE HOUSEHOLD GOODS CARRIERS.—

(1) IN GENERAL.—Chapter 147 of such title is amended by adding at the end the following:

''§ 14710. Enforcement of Federal laws and regulations with respect to transportation of household goods

''(a) ENFORCEMENT BY STATES.—Notwithstanding any other provision of this title, a State authority may enforce the consumer protection provisions of this title that apply to individual shippers, as determined by the Secretary, and are related to the delivery and transportation of household goods in interstate commerce. Any fine or penalty imposed on a carrier in a proceeding under this subsection shall be paid, notwithstanding any other provision of law, to and retained by the State.

''(b) NOTICE.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide the notice immediately upon instituting such civil action.

''(c) ENFORCEMENT ASSISTANCE OUTREACH PLAN.—The Federal Motor Carrier Safety Administration shall implement an outreach plan to enhance the coordination and effective enforcement of Federal laws and regulations with respect to transportation of household goods between and among Federal and State law enforcement and consumer protection authorities. The outreach shall include, as appropriate, local law enforcement and consumer protection authorities.

''(d) STATE AUTHORITY DEFINED.—In this section, the term 'State authority' means an agency of a State that has authority under the laws of the State to regulate the intrastate movement of household goods.

''§ 14711. Enforcement by State attorneys general

''(a) IN GENERAL.—A State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the consumer protection provisions of this title that apply to individual shippers, as determined by the Secretary, and are related to the delivery and transportation of household goods by a household goods motor carrier subject to jurisdiction under subchapter I of chapter 135 or regulations or orders of the Secretary or the Board issued under such provisions or to impose the civil penalties authorized by this part or such regulations or orders, whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a carrier or broker providing transportation subject to jurisdiction under subchapter I or III of chapter 135 or a foreign motor carrier providing transportation that is registered under section 13902 and is engaged in household goods transportation that violates this part or a regulation or order of the Secretary or Board, as applicable, issued under this part.

''(b) NOTICE AND CONSENT.—

''(1) IN GENERAL.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action.

''(2) CONDITIONS.—The Secretary or the Board—

''(A) shall review the initiation of a civil action under this section by a State if—

''(i) the carrier or broker that is the subject of the action is not registered with the Department of Transportation;

''(ii) the license of the carrier or broker for failure to file proof of required bodily injury or cargo liability insurance is pending, or the license has been revoked for any other reason by the Department;

''(iii) the carrier is not rated or has received a conditional or unsatisfactory safety rating by the Department; or

''(iv) the carrier or broker has been licensed with the Department for less than 5 years; and

''(B) may review if the carrier or broker fails to meet criteria developed by the Secretary that are consistent with this section.

''(3) CONGRESSIONAL NOTIFICATION.—The Secretary shall notify the Committee on Commerce, Science, and Transportation, of the Senate and the Committee on Transportation and Infrastructure of the House of Representativesof any criteria developed by the Secretary under paragraph (2)(B).

''(4) 60-DAY DEADLINE.—The Secretary or the Board shall be considered to have consented to any civil action of a State under this section if the Secretary or the Board has taken no action with respect to the notice within 60 calendar days after the date on which the Secretary or the Board received notice under paragraph (1).

''(c) AUTHORITY TO INTERVENE.—Upon receiving the notice required by subsection (b), the Secretary or board may intervene in a civil action of a State under this section and upon intervening—

''(1) be heard on all matters arising in such civil action; and

''(2) file petitions for appeal of a decision in such civil actions.

''(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall—

''(1) convey a right to initiate or maintain a class action lawsuit in the enforcement of a Federal law or regulation; or

''(2) prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(e) VENUE; SERVICE OF PROCESS.—In a civil action brought under subsection (a)—

''(1) the venue shall be a Federal judicial district in which—

''(A) the carrier, foreign motor carrier, or broker operates;

''(B) the carrier, foreign motor carrier, or broker was authorized to provide transportation at the time the complaint arose; or

''(C) where the defendant in the civil action is found;

''(2) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted; and

''(3) a person who participated with a carrier or broker in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

''(f) ENFORCEMENT OF STATE LAW.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court to enforce a criminal statute of such State.''.

(c) CLERICAL AMENDMENT.—The analysis for such chapter 147 is amended by inserting after the item relating to section 14709 the following:

''14710. Enforcement of Federal laws and regulations with respect to transportation of household goods.
''14711. Enforcement by State attorneys general.''.

SEC. 4207. LIABILITY OF CARRIERS UNDER RECEIPTS AND BILLS OF LADING.

Section 14706(f) of title 49, United States Code, is amended—

(1) by striking ''A carrier'' and inserting the following:

''(1) IN GENERAL.—A carrier''; and

(2) by adding at the end the following:

''(2) FULL VALUE PROTECTION OBLIGATION.—Unless the carrier receives a waiver in writing under paragraph (3), a carrier's maximum liability for household goods that are lost, damaged, destroyed, or otherwise not delivered to the final destination is an amount equal to the replacement value of such goods, subject to a maximum amount equal to the declared value of the shipment and to rules issued by the Surface Transportation Board and applicable tariffs.

''(3) APPLICATION OF RATES.—The released rates established by the Board under paragraph (1) (commonly known as 'released rates') shall not apply to the transportation of household goods by a carrier unless the liability of the carrier for the full value of such household goods under paragraph (2) is waived, in writing, by the shipper.''.

SEC. 4208. ARBITRATION REQUIREMENTS.

(a) OFFERING SHIPPERS ARBITRATION.—Section 14708(a) of title 49, United States Code, is amended by inserting before the period at the end the following: ''and to determine whether carrier charges, in addition to those collected at delivery, must be paid by shippers for transportation and services related to transportation of household goods''.

(b) THRESHOLD FOR BINDING ARBITRATION.—Section 14708(b)(6) of such title is amended by striking ''$5,000'' each place it appears and inserting ''$10,000''.

(c) DEADLINE FOR DECISION.—Section 14708(b)(8) of such title is amended in last sentence—

(1) by striking ''and''; and

(2) by inserting after ''for damages'' the following: '', and an order requiring the payment of additional carrier charges''.

(d) ATTORNEY'S FEES TO SHIPPERS.—Section 14708(d)(3) of such title is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking ''(3)(A) a decision resolving the dispute was not'' and inserting the following:

''(3)(A) the shipper was not advised by the carrier during the claim settlement process that a dispute settlement program was available to resolve the dispute;

''(B) a decision resolving the dispute was not''.

SEC. 4209. CIVIL PENALTIES RELATING TO HOUSEHOLD GOODS BROKERS AND UNAUTHORIZED TRANSPORTATION.

Section 14901(d) of title 49, United States Code, is amended—

(1) by striking ''If a carrier'' and inserting the following:

''(1) IN GENERAL.—If a carrier''; and

(2) by adding at the end the following:

''(2) ESTIMATE OF BROKER WITHOUT CARRIER AGREEMENT.—If a broker for transportation of household goods subject to jurisdiction under subchapter I of chapter 135 makes an estimate of the cost of transporting any such goods before entering into an agreement with a carrier to provide transportation of household goods subject to such jurisdiction, the broker is liable to the United States for a civil penalty of not less than $10,000 for each violation.

''(3) UNAUTHORIZED TRANSPORTATION.—If a person provides transportation of household goods subject to jurisdiction under subchapter I of chapter 135 or provides broker services for such transportation without being registered under chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, such person is liable to the United States for a civil penalty of not less than $25,000 for each violation.''.

SEC. 4210. PENALTIES FOR HOLDING HOUSEHOLD GOODS HOSTAGE.

(a) IN GENERAL.—Chapter 149 of title 49, United States Code, is amended by adding at the end the following:

''§ 14915. Penalties for failure to give up possession of household goods

''(a) CIVIL PENALTY.—

''(1) IN GENERAL.—Whoever is found holding a household goods shipment hostage is liable to the United States for a civil penalty of not less than $10,000 for each violation.

''(2) EACH DAY, A SEPARATE VIOLATION.—Each day a carrier is found to have failed to give up possession of household goods may constitute a separate violation.

''(3) SUSPENSION.—If the person found holding a shipment hostage is a carrier or broker, the Secretary may suspend for a period of not less than 12 months nor more than 36 months the registration of such carrier or broker under chapter 139. The force and effect of such suspension of a carrier or broker shall extend to and include any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

''(b) CRIMINAL PENALTY.—Whoever has been convicted of having failed to give up possession of household goods shall be fined under title 18 or imprisoned for not more than 2 years, or both.

''(c) FAILURE TO GIVE UP POSSESSION OF HOUSEHOLD GOODS DEFINED.—For purposes of this section, the term 'failed to give up possession of household goods' means the knowing and willful failure, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods that is subject to jurisdiction under subchapter I or III of chapter 135 of this title, for which charges have been estimated by the motor carrier providing transportation of such goods, and for which the shipper has tendered a payment described in clause (i), (ii), or (iii) of section 13707(b)(3)(A).''.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by adding at the end the following:

''14915. Penalties for failure to give up possession of household goods.''.

SEC. 4211. CONSUMER HANDBOOK ON DOT WEB SITE.

Not later than 1 year after the date of enactment of this Act, the Secretary shall take such action as may be necessary to ensure that publication ESA 03005 of the Federal Motor Carrier Safety Administration entitled ''Your Rights and Responsibilities When You Move'', is prominently displayed, and available in language that is readily understandable by the general public, on the Web site of the Department of Transportation.

SEC. 4212. RELEASE OF HOUSEHOLD GOODS BROKER INFORMATION.

Not later than 1 year after the date of enactment of this Act, the Secretary shall modify the regulations contained in part 375 of title 49, Code of Federal Regulations, to require a broker that is subject to such regulations to provide shippers with the following information whenever they have contact with a shipper or potential shipper:

(1) The Department of Transportation number of the broker.

(2) The ESA 03005 publication referred to in section 4211 of this Act.

(3) A list of all motor carriers providing transportation of household goods used by the broker and a statement that the broker is not a motor carrier providing transportation of household goods.

SEC. 4213. WORKING GROUP FOR DEVELOPMENT OF PRACTICES AND PROCEDURES TO ENHANCE FEDERAL-STATE RELATIONS.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall establish a working group of State attorneys general, State consumer protection administrators, and Federal and local law enforcement officials for the purpose of developing practices and procedures to enhance the Federal-State partnership in enforcement efforts, exchange of information, and coordination of enforcement efforts with respect to interstate transportation of household goods and of making legislative and regulatory recommendations to the Secretary concerning such enforcement efforts.

(b) CONSULTATION.—In carrying out subsection (a), the working group shall consult with industries involved in the transportation of household goods, the public, and other interested parties.

(c) FEDERAL ADVISORY COMMITTEE ACT EXEMPTION.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working group established under subsection (a).

(d) TERMINATION DATE.—The working group shall remain in effect until September 30, 2009.

SEC. 4214. CONSUMER COMPLAINT INFORMATION.

(a) ESTABLISHMENT OF SYSTEM.—Not later than 1 year after the date of enactment of this Act, the Secretary shall—

(1) establish (A) a system for filing and logging consumer complaints relating to household goods motor carriers for the purpose of compiling or linking complaint information gathered by the Department of Transportation and the States with regard to such carriers, (B) a database of the complaints, and (C) a procedure for the public to have access, subject to section 552(a) of title 5, United States Code, to aggregated information and for carriers to challenge duplicate or fraudulent information in the database;

(2) issue regulations requiring each motor carrier of household goods to submit on a quarterly basis a report summarizing—

(A) the number of shipments that originate and are delivered for individual shippers during the reporting period by the carrier;

(B) the number and general category of complaints lodged by consumers with the carrier;

(C) the number of claims filed with the carrier for loss and damage in excess of $500;

(D) the number of such claims resolved during the reporting period;

(E) the number of such claims declined in the reporting period; and

(F) the number of such claims that are pending at the close of the reporting period; and

(3) develop a procedure to forward a complaint, including the motor carrier bill of lading number, if known, related to the complaint to a motor carrier named in such complaint and to an appropriate State authority (as defined in section 14710(d) of title 49, United States Code) in the State in which the complainant resides.

(b) USE OF INFORMATION.—The Secretary shall consider information in the data base established under subsection (a) in its household goods compliance and enforcement program.

SEC. 4215. REVIEW OF LIABILITY OF CARRIERS.

(a) REVIEW.—Not later than 1 year after the date of enactment of this Act, the Surface Transportation Board shall complete a review of the current Federal regulations regarding the level of liability protection provided by motor carriers that provide transportation of household goods and revise such regulations, if necessary, to provide enhanced protection in the case of loss or damage.

(b) DETERMINATIONS.—The review required by subsection (a) shall include a determination of—

(1) whether the current regulations provide adequate protection;

(2) the benefits of purchase by a shipper of insurance to supplement the carrier's limitations on liability; and

(3) whether there are abuses of the current regulations that leave the shipper unprotected in the event of loss and damage to a shipment of household goods.

SEC. 4216. APPLICATION OF STATE CONSUMER PROTECTION LAWS TO CERTAIN HOUSEHOLD GOODS CARRIERS.

(a) STUDY.—The Comptroller General shall conduct a study on the current consumer protection authorities and actions of the Department of Transportation and the impact on shippers and carriers of household goods involved in interstate transportation of allowing State attorneys general to apply State consumer protection laws to such transportation.

(b) MATTERS TO BE CONSIDERED.—In conducting the study, the Comptroller General shall consider, at a minimum—

(1) the level of consumer protection being provided to consumers through Federal household goods regulations and how household goods regulations relating to consumer protection compare to regulations relating to consumer protection for other modes of transportation regulated by the Department of Transportation;

(2) the history and background of State enforcement of State consumer protection laws on household goods carriers providing intrastate transportation and what effects such laws have on the ability of intrastate household goods carriers to operate;

(3) what operational impacts, if any, would result on household goods carriers engaged in interstate commerce being subject to the State consumer protection laws; and

(4) the potential for States to regulate rates or other business operations if State consumer protection laws applied to interstate household goods movements.

(c) CONSULTATION.—In conducting the study, the Comptroller General shall consult with the Secretary, State attorneys general, consumer protection agencies, and the household goods industry.

(d) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall transmit to the Committee of Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate a report on the results of the study.

Subtitle C—Unified Carrier Registration Act of 2005

SEC. 4301. SHORT TITLE.

This subtitle may be cited as the ''Unified Carrier Registration Act of 2005''.

SEC. 4302. RELATIONSHIP TO OTHER LAWS.

Except as provided in section 14504 of title 49, United States Code, and sections 14504a and 14506 of title 49, United States Code, as added by this subtitle, this subtitle is not intended to prohibit any State or any political subdivision of any State from enacting, imposing, or enforcing any law or regulation with respect to a motor carrier, motor private carrier, broker, freight forwarder, or leasing company that is not otherwise prohibited by law.

SEC. 4303. INCLUSION OF MOTOR PRIVATE AND EXEMPT CARRIERS.

(a) PERSONS REGISTERED TO PROVIDE TRANSPORTATION OR SERVICE AS A MOTOR CARRIER OR

MOTOR PRIVATE CARRIER.—Section 13905 of title 49, United States Code, is amended—

(1) by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively; and

(2) by inserting after subsection (a) the following:

''(b) PERSON REGISTERED WITH SECRETARY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), any person having registered with the Secretary to provide transportation or service as a motor carrier or motor private carrier under this title, as in effect on January 1, 2005, but not having registered pursuant to section 13902(a), shall be treated, for purposes of this part, to be registered to provide such transportation or service for purposes of sections 13908 and 14504a.

''(2) EXCLUSIVELY INTRASTATE OPERATORS.—Paragraph (1) does not apply to a motor carrier or motor private carrier (including a transporter of waste or recyclable materials) engaged exclusively in intrastate transportation operations.''.

(b) SECURITY REQUIREMENT.—Section 13906(a) of such title is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following:

''(2) SECURITY REQUIREMENT.—Not later than 120 days after the date of enactment of the Unified Carrier Registration Act of 2005, any person, other than a motor private carrier, registered with the Secretary to provide transportation or service as a motor carrier under section 13905(b) shall file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than required by sections 31138 and 31139.''.

(c) TERMINATION OF TRANSITION RULE.—Section 13902 of such title is amended—

(1) by adding at the end of subsection (d) the following:

''(3) TERMINATION.—This subsection shall cease to be in effect on the transition termination date.''; and

(2) by redesignating subsection (f) as subsection (g), and inserting after subsection (e) the following:

''(f) MODIFICATION OF CARRIER REGISTRATION.—

''(1) IN GENERAL.—On and after the transition termination date, the Secretary—

''(A) may not register a motor carrier under this section as a motor common carrier or a motor contract carrier;

''(B) shall register applicants under this section as motor carriers; and

''(C) shall issue any motor carrier registered under this section after that date a motor carrier certificate of registration that specifies whether the holder of the certificate may provide transportation of persons, household goods, other property, or any combination thereof.

''(2) PRE-EXISTING CERTIFICATES AND PERMITS.—The Secretary shall redesignate any motor carrier certificate or permit issued before the transition termination date as a motor carrier certificate of registration. On and after the transition termination date, any person holding a motor carrier certificate of registration redesignated under this paragraph may provide both contract carriage (as defined in section 13102(4)(B)) and transportation under terms and conditions meeting the requirements of section 13710(a)(1). The Secretary may not, pursuant to any regulation or form issued before or after the transition termination date, make any distinction among holders of motor carrier certificates of registration on the basis of whether the holder would have been classified as a common carrier or as a contract carrier under—

''(A) subsection (d) of this section, as that section was in effect before the transition termination date; or

''(B) any other provision of this title that was in effect before the transition termination date.

''(3) TRANSITION TERMINATION DATE DEFINED.—In this section, the term 'transition termination date' means the first day of January occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2005.''.

(d) CLERICAL AMENDMENTS.—

(1) HEADING FOR SECTION 13906.—Section 13906 of such title is amended by striking the section designation and heading and inserting the following:

''§ 13906. Security of motor carriers, motor private carriers, brokers, and freight forwarders''.

(2) CHAPTER ANALYSIS.—The analysis for chapter 139 of such title is amended by striking the item relating to section 13906 and inserting the following:

''13906. Security of motor carriers, motor private carriers, brokers, and freight forwarders.''.

SEC. 4304. UNIFIED CARRIER REGISTRATION SYSTEM.

Section 13908 of title 49, United States Code, is amended to read as follows:

''§ 13908. Registration and other reforms

''(a) ESTABLISHMENT OF UNIFIED CARRIER REGISTRATION SYSTEM.—The Secretary, in cooperation with the States, representatives of the motor carrier, motor private carrier, freight forwarder, and broker industries and after notice and opportunity for public comment, shall issue within 1 year after the date of enactment of the Unified Carrier Registration Act of 2005 regulations to establish an online Federal registration system, to be named the 'Unified Carrier Registration System', to replace—

''(1) the current Department of Transportation identification number system, the single state registration system under section 14504;

''(2) the registration system contained in this chapter and the financial responsibility information system under section 13906; and

''(3) the service of process agent systems under sections 503 and 13304.

''(b) ROLE AS CLEARINGHOUSE AND DEPOSITORY OF INFORMATION.—The Unified Carrier Registration System shall serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, motor private carriers, brokers, freight forwarders, and others required to register with the Department of Transportation, including information with respect to a carrier's safety rating, compliance with required levels of financial responsibility, and compliance with the provisions of section 14504a. The Secretary shall ensure that Federal agencies, States, representatives of the motor carrier industry, and the public have access to the Unified Carrier Registration System, including the records and information contained in the System.

''(c) PROCEDURES FOR CORRECTING INFORMATION.—Not later than 60 days after the effective date of this section, the Secretary shall prescribe regulations establishing procedures that enable a motor carrier to correct erroneous information contained in any part of the Unified Carrier Registration System.

''(d) FEE SYSTEM.—The Secretary shall establish, under section 9701 of title 31, a fee system for the Unified Carrier Registration System according to the following guidelines:

''(1) REGISTRATION AND FILING EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for new registrants shall as nearly as possible cover the costs of processing the registration but shall not exceed $300.

''(2) EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for filing evidence of financial responsibility pursuant to this section shall not exceed $10 per filing. No fee shall be charged for a filing for purposes of designating an agent for service of process or the filing of other information relating to financial responsibility.

''(3) ACCESS AND RETRIEVAL FEES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the fee system shall include a nominal fee for the access to or retrieval of information from the Unified Carrier Registration System to cover the costs of operating and upgrading the System, including the personnel costs incurred by the Department and the costs of administration of the unified carrier registration agreement.

''(B) EXCEPTIONS.—There shall be no fee charged under this paragraph—

''(i) to any agency of the Federal Government or a State government or any political subdivision of any such government for the access to or retrieval of information and data from the Unified Carrier Registration System for its own use; or

''(ii) to any representative of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder (as each is defined in section 14504a) for the access to or retrieval of the individual information related to such entity from the Unified Carrier Registration System for the individual use of such entity.

''(e) APPLICATION TO CERTAIN INTRASTATE OPERATIONS.—Nothing in this section requires the registration of a motor carrier, a motor private carrier of property, or a transporter of waste or recyclable materials operating exclusively in intrastate transportation not otherwise required to register with the Secretary under another provision of this title.''.

SEC. 4305. REGISTRATION OF MOTOR CARRIERS BY STATES.

(a) TERMINATION OF REGISTRATION PROVISIONS.—Section 14504, and the item relating to such section in the analysis for chapter 145, of title 49, United States Code, are repealed effective on the first January 1st occurring more than 12 months after the date of enactment of this Act.

(b) UNIFIED CARRIER REGISTRATION SYSTEM PLAN AND AGREEMENT.—Chapter 145 of title 49, United States Code is amended by inserting after section 14504 the following:

''§ 14504a. Unified Carrier Registration System plan and agreement

''(a) DEFINITIONS.—In this section and section 14506, the following definitions apply :

''(1) COMMERCIAL MOTOR VEHICLE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'commercial motor vehicle' has the meaning such term has under section 31101.

''(B) EXCEPTION.—With respect to a motor carrier required to make any filing or pay any fee to a State with respect to the motor carrier's authority or insurance related to operation within such State, the motor carrier shall have the option to include, in addition to commercial motor vehicles as defined in subparagraph (A), any self-propelled vehicle used on the highway in commerce to transport passengers or property for compensation regardless of the gross vehicle weight rating of the vehicle or the number of passengers transported by such vehicle.

''(2) BASE-STATE.—

''(A) IN GENERAL.—Subject to subparagraph (B), the term 'base-State' means, with respect to a unified carrier registration agreement, a State—

''(i) that is in compliance with the requirements of subsection (e); and

''(ii) in which the motor carrier, motor private carrier, broker, freight forwarder, or leasing company to which the agreement applies maintains its principal place of business.

''(B) DESIGNATION OF BASE-STATE.—A motor carrier, motor private carrier, broker, freight forwarder, or leasing company may designate another State in which it maintains an office or operating facility to be its base-State in the event that—

''(i) the State in which the motor carrier, motor private carrier, broker, freight forwarder, or leasing company maintains its principal place of business is not in compliance with the requirements of subsection (e); or

''(ii) the motor carrier, motor private carrier, broker, freight forwarder, or leasing company

does not have a principal place of business in the United States.

''(3) INTRASTATE FEE.—The term 'intrastate fee' means any fee, tax, or other type of assessment, including per vehicle fees and gross receipts taxes, imposed on a motor carrier or motor private carrier for the renewal of the intrastate authority or insurance filings of such carrier with a State.

''(4) LEASING COMPANY.—The term 'leasing company' means a lessor that is engaged in the business of leasing or renting for compensation motor vehicles without drivers to a motor carrier, motor private carrier, or freight forwarder.

''(5) MOTOR CARRIER.—The term 'motor carrier' includes all carriers that are otherwise exempt from this part under subchapter I of chapter 135 or exemption actions by the former Interstate Commerce Commission under this title.

''(6) PARTICIPATING STATE.—The term 'participating State' means a State that has complied with the requirements of subsection (e).

''(7) SSRS.—The term 'SSRS' means the single state registration system in effect on the date of enactment this section.

''(8) UNIFIED CARRIER REGISTRATION AGREEMENT.—The terms 'unified carrier registration agreement' and 'UCR agreement' mean the interstate agreement developed under the unified carrier registration plan governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies pursuant to this section.

''(9) UNIFIED CARRIER REGISTRATION PLAN.—The terms 'unified carrier registration plan' and 'UCR plan' mean the organization of State, Federal, and industry representatives responsible for developing, implementing, and administering the unified carrier registration agreement.

''(10) VEHICLE REGISTRATION.—The term 'vehicle registration' means the registration of any commercial motor vehicle under the International Registration Plan (as defined in section 31701) or any other registration law or regulation of a jurisdiction.

''(b) APPLICABILITY OF PROVISIONS TO FREIGHT FORWARDERS.—A freight forwarder that operates commercial motor vehicles and is not required to register as a carrier pursuant to section 13903(b) shall be subject to the provisions of this section as if the freight forwarder is a motor carrier.

''(c) UNREASONABLE BURDEN.—For purposes of this section, it shall be considered an unreasonable burden upon interstate commerce for any State or any political subdivision of a State, or any political authority of 2 or more States—

''(1) to enact, impose, or enforce any requirement or standards with respect to, or levy any fee or charge on, any motor carrier or motor private carrier providing transportation or service subject to jurisdiction under subchapter I of chapter 135 (in this section referred to as an 'interstate motor carrier' and an 'interstate motor private carrier', respectively) in connection with—

''(A) the registration with the State of the interstate operations of the motor carrier or motor private carrier;

''(B) the filing with the State of information relating to the financial responsibility of the a motor carrier or motor private carrier pursuant to sections 31138 or 31139;

''(C) the filing with the State of the name of the local agent for service of process of the motor carrier or motor private carrier pursuant to sections 503 or 13304; or

''(D) the annual renewal of the intrastate authority, or the insurance filings, of the motor carrier or motor private carrier, or other intrastate filing requirement necessary to operate within the State if the motor carrier or motor private carrier is—

''(i) registered under section 13902 or section 13905(b); and

''(ii) in compliance with the laws and regulations of the State authorizing the carrier to operate in the State in accordance with section 14501(c)(2)(A); except with respect to—

''(I) intrastate service provided by motor carriers of passengers that is not subject to the preemption provisions of section 14501(a);

''(II) motor carriers of property, motor private carriers, brokers, or freight forwarders, or their services or operations, that are described in subparagraphs (B) and (C) of section 14501(c)(2).

''(III) the intrastate transportation of waste or recyclable materials by any carrier; or

''(2) to require any interstate motor carrier or motor private carrier that also performs intrastate operations to pay any fee or tax which a carrier engaged exclusively in interstate operations is exempt.

''(d) UNIFIED CARRIER REGISTRATION PLAN.—

''(1) BOARD OF DIRECTORS.—

''(A) GOVERNANCE OF PLAN; ESTABLISHMENT.—The unified carrier registration plan shall have a board of directors consisting of representatives of the Department of Transportation, participating States, and the motor carrier industry. The Secretary shall establish the board.

''(B) COMPOSITION.—The board shall consist of 15 directors appointed by the Secretary as follows:

''(i) FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION.—One director from each of the Federal Motor Carrier Safety Administration's 4 service areas (as those areas were defined by the Federal Motor Carrier Safety Administration on January 1, 2005) from among the chief administrative officers of the State agencies responsible for overseeing the administration of the UCR agreement.

''(ii) STATE AGENCIES.—Five directors from the professional staffs of State agencies responsible for overseeing the administration of the UCR agreement in their respective States. Nominees for these 5 directorships shall be submitted to the Secretary by the national association of professional employees of the State agencies responsible for overseeing the administration of the UCR agreement in their respective States.

''(iii) MOTOR CARRIER INDUSTRY.—Five directors from the motor carrier industry. At least 1 of the appointees under this clause shall be a representative of a national trade association representing the general motor carrier of property industry. At least 1 of the appointees under this clause shall represent a motor carrier that falls within the smallest fleet fee bracket.

''(iv) DEPARTMENT OF TRANSPORTATION.—The Deputy Administrator of the Federal Motor Carrier Safety Administration, or such other presidential appointee from the Department, as the Secretary may appoint.

''(C) CHAIRPERSON AND VICE-CHAIRPERSON.—The Secretary shall designate 1 director as chairperson and 1 director as vice-chairperson of the board. The chairperson and vice-chairperson shall serve in such capacity for the term of their appointment as directors.

''(D) TERMS.—

''(i) INITIAL TERMS.—In appointing the initial board, the Secretary shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms of 1 year.

''(ii) THEREAFTER.—After the initial term, all directors shall be appointed for terms of 3 years; except that the term of the Deputy Administrator or other individual designated by the Secretary under subparagraph (B)(iv) shall be at the discretion of the Secretary.

''(iii) SUCCESSION.—A director may be appointed to succeed himself or herself.

''(iv) END OF SERVICE.—A director may continue to serve on the board until his or her successor is appointed.

''(2) RULES AND REGULATIONS GOVERNING THE UCR AGREEMENT.—The board of directors shall issue rules and regulations to govern the UCR agreement. The rules and regulations shall—

''(A) prescribe uniform forms and formats, for—

''(i) the annual submission of the information required by a base-State of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder;

''(ii) the transmission of information by a participating State to the Unified Carrier Registration System;

''(iii) the payment of excess fees by a State to the designated depository and the distribution of fees by the depository to those States so entitled; and

''(iv) the providing of notice by a motor carrier, motor private carrier, broker, freight forwarder, or leasing company to the board of the intent of such entity to change its base-State, and the procedures for a State to object to such a change under subparagraph (C);

''(B) provide for the administration of the unified carrier registration agreement, including procedures for amending the agreement and obtaining clarification of any provision of the Agreement;

''(C) provide procedures for dispute resolution under the agreement that provide due process for all involved parties; and

''(D) designate a depository.

''(3) COMPENSATION AND EXPENSES.—

''(A) IN GENERAL.—Except for the representative of the Department appointed under paragraph (1)(B)(iv), no director shall receive any compensation or other benefits from the Federal Government for serving on the board or be considered a Federal employee as a result of such service.

''(B) EXPENSES.—All directors shall be reimbursed for expenses they incur attending meetings of the board. In addition, the board may approve the reimbursement of expenses incurred by members of any subcommittee or task force appointed under paragraph (5) for carrying out the duties of the subcommittee or task force. The reimbursement of expenses to directors and subcommittee and task force members shall be under subchapter II of chapter 57 of title 5, United States Code, governing reimbursement of expenses for travel by Federal employees.

''(4) MEETINGS.—

''(A) IN GENERAL.—The board shall meet at least once per year. Additional meetings may be called, as needed, by the chairperson of the board, a majority of the directors, or the Secretary.

''(B) QUORUM.—A majority of directors shall constitute a quorum.

''(C) VOTING.—Approval of any matter before the board shall require the approval of a majority of all directors present at the meeting.

''(D) OPEN MEETINGS.—Meetings of the board and any subcommittees or task forces appointed under paragraph (5) shall be subject to the provisions of section 552b of title 5.

''(5) SUBCOMMITTEES.—

''(A) INDUSTRY ADVISORY SUBCOMMITTEE.—The chairperson shall appoint an industry advisory subcommittee. The industry advisory subcommittee shall consider any matter before the board and make recommendations to the board.

''(B) OTHER SUBCOMMITTEES.—The chairperson shall appoint an audit subcommittee, a dispute resolution subcommittee, and any additional subcommittees and task forces that the board determines to be necessary.

''(C) MEMBERSHIP.—The chairperson of each subcommittee shall be a director. The other members of subcommittees and task forces may be directors or nondirectors.

''(D) REPRESENTATION ON SUBCOMMITTEES.—Except for the industry advisory subcommittee (the membership of which shall consist solely of representatives of entities subject to the fee requirements of subsection (f)), each subcommittee and task force shall include representatives of the participating States and the motor carrier industry.

''(6) DELEGATION OF AUTHORITY.—The board may contract with any person or any agency of

a State to perform administrative functions required under the unified carrier registration agreement, but may not delegate its decision or policy-making responsibilities.

''(7) DETERMINATION OF FEES.—

''(A) RECOMMENDATION BY BOARD.—The board shall recommend to the Secretary the initial annual fees to be assessed carriers, leasing companies, brokers, and freight forwarders under the unified carrier registration agreement. In making its recommendation to the Secretary for the level of fees to be assessed in any agreement year, and in setting the fee level, the board and the Secretary shall consider—

''(i) the administrative costs associated with the unified carrier registration plan and the agreement;

''(ii) whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the participating States to achieve the revenue levels set by the board; and

''(iii) the provisions governing fees under in subsection (f)(1).

''(B) SETTING FEES.—The Secretary shall set the initial annual fees for the next agreement year and any subsequent adjustment of those fees—

''(i) within 90 days after receiving the board's recommendation under subparagraph (A); and

''(ii) after notice and opportunity for public comment.

''(8) LIABILITY PROTECTIONS FOR DIRECTORS.—No individual appointed to serve on the board shall be liable to any other director or to any other party for harm, either economic or non-economic, caused by an act or omission of the individual arising from the individual's service on the board if—

''(A) the individual was acting within the scope of his or her responsibilities as a director; and

''(B) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the right or safety of the party harmed by the individual.

''(9) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the unified carrier registration plan, the board, or its committees.

''(10) CERTAIN FEES NOT AFFECTED.—This section does not limit the amount of money a State may charge for vehicle registration or the amount of any fuel use tax a State may impose pursuant to the International Fuel Tax Agreement (as defined in section 31701).

''(e) STATE PARTICIPATION.—

''(1) STATE PLAN.—No State shall be eligible to participate in the unified carrier registration plan or to receive any revenues derived under the UCR agreement, unless the State submits to the Secretary, not later than 3 years after the date of enactment of the Unified Carrier Registration Act of 2005, a plan—

''(A) identifying the State agency that has or will have the legal authority, resources, and qualified personnel necessary to administer the agreement in accordance with the rules and regulations promulgated by the board of directors; and

''(B) demonstrating that an amount at least equal to the revenue derived by the State from the unified carrier registration agreement shall be used for motor carrier safety programs, enforcement, or the administration of the UCR plan and UCR agreement.

''(2) AMENDED PLANS.—A State that submits a plan under this subsection may change the agency designated in the plan by filing an amended plan with the Secretary and the chairperson of the board of directors.

''(3) WITHDRAWAL OF PLAN.—If a State withdraws, or notifies the Secretary that it is withdrawing, the plan it submitted under this subsection, the State may no longer participate in the unified carrier registration agreement or receive any portion of the revenues derived under the agreement. The Secretary shall notify the chairperson upon receiving notice from a State that it is withdrawing its plan or withdrawing from the agreement, or both.

''(4) TERMINATION OF ELIGIBILITY.—If a State fails to submit a plan to the Secretary in accordance with paragraph (1) or withdraws its plan under paragraph (3), the State may not submit or resubmit a plan or participate in the agreement.

''(5) PROVISION OF PLAN TO CHAIRPERSON.—The Secretary shall provide a copy of each plan submitted under this subsection to the chairperson of the board of directors not later than 10 days after date of submission of the plan.

''(f) CONTENTS OF UNIFIED CARRIER REGISTRATION AGREEMENT.—The unified carrier registration agreement shall provide the following:

''(1) FEES.—(A) Fees charged—

''(i) to a motor carrier, motor private carrier, or freight forwarder in connection with the filing of proof of financial responsibility under the UCR agreement shall be based on the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder; and

''(ii) to a broker or leasing company in connection with such a filing shall be equal to the smallest fee charged to a motor carrier, motor private carrier, and freight forwarder or under this paragraph.

''(B) The fees shall be determined by the Secretary based upon the recommendation of the board under subsection (d)(7).

''(C) The board shall develop for purposes of charging fees no more than 6 and no less than 4 brackets of carriers (including motor private carriers) based on the size of fleet.

''(D) The fee scale shall be progressive in the amount of the fee.

''(E) The board may ask the Secretary to adjust the fees within a reasonable range on an annual basis if the revenues derived from the fees—

''(i) are insufficient to provide the revenues to which the States are entitled under this section; or

''(ii) exceed those revenues.

''(2) DETERMINATION OF OWNERSHIP OR OPERATION.—For purposes of this subsection, a commercial motor vehicle is owned or operated by a motor carrier, motor private carrier, or freight forwarder if the vehicle is registered under Federal law or State law, or both, in the name of the motor carrier, motor private carrier, or freight forwarder or is controlled by the motor carrier, motor private carrier, or freight forwarder under a long term lease during a vehicle registration year.

''(3) CALCULATION OF NUMBER OF COMMERCIAL MOTOR VEHICLES OWNED OR OPERATED.—The number of commercial motor vehicles owned or operated by a motor carrier, motor private carrier, or freight forwarder for purposes of paragraph (1) shall be based either on the number of commercial motor vehicles the motor carrier, motor private carrier, or freight forwarder has indicated it operates on its most recently filed MCS–150 or the total number of such vehicles it owned or operated for the 12-month period ending on June 30 of the year immediately prior to the registration year of the Unified Carrier Registration System. A motor carrier may include in the calculation of its fleet size for purposes of paragraph (1) any commercial motor vehicle. Motor carriers and motor private carriers in the calculation of their fleet size for purposes of paragraph (1) may elect not to include commercial motor vehicle used exclusively in the intrastate transportation of property, waste, or recyclable material.

''(4) PAYMENT OF FEES.—Motor carriers, motor private carriers, leasing companies, brokers, and freight forwarders shall pay all fees required under this section to their base-State pursuant to the UCR Agreement.

''(g) PAYMENT OF FEES.—Revenues derived under the UCR Agreement shall be allocated to participating States as follows:

''(1) A State that participated in the SSRS in the last registration year under the SSRS ending before the date of enactment of the Unified Carrier Registration Act of 2005 and complies with subsection (e) is entitled to receive under this section a portion of the revenues generated under the UCR agreement equivalent to the revenues it received under the SSRS in such last registration year, as long as the State continues to comply with subsection (e).

''(2) A State that collected intrastate registration fees from interstate motor carriers, interstate motor private carriers, or interstate exempt carriers and complies with subsection (e) is entitled to receive under this section an additional portion of the revenues generated under the UCR agreement equivalent to the revenues it received from such carriers in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2005, as long as the State continues to comply with subsection (e).

''(3) States that comply with subsection (e) but did not participate in SSRS during such last registration year shall be entitled under this section to an annual allotment not to exceed $500,000 from the revenues generated under the UCR agreement, as long as the State continues to comply with the provisions of subsection (e).

''(4) The amount of revenues generated under the UCR agreement to which a State is entitled under this section shall be calculated by the board and approved by the Secretary.

''(h) DISTRIBUTION OF UCR AGREEMENT REVENUES.—

''(1) ELIGIBILITY.—Each State that is in compliance with subsection (e) shall be entitled under this section to a portion of the revenues derived from the UCR Agreement in accordance with subsection (g).

''(2) ENTITLEMENT TO REVENUES.—A State that is in compliance with subsection (e) may retain an amount of the gross revenues it collects from motor carriers, motor private carriers, brokers, freight forwarders and leasing companies under the UCR agreement equivalent to the portion of revenues to which the State is entitled under subsection (g). All revenues a participating State collects in excess of the amount to which the State is so entitled shall be forwarded to the depository designated by the board under subsection (d)(2)(D).

''(3) DISTRIBUTION OF FUNDS FROM DEPOSITORY.—The excess funds deposited in the depository shall be distributed by the board of directors as follows:

''(A) On a pro rata basis to each participating State that did not collect revenues under the UCR agreement equivalent to the amount such State is entitled under subsection (g), except that the sum of the gross revenues collected under the UCR agreement by a participating State and the amount distributed to it from the depository shall not exceed the amount to which the State is entitled under subsection (g).

''(B) After all distributions under subparagraph (A) have been made, to pay the administrative costs of the UCR plan and the UCR agreement.

''(4) RETENTION OF CERTAIN EXCESS FUNDS.—Any excess funds held by the depository after distributions and payments under paragraphs (3)(A) and (3)(B) shall be retained in the depository, and the fees charged under the UCR agreement to motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers for the next fee year shall be reduced by the Secretary accordingly.

''(i) ENFORCEMENT.—

''(1) CIVIL ACTIONS.—Upon request by the Secretary, the Attorney General may bring a civil action in the United States district court described in paragraph (2) to enforce an order issued to require compliance with this section and with the terms of the UCR agreement.

''(2) VENUE.—An action under this section may be brought only in a United States district court in the State in which compliance with the order is required.

''(3) RELIEF.—Subject to section 1341 of title 28, the court, on a proper showing shall issue a temporary restraining order or a preliminary or permanent injunction requiring that the State or any person comply with this section.

''(4) ENFORCEMENT BY STATES.—Nothing in this section—

''(A) prohibits a participating State from issuing citations and imposing reasonable fines and penalties pursuant to the applicable laws and regulations of the State on any motor carrier, motor private carrier, freight forwarder, broker, or leasing company for failure to—

''(i) submit information documents as required under subsection (d)(2); or

''(ii) pay the fees required under subsection (f); or

''(B) authorizes a State to require a motor carrier, motor private carrier, or freight forwarder to display as evidence of compliance any form of identification in excess of those permitted under section 14506 on or in a commercial motor vehicle.

''(j) APPLICATION TO INTRASTATE CARRIERS.—Notwithstanding any other provision of this section, a State may elect to apply the provisions of the UCR agreement to motor carriers and motor private carriers and freight forwarders subject to its jurisdiction that operate solely in intrastate commerce within the borders of the State.''.

(c) CLERICAL AMENDMENT.—The analysis for such chapter is amended by inserting after the item relating to section 14504 the following:

''14504a. Unified Carrier Registration System plan and agreement.''.

SEC. 4306. IDENTIFICATION OF VEHICLES.

(a) IN GENERAL.—Chapter 145 of title 49, United States Code; is amended by adding at the end the following:

''§ 14506. Identification of vehicles

''(a) RESTRICTION ON REQUIREMENTS.—No State, political subdivision of a State, interstate agency, or other political agency of 2 or more States may enact or enforce any law, rule, regulation standard, or other provision having the force and effect of law that requires a motor carrier, motor private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial motor vehicle (as defined in section 14504a), other than forms of identification required by the Secretary of Transportation under section 390.21 of title 49, Code of Federal Regulations.

''(b) EXCEPTION.—Notwithstanding subsection (a), a State may continue to require display of credentials that are required—

''(1) under the International Registration Plan under section 31704;

''(2) under the International Fuel Tax Agreement under section 31705;

''(3) under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate;

''(4) in connection with Federal requirements for hazardous materials transportation under section 5103; or

''(5) in connection with the Federal vehicle inspection standards under section 31136.''.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by inserting after the item relating to section 14505 the following:

''14506. Identification of vehicles.''.

SEC. 4307. USE OF UCR AGREEMENT REVENUES AS MATCHING FUNDS.

(a) IN GENERAL.—Section 31103(a) of title 49, United States Code, is amended—

(1) by striking ''31102(b)(1)(D)'' inserting ''31102(b)(1)(E)''; and

(2) by inserting ''Amounts generated under the unified carrier registration agreement under section 14504a and received by a State and used for motor carrier safety purposes may be included as part of the State's share not provided by the United States.'' after ''United States Government.''.

(b) TECHNICAL CORRECTION.—Sections 31102(b)(3) of such title is amended by striking ''paragraph (1)(D)'' and inserting ''paragraph (1)(E)''.

SEC. 4308. REGULATIONS.

The Secretary may issue such regulations as the Secretary determines are necessary to carry out this subtitle and the amendments made by this subtitle.

Subtitle D—Miscellaneous Provisions

SEC. 4401. TECHNICAL ADJUSTMENT.

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

(1) The term ''Administrator'' means the Administrator of General Services.

(2) The term ''donee'' means the corporation to which the Administrator donated the vessel.

(3) The term ''vessel'' means the vessel with Unit Identification number 13862.

(b) TRANSFER.—Not later than 30 days after the date of enactment of this Act, the donee shall transfer all of the rights, title, and interest of the donee in and to the vessel to the Administrator.

(c) FUTURE CONVEYANCE.—Within 30 days after the transfer of the vessel under subsection (b), the Administrator shall remove the vessel to a Federal facility. Within 60 days after the date of the transfer of the vessel under subsection (b), the Administrator shall sell the vessel for fair market value. The Administrator shall require as a condition of any conveyance of the vessel that the vessel shall not be used within the United States, as defined in section 2101(44) of title 46, United States Code, or within the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988. The donee shall not be required to pay any amounts for removing the vessel to a Federal facility under this subsection.

(d) EFFECT ON PENDING LAWSUITS.—Nothing in this section shall have any effect on any lawsuit relating to transfer or use of the vessel.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $4,000,000 for a grant to the donee. The Secretary shall transfer any funds appropriated under this subsection to the Secretary of the Interior, who shall obligate such funds through instruments and procedures that are equivalent to the instruments and procedures required to be used by the Bureau of Indian Affairs pursuant to title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.). Amounts paid to the donee under this section shall be treated as revenues originating from the Alaska Native Fund for purposes of section 21(a) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(a)).

SEC. 4402. TRANSFER.

Section 407(b) of the Coast Guard Authorization Act of 1998 (112 Stat. 3430) is amended—

(1) by striking ''made—'' and all that follows through ''(1) subject'' and inserting ''made subject''; and

(2) by striking ''; and'' and all that follows and inserting a period.

SEC. 4403. EXTENSION OF ASSISTANCE.

Section 206(c) of Public Law 89–702 (16 U.S.C. 1166(c)) is amended—

(1) by striking ''for fiscal years 2001, 2002, 2003, 2004, and 2005'' the first place it it appears; and

(2) in paragraph (1) by inserting '', for fiscal years 2001, 2002, 2003, 2004, 2005, 2006, and 2007'' after ''subsection (a)''.

SEC. 4404. DESIGNATIONS.

(a) DESIGNATION.—In the States of Alaska and Hawaii, members of the State legislature may serve on the policy board of a metropolitan planning organization designated under section 134 of title 23, United States Code, if such service is allowed by State law.

(b) REDESIGNATION.—In the States of Alaska and Hawaii, a metropolitan planning organization designated under section 134 of title 23, United Sates Code, may be redesignated as a result of changes in State law that define new requirements for the metropolitan planning organization policy board.

SEC. 4405. LIMITED EXCEPTION.

Section 44704(a) of title 49, United States Code is amended—

(1) in paragraph (1) by striking ''The'' the first place it appears and inserting ''ISSUANCE, INVESTIGATIONS, AND TESTS.—The'';

(2) in paragraph (2) by striking ''The'' and inserting ''SPECIFICATIONS.—The'';

(3) in paragraph (3) by striking ''If'' and inserting ''SPECIAL RULES FOR NEW AIRCRAFT AND APPLIANCES.—Except as provided in paragraph (4), if'';

(4) by adding at the end the following:

''(4) LIMITATION FOR AIRCRAFT MANUFACTURED BEFORE AUGUST 5, 2004.—Paragraph (3) shall not apply to a person who began the manufacture of an aircraft before August 5, 2004, and who demonstrates to the satisfaction of the Administrator that such manufacture began before August 5, 2004, if the name of the holder of the type certificate for the aircraft does not appear on the airworthiness certificate or identification plate of the aircraft. The holder of the type certificate for the aircraft shall not be responsible for the continued airworthiness of the aircraft. A person may invoke the exception provided by this paragraph with regard to the manufacture of only one aircraft.'';

(5) by indenting paragraph (1); and

(6) by aligning the left margin of paragraphs (1), (2), and (3) with the left margin of paragraph (4) (as added by paragraph (4) of this section.)

SEC. 4406. AIRPORT LAND AMENDMENT.

(a) RELEASE OF REVERTER CONDITION.—The Secretary of the Interior shall execute such instruments as are necessary to release the condition on a portion of land situated adjacent to the community of Beaver, Alaska, conveyed pursuant to Patent No. 50–69–0130 and dated August 23, 1968, requiring that such land reverts to the United States if the land is not used for airport purposes. The Secretary shall ensure that the release executed pursuant to this subsection—

(1) applies only to approximately 33 acres of land identified as tracts II through VI of the Beaver Airport, a part of U.S. Survey No. 3798, Alaska (referred to in this section as the ''community expansion land'');

(2) is without any requirement for receipt of fair market value for the release and conveyance of the conditions otherwise applicable to the community expansion land; and

(3) is contingent on the conveyance by the State of Alaska of the community expansion land to the Beaver Kwit'chin Corporation, the Village Corporation of the village of Beaver, Alaska.

(b) RECONVEYANCE.—The Beaver Kwit'chin Corporation—

(1) shall reconvey to any individual who currently occupies a portion of the land referred to in subsection (a) or successor in interest to such an individual, all right, title, and interest of the Kwit'chin Corporation in and to such land as is currently occupied;

(2) may subsequently—

(A) convey the remaining land to other individuals or persons for community expansion purposes; or

(B) retain the remaining land in whole or in part for community uses.

SEC. 4407. RIGHTS-OF-WAY.

Notwithstanding any other provision of law, the reciprocal rights-of-way and easements identified on the map numbered 92337 and dated June 15, 2005, are hereby enacted into law.

SEC. 4408. RIALTO MUNICIPAL AIRPORT.

(a) FINDINGS.—Congress finds that—

(1) Rialto Municipal Airport/Art Scholl Memorial Airport (Rialto Municipal Airport) is a general aviation airport located within a 20-mile radius of 10 other general aviation airports;

(2) Rialto Municipal Airport is located approximately 8.5 nautical miles from the former Norton Air Force Base which was selected for closure by the Base Realignment and Closure Commission in 1988 and was closed in 1994;

(3) there has been a significant decline in based aircraft and aviation operations at Rialto Municipal Airport due to the unexpected impact of increased capacity in the immediate vicinity of the airport;

(4) the transfer of Rialto Municipal Airport's operations, assets and liabilities is supported by the general aviation operators at the airport and will not compromise service or safety; and

(5) the closure of Rialto Municipal Airport shall be in compliance with applicable federal laws and regulations.

(b) IN GENERAL.—Notwithstanding any law, regulation or grant assurance, but subject to the requirements of this section, the United States shall release all restrictions, conditions, and limitations on the use, encumbrance, conveyance, or closure of the Rialto Municipal Airport, in Rialto, California, to the extent such restrictions, conditions, and limitations are enforceable by the United States.

(c) CONDITIONS.—A release under subsection (b) shall be subject to the following conditions:

(1) Upon conveyance of the land or transfer of any interest or rights of use or occupancy of the land—

(A) the city of Rialto will pay the United States 45 percent of the current fair market value of the property, and this amount shall be used for projects eligible under chapter 471 of title 49, United States Code, at a commercial airport—

(i) for which a certificate is issued under part 139 of title 14, Code of Federal Regulations;

(ii) that is located within 10 nautical miles of Rialto Municipal Airport; and

(iii) that was included on the Department of Defense base closure list of 1988;

(B) the remaining 55 percent of the fair market value referred to in subparagraph (A) shall be retained by the city of Rialto;

(C) the city shall pay to the United States 90 percent of the unamortized portion of any Federal development grant for airport facilities other than land, amortized over a 20-year term, with interest. These funds shall be payable over a period of 5 years and deposited into the Airport and Airway Trust Fund and available for projects eligible under chapter 471 of title 49, United States Code.

(2) The United States will not be responsible for any environmental cleanup of any land with respect to which such release is made.

(3) All airport and aviation-related equipment located at Rialto Municipal Airport and owned by the city of Rialto before the date of the release will be transferred to a commercial airport referred to in paragraph (1)(A).

SEC. 4409. CONFORMING AMENDMENTS.

Section 218 of title 23, United States Code, is amended—

(1) in subsection (a) by striking ''prior to the date of the enactment of the reauthorization of the Transportation Equity Act for the 21st Century''; and

(2) by adding at the end the following:

''(c) For purposes of this section, the term 'Alaska Marine Highway System' includes all existing or planned transportation facilities and equipment in Alaska, including the lease, purchase, or construction of vessels, terminals, docks, floats, ramps, staging areas, parking lots, bridges and approaches thereto, and necessary roads.''.

SEC. 4410. RALPH M. BARTHOLOMEW VETERANS' MEMORIAL BRIDGE.

(a) DESIGNATION.—The bridge joining the Island of Gravina to the community of Ketchican, Alaska, constructed pursuant to section 144(g)(1)(E) of title 23, United States Code, is designated as the ''Ralph M. Bartholomew Veterans' Memorial Bridge''.

(b) REFERENCES.—Any reference in law, map, regulation, document, paper, or other record of the United States to the bridge referred to in subsection (a) shall be deemed to be a reference to the ''Ralph M. Bartholomew Veterans' Memorial Bridge''.

SEC. 4411. DON YOUNG'S WAY.

(a) DESIGNATION.—The Knik Arm bridge in Alaska to be planned, designed, and constructed pursuant to section 117 of title 23, United States Code, as high priority project number 2465 under section 1702 of this Act, is designated as ''Don Young's Way''.

(b) REFERENCES.—Any reference in law, map, regulation, document, paper, or other record of the United States to the bridge referred to in subsection (a) shall be deemed to be a reference to ''Don Young's Way''.

SEC. 4412. QUALITY BANK ADJUSTMENTS.

(a) DEFINITION OF TAPS QUALITY BANK ADJUSTMENTS.—In this section, the term ''TAPS quality bank adjustments'' means monetary adjustments paid by or to a shipper of oil on the Trans Alaska Pipeline System through the operation of a quality bank to compensate for the value of the oil of the shipper that is commingled in the Pipeline.

(b) PROCEEDINGS.—

(1) IN GENERAL.—In a proceeding commenced before the date of enactment of this Act, the Federal Energy Regulatory Commission may not order retroactive changes in TAPS quality bank adjustments for any period before February 1, 2000.

(2) PROCEEDINGS COMMENCED AFTER THE DATE OF ENACTMENT.—In a proceeding commenced after the date of enactment of this Act, the Commission may not order retroactive changes in TAPS quality bank adjustments for any period that exceeds the 15-month period immediately preceding the earliest date of the first order of the Federal Energy Regulatory Commission imposing quality bank adjustments in the proceeding.

(c) DEADLINE FOR CLAIMS.—

(1) IN GENERAL.—A claim relating to a quality bank under this section shall be filed with the Federal Energy Regulatory Commission not later than 2 years after the date on which the claim arose.

(2) FINAL ORDER.—Not later than 15 months after the date on which a claim is filed under paragraph (1), the Federal Energy Regulatory Commission shall issue a final order with respect to the claim.

SEC. 4413. TECHNICAL AMENDMENT.

Section 5006(d) of Public Law 101–380 is amended by inserting ''annual'' before ''amount''.

TITLE V—RESEARCH

Subtitle A—Funding

SEC. 5101. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) SURFACE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEPLOYMENT PROGRAM.—To carry out sections 502, 503, 506, 507, 509, and 510 of title 23, United States Code, and sections 5201, 5203, 5204, 5309, 5501, 5502, 5503, 5504, 5506, 5511, 5512, 5513 of this title $196,400,000 for each of fiscal years 2005 through 2009 shall be available.

(2) TRAINING AND EDUCATION.—To carry out section 504 of title 23, United States Code, and section 5502 of this Act $26,700,000 for each of fiscal years 2005 through 2009.

(3) BUREAU OF TRANSPORTATION STATISTICS.—For the Bureau of Transportation Statistics to carry out section 111 of title 49, United States Code, $27,000,000 for each of fiscal years 2005 through 2009.

(4) UNIVERSITY TRANSPORTATION RESEARCH.—To carry out sections 5505 and 5506 of title 49, United States Code, $69,700,000 for each of fiscal years 2005 through 2009.

(5) INTELLIGENT TRANSPORTATION SYSTEMS (ITS) RESEARCH.—To carry out subtitle C of this title, and section 511 of title 23, United States Code, $110,000,000 for each of fiscal years 2005 through 2009.

(6) ITS DEPLOYMENT.—To carry out sections 5208 and 5209 of the Transportation Equity Act for the 21st Century (112 Stat. 458; 112 Stat. 460), $122,000,000 for fiscal year 2005.

(b) APPLICABILITY OF TITLE 23, UNITED STATES CODE.—Funds authorized to be appropriated by subsection (a) shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of a project or activity carried out using such funds shall be 50 percent, unless otherwise expressly provided by this Act (including the amendments made by this Act) or otherwise determined by the Secretary, and such funds shall remain available until expended and shall not be transferable.

SEC. 5102. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Highway Trust Fund (other than the Mass Transit Account) by section 5101(a) of this Act shall be $410,888,888 for each of fiscal years 2005 through 2009.

SEC. 5103. FINDINGS.

Congress finds the following:

(1) Research and development are critical to developing and maintaining a transportation system that meets the goals of safety, mobility, economic vitality, efficiency, equity, and environmental protection.

(2) Federally sponsored surface transportation research and development has produced many successes. The development of rumble strips has increased safety; research on materials has increased the lifespan of pavements, saving money and reducing the disruption caused by construction; and Geographic Information Systems have improved the management and efficiency of transit fleets.

(3) Despite these important successes, the Federal surface transportation research and development investment represents less than one percent of overall Government spending on surface transportation.

(4) While Congress increased funding for overall transportation programs by about 40 percent in the Transportation Equity Act for the 21st Century, funding for transportation research and development remained relatively flat.

(5) The Federal investment in research and development should be balanced between short-term applied and long-term fundamental research and development. The investment should also cover a wide range of research areas, including research on materials and construction, research on operations, research on transportation trends and human factors, and research addressing the institutional barriers to deployment of new technologies.

(6) That it is in the United States interest to increase the Federal investment in transportation research and development, and to conduct research in critical research gaps, in order to ensure that the transportation system meets the goals of safety, mobility, economic vitality, efficiency, equity, and environmental protection.

Subtitle B—Research, Technology, and Education

SEC. 5201. RESEARCH, TECHNOLOGY, AND EDUCATION.

(a) RESEARCH, TECHNOLOGY, AND EDUCATION.—Title 23, United States Code, is amended—

(1) in the table of chapters by striking the item relating to chapter 5 and inserting the following:

"5. Research, Technology, and Education ..... 501"

; and

(2) by striking the heading for chapter 5 and inserting the following:

"CHAPTER 5—RESEARCH, TECHNOLOGY, AND EDUCATION".

(b) STATEMENT OF PRINCIPLES GOVERNING RESEARCH AND TECHNOLOGY INVESTMENTS.—Section 502 of such title is amended—

(1) by redesignating subsections (a) through (g) as subsections (b) through (h), respectively; and

(2) by inserting before subsection (b) (as so redesignated) the following:

''(a) BASIC PRINCIPLES GOVERNING RESEARCH AND TECHNOLOGY INVESTMENTS.—

''(1) COVERAGE.—Surface transportation research and technology development shall include all activities leading to technology development and transfer, as well as the introduction of new and innovative ideas, practices, and approaches, through such mechanisms as field applications, education and training, and technical support.

''(2) FEDERAL RESPONSIBILITY.—Funding and conducting surface transportation research and technology transfer activities shall be considered a basic responsibility of the Federal Government when the work—

''(A) is of national significance;

''(B) supports research in which there is a clear public benefit and private sector investment is less than optimal;

''(C) supports a Federal stewardship role in assuring that State and local governments use national resources efficiently; or

''(D) presents the best means to support Federal policy goals compared to other policy alternatives.

''(3) ROLE.—Consistent with these Federal responsibilities, the Secretary shall—

''(A) conduct research;

''(B) support and facilitate research and technology transfer activities by State highway agencies;

''(C) share results of completed research; and

''(D) support and facilitate technology and innovation deployment.

''(4) PROGRAM CONTENT.—A surface transportation research program shall include—

''(A) fundamental, long-term highway research;

''(B) research aimed at significant highway research gaps and emerging issues with national implications; and

''(C) research related to policy and planning.

''(5) STAKEHOLDER INPUT.—Federal surface transportation research and development activities shall address the needs of stakeholders. Stakeholders include States, metropolitan planning organizations, local governments, the private sector, researchers, research sponsors, and other affected parties, including public interest groups.

''(6) COMPETITION AND PEER REVIEW.—Except as otherwise provided in this chapter, the Secretary shall award, to the maximum extent practicable, all grants, contracts, and cooperative agreements for research and development under this chapter based on open competition and peer review of proposals.

''(7) PERFORMANCE REVIEW AND EVALUATION.—To the maximum extent practicable, all surface transportation research and development projects shall include a component of performance measurement and evaluation. Performance measures shall be established during the proposal stage of a research and development project and shall, to the maximum extent possible, be outcome-based. All evaluations shall be made readily available to the public.

''(8) TECHNOLOGICAL INNOVATION.—The programs and activities carried out under this section shall be consistent with the surface transportation research and technology development strategic plan developed under section 508.''.

(c) PROCUREMENT FOR RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—Section 502(b)(3) of such title (as redesignated by subsection (b) of this section) is amended to read as follows:

''(3) COOPERATION, GRANTS, AND CONTRACTS.—The Secretary may carry out research, development, and technology transfer activities related to transportation—

''(A) independently;

''(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories; or

''(C) by making grants to, or entering into contracts and cooperative agreements with one or more of the following: the National Academy of Sciences, the American Association of State Highway and Transportation Officials, any Federal laboratory, Federal agency, State agency, authority, association, institution, for-profit or nonprofit corporation, organization, foreign country, or any other person.''.

(d) TRANSPORTATION POOLED FUND PROGRAM.—Section 502(b) of such title (as redesignated by subsection (b) of this section) is amended by adding at the end the following:

''(6) POOLED FUNDING.—

''(A) COOPERATION.—To promote effective utilization of available resources, the Secretary may cooperate with a State and an appropriate agency in funding research, development, and technology transfer activities of mutual interest on a pooled funds basis.

''(B) SECRETARY AS AGENT.—The Secretary may enter into contracts, cooperative agreements, and grants as the agent for all participating parties in carrying out such research, development, or technology transfer activities.''.

(e) OPERATIONS ELEMENTS IN RESEARCH ACTIVITIES.—Section 502 of such title is further amended—

(1) in subsection (b)(1)(B) (as redesignated by subsection (b) of this section) by inserting ''transportation system management and operations,'' after ''operation,'';

(2) in subsection (d)(5)(C) (as redesignated by subsection (b) of this section) by inserting ''system management and'' after ''transportation''; and

(3) by inserting at the end of subsection (d) (as redesignated by subsection (b) of this section) the following:

''(12) Investigation and development of various operational methodologies to reduce the occurrence and impact of recurrent congestion and nonrecurrent congestion and increase transportation system reliability.

''(13) Investigation of processes, procedures, and technologies to secure container and hazardous material transport, including the evaluation of regulations and the impact of good security practices on commerce and productivity.

''(14) Research, development, and technology transfer related to asset management.''.

(f) FACILITATING TRANSPORTATION RESEARCH AND TECHNOLOGY DEPLOYMENT PARTNERSHIPS.—Section 502(c)(2) of such title (as redesignated by subsection (b) of this section) is amended to read as follows:

''(2) COOPERATION, GRANTS, CONTRACTS, AND AGREEMENTS.—Notwithstanding any other provision of law, the Secretary may directly initiate contracts, cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)) to fund, and accept funds from, the Transportation Research Board of the National Research Council of the National Academy of Sciences, State departments of transportation, cities, counties, and their agents to conduct joint transportation research and technology efforts.''.

(g) EXPLORATORY ADVANCED RESEARCH PROGRAM.—Section 502(e) of such title (as redesignated by subsection (b) of this section) is amended to read as follows:

''(e) EXPLORATORY ADVANCED RESEARCH.—

''(1) IN GENERAL.—The Secretary shall establish an exploratory advanced research program, consistent with the surface transportation research and technology development strategic plan developed under section 508 that addresses longer-term, higher-risk research with potentially dramatic breakthroughs for improving the durability, efficiency, environmental impact, productivity, and safety (including bicycle and pedestrian safety) aspects of highway and intermodal transportation systems. In carrying out the program, the Secretary shall strive to develop partnerships with public and private sector entities.

''(2) RESEARCH AREAS.—In carrying out the program, the Secretary may make grants and enter into cooperative agreements and contracts in such areas of surface transportation research and technology as the Secretary determines appropriate, including the following:

''(A) Characterization of materials used in highway infrastructure, including analytical techniques, microstructure modeling, and the deterioration processes.

''(B) Assessment of the effects of transportation decisions on human health.

''(C) Development of surrogate measures of safety.

''(D) Environmental research.

''(E) Data acquisition techniques for system condition and performance monitoring.

''(F) System performance data and information processing needed to assess the day-to-day operational performance of the system in support of hour-to-hour operational decisionmaking.''.

(h) FUNDING.—Of the amounts made available by section 5101(a) of this Act, $14,000,000 for each of fiscal years 2005 through 2009 shall be available to carry out section 502(e) of such title.

(i) LONG-TERM PAVEMENT PERFORMANCE PROGRAM.—

(1) IN GENERAL.—Section 502(f) of such title (as redesignated by subsection (b) of this section) is amended to read as follows:

''(f) LONG-TERM PAVEMENT PERFORMANCE PROGRAM.—

''(1) AUTHORITY.—The Secretary shall continue to carry out, through September 30, 2009, tests, monitoring, and data analysis under the long-term pavement performance program.

''(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to—

''(A) monitor, material-test, and evaluate highway test sections in existence as of the date of the grant, agreement, or contract;

''(B) analyze the data obtained under subparagraph (A); and

''(C) prepare products to fulfill program objectives and meet future pavement technology needs.''.

(2) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $10,120,000 for each of fiscal years 2005 through 2009 shall be available to carry out section 502(f) of such title.

(j) SEISMIC RESEARCH.—

(1) IN GENERAL.—Section 502(g) of such title (as redesignated by subsection (b) of this section) is amended to read as follows:

''(g) SEISMIC RESEARCH.—The Secretary shall—

''(1) in consultation and cooperation with Federal agencies participating in the National Earthquake Hazards Reduction Program established by section 5 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704), coordinate the conduct of seismic research;

''(2) take such actions as are necessary to ensure that the coordination of the research is consistent with—

''(A) planning and coordination activities of the National Institute of Standards and Technology under section 5(b)(1) of that Act (42 U.S.C. 7704(b)(1)); and

''(B) the plan developed by the Director of the National Institute of Standards and Technology under section 8(b) of that Act (42 U.S.C. 7705b(b)); and

''(3) in cooperation with the Center for Civil Engineering Research at the University of Nevada, Reno, and the National Center for Earthquake Engineering Research at the University of Buffalo, carry out a seismic research program—

''(A) to study the vulnerability of the Federal-aid system and other surface transportation systems to seismic activity;

''(B) to develop and implement cost-effective methods to reduce the vulnerability; and

''(C) to conduct seismic research and upgrade earthquake simulation facilities as necessary to carry out the program.''.

(2) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $2,500,000 for each of fiscal years 2005 through 2009 shall be available to carry out section 502(g) of such title.

(k) INFRASTRUCTURE INVESTMENT NEEDS REPORT.—Section 502 of such title is further amended by adding at the end the following:

''(h) INFRASTRUCTURE INVESTMENT NEEDS REPORT.—

''(1) IN GENERAL.—Not later than July 31, 2006, and July 31 of every second year thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes—

''(A) estimates of the future highway, transit, and bridge needs of the United States; and

''(B) the backlog of current highway, transit, and bridge needs.

''(2) COMPARISON WITH PRIOR REPORTS.—Each report under paragraph (1) shall provide the means, including all necessary information, to relate and compare the conditions and service measures used in the previous biennial reports.''.

(l) TURNER-FAIRBANK HIGHWAY RESEARCH CENTER.—Section 502 of such title is further amended by adding at the end the following:

''(i) TURNER-FAIRBANK HIGHWAY RESEARCH CENTER.—

''(1) IN GENERAL.—The Secretary shall operate in the Federal Highway Administration a Turner-Fairbank Highway Research Center.

''(2) USES OF THE CENTER.—The Turner-Fairbank Highway Research Center shall support—

''(A) the conduct of highway research and development related to new highway technology;

''(B) the development of understandings, tools, and techniques that provide solutions to complex technical problems through the development of economical and environmentally sensitive designs, efficient and quality-controlled construction practices, and durable materials; and

''(C) the development of innovative highway products and practices.''.

(m) BIOBASED TRANSPORTATION RESEARCH.—Of the amounts made available by section 5101(a)(1) of this Act, $12,500,000 for each of fiscal years 2006 through 2009, equally divided and available, shall be available to carry out biobased research of national importance at the National Biodiesel Board and at research centers identified in section 9011 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8109).

SEC. 5202. LONG-TERM BRIDGE PERFORMANCE PROGRAM; INNOVATIVE BRIDGE RESEARCH AND DEPLOYMENT PROGRAM.

(a) LONG-TERM BRIDGE PERFORMANCE PROGRAM.—

(1) IN GENERAL.—Section 502 of title 23, United States Code, is further amended by adding at the end the following:

''(j) LONG-TERM BRIDGE PERFORMANCE PROGRAM.—

''(1) AUTHORITY.—The Secretary shall establish a 20-year long-term bridge performance program.

''(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to—

''(A) monitor, material-test, and evaluate test bridges;

''(B) analyze the data obtained under subparagraph (A); and

''(C) prepare products to fulfill program objectives and meet future bridge technology needs.''.

(2) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $7,750,000 for each of fiscal years 2006 through 2009 shall be available to carry out section 502(j) of such title.

(b) INNOVATIVE BRIDGE RESEARCH AND DEPLOYMENT PROGRAM.—

(1) IN GENERAL.—Section 503(b)(1) of such title is amended to read as follows:

''(1) IN GENERAL.—The Secretary shall establish and carry out a program to promote, demonstrate, evaluate, and document the application of innovative designs, materials, and construction methods in the construction, repair, and rehabilitation of bridges and other highway structures.''.

(2) GOALS.—Section 503(b)(2) of such title is amended to read as follows:

''(2) GOALS.—The goals of the program shall include—

''(A) the development of new, cost-effective, innovative highway bridge applications;

''(B) the development of construction techniques to increase safety and reduce construction time and traffic congestion;

''(C) the development of engineering design criteria for innovative products, materials, and structural systems for use in highway bridges and structures;

''(D) the reduction of maintenance costs and life-cycle costs of bridges, including the costs of new construction, replacement, or rehabilitation of deficient bridges;

''(E) the development of highway bridges and structures that will withstand natural disasters;

''(F) the documentation and wide dissemination of objective evaluations of the performance and benefits of these innovative designs, materials, and construction methods;

''(G) the effective transfer of resulting information and technology; and

''(H) the development of improved methods to detect bridge scour and economical bridge foundation designs that will withstand bridge scour.''.

(3) FUNDING.—

(A) IN GENERAL.—Of the amounts made available by section 5101(a)(1) of this Act, $13,100,000 for each of fiscal years 2005 through 2009 shall be available to carry out section 503(b) of such title.

(B) HIGH PERFORMANCE CONCRETE BRIDGE TECHNOLOGY RESEARCH AND DEPLOYMENT.—The Secretary shall obligate $4,125,000 of the amount described in subparagraph (A) for each of fiscal years 2006 through 2009 to conduct research and deploy technology related to high-performance concrete bridges.

(c) HIGH PERFORMING STEEL BRIDGE RESEARCH AND TECHNOLOGY TRANSFER.—

(1) IN GENERAL.—The Secretary shall carry out a program to demonstrate the application of high-performing steel in the construction and rehabilitation of bridges.

(2) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $4,100,000 for each of fiscal years 2006 through 2009 shall be available to carry out this subsection.

(d) STEEL BRIDGE TESTING.—

(1) IN GENERAL.—The Secretary shall carry out a program to test steel bridges using a nondestructive technology that is able to detect growing cracks, including subsurface flaws as small as 0.010 inches in length or depth, in the bridges.

(2) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $1,250,000 for each of fiscal years 2006 through 2009 shall be available to carry out this subsection.

(3) FEDERAL SHARE.—The Federal share of the cost of activities carried out in accordance with this subsection shall be 80 percent.

SEC. 5203. TECHNOLOGY DEPLOYMENT.

(a) TECHNOLOGY DEPLOYMENT PROGRAM.—Section 503(a) of title 23, United States Code, is amended—

(1) in the subsection heading by striking ''INITIATIVES AND PARTNERSHIPS'';

(2) by striking paragraph (1) and inserting the following:

''(1) ESTABLISHMENT.—The Secretary shall develop and administer a national technology deployment program.'';

(3) by striking paragraph (7) and inserting the following:

''(7) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—

''(A) IN GENERAL.—Under the program, the Secretary may make grants to, and enter into cooperative agreements and contracts with, States, other Federal agencies, universities and colleges, private sector entities, and nonprofit organizations to pay the Federal share of the cost of research, development, and technology transfer activities concerning innovative materials.

''(B) APPLICATIONS.—To receive a grant under this subsection, an entity described in subparagraph (A) shall submit an application to the Secretary. The application shall be in such form and contain such information as the Secretary may require. The Secretary shall select and approve an application based on whether the project that is the subject of the grant meets the purpose of the program described in paragraph (2).''; and

(4) by striking paragraph (8) and inserting the following:

''(8) TECHNOLOGY AND INFORMATION TRANSFER.—The Secretary shall ensure that the information and technology resulting from research conducted under paragraph (7) is made available to State and local transportation departments and other interested parties as specified by the Secretary.''.

(b) INNOVATIVE PAVEMENT RESEARCH AND DEPLOYMENT PROGRAM.—

(1) IN GENERAL.—Section 503 of such title is further amended by adding at the end the following:

''(c) INNOVATIVE PAVEMENT RESEARCH AND DEPLOYMENT PROGRAM.—

''(1) IN GENERAL.—The Secretary shall establish and implement a program to promote, demonstrate, support, and document the application of innovative pavement technologies, practices, performance, and benefits.

''(2) GOALS.—The goals of the innovative pavement research and deployment program shall include—

''(A) the deployment of new, cost-effective, innovative designs, materials, recycled materials (including taconite tailings and foundry sand), and practices to extend pavement life and performance and to improve customer satisfaction;

''(B) the reduction of initial costs and life-cycle costs of pavements, including the costs of new construction, replacement, maintenance, and rehabilitation;

''(C) the deployment of accelerated construction techniques to increase safety and reduce construction time and traffic disruption and congestion;

''(D) the deployment of engineering design criteria and specifications for innovative practices, products, and materials for use in highway pavements;

''(E) the deployment of new nondestructive and real-time pavement evaluation technologies and techniques;

''(F) the evaluation, refinement, and documentation of the performance and benefits of innovative technologies deployed to improve life, performance, cost effectiveness, safety, and customer satisfaction;

''(G) effective technology transfer and information dissemination to accelerate implementation of innovative technologies and to improve life, performance, cost effectiveness, safety, and customer satisfaction; and

''(H) the development of designs and materials to reduce storm water runoff.

''(3) RESEARCH TO IMPROVE NHS PAVEMENT.—The Secretary shall obligate for each of fiscal years 2006 through 2009 from funds made available to carry out this subsection, $4,100,000 to conduct research to improve asphalt pavement, $4,100,000 to conduct research to improve concrete pavement, $4,100,000 to conduct research to improve alternative materials used in highways (including alternative materials used in highway drainage applications), and $2,450,000 to conduct research to improve aggregates used in highways on the National Highway System.''.

(2) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $22,625,000 for each of fiscal years 2006 through 2009 shall be available to carry out section 503(c) of such title.

(c) SAFETY INNOVATION DEPLOYMENT PROGRAM.—

(1) IN GENERAL.—Section 503 of such title is further amended by adding at the end the following:

''(d) SAFETY INNOVATION DEPLOYMENT PROGRAM.—

''(1) IN GENERAL.—The Secretary shall establish and implement a program to demonstrate the application of innovative technologies in highway safety.

''(2) GOALS.—The goals of the program shall include—

''(A) the deployment and evaluation of safety technologies and innovations at State and local levels; and

''(B) the deployment of best practices in training, management, design, and planning.

''(3) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—

''(A) IN GENERAL.—Under the program, the Secretary shall make grants to, and enter into cooperative agreements and contracts with, States, other Federal agencies, universities and colleges, private sector entities, and nonprofit organizations for research, development, and technology transfer for innovative safety technologies.

''(B) APPLICATIONS.—To receive a grant under this subsection, an entity described in subparagraph (A) shall submit to the Secretary an application at such time and containing such information as the Secretary may require. The Secretary shall select and approve an application based on whether the project that is the subject of the application meets the goals of the program described in paragraph (2).

''(4) TECHNOLOGY AND INFORMATION TRANSFER.—The Secretary shall take such action as is necessary to ensure that the information and technology resulting from research conducted under paragraph (3) is made available to State and local transportation departments and other interested parties as specified by the Secretary.''.

(2) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $12,750,000 for each of fiscal years 2006 through 2009 shall be available to carry out section 503(d) of such title.

(d) AUTHORITY TO PURCHASE PROMOTIONAL ITEMS.—Section 503 of such title is further amended by adding at the end the following:

''(e) PROMOTIONAL AUTHORITY.—Funds authorized to be appropriated for necessary expenses for administration and operation of the Federal Highway Administration shall be available to purchase promotional items of nominal value for use in the recruitment of individuals and to promote the programs of the Federal Highway Administration.''.

(e) DEMONSTRATION PROJECTS AND STUDIES.—

(1) WOOD COMPOSITE MATERIALS DEMONSTRATION PROJECT.—Of the funds made available by section 5101(a)(1) of this Act, $1,000,000 for each of fiscal years 2006 and 2007 shall be made available for conducting a demonstration at the University of Maine of the durability and potential effectiveness of wood composite materials in multimodal transportation facilities.

(2) ASPHALT RECLAMATION STUDY.—Of the funds made available by section 5101(a)(1) of this Act, $1,500,000 for fiscal year 2006 shall be available for asphalt and asphalt-related reclamation research at the South Dakota School of Mines.

(3) ALKALI SILICA REACTIVITY.—Of the funds made available by section 5101(a)(1) of this Act, $2,450,000 shall be made available by the Secretary for each of fiscal years 2006 through 2009 for further development and deployment of techniques to prevent and mitigate alkali silica reactivity.

(4) FEDERAL SHARE.—The Federal share of the cost of the projects—

(A) under paragraph (1) shall be 100 percent; and

(B) under paragraphs (2) and (3) shall be the share applicable under section 120(b) of such title unless otherwise specified or determined by the Secretary.

(f) TURNER-FAIRBANK FACILITY.—Of the funds made available by section 5101(a)(1) of this Act, $625,000 shall be available for each of fiscal years 2006 through 2009 to provide for physical demonstrations of the ongoing work at the Turner-Fairbank facility with respect to ultra-high performance concrete with ductility.

SEC. 5204. TRAINING AND EDUCATION.

(a) NATIONAL HIGHWAY INSTITUTE.—

(1) COURSES.—Section 504(a)(3) of title 23, United States Code, is amended to read as follows:

''(3) COURSES.—

''(A) IN GENERAL.—The Institute shall—

''(i) develop or update existing courses in asset management, including courses that include such components as—

''(I) the determination of life-cycle costs;

''(II) the valuation of assets;

''(III) benefit-to-cost ratio calculations; and

''(IV) objective decisionmaking processes for project selection; and

''(ii) continually develop courses relating to the application of emerging technologies for—

''(I) transportation infrastructure applications and asset management;

''(II) intelligent transportation systems;

''(III) operations (including security operations);

''(IV) the collection and archiving of data;

''(V) expediting the planning and development of transportation projects; and

''(VI) the intermodal movement of individuals and freight.

''(B) ADDITIONAL COURSES.—In addition to the courses developed under subparagraph (A), the Institute, in consultation with State transportation departments, metropolitan planning organizations, and the American Association of State Highway and Transportation Officials, may develop courses relating to technology, methods, techniques, engineering, construction, safety, maintenance, environmental mitigation and compliance, regulations, management, inspection, and finance.

''(C) REVISION OF COURSES OFFERED.—The Institute shall periodically—

''(i) review the course inventory of the Institute; and

''(ii) revise or cease to offer courses based on course content, applicability, and need.''.

(2) FUNDING.—Of the amounts made available by section 5101(a)(2) of this Act, $9,600,000 for each of fiscal years 2005 through 2009 shall be available to carry out section 504(a) of such title.

(b) LOCAL TECHNICAL ASSISTANCE PROGRAM.—Section 504(b) of such title is amended to read as follows:

''(b) LOCAL TECHNICAL ASSISTANCE PROGRAM.—

''(1) AUTHORITY.—The Secretary shall carry out a local technical assistance program that will provide access to surface transportation technology to—

''(A) highway and transportation agencies in urbanized and rural areas;

''(B) contractors that perform work for the agencies; and

''(C) infrastructure security staff.

''(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—The Secretary may make grants and enter into cooperative agreements and contracts to provide education and training, technical assistance, and related support services to—

''(A) assist rural, local transportation agencies and tribal governments, and the consultants and construction personnel working for the agencies and governments, to—

''(i) develop and expand expertise in road and transportation areas (including pavement, bridge, concrete structures, intermodal connections, safety management systems, intelligent transportation systems, incident response, operations, and traffic safety countermeasures);

''(ii) improve roads and bridges;

''(iii) enhance—

''(I) programs for the movement of passengers and freight; and

''(II) intergovernmental transportation planning and project selection; and

''(iv) deal effectively with special transportation-related problems by preparing and providing training packages, manuals, guidelines, and technical resource materials;

''(B) develop technical assistance for tourism and recreational travel;

''(C) identify, package, and deliver transportation technology and traffic safety information to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with transportation-related problems (particularly the promotion of regional cooperation);

''(D) operate, in cooperation with State transportation departments and universities—

''(i) local technical assistance program centers designated to provide transportation technology transfer services to rural areas and to urbanized areas; and

''(ii) local technical assistance program centers designated to provide transportation technical assistance to tribal governments; and

''(E) allow local transportation agencies and tribal governments, in cooperation with the private sector, to enhance new technology implementation.

''(3) FEDERAL SHARE.—The Federal share of the cost of activities carried out by the tribal technical assistance centers under paragraph (2)(D)(ii) shall be 100 percent. ''.

(c) FUNDING.—Of the funds made available by section 5101(a)(2) of this Act, $11,100,000 for each of fiscal years 2005 through 2009 shall be available to carry out section 504(b) of such title.

(d) GARRETT A. MORGAN TECHNOLOGY AND TRANSPORTATION EDUCATION PROGRAM.—

(1) IN GENERAL.—Section 504 of such title, is further amended by adding at the end the following new subsection:

''(d) GARRETT A. MORGAN TECHNOLOGY AND TRANSPORTATION EDUCATION PROGRAM.—

''(1) IN GENERAL.—The Secretary shall establish the Garrett A. Morgan Technology and Transportation Education Program to improve the preparation of students, particularly women and minorities, in science, technology, engineering, and mathematics through curriculum development and other activities related to transportation.

''(2) AUTHORIZED ACTIVITIES.—The Secretary shall award grants under this subsection on the basis of competitive peer review. Grants awarded under this subsection may be used for enhancing science, technology, engineering, and mathematics at the elementary and secondary school level through such means as—

''(A) internships that offer students experience in the transportation field;

''(B) programs that allow students to spend time observing scientists and engineers in the transportation field; and

''(C) developing relevant curriculum that uses examples and problems related to transportation.

''(3) APPLICATION AND REVIEW PROCEDURES.—

''(A) IN GENERAL.—An entity described in subparagraph (C) seeking funding under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Such application, at a minimum, shall include a description of how the funds will be used to serve the purposes described in paragraph (2).

''(B) PRIORITY.—In making awards under this subsection, the Secretary shall give priority to applicants that will encourage the participation of women and minorities.

''(C) ELIGIBILITY.—Local educational agencies and State educational agencies, which may enter into a partnership agreement with institutions of higher education, businesses, or other entities, shall be eligible to apply for grants under this subsection.

''(4) DEFINITIONS.—In this subsection, the following definitions apply:

''(A) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

''(B) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given that term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

''(C) STATE EDUCATIONAL AGENCY.—The term 'State educational agency' has the meaning given that term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).''.

(2) FUNDING.—Of the amounts made available by section 5101(a)(2) of this Act, $1,250,000 for each of fiscal years 2006 through 2009 shall be available to carry out section 504(d) of such title.

(3) FEDERAL SHARE.—The Federal share of the cost of activities carried out in accordance with this section 504(d) of such title shall be 100 percent.

(e) SURFACE TRANSPORTATION WORKFORCE DEVELOPMENT, TRAINING, AND EDUCATION.—Section 504 of such title is further amended by adding at the end the following:

''(e) SURFACE TRANSPORTATION WORKFORCE DEVELOPMENT, TRAINING, AND EDUCATION.—

''(1) FUNDING.—Subject to project approval by the Secretary, a State may obligate funds apportioned to the State under sections 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4), and 144(e) for surface transportation workforce development, training, and education, including—

''(A) tuition and direct educational expenses, excluding salaries, in connection with the education and training of employees of State and local transportation agencies;

''(B) employee professional development;

''(C) student internships;

''(D) university or community college support; and

''(E) education activities, including outreach, to develop interest and promote participation in surface transportation careers.

''(2) FEDERAL SHARE.—The Federal share of the cost of activities carried out in accordance with this subsection shall be 100 percent.

''(3) SURFACE TRANSPORTATION WORKFORCE DEVELOPMENT, TRAINING, AND EDUCATION DEFINED.—In this subsection, the term 'surface transportation workforce development, training, and education' means activities associated with surface transportation career awareness, student transportation career preparation, and training and professional development for surface transportation workers, including activities for women and minorities.

''(f) TRANSPORTATION EDUCATION DEVELOPMENT PILOT PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary shall establish a program to make grants to institutions of higher education that, in partnership with industry or State departments of transportation, will develop, test, and revise new curricula and education programs to train individuals at all levels of the transportation workforce.

''(2) SELECTION OF GRANT RECIPIENTS.—In selecting applications for awards under this subsection, the Secretary shall consider—

''(A) the degree to which the new curricula or education program meets the specific needs of a segment of the transportation industry, States, or regions;

''(B) providing for practical experience and on-the-job training;

''(C) proposals oriented toward practitioners in the field rather than the support and growth of the research community;

''(D) the degree to which the new curricula or program will provide training in areas other than engineering, such as business administration, economics, information technology, environmental science, and law;

''(E) programs or curricula in nontraditional departments that train professionals for work in the transportation field, such as materials, information technology, environmental science, urban planning, and industrial technology; and

''(F) the commitment of industry or a State's department of transportation to the program.

''(3) LIMITATIONS.—The amount of a grant under this subsection shall not exceed $300,000 per year. After a recipient has received 3 years of Federal funding under this subsection, Federal funding may equal not more than 75 percent of a grantee's program costs.''.

(f) FUNDING.—

(1) IN GENERAL.—Of the amounts made available by section 5101(a)(2) of this Act, $1,875,000 for each of fiscal years 2006 through 2009 shall be available to carry out section 504(f) of such title.

(2) FEDERAL SHARE.—The Federal share of the cost of activities carried out in accordance with section 504(f) of such title shall be 100 percent.

(g) TRANSPORTATION TECHNOLOGY INNOVATIONS.—

(1) FUNDAMENTAL PROPERTIES OF ASPHALTS AND MODIFIED ASPHALTS.—The Secretary shall continue to carry out section 5117(b)(5) of the Transportation Equity Act for the 21st Century (112 Stat. 450).

(2) TRANSPORTATION, ECONOMIC, AND LAND USE SYSTEM.—The Secretary shall continue to carry out section 5117(b)(7) of the Transportation Equity Act for the 21st Century (112 Stat. 450).

(3) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, for each of fiscal years 2005 through 2009 $4,200,000 shall be available to carry out paragraph (1) and $1,000,000 shall be available to carry out paragraph (2).

(h) FREIGHT PLANNING CAPACITY BUILDING.—

(1) IN GENERAL.—Section 504 of title 23, United States Code, is further amended by adding at the end the following:

''(g) FREIGHT CAPACITY BUILDING PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary shall establish a freight planning capacity building initiative to support enhancements in freight transportation planning in order to—

''(A) better target investments in freight transportation systems to maintain efficiency and productivity; and

''(B) strengthen the decisionmaking capacity of State transportation departments and local transportation agencies with respect to freight transportation planning and systems.

''(2) AGREEMENTS.—The Secretary shall enter into agreements to support and carry out administrative and management activities relating to the governance of the freight planning capacity initiative.

''(3) STAKEHOLDER INVOLVEMENT.—In carrying out this section, the Secretary shall consult with the Association of Metropolitan Planning Organizations, the American Association of State Highway and Transportation Officials, and other freight planning stakeholders, including the other Federal agencies, State transportation departments, local governments, nonprofit entities, academia, and the private sector.

''(4) ELIGIBLE ACTIVITIES.—The freight planning capacity building initiative shall include research, training, and education in the following areas:

''(A) The identification and dissemination of best practices in freight transportation.

''(B) Providing opportunities for freight transportation staff to engage in peer exchange.

''(C) Refinement of data and analysis tools used in conjunction with assessing freight transportation needs.

''(D) Technical assistance to State transportation departments and local transportation agencies reorganizing to address freight transportation issues.

''(E) Facilitating relationship building between governmental and private entities involved in freight transportation.

''(F) Identifying ways to target the capacity of State transportation departments and local transportation agencies to address freight considerations in operations, security, asset management, and environmental excellence in connection with long-range multimodal transportation planning and project implementation.

''(5) FEDERAL SHARE.—The Federal share of the cost of an activity carried out under this section shall be up to 100 percent, and such funds shall remain available until expended.

''(6) USE OF FUNDS.—Funds made available for the program established under this subsection may be used for research, program development, information collection and dissemination, and technical assistance. The Secretary may use such funds independently or make grants or to and enter into contracts and cooperative agreements with a Federal agency, State agency, local agency, federally recognized Indian tribal government or tribal consortium, authority, association, nonprofit or for-profit corporation, or institution of higher education, to carry out the purposes of this subsection.''.

(2) FUNDING.—Of the amounts made available under section 5101(a)(2) of this Act, $875,000 for each of fiscal years 2006 through 2009 shall be available to carry out section 504(g) of such title.

(i) EISENHOWER TRANSPORTATION FELLOWSHIP PROGRAM.—Of the amounts made available by section 5101(a)(2) of this Act, $2,200,000 for each of fiscal years 2005 through 2009 shall be available to carry out section 504(c)(2) of such title.

SEC. 5205. STATE PLANNING AND RESEARCH.

Section 505 of title 23, United States Code, is amended—

(1) in subsection (a) by adding at the end the following—

''(7) The conduct of activities relating to the planning of real-time monitoring elements.''; and

(2) in subsection (d) by striking ''for the same'' and all that follows through the period and inserting the following: ''for the period described in section 118(b)(2).''.

SEC. 5206. INTERNATIONAL HIGHWAY TRANSPORTATION OUTREACH PROGRAM.

(a) IN GENERAL.—Section 506 of title 23, United States Code, is amended to read as follows:

''§ 506. International highway transportation outreach program

''(a) ESTABLISHMENT.—The Secretary may establish an international highway transportation outreach program—

''(1) to inform the United States highway community of technological innovations in foreign countries that could significantly improve highway transportation in the United States;

''(2) to promote United States highway transportation expertise, goods, and services in foreign countries; and

''(3) to increase transfers of United States highway transportation technology to foreign countries.

''(b) ACTIVITIES.—Activities carried out under the program may include—

''(1) the development, monitoring, assessment, and dissemination in the United States of information about highway transportation innovations in foreign countries that could significantly improve highway transportation in the United States;

''(2) research, development, demonstration, training, and other forms of technology transfer and exchange;

''(3) the provision to foreign countries, through participation in trade shows, seminars, expositions, and other similar activities, of information relating to the technical quality of United States highway transportation goods and services;

''(4) the offering of technical services of the Federal Highway Administration that cannot be readily obtained from private sector firms in the United States for incorporation into the proposals of those firms undertaking highway transportation projects outside the United States, if the costs of the technical services will be recovered under the terms of the project;

''(5) the conduct of studies to assess the need for, or feasibility of, highway transportation improvements in foreign countries; and

''(6) the gathering and dissemination of information on foreign transportation markets and industries.

''(c) COOPERATION.—The Secretary may carry out this section in cooperation with any appropriate—

''(1) Federal, State, or local agency;

''(2) authority, association, institution, or organization;

''(3) for-profit or nonprofit corporation;

''(4) national or international entity;

''(5) foreign country; or

''(6) person.

''(d) FUNDS.—

''(1) CONTRIBUTIONS.—Funds available to carry out this section shall include funds deposited by any cooperating organization or person into a special account of the Treasury established for this purpose.

''(2) ELIGIBLE USES OF FUNDS.—The funds deposited into the account, and other funds available to carry out this section, shall be available to cover the cost of any activity eligible under this section, including the cost of—

''(A) promotional materials;

''(B) travel;

''(C) reception and representation expenses; and

''(D) salaries and benefits.

''(3) REIMBURSEMENTS FOR SALARIES AND BENEFITS.—Reimbursements for salaries and benefits of Department employees providing services under this section shall be credited to the account.

''(e) REPORT.—For each fiscal year, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes the destinations and individual trip costs of international travel conducted in carrying out activities described in this section.''.

(b) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $300,000 for each of fiscal years 2005 through 2009 shall be available to carry out section 506 of such title.

SEC. 5207. SURFACE TRANSPORTATION ENVIRONMENT AND PLANNING COOPERATIVE RESEARCH PROGRAM.

(a) IN GENERAL.—Section 507 of title 23, United States Code, is amended to read as follows:

''§ 507. Surface transportation-environmental cooperative research program

''(a) IN GENERAL.—The Secretary shall establish and carry out a surface transportation-environmental cooperative research program.

''(b) CONTENTS.—The program carried out under this section may include research—

''(1) to develop more accurate models for evaluating transportation control measures and transportation system designs that are appropriate for use by State and local governments (including metropolitan planning organizations) in designing implementation plans to meet Federal, State, and local environmental requirements;

''(2) to improve understanding of the factors that contribute to the demand for transportation;

''(3) to develop indicators of economic, social, and environmental performance of transportation systems to facilitate analysis of potential alternatives;

''(4) to meet additional priorities as determined by the Secretary in the strategic planning process under section 508; and

''(5) to refine, through the conduct of workshops, symposia, and panels, and in consultation with stakeholders (including the Department of Energy, the Environmental Protection Agency, and other appropriate Federal and State agencies and associations) the scope and research emphases of the program.

''(c) PROGRAM ADMINISTRATION.—The Secretary shall—

''(1) administer the program established under this section; and

''(2) ensure, to the maximum extent practicable, that—

''(A) the best projects and researchers are selected to conduct research in the priority areas described in subsection (b)—

''(i) on the basis of merit of each submitted proposal; and

''(ii) through the use of open solicitations and selection by a panel of appropriate experts;

''(B) a qualified, permanent core staff with the ability and expertise to manage a large multiyear budget is used;

''(C) the stakeholders are involved in the governance of the program, at the executive, overall program, and technical levels, through the use of expert panels and committees; and

''(D) there is no duplication of research effort between the program established under this section and the new strategic highway research program established under section 510.

''(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsections (b) and (c) as the Secretary determines to be appropriate.''.

(b) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $16,875,000 for each of fiscal years 2006 through 2009 shall be available to carry out section 507 of such title.

(c) CONFORMING AMENDMENT.—The analysis for chapter 5 of such title is amended by striking the item relating to section 507 and inserting the following:

''507. Surface transportation environment and planning cooperative research program.''.

SEC. 5208. TRANSPORTATION RESEARCH AND DEVELOPMENT STRATEGIC PLANNING.

(a) IN GENERAL.—Section 508 of title 23, United States Code, is amended to read as follows:

''§ 508. Transportation research and development strategic planning

''(a) IN GENERAL.—

''(1) DEVELOPMENT.—Not later than 1 year after the date of enactment of the SAFETEA-LU, the Secretary shall develop a 5-year transportation research and development strategic plan to guide Federal transportation research and development activities. This plan shall be consistent with section 306 of title 5, sections 1115 and 1116 of title 31, and any other research and development plan within the Department of Transportation.

''(2) CONTENTS.—The strategic plan developed under paragraph (1) shall—

''(A) describe the primary purposes of the transportation research and development program, which shall include, at a minimum—

''(i) reducing congestion and improving mobility;

''(ii) promoting safety;

''(iii) promoting security;

''(iv) protecting and enhancing the environment;

''(v) preserving the existing transportation system; and

''(vi) improving the durability and extending the life of transportation infrastructure;

''(B) for each purpose, list the primary research and development topics that the Department intends to pursue to accomplish that purpose, which may include the fundamental research in the physical and natural sciences, applied research, technology development, and social science research intended for each topic; and

''(C) for each research and development topic, describe—

''(i) the anticipated annual funding levels for the period covered by the strategic plan; and

''(ii) the additional information the Department expects to gain at the end of the period covered by the strategic plan as a result of the research and development in that topic area.

''(3) CONSIDERATIONS.—In developing the strategic plan, the Secretary shall ensure that the plan—

''(A) reflects input from a wide range of stakeholders;

''(B) includes and integrates the research and development programs of all the Department's operating administrations, including aviation, transit, rail, and maritime; and

''(C) takes into account how research and development by other Federal, State, private sector, and nonprofit institutions contributes to the achievement of the purposes identified under paragraph (2)(A), and avoids unnecessary duplication with these efforts.

''(4) PERFORMANCE PLANS AND REPORTS.—In reports submitted under sections 1115 and 1116 of title 31, the Secretary shall include—

''(A) a summary of the Federal transportation research and development activities for the previous fiscal year in each topic area;

''(B) the amount of funding spent in each topic area;

''(C) a description of the extent to which the research and development is meeting the expectations set forth in paragraph (2)(C)(ii); and

''(D) any amendments to the strategic plan.

''(b) ANNUAL REPORT.—The Secretary shall submit to appropriate committees of Congress an annual report, in conjunction with the President's annual budget request as set forth in section 1105 of title 31, describing the amount spent in the last completed fiscal year on transportation research and development and the amount proposed in the current budget for transportation research and development.

''(c) NATIONAL RESEARCH COUNCIL REVIEW.—The Secretary shall enter into an agreement for the review by the National Research Council of the details of each—

''(1) strategic plan under this section;

''(2) performance plan required under section 1115 of title 31; and

''(3) program performance report required under section 1116 of title 31, with respect to transportation research and development.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of such title is amended by striking the item relating to section 508 and inserting the following:

''508. Transportation research and development strategic planning.''.

SEC. 5209. NATIONAL COOPERATIVE FREIGHT TRANSPORTATION RESEARCH PROGRAM.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended by adding at the end the following:

''§ 509. National cooperative freight transportation research program

''(a) ESTABLISHMENT.—The Secretary shall establish and support a national cooperative freight transportation research program.

''(b) AGREEMENT.—The Secretary shall enter into an agreement with the National Academy of Sciences to support and carry out administrative and management activities relating to the governance of the national cooperative freight transportation research program.

''(c) ADVISORY COMMITTEE.—The National Academy of Sciences shall select an advisory committee consisting of a representative cross-section of freight stakeholders, including the Department of Transportation, other Federal agencies, State transportation departments, local governments, nonprofit entities, academia, and the private sector.

''(d) GOVERNANCE.—The national cooperative freight transportation research program established under this section shall include the following administrative and management elements:

''(1) NATIONAL RESEARCH AGENDA.—The advisory committee, in consultation with interested parties, shall recommend a national research agenda for the program. The agenda shall include a multiyear strategic plan.

''(2) INVOLVEMENT.—Interested parties may—

''(A) submit research proposals to the advisory committee;

''(B) participate in merit reviews of research proposals and peer reviews of research products; and

''(C) receive research results.

''(3) OPEN COMPETITION AND PEER REVIEW OF RESEARCH PROPOSALS.—The National Academy of Sciences may award research contracts and grants under the program through open competition and merit review conducted on a regular basis.

''(4) EVALUATION OF RESEARCH.—

''(A) PEER REVIEW.—Research contracts and grants under the program may allow peer review of the research results.

''(B) PROGRAMMATIC EVALUATIONS.—The National Academy of Sciences may conduct periodic programmatic evaluations on a regular basis of research contracts and grants.

''(5) DISSEMINATION OF RESEARCH FINDINGS.—The National Academy of Sciences shall disseminate research findings to researchers, practitioners, and decisionmakers, through conferences and seminars, field demonstrations, workshops, training programs, presentations, testimony to government officials, the World Wide Web, publications for the general public, and other appropriate means.

''(e) CONTENTS.—The national research agenda required under subsection (d)(1) shall include research in the following areas:

''(1) Techniques for estimating and quantifying public benefits derived from freight transportation projects.

''(2) Alternative approaches to calculating the contribution of truck and rail traffic to congestion on specific highway segments.

''(3) The feasibility of consolidating origins and destinations for freight movement.

''(4) Methods for incorporating estimates of international trade into landside transportation planning.

''(5) The use of technology applications to increase capacity of highway lanes dedicated to truck-only traffic.

''(6) Development of physical and policy alternatives for separating car and truck traffic.

''(7) Ways to synchronize infrastructure improvements with freight transportation demand.

''(8) The effect of changing patterns of freight movement on transportation planning decisions relating to rest areas.

''(9) Other research areas to identify and address emerging and future research needs related to freight transportation by all modes.

''(f) FUNDING.—

''(1) FEDERAL SHARE.—The Federal share of the cost of an activity carried out under this section shall be up to 100 percent.

''(2) USE OF NON-FEDERAL FUNDS.—In addition to using funds authorized for this section, the National Academy of Sciences may seek and accept additional funding sources from public and private entities capable of accepting funding from the Department of Transportation, States, local governments, nonprofit foundations, and the private sector.

''(3) PERIOD OF AVAILABILITY.—Amounts made available to carry out this section shall remain available until expended.''.

(b) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $3,750,000 for each of fiscal years 2006 through 2009 shall be available to carry out section 509 of such title.

(c) CONFORMING AMENDMENT.—The analysis for such chapter is further amended by adding at the end the following:

''509. National cooperative freight transportation research program.''.

SEC. 5210. FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is further amended by adding at the end the following:

''§ 510. Future strategic highway research program

''(a) ESTABLISHMENT.—The Secretary, in consultation with the American Association of State Highway and Transportation Officials, shall establish and carry out, acting through the National Research Council of the National Academy of Sciences, the future strategic highway research program.

''(b) COOPERATIVE AGREEMENTS.—The Secretary may make grants to, and enter into cooperative agreements with, the American Association of State Highway and Transportation Officials and the National Academy of Sciences to carry out such activities under this section as the Secretary determines are appropriate.

''(c) PROGRAM PRIORITIES.—

''(1) PROGRAM ELEMENTS.—The program established under this section shall be based on the National Research Council Special Report 260, entitled 'Strategic Highway Research: Saving Lives, Reducing Congestion, Improving Quality of Life' and the results of the detailed planning work subsequently carried out in 2002 and 2003 to identify the research areas through National Cooperative Research Program Project 20–58. The research program shall include an analysis of the following:

''(A) Renewal of aging highway infrastructure with minimal impact to users of the facilities.

''(B) Driving behavior and likely crash causal factors to support improved countermeasures.

''(C) Reducing highway congestion due to nonrecurring congestion.

''(D) Planning and designing new road capacity to meet mobility, economic, environmental, and community needs.

''(2) DISSEMINATION OF RESULTS.—The research results of the program, expressed in terms of technologies, methodologies, and other appropriate categorizations, shall be disseminated to practicing engineers for their use, as soon as practicable.

''(d) PROGRAM ADMINISTRATION.—In carrying out the program under this section, the National Research Council shall ensure, to the maximum extent practicable, that—

''(1) projects and researchers are selected to conduct research for the program on the basis of merit and open solicitation of proposals and review by panels of appropriate experts;

''(2) State department of transportation officials and other stakeholders, as appropriate, are involved in the governance of the program at the overall program level and technical level through the use of expert panels and committees;

''(3) the Council acquires a qualified, permanent core staff with the ability and expertise to manage the program and multiyear budget; and

''(4) there is no duplication of research effort between the program and any other research effort of the Department.

''(e) REPORT ON IMPLEMENTATION OF RESULTS.—

''(1) REPORT.—The Transportation Research Board of the National Research Council shall complete a report on the strategies and administrative structure to be used for implementation of the results of the future strategic highway research program.

''(2) COMPONENTS.—The report under paragraph (1) shall include with respect to the program—

''(A) an identification of the most promising results of research under the program (including the persons most likely to use the results);

''(B) a discussion of potential incentives for, impediments to, and methods of, implementing those results;

''(C) an estimate of costs of implementation of those results; and

''(D) recommendations on methods by which implementation of those results should be conducted, coordinated, and supported in future years, including a discussion of the administrative structure and organization best suited to carry out those recommendations.

''(3) CONSULTATION.—In developing the report, the Transportation Research Board shall consult with a wide variety of stakeholders, including—

''(A) the Federal Highway Administration;

''(B) the National Highway Traffic Safety Administration; and

''(C) the American Association of State Highway and Transportation Officials.

''(4) SUBMISSION.—Not later than February 1, 2009, the report shall be submitted to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

''(f) FUNDING.—

''(1) FEDERAL SHARE.—The Federal share of the cost of an activity carried out using amounts made available under a grant or cooperative agreement under this section shall be 100 percent, and such funds shall remain available until expended.

''(2) ADVANCE PAYMENTS.—The Secretary may make advance payments as necessary to carry out the program under this section.

''(g) LIMITATION OF REMEDIES.—

''(1) SAME REMEDY AS IF UNITED STATES.—The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for injury, loss of property, personal injury, or death shall apply to any claim against the National Academy of Sciences for money damages for injury, loss of property, personal injury, or death caused by any negligent or wrongful act or omission by employees and individuals described in paragraph (3) arising from activities conducted under or in connection with this section. Any such claim shall be subject to the limitations and exceptions which would be applicable to such claim if such claim were against the United States. With respect to any such claim, the Secretary shall be treated as the head of the appropriate Federal agency for purposes of sections 2672 and 2675 of title 28.

''(2) EXCLUSIVENESS OF REMEDY.—The remedy referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining liability arising from any such act or omission without regard to when the act or omission occurred.

''(3) TREATMENT.—Employees of the National Academy of Sciences and other individuals appointed by the president of the National Academy of Sciences and acting on its behalf in connection with activities carried out under this section shall be treated as if they are employees of the Federal Government under section 2671 of title 28 for purposes of a civil action or proceeding with respect to a claim described in paragraph (1). The civil action or proceeding shall proceed in the same manner as any proceeding under chapter 171 of title 28 or action against the United States filed pursuant to section 1346(b) of title 28 and shall be subject to the limitations and exceptions applicable to such a proceeding or action.

''(4) SOURCES OF PAYMENTS.—Payment of any award, compromise, or settlement of a civil action or proceeding with respect to a claim described in paragraph (1) shall be paid first out of insurance maintained by the National Academy of Sciences, second from funds made available to carry out this section, and then from sums made available under section 1304 of title 31. For purposes of such section, such an award, compromise, or settlement shall be deemed to be a judgment, award, or settlement payable under section 2414 or 2672 of title 28. The Secretary may establish a reserve of funds to carry out this section for making payments under this paragraph.''.

(b) PROGRAMMATIC EVALUATIONS.—Not later than 3 years after the first research and development project grants, cooperative agreements, or contracts are awarded under section 510 of title 23, United States Code, the Comptroller General shall review the program under such section and recommend improvements to the program. The review shall assess the degree to which projects funded under such section have addressed the research and development topics identified in the Transportation Research Board Special Report 260, including identifying those topics that have not yet been addressed.

(c) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $51,250,000 for each of fiscal years 2006 through 2009, shall be available to carry out section 510 of such title.

(d) CONFORMING AMENDMENT.—The analysis for chapter 5 of such title is further amended by adding at the end the following:

''510. Future strategic highway research program.''.

SEC. 5211. MULTISTATE CORRIDOR OPERATIONS AND MANAGEMENT.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is further amended by adding at the end the following:

''§ 511. Multistate corridor operations and management

''(a) IN GENERAL.—The Secretary shall encourage multistate cooperative agreements, coalitions, or other arrangements to promote regional cooperation, planning, and shared project implementation for programs and projects to improve transportation system management and operations.

''(b) INTERSTATE ROUTE 95 CORRIDOR COALITION TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—The Secretary shall make grants under this subsection to States to continue intelligent transportation system management and operations in the Interstate Route 95 corridor coalition region initiated under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240).''.

(b) FUNDING.—Of the amounts made available under section 5101(a)(5) of this Act $7,000,000 for each of fiscal years 2005 through 2009 shall be available to carry out section 511 of such title.

(c) CONFORMING AMENDMENT.—The analysis for such chapter is further amended by adding at the end the following:

''511. Multistate corridor operations and management.''.

Subtitle C—Intelligent Transportation System Research

SEC. 5301. NATIONAL ITS PROGRAM PLAN.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is further amended by adding at the end the following:

''§ 512. National ITS program plan

''(a) IN GENERAL.—

''(1) UPDATES.—Not later than 1 year after the date of enactment of the SAFETEA-LU, the Secretary, in consultation with interested stakeholders (including State transportation departments) shall develop a 5-year National Intelligent Transportation System (in this section referred to as 'ITS') program plan.

''(2) SCOPE.—The National ITS program plan shall—

''(A) specify the goals, objectives, and milestones for the research and deployment of intelligent transportation systems in the contexts of—

''(i) major metropolitan areas;

''(ii) smaller metropolitan and rural areas; and

''(iii) commercial vehicle operations;

''(B) specify the manner in which specific programs and projects will achieve the goals, objectives, and milestones referred to in subparagraph (A), including consideration of a 5-year timeframe for the goals and objectives;

''(C) identify activities that provide for the dynamic development, testing, and necessary revision of standards and protocols to promote and ensure interoperability in the implementation of intelligent transportation system technologies, including actions taken to establish standards; and

''(D) establish a cooperative process with State and local governments for—

''(i) determining desired surface transportation system performance levels; and

''(ii) developing plans for accelerating the incorporation of specific intelligent transportation system capabilities into surface transportation systems.

''(b) REPORTING.—The National ITS program plan shall be submitted and biennially updated as part of the transportation research and development strategic plan developed under section 508.''.

(b) CONFORMING AMENDMENT.—The analysis for such chapter is further amended by adding at the end the following:

''512. National ITS Program Plan.''.

SEC. 5302. USE OF FUNDS.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is further amended by adding at the end the following:

''§ 513. Use of funds for ITS activities

''(a) IN GENERAL.—For each fiscal year, not more than $250,000 of the funds made available to carry out this subtitle C of title V of the SAFETEA–LU shall be used for intelligent transportation system outreach, public relations, displays, tours, and brochures.

''(b) APPLICABILITY.—Subsection (a) shall not apply to intelligent transportation system training, scholarships, or the publication or distribution of research findings, technical guidance, or similar documents.''.

(b) CONFORMING AMENDMENT.—The analysis for such chapter is further amended by adding at the end the following:

''513. Use of funds for ITS activities.''.

SEC. 5303. GOALS AND PURPOSES.

(a) GOALS.—The goals of the intelligent transportation system program include—

(1) enhancement of surface transportation efficiency and facilitation of intermodalism and international trade to enable existing facilities to meet a significant portion of future transportation needs, including public access to employment, goods, and services and to reduce regulatory, financial, and other transaction costs to public agencies and system users;

(2) achievement of national transportation safety goals, including the enhancement of safe operation of motor vehicles and nonmotorized vehicles and improved emergency response to a crash, with particular emphasis on decreasing the number and severity of collisions;

(3) protection and enhancement of the natural environment and communities affected by surface transportation, with particular emphasis on assisting State and local governments to achieve national environmental goals;

(4) accommodation of the needs of all users of surface transportation systems, including operators of commercial motor vehicles, passenger motor vehicles, motorcycles, bicycles and pedestrians, including individuals with disabilities; and

(5) improvement of the Nation's ability to respond to security-related or other manmade emergencies and natural disasters and enhancement of national defense mobility.

(b) PURPOSES.—The Secretary shall implement activities under the intelligent system transportation program to, at a minimum—

(1) expedite, in both metropolitan and rural areas, deployment and integration of intelligent transportation systems for consumers of passenger and freight transportation;

(2) ensure that Federal, State, and local transportation officials have adequate knowledge of intelligent transportation systems for consideration in the transportation planning process;

(3) improve regional cooperation and operations planning for effective intelligent transportation system deployment;

(4) promote the innovative use of private resources;

(5) facilitate, in cooperation with the motor vehicle industry, the introduction of vehicle-based safety enhancing systems;

(6) support the application of intelligent transportation systems that increase the safety and efficiency of commercial motor vehicle operations;

(7) develop a workforce capable of developing, operating, and maintaining intelligent transportation systems; and

(8) provide continuing support for operations and maintenance of intelligent transportation systems.

SEC. 5304. INFRASTRUCTURE DEVELOPMENT.

Funds made available to carry out this subtitle for operational tests—

(1) shall be used primarily for the development of intelligent transportation system infrastructure; and

(2) to the maximum extent practicable, shall not be used for the construction of physical highway and public transportation infrastructure unless the construction is incidental and critically necessary to the implementation of an intelligent transportation system project.

SEC. 5305. GENERAL AUTHORITIES AND REQUIREMENTS.

(a) SCOPE.—Subject to the provisions of this subtitle, the Secretary shall conduct an ongoing intelligent transportation system program to research, develop, and operationally test intelligent transportation systems and to provide technical assistance in the nationwide application of those systems as a component of the surface transportation systems of the United States.

(b) POLICY.—Intelligent transportation system research projects and operational tests funded pursuant to this subtitle shall encourage and not displace public-private partnerships or private sector investment in such tests and projects.

(c) COOPERATION WITH GOVERNMENTAL, PRIVATE, AND EDUCATIONAL ENTITIES.—The Secretary shall carry out the intelligent transportation system program in cooperation with State and local governments and other public entities, the private sector firms of the United States, the Federal laboratories, and colleges and universities, including historically Black colleges and universities and other minority institutions of higher education.

(d) CONSULTATION WITH FEDERAL OFFICIALS.—In carrying out the intelligent transportation system program, the Secretary shall consult with the heads of other Federal departments and agencies, as appropriate.

(e) TECHNICAL ASSISTANCE, TRAINING, AND INFORMATION.—The Secretary may provide technical assistance, training, and information to State and local governments seeking to implement, operate, maintain, or evaluate intelligent transportation system technologies and services.

(f) TRANSPORTATION PLANNING.—The Secretary may provide funding to support adequate consideration of transportation systems management and operations, including intelligent transportation systems, within metropolitan and statewide transportation planning processes.

(g) INFORMATION CLEARINGHOUSE.—

(1) IN GENERAL.—The Secretary shall—

(A) maintain a repository for technical and safety data collected as a result of federally sponsored projects carried out under this subtitle (including the amendments made by this subtitle); and

(B) make, on request, that information (except for proprietary information and data) readily available to all users of the repository at an appropriate cost.

(2) AGREEMENT.—

(A) IN GENERAL.—The Secretary may enter into an agreement with a third party for the maintenance of the repository for technical and safety data under paragraph (1)(A).

(B) FEDERAL FINANCIAL ASSISTANCE.—If the Secretary enters into an agreement with an entity for the maintenance of the repository, the entity shall be eligible for Federal financial assistance under this section.

(3) AVAILABILITY OF INFORMATION.—Information in the repository shall not be subject to section 555 of title 5, United States Code.

(h) ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Secretary shall establish an Advisory Committee to advise the Secretary on carrying out this subtitle.

(2) MEMBERSHIP.—The Advisory Committee shall have no more than 20 members, be balanced between metropolitan and rural interests, and include, at a minimum—

(A) a representative from a State highway department;

(B) a representative from a local highway department who is not from a metropolitan planning organization;

(C) a representative from a State, local, or regional transit agency;

(D) a representative from a metropolitan planning organization;

(E) a private sector user of intelligent transportation system technologies;

(F) an academic researcher with expertise in computer science or another information science field related to intelligent transportation systems, and who is not an expert on transportation issues;

(G) an academic researcher who is a civil engineer;

(H) an academic researcher who is a social scientist with expertise in transportation issues;

(I) a representative from a nonprofit group representing the intelligent transportation system industry;

(J) a representative from a public interest group concerned with safety;

(K) a representative from a public interest group concerned with the impact of the transportation system on land use and residential patterns; and

(L) members with expertise in planning, safety, and operations.

(3) DUTIES.—The Advisory Committee shall, at a minimum, perform the following duties:

(A) Provide input into the development of the Intelligent Transportation System aspects of the strategic plan under section 508 of title 23, United States Code.

(B) Review, at least annually, areas of intelligent transportation systems research being considered for funding by the Department, to determine—

(i) whether these activities are likely to advance either the state-of-the-practice or state-of-the-art in intelligent transportation systems;

(ii) whether the intelligent transportation system technologies are likely to be deployed by users, and, if not, to determine the barriers to deployment; and

(iii) the appropriate roles for government and the private sector in investing in the research and technologies being considered.

(4) REPORT.—Not later than February 1 of each year after the date of enactment of this Act, the Secretary shall transmit to the Congress a report including—

(A) all recommendations made by the Advisory Committee during the preceding calendar year;

(B) an explanation of how the Secretary has implemented those recommendations; and

(C) for recommendations not implemented, the reasons for rejecting the recommendations.

(5) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Advisory Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(i) REPORTING.—

(1) GUIDELINES AND REQUIREMENTS.—

(A) IN GENERAL.—The Secretary shall issue guidelines and requirements for the reporting and evaluation of operational tests and deployment projects carried out under this subtitle.

(B) OBJECTIVITY AND INDEPENDENCE.—The guidelines and requirements issued under subparagraph (A) shall include provisions to ensure the objectivity and independence of the reporting entity so as to avoid any real or apparent conflict of interest or potential influence on the outcome by parties to any such test or deployment project or by any other formal evaluation carried out under this subtitle.

(C) FUNDING.—The guidelines and requirements issued under subparagraph (A) shall establish reporting funding levels based on the size and scope of each test or project that ensure adequate reporting of the results of the test or project.

(2) SPECIAL RULE.—Any survey, questionnaire, or interview that the Secretary considers necessary to carry out the reporting of any test, deployment project, or program assessment activity under this subtitle shall not be subject to chapter 35 of title 44, United States Code.

SEC. 5306. RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—The Secretary shall carry out a comprehensive program of intelligent transportation system research, development, and operational tests of intelligent vehicles and intelligent infrastructure systems and other similar activities that are necessary to carry out this subtitle.

(b) PRIORITY AREAS.—Under the program, the Secretary shall give higher priority to funding projects that—

(1) enhance mobility and productivity through improved traffic management, incident management, transit management, freight management, road weather management, toll collection, traveler information, or highway operations systems and remote sensing products;

(2) utilize interdisciplinary approaches to develop traffic management strategies and tools to address multiple impacts of congestion concurrently;

(3) address traffic management, incident management, transit management, toll collection traveler information, or highway operations systems with goals of—

(A) reducing metropolitan congestion by not less than 5 percent by 2010;

(B) ensuring that a national, interoperable 5–1–1 system, along with a national traffic information system that includes a user-friendly, comprehensive website, is fully implemented for use by travelers throughout the United States by September 30, 2010; and

(C)(i) improving incident management response, particularly in rural areas, so that rural emergency response times are reduced by an average of 10 minutes; and

(ii) improving communication between emergency care providers and trauma centers;

(4) incorporate research on the impact of environmental, weather, and natural conditions on intelligent transportation systems, including the effects of cold climates;

(5) enhance intermodal use of intelligent transportation systems for diverse groups, including for emergency and health-related services;

(6) enhance safety through improved crash avoidance and protection, crash and other notification, commercial motor vehicle operations, and infrastructure-based or cooperative safety systems; and

(7) facilitate the integration of intelligent infrastructure, vehicle, and control technologies.

(c) FEDERAL SHARE.—The Federal share of the cost of operational tests and demonstrations under subsection (a) shall not exceed 80.

SEC. 5307. NATIONAL ARCHITECTURE AND STANDARDS.

(a) IN GENERAL.—

(1) DEVELOPMENT, IMPLEMENTATION, AND MAINTENANCE.—Consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note; 110 Stat. 783), the Secretary shall develop, implement, and maintain a national architecture and supporting standards and protocols to promote the widespread use and evaluation of intelligent transportation system technology as a component of the surface transportation systems of the United States.

(2) INTEROPERABILITY AND EFFICIENCY.—To the maximum extent practicable, the national architecture shall promote interoperability among, and efficiency of, intelligent transportation system technologies implemented throughout the United States.

(3) USE OF STANDARDS DEVELOPMENT ORGANIZATIONS.—In carrying out this section, the Secretary shall use the services of such standards development organizations as the Secretary determines to be appropriate.

(4) USE OF EXPERT PANEL.—

(A) DESIGNATION.—The Secretary shall designate a panel of experts to recommend ways to expedite and streamline the process for developing the standards and protocols to be developed pursuant to paragraph (1).

(B) NONAPPLICABILITY OF ADVISORY COMMITTEE ACT.—The expert panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(C) DEADLINE FOR RECOMMENDATION.—Not later than September 30, 2007, the expert panel shall provide the Secretary with a recommendation relating to such standards development.

(b) PROVISIONAL STANDARDS.—

(1) IN GENERAL.—If the Secretary finds that the development or balloting of an intelligent transportation system standard jeopardizes the timely achievement of the objectives identified in subsection (a), the Secretary may establish a provisional standard, after consultation with affected parties, using, to the extent practicable, the work product of appropriate standards development organizations.

(2) PERIOD OF EFFECTIVENESS.—A provisional standard established under paragraph (1) shall be published in the Federal Register and remain in effect until the appropriate standards development organization adopts and publishes a standard.

(c) CONFORMITY WITH NATIONAL ARCHITECTURE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall ensure that intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a).

(2) SECRETARY'S DISCRETION.—The Secretary may authorize exceptions to paragraph (1) for—

(A) projects designed to achieve specific research objectives outlined in the national intelligent transportation system program plan or the surface transportation research and development strategic plan developed under section 508 of title 23, United States Code; or

(B) the upgrade or expansion of an intelligent transportation system in existence on the date of enactment of this Act if the Secretary determines that the upgrade or expansion—

(i) would not adversely affect the goals or purposes of this subtitle;

(ii) is carried out before the end of the useful life of such system; and

(iii) is cost-effective as compared to alternatives that would meet the conformity requirement of paragraph (1).

(3) EXCEPTIONS.—Paragraph (1) shall not apply to funds used for operation or maintenance of an intelligent transportation system in existence on the date of enactment of this Act.

SEC. 5308. ROAD WEATHER RESEARCH AND DEVELOPMENT PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a road weather research and development program to—

(1) maximize use of available road weather information and technologies;

(2) expand road weather research and development efforts to enhance roadway safety, capacity, and efficiency while minimizing environmental impacts; and

(3) promote technology transfer of effective road weather scientific and technological advances.

(b) STAKEHOLDER INPUT.—In carrying out this section, the Secretary shall consult with the National Oceanic and Atmospheric Administration, the National Science Foundation, the American Association of State Highway and Transportation Officials, nonprofit organizations, and the private sector.

(c) CONTENTS.—The program established under this section shall solely carry out research and development called for in the National Research Council's report entitled ''A Research Agenda for Improving Road Weather Services''. Such research and development includes—

(1) integrating existing observational networks and data management systems for road weather applications;

(2) improving weather modeling capabilities and forecast tools, such as the road surface and atmospheric interface;

(3) enhancing mechanisms for communicating road weather information to users, such as transportation officials and the public; and

(4) integrating road weather technologies into an information infrastructure.

(d) ACTIVITIES.—In carrying out this section, the Secretary shall—

(1) enable efficient technology transfer;

(2) improve education and training of road weather information users, such as State and local transportation officials and private sector transportation contractors; and

(3) coordinate with transportation weather research programs in other modes, such as aviation.

(e) FUNDING.—

(1) IN GENERAL.—In awarding funds under this section, the Secretary shall give preference to applications with significant matching funds from non-Federal sources.

(2) FUNDS FOR ROAD WEATHER RESEARCH AND DEVELOPMENT.—Of the amounts made available by section 5101(a)(5) of this Act, $5,000,000 for each of fiscal years 2006 through 2009 shall be available to carry out this section.

SEC. 5309. CENTERS FOR SURFACE TRANSPORTATION EXCELLENCE.

(a) ESTABLISHMENT.—The Secretary shall establish 4 centers for surface transportation excellence.

(b) GOALS.—The goals of the centers for surface transportation excellence are to promote and support strategic national surface transportation programs and activities relating to the work of State departments of transportation in the areas of environment, surface transportation safety, rural safety, and project finance.

(c) ROLE OF CENTERS.—To achieve the goals set forth in subsection (b), the Secretary shall establish the 4 centers as follows:

(1) ENVIRONMENTAL EXCELLENCE.—To provide technical assistance, information sharing of best practices, and training in the use of tools and decision-making processes that can assist States in planning and delivering environmentally sound surface transportation projects.

(2) SURFACE TRANSPORTATION SAFETY.—To develop and disseminate advanced transportation safety techniques and innovations in both rural areas and urban communities. The center will use a controlled access highway with state of the art features, to test safety devices and techniques that enhance driver performance, examine advanced pavement and lighting systems, and develop techniques to address older driver and fatigue driver issues.

(3) RURAL SAFETY.—To provide research, training, and outreach on innovative uses of technology to enhance rural safety and economic development, assess local community needs to improve access to mobile emergency treatment, and develop online and seminar training needs of rural transportation practitioners and policy-makers.

(4) PROJECT FINANCE.—To provide support to State transportation departments in the development of finance plans and project oversight tools and to develop and offer training in state of the art financing methods to advance projects and leverage funds.

(d) FUNDING.—

(1) IN GENERAL.—Of the amounts made available by section 5101(a)(1) of this Act, $3,750,000 for each of fiscal years 2006 through 2009 shall be available to carry out this section.

(2) ALLOCATION OF FUNDS.—Of the funds made available under paragraph (1) the Secretary shall use such amounts as follows:

(A) $1,250,000 to establish the Center for Environmental Excellence.

(B) $750,000 to establish the Center for Excellence in Surface Transportation Safety at the Virginia Tech Transportation Institute.

(C) $875,000 to establish the Center for Excellence in Rural Safety at the Hubert H. Humphrey Institute, Minnesota.

(D) $875,000 to establish the Center for Excellence in Project Finance.

(3) APPLICABILITY OF TITLE 23.—Funds authorized by this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share shall be 100 percent.

(e) PROGRAM ADMINISTRATION.—

(1) COMPETITION.—A party entering into a contract, cooperative agreement, or other transaction with the Secretary, or receiving a grant to perform research or provide technical assistance under subsections (d)(2)(A) and (d)(2)(D) shall be selected on a competitive basis, to the maximum extent practicable.

(2) STRATEGIC PLAN.—The Secretary shall require each center to develop a multiyear strategic plan that describes—

(A) the activities to be undertaken; and

(B) how the work of the center is coordinated with the activities of the Federal Highway Administration and the various other research, development, and technology transfer activities authorized by this title. Such plans shall be submitted to the Secretary by January 1, 2006, and each year thereafter.

SEC. 5310. DEFINITIONS.

In this subtitle, the following definitions apply:

(1) INCIDENT.—The term ''incident'' means a crash, a natural disaster, workzone activity, special event, or other emergency road user occurrence that adversely affects or impedes the normal flow of traffic.

(2) INTELLIGENT TRANSPORTATION INFRASTRUCTURE.—The term ''intelligent transportation infrastructure'' means fully integrated public sector intelligent transportation system components, as defined by the Secretary.

(3) INTELLIGENT TRANSPORTATION SYSTEM.—The term ''intelligent transportation system'' means electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

(4) NATIONAL ARCHITECTURE.—The term ''national architecture'' means the common framework for interoperability that defines—

(A) the functions associated with intelligent transportation system user services;

(B) the physical entities or subsystems within which the functions reside;

(C) the data interfaces and information flows between physical subsystems; and

(D) the communications requirements associated with the information flows.

(5) PROJECT.—The term ''project'' means an undertaking to research, develop, or operationally test intelligent transportation systems or any other undertaking eligible for assistance under this subtitle.

(6) STANDARD.—The term ''standard'' means a document that—

(A) contains technical specifications or other precise criteria for intelligent transportation systems that are to be used consistently as rules, guidelines, or definitions of characteristics so as to ensure that materials, products, processes, and services are fit for their purposes; and

(B) may support the national architecture and promote—

(i) the widespread use and adoption of intelligent transportation system technology as a component of the surface transportation systems of the United States; and

(ii) interoperability among intelligent transportation system technologies implemented throughout the States.

(7) STATE.—The term ''State'' has the meaning given the term under section 101 of title 23, United States Code.

(8) TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—The term ''transportation systems management and operations'' has the meaning given the term under section 101(a) of title 23, United States Code.

Subtitle D—University Transportation Research; Scholarship Opportunities

SEC. 5401. NATIONAL UNIVERSITY TRANSPORTATION CENTERS.

(a) IN GENERAL.—Section 5505 of title 49, United States Code, is amended to read as follows:

''SEC. 5505. NATIONAL UNIVERSITY TRANSPORTATION CENTERS.

''(a) IN GENERAL.—

''(1) ESTABLISHMENT AND OPERATION.—The Secretary of Transportation shall make grants under this section to eligible nonprofit institutions of higher learning to establish and operate national university transportation centers.

''(2) ROLE OF CENTERS.—The role of each center shall be to advance significant transportation research on critical national transportation issues and to expand the workforce of transportation professionals.

''(b) APPLICABILITY OF REQUIREMENTS.—A grant received by an eligible nonprofit institution of higher learning under this section shall be available for the same purposes, and shall be subject to the same terms and conditions, as a grant made to a nonprofit institution of higher learning under section 5506.

''(c) ELIGIBLE NONPROFIT INSTITUTION OF HIGHER LEARNING DEFINED.—In this section, the term 'eligible nonprofit institution of higher learning' means each of the following:

''(1) University of Alaska.

''(2) Marshall University, West Virginia, on behalf of a consortium of West Virginia colleges and universities.

''(3) University of Minnesota.

''(4) University of Missouri, Rolla.

''(5) Northwestern University.

''(6) Oklahoma Transportation Center.

''(7) Portland State University, in partnership with the University of Oregon, Oregon State University, and the Oregon Institute of Technology.

''(8) University of Vermont.

''(9) Western Transportation Institute at Montana State University.

''(10) University of Wisconsin.

''(d) GRANTS.—The Secretary shall make a grant under this section to each eligible nonprofit institution of higher learning in an

amount $2,000,000 in fiscal year 2005 and $3,500,000 in each of fiscal years 2006 through 2009 to carry out this section.''.

(b) FUNDING.—Of the amounts made available by section 5101(a)(4) of this Act, $20,000,000 for fiscal year 2005 and $35,000,000 for each of fiscal years 2006 through 2009 shall be available to carry out section 5505 of such title.

(c) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 55 of such title is amended by striking the item relating to section 5505 and inserting the following:

''5505. National university transportation centers.''.

SEC. 5402. UNIVERSITY TRANSPORTATION RESEARCH.

(a) IN GENERAL.—Section 5506 of title 49, United States Code, is amended to read as follows:

''SEC. 5506. UNIVERSITY TRANSPORTATION RESEARCH.

''(a) IN GENERAL.—The Secretary of Transportation shall make grants under this section to nonprofit institutions of higher learning to establish and operate university transportation centers.

''(b) OBJECTIVES.—Grants received under this section shall be used by nonprofit institutions of higher learning to advance significantly the state-of-the-art in transportation research and expand the workforce of transportation professionals through the following programs and activities:

''(1) RESEARCH.—Basic and applied research, the products of which are judged by peers or other experts in the field of transportation to advance the body of knowledge in transportation.

''(2) EDUCATION.—An education program relating to transportation that includes multidisciplinary course work and participation in research.

''(3) TECHNOLOGY TRANSFER.—An ongoing program of technology transfer that makes transportation research results available to potential users in a form that can be implemented, utilized, or otherwise applied.

''(c) REGIONAL, TIER I, AND TIER II CENTERS.—

''(1) REGIONAL AND TIER I CENTERS.—For each of fiscal years 2005 through 2009, the Secretary shall make grants under subsection (a) to nonprofit institutions of higher learning to establish and operate—

''(A) 10 regional university transportation centers; and

''(B) 10 Tier I university transportation centers.

''(2) TIER II CENTERS.—

''(A) For each of fiscal years 2006 through 2009, the Secretary shall make grants under subsection (a) to nonprofit institutions of higher learning to establish and operate 22 Tier II university transportation centers.

''(B) The tier II centers consist of the following:

''(i) University of Arkansas, Mack-Blackwell Rural Transportation Center.

''(ii) University of California, Davis.

''(iii) California State University, San Bernardino.

''(iv) Cleveland State University, Work Zone Safety Institute.

''(v) University of Connecticut.

''(vi) University of Delaware in Newark.

''(vii) University of Detroit Mercy (including the coalition partners of the university).

''(viii) George Mason University.

''(ix) Hampton University, Eastern Seaboard Intermodal Transportation Applications Center (ESITAC).

''(x) Kansas State University.

''(xi) Louisiana State University, LTRC-TTEC.

''(xii) University of Massachusetts Amherst.

''(xiii) Michigan Technological University.

''(xiv) University of Nevada Las Vegas.

''(xv) North Carolina State University, Center for Transportation and the Environment.

''(xvi) Northwestern University.

''(xvii) Ohio Higher Education Transportation Consortium–University of Akron.

''(xviii) University of Rhode Island.

''(xix) University of Toledo.

''(xx) Utah State University.

''(xxi) Youngstown State University.

''(xxii) University of Memphis.

''(3) LOCATION OF REGIONAL CENTERS.—One regional university transportation center shall be located in each of the 10 United States Government regions that comprise the Standard Federal Regional Boundary System.

''(4) LIMITATION.—A nonprofit institution of higher learning may not directly receive a grant under this section for a fiscal year for more than one university transportation center.

''(d) COMPETITIVE SELECTION PROCESS.—

''(1) APPLICATIONS.—In order to be eligible to receive a grant under subsection (c)(1), a nonprofit institution of higher learning shall submit to the Secretary an application that is in such form and contains such information as the Secretary may require.

''(2) GENERAL SELECTION CRITERIA.—Except as otherwise provided by this section, the Secretary shall select each recipient of a grant under subsection (c)(1) through a competitive process on the basis of the following:

''(A) The demonstrated research and extension resources available to the recipient to carry out this section.

''(B) The capability of the recipient to provide leadership in making national and regional contributions to the solution of immediate and long-range transportation problems.

''(C) The recipient's demonstrated commitment of at least $400,000 each year in regularly budgeted institutional amounts to support ongoing transportation research and education programs.

''(D) The recipient's demonstrated ability to disseminate results of transportation research and education programs through a statewide or regionwide continuing education program.

''(E) The strategic plan the recipient proposes to carry out under the grant.

''(e) REGIONAL UNIVERSITY TRANSPORTATION CENTERS.—

''(1) COMPETITION.—Not later than March 31, 2006, and not later than March 31st of every 4th year thereafter, the Secretary shall complete a competition among nonprofit institutions of higher learning for grants to establish and operate the 10 regional university transportation centers referred to in subsection (c)(1)(A).

''(2) SELECTION CRITERIA.—In conducting a competition under paragraph (1), the Secretary shall select a nonprofit institution of higher learning on the basis of—

''(A) the criteria described in subsection (d)(2);

''(B) the location of the center within the Federal region to be served; and

''(C) whether or not the institution (or, in the case of a consortium of institutions, the lead institution) demonstrates that it has a well-established, nationally recognized program in transportation research and education, as evidenced by—

''(i) not less than $2,000,000 in highway or public transportation research expenditures each year for each of the preceding 5 years;

''(ii) not less than 10 graduate degrees awarded in professional fields closely related to highways and public transportation each year for each of the preceding 5 years; and

''(iii) not less than 5 tenured or tenure-track faculty members who specialize on a full-time basis in professional fields closely related to highways and public transportation who, as a group, have published a total at least 50 refereed journal publications on highway or public transportation research during the preceding 5 years.

''(3) GRANT RECIPIENTS.—After selecting a nonprofit institution of higher learning as a grant recipient on the basis of a competition conducted under this subsection, the Secretary shall make a grant to the recipient to establish and operate a regional university transportation center in each of the first 4 fiscal years beginning after the date of the competition.

''(4) SPECIAL RULE FOR FISCAL YEARS 2005 AND 2006.—For fiscal years 2005 and 2006, the Secretary shall make a grant under this section to each of the 10 nonprofit institutions of higher learning that were competitively selected for grants by the Secretary under this section in July 1999 to operate regional university transportation centers.

''(5) AMOUNT OF GRANTS.—The Secretary shall make a grant to a nonprofit institution of higher learning to establish and operate a regional university transportation center of—

''(A) $1,000,000 for fiscal year 2005;

''(B) $2,000,000 for each of fiscal years 2006 through 2008; and

''(C) $2,225,000 for fiscal year 2009.

''(f) TIER I UNIVERSITY TRANSPORTATION CENTERS.—

''(1) COMPETITION.—Not later than June 30, 2006, and not later than June 30 of every 4th year thereafter, the Secretary shall complete a competition among nonprofit institutions of higher learning for grants to establish and operate the 10 Tier I university transportation centers referred to in subsection (c)(1)(B).

''(2) SELECTION CRITERIA.—In conducting a competition under paragraph (1), the Secretary shall select a nonprofit institution of higher learning on the basis of—

''(A) the criteria described in subsection (d)(2); and

''(B) whether or not the institution (or, in the case of a consortium of institutions, the lead institution) can demonstrate that it has an established, recognized program in transportation research and education, as evidenced by—

''(i) not less than $1,000,000 in highway or public transportation research expenditures each year for each of the preceding 5 years or not less than $6,000,000 in such expenditures during the 5 preceding years;

''(ii) not less than 5 graduate degrees awarded in professional fields closely related to highways and public transportation each year for each of the preceding 5 years; and

''(iii) not less than 3 tenured or tenure-track faculty members who specialize on a full-time basis in professional fields closely related to highways and public transportation who, as a group, have published a total at least 20 refereed journal publications on highway or public transportation research during the preceding 5 years.

''(3) GRANT RECIPIENTS.—After selecting a nonprofit institution of higher learning as a grant recipient on the basis of a competition conducted under this subsection, the Secretary shall make a grant to the recipient to establish and operate a Tier I university transportation center in each of the first 4 fiscal years beginning after the date of the competition.

''(4) SPECIAL RULE FOR FISCAL YEARS 2005 AND 2006.—For fiscal years 2005 and 2006, the Secretary shall make a grant under this section to each of the 10 nonprofit institutions of higher learning that were competitively selected for grant awards by the Secretary under this section in May 2002 to operate university transportation centers (other than regional centers).

''(5) AMOUNT OF GRANTS.—The Secretary shall make a grant of $1,000,000 for each of fiscal years 2005 through 2009 to a nonprofit institution of higher learning to establish and operate a Tier I university transportation center.

''(g) TIER II UNIVERSITY TRANSPORTATION CENTERS.—

''(1) SELECTION.—The Secretary shall make grants to the nonprofit institutions of higher learning to establish and operate the 22 Tier II university transportation centers referred to in subsection (c)(2)(B).

''(2) AMOUNT OF GRANTS.—The Secretary shall make a grant of $500,000 for each of fiscal years

2006 through 2009 to a nonprofit institution of higher learning to establish and operate a Tier II university transportation center.

''(h) SUPPORT OF NATIONAL STRATEGY FOR SURFACE TRANSPORTATION RESEARCH.—In order to be eligible to receive a grant under this section, a nonprofit institution of higher learning shall provide assurances satisfactory to the Secretary that the research and education activities of its university transportation center will support the national strategy for surface transportation research, as identified by—

''(1) the report of the National Highway Research and Technology Partnership entitled 'Highway Research and Technology: The Need for Greater Investment', dated April 2002; and

''(2) the programs of the National Research and Technology Program of the Federal Transit Administration.

''(i) MAINTENANCE OF EFFORT.—In order to be eligible to receive a grant under this section, a nonprofit institution of higher learning shall enter into an agreement with the Secretary to ensure that the institution will maintain total expenditures from all other sources to establish and operate a university transportation center and related research activities at a level at least equal to the average level of such expenditures in its 2 fiscal years prior to award of a grant under this section.

''(j) FEDERAL SHARE.—The Federal share of the costs of activities carried out using a grant made under this section shall be 50 percent of such costs. The non-Federal share may include funds provided to a recipient under section 503, 504(b), or 505 of title 23.

''(k) PROGRAM COORDINATION.—

''(1) COORDINATION.—The Secretary shall coordinate the research, education, and technology transfer activities that grant recipients carry out under this section, disseminate the results of the research, and establish and operate a clearinghouse to disseminate the results of the research.

''(2) ANNUAL REVIEW AND EVALUATION.—At least annually, and consistent with the plan developed under section 508 of title 23, the Secretary shall review and evaluate programs of grant recipients.

''(3) MANAGEMENT AND OVERSIGHT.—The Secretary shall expend not more than $400,000 for each of fiscal years 2005 through 2009 from amounts made available to carry out this section to carry out management and oversight of the centers receiving assistance under this section and section 5505.

''(l) PROGRAM ADMINISTRATION.—The Secretary shall carry out this section acting through the Administrator of the Research and Innovative Technology Administration.

''(m) LIMITATION ON AVAILABILITY OF FUNDS.—Funds made available to carry out this section shall remain available for obligation by the Secretary for a period of 2 years after the last day of the fiscal year for which such funds are authorized.''.

(b) FUNDING.—Of the amounts made available by section 5101(a)(4) of this Act, the following amounts shall be available to carry out section 5506 of such title.

(1) $20,400,000 for fiscal year 2005.

(2) $41,400,000 for each of fiscal years 2006 through 2008.

(3) $43,900,000 for fiscal year 2009.

(c) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 55 of such title is amended by striking the item relating to section 5506 and inserting the following:

''5506. University transportation research.''.

Subtitle E—Other Programs

SEC. 5501. TRANSPORTATION SAFETY INFORMATION MANAGEMENT SYSTEM PROJECT.

(a) IN GENERAL.—The Secretary shall fund and carry out a project to further the development of a comprehensive transportation safety information management system (in this section referred to as ''TSIMS'').

(b) PURPOSES.—The purpose of the TSIMS project is to further the development of a software application to provide for the collection, integration, management, and dissemination of safety data from and for use among State and local safety and transportation agencies, including driver licensing, vehicle registration, emergency management system, injury surveillance, roadway inventory, and motor carrier databases.

(c) FUNDING.—

(1) FEDERAL FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $1,000,000 for fiscal years 2006 and 2007 shall be available to carry out the TSIMS project under this section.

(2) STATE CONTRIBUTION.—The sums authorized in paragraph (1) are intended to supplement voluntary contributions to be made by State departments of transportation and other State safety and transportation agencies.

SEC. 5502. SURFACE TRANSPORTATION CONGESTION RELIEF SOLUTIONS RESEARCH INITIATIVE.

(a) ESTABLISHMENT.—The Secretary shall establish a surface transportation congestion solutions research initiative consisting of 2 independent research programs described in subsections (b)(1) and (b)(2) and designed to develop information to assist State transportation departments and metropolitan planning organizations measure and address surface transportation congestion problems.

(b) SURFACE TRANSPORTATION CONGESTION SOLUTIONS RESEARCH PROGRAM.—

(1) IMPROVED SURFACE TRANSPORTATION CONGESTION MANAGEMENT SYSTEM MEASURES.—The purposes of the first research program established under this section shall be—

(A) to examine the effectiveness of surface transportation congestion management systems since enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240);

(B) to identify best case examples of locally designed reporting methods and incorporate such methods in research on national models for developing and recommending improved surface transportation congestion measurement and reporting; and

(C) to incorporate such methods in the development of national models and methods to monitor, measure, and report surface transportation congestion information.

(2) ANALYTICAL TECHNIQUES FOR ACTION ON SURFACE TRANSPORTATION CONGESTION.—The purposes of the second research program established under this section shall be—

(A) to analyze the effectiveness of procedures used by State transportation departments and metropolitan planning organizations to assess surface transportation congestion problems and communicate those problems to decisionmakers; and

(B) to identify methods to ensure that the results of surface transportation congestion analyses lead to the targeting of funding for programs, projects, or services with demonstrated effectiveness in reducing travel delay, congestion, and system unreliability.

(c) TECHNICAL ASSISTANCE AND TRAINING.—In fiscal year 2006, the Secretary shall develop a technical assistance and training program to disseminate the results of the surface transportation congestion solutions research initiative for the purpose of assisting State transportation departments and local transportation agencies with improving their approaches to surface transportation congestion measurement, analysis, and project programming.

(d) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $9,000,000 for each of fiscal years 2006 through 2009 shall be available to carry out subsections (a) and (b) of this section. Of the amounts made available by section 5101(a)(2), $750,000 for each of fiscal years 2006 through 2009 shall be available to carry out subsection (c) of this subsection.

SEC. 5503. MOTOR CARRIER EFFICIENCY STUDY.

(a) IN GENERAL.—The Secretary, in coordination with the motor carrier and wireless technology industry, shall conduct a study to—

(1) identify inefficiencies in the transportation of freight;

(2) evaluate the safety, productivity, and reduced cost improvements that may be achieved through the use of wireless technologies to address the inefficiencies identified in paragraph (1); and

(3) conduct, as appropriate, field tests demonstrating the technologies identified in paragraph (2).

(b) PROGRAM ELEMENTS.—The program shall include, at a minimum, the following:

(1) Fuel monitoring and management systems.

(2) Radio frequency identification technology.

(3) Electronic manifest systems.

(4) Cargo theft prevention.

(c) FEDERAL SHARE.—The Federal share of the cost of the study under this section shall be 100 percent.

(d) ANNUAL REPORT.—The Secretary shall prepare and submit to Congress an annual report on the programs and activities carried out under this section.

(e) FUNDING.—Of the amounts made available under section 5101(a)(1) of this Act, the Secretary shall make available $1,250,000 to the Federal Motor Carrier Safety Administration for each of fiscal years 2006 through 2009 to carry out this section.

SEC. 5504. CENTER FOR TRANSPORTATION ADVANCEMENT AND REGIONAL DEVELOPMENT.

(a) ESTABLISHMENT.—The Secretary shall establish a Center for Transportation Advancement and Regional Development (referred to in this section as the ''Center'') to assist, through training, education, and research, in the comprehensive development of small metropolitan and rural regional transportation systems that are responsive to the needs of businesses and local communities.

(b) ACTIVITIES.—In carrying out this section, the Center shall—

(1) provide training, information, and professional resources for small metropolitan and rural regions to pursue innovative strategies to expand the capabilities, capacity, and effectiveness of a region's transportation network, including activities related to freight projects, transit system upgrades, roadways and bridges, and intermodal transfer facilities and operations;

(2) assist local officials, rural transportation and economic development planners, officials from State departments of transportation and economic development, business leaders, and other stakeholders in developing public-private partnerships to enhance their transportation systems; and

(3) promote the leveraging of regional transportation planning with regional economic and business development planning to assure that appropriate transportation systems are created.

(c) PROGRAM ADMINISTRATION.—To carry out this section, the Secretary shall make a grant to, or enter into a cooperative agreement or contract with the National Association of Development Organizations.

(d) FUNDING.—

(1) IN GENERAL.—Of the amounts made available by section 5101(a)(1) of this Act, $625,000 shall be available for each of fiscal years 2006 through 2009 to carry out this section.

(2) FEDERAL SHARE.—The Federal share of the cost of activities carried out in accordance with this subsection shall be 100 percent.

SEC. 5505. TRANSPORTATION SCHOLARSHIP OPPORTUNITIES PROGRAM.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary may establish and implement a scholarship program for the purpose of attracting qualified students for transportation-related critical jobs.

(2) PARTNERSHIP.—The Secretary may establish the program in partnership with appropriate nongovernmental institutions.

(b) PARTICIPATION.—An operating administration of the Department and the Office of Inspector General may participate in the scholarship program.

(c) FUNDING.—Notwithstanding any other provision of law, the Secretary may use funds available to an operating administration or from the Office of Inspector General of the Department for the purpose of carrying out this section.

SEC. 5506. COMMERCIAL REMOTE SENSING PRODUCTS AND SPATIAL INFORMATION TECHNOLOGIES.

(a) IN GENERAL.—The Secretary shall establish and carry out a program to validate commercial remote sensing products and spatial information technologies for application to national transportation infrastructure development and construction.

(b) PROGRAM.—

(1) NATIONAL POLICY.—The Secretary shall establish and maintain a national policy for the use of commercial remote sensing products and spatial information technologies in national transportation infrastructure development and construction.

(2) POLICY IMPLEMENTATION.—The Secretary shall develop new applications of commercial remote sensing products and spatial information technologies for the implementation of the national policy established and maintained under paragraph (1).

(c) COOPERATION.—The Secretary shall carry out this section in cooperation with a consortium of university research centers.

(d) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $7,750,000 for each of fiscal years 2006 through 2009 shall be available to carry out this section.

SEC. 5507. RURAL INTERSTATE CORRIDOR COMMUNICATIONS STUDY.

(a) STUDY.—The Secretary, in cooperation with the Secretary of Commerce, State departments of transportation, and other appropriate State, regional, and local officials, shall conduct a study on the feasibility of installing fiber optic cabling and wireless communication infrastructure along multistate Interstate System route corridors for improved communications services to rural communities along such corridors.

(b) CONTENTS OF STUDY.—In conducting the study, the Secretary shall identify—

(1) impediments to installation of the infrastructure described in subsection (a) along multistate Interstate System route corridors and to connecting such infrastructure to the rural communities along such corridors;

(2) the effective geographic range of such infrastructure;

(3) potential opportunities for the private sector to fund, wholly or partially, the installation of such infrastructure;

(4) potential benefits fiber optic cabling and wireless communication infrastructure may provide to rural communities along such corridors, including the effects of the installation of such infrastructure on economic development, deployment of intelligent transportation systems technologies and applications, homeland security precaution and response, and education and health systems in those communities;

(5) rural broadband access points for such infrastructure;

(6) areas of environmental conflict with such installation;

(7) real estate ownership issues relating to such installation;

(8) preliminary design for placement of fiber optic cable and wireless towers;

(9) monetary value of the rights-of-way necessary for such installation;

(10) applicability and transferability of the benefits of such installation to other rural corridors; and

(11) safety and other operational issues associated with the installation and maintenance of fiber optic cabling and wire infrastructure within Interstate System rights-of-way and other publicly owned rights-of-way.

(c) CORRIDOR LOCATIONS.—The study required under subsection (a) shall be conducted for corridors along—

(1) Interstate Route 90 through rural Wisconsin, southern Minnesota, northern Iowa, and South Dakota;

(2) Interstate Route 20 through Alabama, Mississippi, and northern Louisiana;

(3) Interstate Route 91 through Vermont, New Hampshire, and Massachusetts; and

(4) any other rural corridor the Secretary considers appropriate.

(d) REPORT TO CONGRESS.—Not later than September 30, 2007, the Secretary shall submit to Congress a report on the results of the study, including any recommendations of the Secretary.

(e) FEDERAL SHARE.—The Federal share of the cost of the study shall be 100 percent.

(f) FUNDING.—Of the amounts made available under section 5101(a)(5) of this Act, $1,000,000 shall be available for fiscal year 2006, and $2,000,000 shall be available for fiscal year 2007 to carry out this section.

SEC. 5508. TRANSPORTATION TECHNOLOGY INNOVATION AND DEMONSTRATION PROGRAM.

Section 5117(b) of the Transportation Equity Act for the 21st Century (112 Stat 449; 112 Stat. 864; 115 Stat. 2330) is amended by striking paragraph (3) and inserting the following:

''(3) INTELLIGENT TRANSPORTATION INFRASTRUCTURE.—

''(A) DEFINITIONS.—In this paragraph:

''(i) CONGESTED AREA.—The term 'congested area' means a metropolitan area that experiences significant traffic congestion, as determined by the Secretary on an annual basis, including the metropolitan areas of Albany, Atlanta, Austin, Burlington, Charlotte, Columbus, Greensboro, Hartford, Jacksonville, Kansas City, Louisville, Milwaukee, Minneapolis-St. Paul, Nashville, New Orleans, Norfolk, Raleigh, Richmond, Sacramento, San Jose, Tuscson, and Tulsa.

''(ii) DEPLOYMENT AREA.—The term 'deployment area' means any of the metropolitan areas of Baltimore, Birmingham, Boston, Chicago, Cleveland, Dallas/Ft. Worth, Denver, Detroit, Houston, Indianapolis, Las Vegas, Los Angeles, Miami, New York/Northern New Jersey, Northern Kentucky/Cincinnati, Oklahoma City, Orlando, Philadelphia, Phoenix, Pittsburgh, Portland, Providence, Salt Lake, San Diego, San Francisco, St. Louis, Seattle, Tampa, and Washington, District of Columbia.

''(iii) METROPOLITAN AREA.—The term 'metropolitan area', including a major transportation corridor serving a metropolitan area, means any area that—

''(I) has a population exceeding 300,000; and

''(II) meets criteria established by the Secretary in conjunction with the intelligent vehicle highway systems corridors program.

''(iv) ORIGINAL CONTRACT.—The term 'original contract' means the Department of Transportation contract numbered DTTS 59–99–D–00445 T020013.

''(v) PROGRAM.—The term 'program' means the 2-part intelligent transportation infrastructure program carried out under this paragraph.

''(vi) STATE TRANSPORTATION DEPARTMENT.—The term 'State transportation department' means—

''(I) a State transportation department (as defined in section 101 of title 23, United States Code); and

''(II) a designee of a State transportation department (as so defined) for the purpose of entering into contracts.

''(vii) UNCOMMITTED FUNDS.—The term 'uncommitted funds' means the total amount of funds that, as of the date that is 180 days after the date of enactment of the SAFETEA–LU, remain uncommitted under the original contract.

''(B) INTELLIGENT TRANSPORTATION INFRASTRUCTURE PROGRAM.—

''(i) IN GENERAL.—The Secretary shall carry out a 2-part intelligent transportation infrastructure program in accordance with this paragraph to advance the deployment of an operational intelligent transportation infrastructure system, through measurement of various transportation system activities, to simultaneously—

''(I) aid in transportation planning and analysis; and

''(II) make a significant contribution to the ITS program under this title.

''(ii) OBJECTIVES.—The objectives of the program are—

''(I) to build or integrate an infrastructure of the measurement of various transportation system metrics to aid in planning, analysis, and maintenance of the Department of Transportation, including the buildout, maintenance, and operation of greater than 40 metropolitan area systems with a total cost not to exceed $2,000,000 for each metropolitan area;

''(II) to provide private technology commercialization initiatives to generate revenues that will be reinvested in the intelligent transportation infrastructure system;

''(III) to aggregate data into reports for multipoint data distribution techniques; and

''(IV) with respect to part I of the program under subparagraph (C), to use an advanced information system designed and monitored by an entity with experience with the Department of Transportation in the design and monitoring of high-reliability, mission-critical voice and data systems.

''(C) PART I.—

''(i) IN GENERAL.—In carrying out part I of the program, the Secretary shall permit the entity to which the original contract was awarded to use uncommitted funds to deploy intelligent transportation infrastructure systems that have been accepted by the Secretary—

''(I) in accordance with the terms of the original contract; and

''(II) in any deployment area, with the consent of the State transportation department for the deployment area.

''(ii) APPLICABLE CONDITIONS.—The same asset ownership, maintenance, fixed price contract, and revenue sharing model, and the same competitively selected consortium leader, as were used for the deployment of intelligent transportation infrastructure systems under the original contract before the date of enactment of the SAFETEA–LU shall apply to each deployment carried out under clause (i).

''(iii) DEPLOYMENT IN CONGESTED AREAS.—If the entity referred to in clause (i) is unable to use the uncommitted funds by deploying intelligent transportation infrastructure systems in deployment areas, as determined by the Secretary, the entity may deploy the systems in accordance with this paragraph in 1 or more congested areas, with the consent of the State transportation departments for the congested areas.

''(D) PART II.—

''(i) IN GENERAL.—In carrying out part II of the program, the Secretary shall award, on a competitive basis, contracts for the deployment of intelligent transportation infrastructure systems that have been accepted by the Secretary in congested areas, with the consent of the State transportation departments for the congested areas.

''(ii) REQUIREMENTS.—The Secretary shall award contracts under clause (i)—

''(I) for individual congested areas among entities that seek to deploy intelligent transportation infrastructure systems in the congested areas; and

''(II) on the condition that the terms of each contract awarded requires the entity deploying such system to ensure that the deployed system is compatible (as determined by the Secretary) with systems deployed in other congested areas under this paragraph.

''(iii) PROVISIONS IN CONTRACTS.—The Secretary shall require that each contract for the

deployment of an intelligent transportation infrastructure system under this subparagraph contain such provisions relating to asset ownership, maintenance, fixed price, and revenue sharing as the Secretary considers to be appropriate.

''(E) USE OF FUNDS FOR UNDEPLOYED SYSTEMS.—

''(i) IN GENERAL.—If, under part I or part II of the program, a State transportation department for a deployment area or congested area does not consent by the later of the date that is 180 days after the date of enactment of the SAFETEA–LU, or another date determined jointly by the State transportation department and the deployment area or congested area, to participate in the deployment of an intelligent transportation infrastructure system in the deployment area or congested area, upon application by any other deployment area or congested area that has consented by that date to participate in the deployment of such a system, the Secretary shall distribute any such unused funds to any other deployment or congested area that has consented by that date to participate in the deployment of such a system.

''(ii) NO INCLUSION IN COST LIMITATION.—Costs paid using funds provided through a distribution under clause (i) shall not be considered in determining the limitation on maximum cost described in subparagraph (F)(ii).

''(F) FEDERAL SHARE; LIMITS ON COSTS OF SYSTEMS FOR METROPOLITAN AREAS.—

''(i) FEDERAL SHARE.—Subject to clause (ii), the Federal share of the cost of any project or activity carried out under the program shall be 80 percent.

''(ii) LIMIT ON COSTS OF SYSTEM FOR EACH METROPOLITAN AREA.—

''(I) IN GENERAL.—Not more than $2,000,000 may be provided under this paragraph for deployment of an intelligent transportation infrastructure system for a metropolitan area.

''(II) FUNDING UNDER EACH PART.—A metropolitan area in which an intelligent transportation infrastructure system is deployed under part I or part II under subparagraphs (C) and (D), respectively, including through a distribution of funds under subparagraph (E), may not receive any additional deployment under the other part of the program.

''(G) USE OF RIGHTS-OF-WAY.—

''(i) IN GENERAL.—An intelligent transportation system project described in this paragraph or paragraph (6) that involves privately-owned intelligent transportation system components and is carried out using funds made available from the Highway Trust Fund shall not be subject to any law (including a regulation) of a State or political subdivision of a State prohibiting or regulating commercial activities in the rights-of-way of a highway for which Federal-aid highway funds have been used for planning, design, construction, or maintenance for the project, if the Secretary determines that such use is in the public interest.

''(ii) EFFECT OF SUBPARAGRAPH.—Nothing in this subparagraph affects the authority of a State or political subdivision of a State—

''(I) to regulate highway safety; or

''(II) under sections 253 and 332(c)(7) of the Communications Act of 1934 (47 U.S.C. 253, 332(c)(7)).

''(H) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary for each of fiscal years 2005 through 2009 to carry out this paragraph. ''.

SEC. 5509. REPEAL.

Effective October 1 of 2005, sections 5208 and 5209 of subtitle C of title V of The Transportation Equity Act for the 21st Century (23 U.S.C. 502 note; 112 Stat. 452–463) is repealed.

SEC. 5510. NOTICE.

(a) NOTICE OF REPROGRAMMING.—If any funds authorized for carrying out this title or the amendments made by this title are subject to a reprogramming action that requires notice to be provided to the Committees on Appropriations, Transportation and Infrastructure, and Science of the House of Representatives and the Committees on Appropriations and Environment and Public Works of the Senate, notice of that action shall be concurrently provided to the Committee of Transportation and Infrastructure and the Committee on Science of the House of Representative and the Committee on Environment and Public Works of the Senate.

(b) NOTICE OF REORGANIZATION.—On or before the 15th day preceding the date of any major reorganization of a program, project, or activity of the Department for which funds are authorized by this title or the amendments made by this title, the Secretary shall provide notice of the reorganization to the Committees on Transportation and Infrastructure and Science of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SEC. 5511. MOTORCYCLE CRASH CAUSATION STUDY GRANTS.

(a) GRANTS.—The Secretary shall provide grants to the Oklahoma Transportation Center for the purpose of conducting a comprehensive, in-depth motorcycle crash causation study that employs the common international methodology for in-depth motorcycle accident investigation of the Organization for Economic Cooperation and Development.

(b) FUNDING.—Of the amounts made available under section 5101(a)(1) of this Act, $1,408,000 for each of fiscal years 2006 and 2007 shall be available to carry out this section.

SEC. 5512. ADVANCED TRAVEL FORECASTING PROCEDURES PROGRAM.

(a) CONTINUATION AND ACCELERATION OF TRANSIMS DEPLOYMENT.—

(1) IN GENERAL.—The Secretary shall accelerate the deployment of the advanced transportation model known as the ''Transportation Analysis Simulation System'' (in this section referred to as ''TRANSIMS''), developed by the Los Alamos National Laboratory.

(2) PROGRAM APPRECIATION.—The purpose of the program is to assist State departments of transportation and metropolitan planning organizations—

(A) to implement TRANSIMS;

(B) to develop methods for TRANSIMS applications to transportation planning, air quality analysis, regulatory compliance, and response to natural disasters and other transportation disruptions; and

(C) to provide training and technical assistance for the implementation of TRANSIMS.

(b) REQUIRED ACTIVITIES.—The Secretary shall use funds made available to carry out this section to—

(1) provide funding to State departments of transportation and metropolitan planning organizations serving transportation management areas designated under chapter 52 of title 49, United States Code, representing a diversity of populations, geographic regions, and analytic needs to implement TRANSIMS;

(2) develop methods to demonstrate a wide spectrum of TRANSIMS applications to support local, metropolitan, statewide transportation planning, including integrating highway and transit operational considerations into the transportation Planning process, and estimating the effects of induced travel demand and transit ridership in making transportation conformity determinations where applicable;

(3) provide training and technical assistance with respect to the implementation and application of TRANSIMS to States, local governments, and metropolitan planning organizations with responsibility for travel modeling;

(4) to further develop TRANSIMS for additional applications, including—

(A) congestion analyses;

(B) major investment studies;

(C) economic impact analyses;

(D) alternative analyses;

(E) freight movement studies;

(F) emergency evacuation studies;

(G) port studies; and

(H) airport access studies;

(I) induced demand studies; and

(J) transit ridership analysis.

(c) ELIGIBLE ACTIVITIES.—The program may support the development of methods to plan for the transportation response to chemical and biological terrorism and other security concerns.

(d) ALLOCATION OF FUNDS.—Not more than 75 percent of the funds made available to carry out this section may be allocated to activities described in subsection (b)(1).

(e) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $2,625,000 for each of fiscal years 2006 through 2009 shall be available to carry out this section.

SEC. 5513. RESEARCH GRANTS.

(a) THERMAL IMAGING.—

(1) IN GENERAL.—The Secretary shall make a grant to carry out a demonstration project that uses a thermal imaging inspection system (TIIS) that leverages state-of-the-art thermal imagery technology, integrated with signature recognition software, providing the capability to identify, in real time, faults and failures in tires, brakes and bearings mounted on commercial motor vehicles.

(2) USE OF FUNDS.—Funds shall be used—

(A) to employ a TIIS in a field environment, along the Interstate, to further assess the system's ability to identify faults in tires, brakes, and bearings mounted on commercial motor vehicles;

(B) to establish, through statistical analysis, the probability of failure for each component; and

(C) to develop and integrate a predictive tool into the TIIS, which identifies an impending tire, brake, or bearing failure and provides the use a time frame in which this failure may occur.

(3) FUNDING.—Of the amounts made available under section 5101(a)(1) of this Act, $2,000,000 in fiscal year 2006 shall be available to carry out this subsection.

(b) TRANSPORTATION INJURY RESEARCH.—

(1) GRANT.—The Secretary shall make a grant to maintain a center for transportation injury research at the Calspan University of Buffalo Research Center, through the North Campus facility located in Amherst, New York, and affiliated with the State University of New York at Buffalo.

(2) RECOUP COSTS.— Notwithstanding current law, Federal regulations, or Office of Management and Budget circulars or guidance, the Center shall be permitted to recoup direct and indirect costs and apply a 7 percent fee to the grant made under this subsection.

(3) FUNDING.—Of the amounts made available under section 5101(a)(1) of this Act, $1,250,000 in each of fiscal years 2006 through 2009 shall be available to carry out this subsection.

(c) TECHNOLOGY TRANSFER GRANT.—

(1) GRANT.—The Secretary shall make grants to the Argonne National Laboratory-Advanced Transportation Technology Center for the purpose of conducting transportation research and demonstration projects that would lead to the exchange of research results with the private sector and collaboration with universities at a centralized location conducive for technology transfer.

(2) FUNDING.—Of the amounts made available under section 5101(a)(1) of this Act, $4,000,000 in each of fiscal years 2006 through 2009 shall be available to carry out this subsection.

(d) APPALACHIAN REGIONAL COMMISSION.—

(1) GRANT.—The Secretary shall make a grant to the Appalachian Regional Commission to conduct a feasibility study for the creation of a system of inland ports and distribution centers in Appalachia.

(2) FUNDING.—Of the amounts made available under section 5101(a)(1) of this Act, $500,000 in

fiscal year 2006 shall be available to carry out this subsection.

(e) AUTOMOBILE ACCIDENT INJURY RESEARCH.—

(1) GRANTS.—The Secretary shall make a grant to the Forsyth Institute for research and technology development for preventing and minimizing head, craniofacial, and spinal cord injuries resulting from automobile accidents.

(2) FUNDING.—Of the amounts made available under section 5101(a)(1) of this Act, $500,000 in each of fiscal years 2006 through 2009 shall be available to carry out this subsection.

(f) RURAL TRANSPORTATION RESEARCH.—

(1) GRANTS.—The Secretary shall make grants to the New England Transportation Institute in White River Junction, Vermont for rural transportation research.

(2) FUNDING.—

(A) IN GENERAL.—Of the amounts made available by section 5101(a)(1) of this Act, $1,000,000 for fiscal year 2006 shall be available to carry out this subsection and shall remain available until expended.

(B) COST-SHARING.—

(i) FEDERAL SHARE.—The Federal Share of the cost of activities carried out under this subsection shall be 80 percent.

(ii) NON-FEDERAL SHARE.—The fair market value of any materials or services provided by the non-Federal sponsor for activities under this subsection shall be credited to the non-Federal share.

(g) RURAL TRANSPORTATION RESEARCH INITIATIVE.—

(1) GRANTS.—For each of fiscal years 2006 through 2009, the Secretary shall provide a grant to the Upper Great Plains Transportation Institute at North Dakota State University for use in carrying out the Rural Transportation Research Initiative.

(2) FUNDING.—

(A) IN GENERAL.—Of the amounts made available by section 5101(a)(1) of this Act, $500,000 for each of fiscal years 2006 through 2009 shall be available to carry out this subsection, and shall remain available until expended.

(B) COST-SHARING.—

(i) FEDERAL SHARE.—The Federal share of the cost of the activities carried out under this subsection shall be 80 percent.

(ii) NON-FEDERAL SHARE.—The fair market value of any materials or services provided by the non-Federal project sponsor for any activity under this subsection shall be credited to the non-Federal share.

(h) HYDROGEN-POWERED TRANSPORTATION RESEARCH INITIATIVE.—

(1) GRANTS.—For each of fiscal years 2006 through 2009, the Secretary shall provide a grant to the University of Montana for use in carrying out the Hydrogen-Powered Transportation Research Initiative.

(2) FUNDING.—

(A) IN GENERAL.—Of the amounts made available by section 5101(a)(1) of this Act, $750,000 for each of fiscal years 2006 through 2009 shall be available to carry out this subsection, and shall remain available until expended.

(B) COST-SHARING.—

(i) FEDERAL SHARE.—The Federal share of the cost of the activities carried out under this subsection shall be 80 percent.

(ii) NON-FEDERAL SHARE.—The fair market value of any materials or services provided by the non-Federal project sponsor for an activity under this subsection shall be credited to the non-Federal share.

(i) COLD REGION AND RURAL TRANSPORTATION RESEARCH, MAINTENANCE, AND OPERATIONS.—

(1) GRANTS.—The Secretary shall provide grants to the Western Transportation Institute at Montana State University, for use in developing a research facility in Lewistown, Montana, for basic and applied research and testing on surface transportation issues facing rural and cold regions.

(2) FUNDING.—

(A) IN GENERAL.—Of the amounts made available by section 5101(a)(1) of this Act, $1,000,000 for each of fiscal years 2006 through 2009 shall be available to carry out this subsection, to remain available until expended.

(B) COST-SHARING.—

(i) FEDERAL SHARE.—The Federal share of the cost of the activities carried out under this subsection shall be 80 percent.

(ii) NON-FEDERAL SHARE.—The fair market value of any materials or services provided by the non-Federal project sponsor for an activity under this section shall be credited to the non-Federal share.

(j) ADVANCED VEHICLE TECHNOLOGY.—

(1) GRANT.—The Secretary shall make a grant to the University of Kansas Transportation Research Institute for research and development of advanced vehicle technology concepts, focused on vehicle emissions, fuel cells and catalytic processes, and intelligent transportation systems.

(2) FUNDING.—Of the amounts made available under section 5101(a)(1) of this Act, $2,500,000 in each of fiscal years 2006 through 2009 shall be available to carry out this subsection.

(k) ASPHALT RESEARCH CONSORTIUM.—

(1) GRANT.—The Secretary shall make a grant to the asphalt research consortium lead by the Western Research Institute to research flexible pavement and extending the life-cycle of asphalts.

(2) FUNDING.—Of the amounts made available under section 5101(a)(1) of this Act, $7,500,000 in each of fiscal years 2006 through 2009 shall be available to carry out this subsection.

(l) RENEWABLE TRANSPORTATION SYSTEMS RESEARCH.—

(1) GRANTS.—The Secretary shall make grants to the University of Vermont for research, development and field testing of hydrogen fuel cell and biofuel transportation technology.

(2) FUNDING.—

(A) IN GENERAL.—Of the amounts made available for section 5101(a)(1) of this Act, $1,000,000 for fiscal year 2006 to remain available until expended.

(B) COST-SHARING.—

(i) FEDERAL SHARE.—The Federal Share of the cost of activities carried out under this section shall be 80 percent.

(ii) NON-FEDERAL SHARE.—The fair market value of any materials or services provided by the non-federal sponsor for activities under this section shall be credited to the non-federal share.

(m) FEDERAL SHARE.—The Federal share of the cost of activities carried out in accordance with this section shall be 80 percent unless otherwise expressly provided by this section or otherwise determined by the Secretary.

SEC. 5514. COMPETITION FOR SPECIFICATION OF ALTERNATIVE TYPES OF CULVERT PIPES.

Notwithstanding any contrary interpretation of appendix A of subpart D of section 635.411 of volume 23, Code of Federal Regulations (as in existence on the date of enactment of this Act), not later than 180 days after the date of enactment of this Act, the Secretary shall ensure that States provide for competition with respect to the specification of alternative types of culvert pipes through requirements that are commensurate with competition requirements for other construction materials, as determined by the Secretary.

Subtitle F—Bureau of Transportation Statistics

SEC. 5601. BUREAU OF TRANSPORTATION STATISTICS.

(a) IN GENERAL.—Section 111 of title 49, United States Code, is amended to read as follows:

"§ 111. Bureau of Transportation Statistics

''(a) ESTABLISHMENT.—There is established in the Research and Innovative Technology Administration a Bureau of Transportation Statistics.

''(b) DIRECTOR.—

''(1) APPOINTMENT.—The Bureau shall be headed by a Director who shall be appointed in the competitive service by the Secretary of Transportation.

''(2) QUALIFICATIONS.—The Director shall be appointed from among individuals who are qualified to serve as the Director by virtue of their training and experience in the collection, analysis, and use of transportation statistics.

''(c) RESPONSIBILITIES.—The Director of the Bureau shall serve as the Secretary's senior advisor on data and statistics and shall be responsible for carrying out the following duties:

''(1) PROVIDING DATA, STATISTICS, AND ANALYSIS TO TRANSPORTATION DECISIONMAKERS.—Ensuring that the statistics compiled under paragraph (5) are designed to support transportation decisionmaking by the Federal Government, State and local governments, metropolitan planning organizations, transportation-related associations, the private sector (including the freight community), and the public.

''(2) COORDINATING COLLECTION OF INFORMATION.—Working with the operating administrations of the Department to establish and implement the Bureau's data programs and to improve the coordination of information collection efforts with other Federal agencies.

''(3) DATA MODERNIZATION.—Continually improving surveys and data collection methods to improve the accuracy and utility of transportation statistics.

''(4) ENCOURAGING DATA STANDARDIZATION.—Encouraging the standardization of data, data collection methods, and data management and storage technologies for data collected by the Bureau, the operating administrations of the Department of Transportation, States, local governments, metropolitan planning organizations, and private sector entities.

''(5) TRANSPORTATION STATISTICS.—Collecting, compiling, analyzing, and publishing a comprehensive set of transportation statistics on the performance and impacts of the national transportation system, including statistics on—

''(A) productivity in various parts of the transportation sector;

''(B) traffic flows for all modes of transportation;

''(C) other elements of the intermodal transportation database established under subsection (e);

''(D) travel times and measures of congestion;

''(E) vehicle weights and other vehicle characteristics;

''(F) demographic, economic, and other variables influencing traveling behavior, including choice of transportation mode and goods movement;

''(G) transportation costs for passenger travel and goods movement;

''(H) availability and use of mass transit (including the number of passengers served by each mass transit authority) and other forms of for-hire passenger travel;

''(I) frequency of vehicle and transportation facility repairs and other interruptions of transportation service;

''(J) safety and security for travelers, vehicles, and transportation systems;

''(K) consequences of transportation for the human and natural environment;

''(L) the extent, connectivity, and condition of the transportation system, building on the national transportation atlas database developed under subsection (g); and

''(M) transportation-related variables that influence the domestic economy and global competitiveness.

''(6) NATIONAL SPATIAL DATA INFRASTRUCTURE.—Building and disseminating the transportation layer of the National Spatial Data Infrastructure developed under Executive Order No. 12906, including coordinating the development of transportation geospatial data standards, compiling intermodal geospatial data, and collecting geospatial data that is not being collected by others.

''(7) ISSUING GUIDELINES.—Issuing guidelines for the collection of information by the Department required for statistics to be compiled under paragraph (5) in order to ensure that such information is accurate, reliable, relevant, and in a form that permits systematic analysis.

''(8) REVIEW SOURCES AND RELIABILITY OF STATISTICS.—Reviewing and reporting to the Secretary on the sources and reliability of the statistics proposed by the heads of the operating administrations of the Department to measure outputs and outcomes as required by the Government Performance and Results Act of 1993 (Public Law 103–62; 107 Stat. 285), and the amendments made by such Act, and carrying out such other reviews of the sources and reliability of other data collected or statistical information published by the heads of the operating administrations of the Department as shall be requested by the Secretary.

''(9) MAKING STATISTICS ACCESSIBLE.—Making the statistics published under this subsection readily accessible to the public.

''(d) INFORMATION NEEDS ASSESSMENT.—

''(1) IN GENERAL.—Not later than 60 days after the date of enactment of the SAFETEA–LU, the Secretary shall enter into an agreement with the National Research Council to develop and publish a National transportation information needs assessment (referred to in this subsection as the 'assessment'). The assessment shall be submitted to the Secretary and the appropriate committees of Congress not later than 24 months after such agreement is entered into.

''(2) CONTENT.—The assessment shall—

''(A) identify, in order of priority, the transportation data that is not being collected by the Bureau, operating administrations of the Department, or other Federal, State, or local entities, but is needed to improve transportation decisionmaking at the Federal, State, and local levels and to fulfill the requirements of subsection (c)(5);

''(B) recommend whether the data identified in subparagraph (A) should be collected by the Bureau, other parts of the Department, or by other Federal, State, or local entities, and whether any data is of a higher priority than data currently being collected;

''(C) identify any data the Bureau or other Federal, State, or local entity is collecting that is not needed;

''(D) describe new data collection methods (including changes in surveys) and other changes the Bureau or other Federal, State, or local entity should implement to improve the standardization, accuracy, and utility of transportation data and statistics; and

''(E) estimate the cost of implementing any recommendations.

''(3) CONSULTATION.—In developing the assessment, the National Research Council shall consult with the Department's Advisory Council on Transportation Statistics and a representative cross-section of transportation community stakeholders as well as other Federal agencies, including the Environmental Protection Agency, the Department of Energy, and the Department of Housing and Urban Development.

''(4) REPORT TO CONGRESS.—Not later than 180 days after the date on which the National Research Council submits the assessment under paragraph (1), the Secretary shall submit a report to Congress that describes—

''(A) how the Department plans to fill the data gaps identified under paragraph (2)(A);

''(B) how the Department plans to stop collecting data identified under paragraph (2)(C);

''(C) how the Department plans to implement improved data collection methods and other changes identified under paragraph (2)(D);

''(D) the expected costs of implementing subparagraphs (A), (B), and (C) of this paragraph;

''(E) any findings of the assessment under paragraph (1) with which the Secretary disagrees, and why; and

''(F) any proposed statutory changes needed to implement the findings of the assessment under paragraph (1).

''(e) INTERMODAL TRANSPORTATION DATABASE.—

''(1) IN GENERAL.—In consultation with the Under Secretary for Policy, the Assistant Secretaries, and the heads of the operating administrations of the Department, the Director shall establish and maintain a transportation database for all modes of transportation.

''(2) USE.—The database shall be suitable for analyses carried out by the Federal Government, the States, and metropolitan planning organizations.

''(3) CONTENTS.—The database shall include—

''(A) information on the volumes and patterns of movement of goods, including local, interregional, and international movement, by all modes of transportation and intermodal combinations and by relevant classification;

''(B) information on the volumes and patterns of movement of people, including local, interregional, and international movements, by all modes of transportation (including bicycle and pedestrian modes) and intermodal combinations and by relevant classification;

''(C) information on the location and connectivity of transportation facilities and services; and

''(D) a national accounting of expenditures and capital stocks on each mode of transportation and intermodal combination.

''(f) NATIONAL TRANSPORTATION LIBRARY.—

''(1) IN GENERAL.—The Director shall establish and maintain a National Transportation Library, which shall contain a collection of statistical and other information needed for transportation decisionmaking at the Federal, State, and local levels.

''(2) ACCESS.—The Director shall facilitate and promote access to the Library, with the goal of improving the ability of the transportation community to share information and the ability of the Director to make statistics readily accessible under subsection (c)(9).

''(3) COORDINATION.—The Director shall work with other transportation libraries and transportation information providers, both public and private, to achieve the goal specified in paragraph (2).

''(g) NATIONAL TRANSPORTATION ATLAS DATABASE.—

''(1) IN GENERAL.—The Director shall develop and maintain a national transportation atlas database that is comprised of geospatial databases that depict—

''(A) transportation networks;

''(B) flows of people, goods, vehicles, and craft over the networks; and

''(C) social, economic, and environmental conditions that affect or are affected by the networks.

''(2) INTERMODAL NETWORK ANALYSIS.—The databases shall be able to support intermodal network analysis.

''(h) MANDATORY RESPONSE AUTHORITY FOR FREIGHT DATA COLLECTION.—Whoever, being the owner, official, agent, person in charge, or assistant to the person in charge of any freight corporation, company, business, institution, establishment, or organization of any nature whatsoever, neglects or refuses, when requested by the Director or other authorized officer, employee, or contractor of the Bureau, to answer completely and correctly to the best of the individual's knowledge all questions relating to the corporation, company, business, institution, establishment, or other organization, or to make available records or statistics in the individual's official custody, contained in a data collection request prepared and submitted under the authority of subsection (c)(1), shall be fined not more than $500; but if the individual willfully gives a false answer to such a question, the individual shall be fined not more than $10,000.

''(i) RESEARCH AND DEVELOPMENT GRANTS.—The Secretary may make grants to, or enter into cooperative agreements or contracts with, public and nonprofit private entities (including State transportation departments, metropolitan planning organizations, and institutions of higher education) for—

''(1) investigation of the subjects specified in subsection (c)(5) and research and development of new methods of data collection, standardization, management, integration, dissemination, interpretation, and analysis;

''(2) demonstration programs by States, local governments, and metropolitan planning organizations to coordinate data collection, reporting, management, storage, and archiving to simplify data comparisons across jurisdictions;

''(3) development of electronic clearinghouses of transportation data and related information, as part of the National Transportation Library under subsection (f); and

''(4) development and improvement of methods for sharing geographic data, in support of the database under subsection (g) and the National Spatial Data Infrastructure.

''(j) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed—

''(1) to authorize the Bureau to require any other department or agency to collect data; or

''(2) to reduce the authority of any other officer of the Department to collect and disseminate data independently.

''(k) PROHIBITION ON CERTAIN DISCLOSURES.—

''(1) IN GENERAL.—An officer, employee, or contractor of the Bureau may not—

''(A) make any disclosure in which the data provided by an individual or organization under subsection (c) can be identified;

''(B) use the information provided under subsection (c) for a nonstatistical purpose; or

''(C) permit anyone other than an individual authorized by the Director to examine any individual report provided under subsection (c).

''(2) COPIES OF REPORTS.—

''(A) IN GENERAL.—No department, bureau, agency, officer, or employee of the United States (except the Director in carrying out this section) may require, for any reason, a copy of any report that has been filed under subsection (c) with the Bureau or retained by an individual respondent.

''(B) LIMITATION ON JUDICIAL PROCEEDINGS.—A copy of a report described in subparagraph (A) that has been retained by an individual respondent or filed with the Bureau or any of its employees, contractors, or agents—

''(i) shall be immune from legal process; and

''(ii) shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings.

''(C) APPLICABILITY.—This paragraph shall apply only to reports that permit information concerning an individual or organization to be reasonably determined by direct or indirect means.

''(3) INFORMING RESPONDENT OF USE OF DATA.—In a case in which the Bureau is authorized by statute to collect data or information for a nonstatistical purpose, the Director shall clearly distinguish the collection of the data or information, by rule and on the collection instrument, so as to inform a respondent who is requested or required to supply the data or information of the nonstatistical purpose.

''(l) TRANSPORTATION STATISTICS ANNUAL REPORT.—The Director shall submit to the President and Congress a transportation statistics annual report which shall include information on items referred to in subsection (c)(5), documentation of methods used to obtain and ensure the quality of the statistics presented in the report, and recommendations for improving transportation statistical information.

''(m) DATA ACCESS.—The Director shall have access to transportation and transportation-related information in the possession of any Federal agency, except information—

''(1) the disclosure of which to another Federal agency is expressly prohibited by law; or

''(2) the disclosure of which the agency possessing the information determines would significantly impair the discharge of authorities

and responsibilities which have been delegated to, or vested by law, in such agency.

''(n) PROCEEDS OF DATA PRODUCT SALES.—Notwithstanding section 3302 of title 31, funds received by the Bureau from the sale of data products, for necessary expenses incurred, may be credited to the Highway Trust Fund (other than the Mass Transit Account) for the purpose of reimbursing the Bureau for the expenses.

''(o) ADVISORY COUNCIL ON TRANSPORTATION STATISTICS.—

''(1) ESTABLISHMENT.—The Director shall establish an advisory council on transportation statistics.

''(2) FUNCTION.—The function of the advisory council established under this subsection is to—

''(A) advise the Director on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department;

''(B) provide input to and review the report to Congress under subsection (d)(4); and

''(C) advise the Director on methods to encourage cooperation and interoperability of transportation data collected by the Bureau, the operating administrations of the Department, States, local governments, metropolitan planning organizations, and private sector entities.

''(3) MEMBERSHIP.—The advisory council established under this subsection shall be composed of not fewer than 9 and not more than 11 members appointed by the Director, who are not officers or employees of the United States. Each member shall have expertise in transportation data collection or analysis or application; except that 1 member shall have expertise in economics, 1 member shall have expertise in statistics, and 1 member shall have experience in transportation safety. At least 1 member shall be a senior official of a State department of transportation. Members shall include representation of a cross-section of transportation community stakeholders.

''(4) TERMS OF APPOINTMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), members of the advisory council shall be appointed to staggered terms not to exceed 3 years. A member may be renominated for 1 additional 3-year term.

''(B) CURRENT MEMBERS.—Members serving on the Advisory Council on Transportation Statistics as of the date of enactment of the SAFETEA–LU shall serve until the end of their appointed terms.

''(5) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act shall apply to the Advisory Council established under this subsection, except that section 14 of such Act shall not apply.''.

TITLE VI—TRANSPORTATION PLANNING AND PROJECT DELIVERY

SEC. 6001. TRANSPORTATION PLANNING.

(a) IN GENERAL.—Sections 134 and 135 of title 23, United States Code, are amended to read as follows:

''§ 134. Metropolitan transportation planning

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

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

''(2) encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135(d).

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

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

''(2) METROPOLITAN PLANNING ORGANIZATION.—The term 'metropolitan planning organization' means the policy board of an organization created as a result of the designation process in subsection (d).

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

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

''(5) TIP.—The term 'TIP' means a transportation improvement program developed by a metropolitan planning organization under subsection (j).

''(6) URBANIZED AREA.—The term 'urbanized area' means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

''(c) GENERAL REQUIREMENTS.—

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

''(2) CONTENTS.—The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

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

''(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

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

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

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

''(2) STRUCTURE.—Each metropolitan planning organization that serves an area designated as a transportation management area, when designated or redesignated under this subsection, shall consist of—

''(A) local elected officials;

''(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

''(C) appropriate State officials.

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

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

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

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

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

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

''(e) METROPOLITAN PLANNING AREA BOUNDARIES.—

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

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

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

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

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

''(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the SAFETEA–LU, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained; except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (d)(5).

''(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of the SAFETEA–LU, as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

''(A) shall be established in the manner described in subsection (d)(1);

''(B) shall encompass the areas described in paragraph (2)(A);

''(C) may encompass the areas described in paragraph (2)(B); and

''(D) may address any nonattainment area identified under the Clean Air Act for ozone or carbon monoxide.

''(f) COORDINATION IN MULTISTATE AREAS.—

''(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

''(2) INTERSTATE COMPACTS.—The consent of Congress is granted to any 2 or more States—

''(A) to enter into agreements or compacts, not in conflict with any law of the United States,

for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

''(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

''(3) LAKE TAHOE REGION.—

''(A) DEFINITION.—In this paragraph, the term 'Lake Tahoe region' has the meaning given the term 'region' in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

''(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

''(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

''(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 135.

''(C) INTERSTATE COMPACT.—

''(i) IN GENERAL.—Subject to clause (ii), and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

''(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

''(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

''(II) FUNDING.—In addition to funds made available to the metropolitan planning organization for the Lake Tahoe region under other provisions of this title and under chapter 53 of title 49, 1 percent of the funds allocated under section 202 shall be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

''(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

''(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

''(ii) may, in accordance with chapter 2, be funded using funds allocated under section 202.

''(4) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

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

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

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

''(3) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities. Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by—

''(A) recipients of assistance under chapter 53 of title 49;

''(B) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

''(C) recipients of assistance under section 204.

''(h) SCOPE OF PLANNING PROCESS.—

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

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

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

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

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

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

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

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation of the existing transportation system.

''(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

''(i) DEVELOPMENT OF TRANSPORTATION PLAN.—

''(1) IN GENERAL.—Each metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection. The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

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

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

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

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

''(A) IDENTIFICATION OF TRANSPORTATION FACILITIES.—An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as such factors relate to a 20-year forecast period.

''(B) MITIGATION ACTIVITIES.—

''(i) IN GENERAL.—A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

''(ii) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

''(C) FINANCIAL PLAN.—A financial plan that demonstrates how the adopted transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

''(D) OPERATIONAL AND MANAGEMENT STRATEGIES.—Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

''(E) CAPITAL INVESTMENT AND OTHER STRATEGIES.—Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

''(F) TRANSPORTATION AND TRANSIT ENHANCEMENT ACTIVITIES.—Proposed transportation and transit enhancement activities.

''(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

''(4) CONSULTATION.—

''(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

''(B) ISSUES.—The consultation shall involve, as appropriate—

''(i) comparison of transportation plans with State conservation plans or maps, if available; or

''(ii) comparison of transportation plans to inventories of natural or historic resources, if available.

''(5) PARTICIPATION BY INTERESTED PARTIES.—

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

''(B) CONTENTS OF PARTICIPATION PLAN.—A participation plan—

''(i) shall be developed in consultation with all interested parties; and

''(ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

''(C) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

''(6) PUBLICATION.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

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

''(j) METROPOLITAN TIP.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the area for which the organization is designated.

''(B) OPPORTUNITY FOR COMMENT.—In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

''(C) FUNDING ESTIMATES.—For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

''(D) UPDATING AND APPROVAL.—The TIP shall be updated at least once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

''(2) CONTENTS.—

''(A) PRIORITY LIST.—The TIP shall include a priority list of proposed federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

''(B) FINANCIAL PLAN.—The TIP shall include a financial plan that—

''(i) demonstrates how the TIP can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

''(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

''(C) DESCRIPTIONS.—Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

''(3) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER THIS TITLE AND CHAPTER 53 OF TITLE 49.—A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under chapter 1 of this title and chapter 53 of title 49.

''(B) PROJECTS UNDER CHAPTER 2.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

''(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-range transportation plan developed under subsection (i) for the area.

''(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(4) NOTICE AND COMMENT.—Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

''(5) SELECTION OF PROJECTS.—

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

''(i) by—

''(I) in the case of projects under this title, the State; and

''(II) in the case of projects under chapter 53 of title 49, the designated recipients of public transportation funding; and

''(ii) in cooperation with the metropolitan planning organization.

''(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.

''(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

''(B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.

''(7) PUBLICATION.—

''(A) PUBLICATION OF TIPS.—A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

''(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the TIP.

''(k) TRANSPORTATION MANAGEMENT AREAS.—

''(1) IDENTIFICATION AND DESIGNATION.—

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

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

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

''(3) CONGESTION MANAGEMENT PROCESS.—Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this title and chapter 53 of title 49 through the use of travel demand reduction and operational management strategies. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than 1 year after the identification of a transportation management area.

''(4) SELECTION OF PROJECTS.—

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

''(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under this title shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall—

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

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

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

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

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

''(C) EFFECT OF FAILURE TO CERTIFY.—

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

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

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

''(l) ABBREVIATED PLANS FOR CERTAIN AREAS.—

''(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

''(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act.

''(m) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

''(1) IN GENERAL.—Notwithstanding any other provisions of this title or chapter 53 of title 49, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

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

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

''(o) FUNDING.—Funds set aside under section 104(f) of this title or section 5305(g) of title 49 shall be available to carry out this section.

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

''§ 135. Statewide transportation planning

''(a) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To accomplish the objectives stated in section 134(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State, subject to section 134.

''(2) CONTENTS.—The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation and the policies stated in section 134(a), and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—A State shall—

''(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 134 for metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

''(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(c) INTERSTATE AGREEMENTS.—

''(1) IN GENERAL.—The consent of Congress is granted to 2 or more States entering into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

''(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

''(d) SCOPE OF PLANNING PROCESS.—

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

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

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

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

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

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

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

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation of the existing transportation system.

''(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, the transportation improvement program, a project or strategy, or the certification of a planning process.

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

''(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

''(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

''(3) coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

''(f) LONG-RANGE STATEWIDE TRANSPORTATION PLAN.—

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

''(2) CONSULTATION WITH GOVERNMENTS.—

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

''(B) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The Secretary shall not review or approve the consultation process in each State.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

''(i) IN GENERAL.—The long-range transportation plan shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

''(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve comparison of transportation plans to State and tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

''(3) PARTICIPATION BY INTERESTED PARTIES.—

''(A) IN GENERAL.—In developing the statewide transportation plan, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed plan.

''(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford

reasonable opportunity for consideration of public information under subparagraph (A).

''(4) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A long-range transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

''(5) FINANCIAL PLAN.—The statewide transportation plan may include a financial plan that demonstrates how the adopted statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (5).

''(7) EXISTING SYSTEM.—The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

''(8) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—Each State shall develop a statewide transportation improvement program for all areas of the State. Such program shall cover a period of 4 years and be updated every 4 years or more frequently if the Governor elects to update more frequently.

''(2) CONSULTATION WITH GOVERNMENTS.—

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

''(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The Secretary shall not review or approve the specific consultation process in the State.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the tribal government and the Secretary of the Interior.

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

''(4) INCLUDED PROJECTS.—

''(A) IN GENERAL.—A transportation improvement program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

''(B) LISTING OF PROJECTS.—An annual listing of projects for which funds have been obligated in the preceding year in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

''(C) PROJECTS UNDER CHAPTER 2.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

''(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project shall be—

''(i) consistent with the statewide transportation plan developed under this section for the State;

''(ii) identical to the project or phase of the project as described in an approved metropolitan transportation plan; and

''(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act, if the project is carried out in an area designated as nonattainment for ozone, particulate matter, or carbon monoxide under such Act.

''(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The transportation improvement program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(F) FINANCIAL PLAN.—The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the transportation improvement program, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

''(ii) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved transportation improvement program.

''(H) PRIORITIES.—The transportation improvement program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this title and chapter 53 of title 49.

''(5) PROJECT SELECTION FOR AREAS OF LESS THAN 50,000 POPULATION.—Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under this title or under sections 5310, 5311, 5316, and 5317 of title 49), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation. Projects carried out in areas with populations of less than 50,000 individuals on the National Highway System or under the bridge program or the Interstate maintenance program under this title or under sections 5310, 5311, 5316, and 5317 of title 49 shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

''(6) TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

''(7) PLANNING FINDING.—A finding shall be made by the Secretary at least every 4 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 134.

''(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

''(h) FUNDING.—Funds set aside pursuant to section 104(f) of this title and section 5305(g) of title 49, shall be available to carry out this section.

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

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

(b) SCHEDULE FOR IMPLEMENTATION.—The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States and metropolitan planning organizations. The Secretary shall not require a State or metropolitan planning organization to deviate from its established planning update cycle to implement changes made by this section. Beginning July 1, 2007, State or metropolitan planning organization plan or program updates shall reflect changes made by this section.

(c) CONFORMING AMENDMENT.—The analysis for chapter 1 of such title is amended by striking the items relating to sections 134 and 135 and inserting the following:

''134. Metropolitan transportation planning.
''135. Statewide transportation planning.''.

SEC. 6002. EFFICIENT ENVIRONMENTAL REVIEWS FOR PROJECT DECISIONMAKING.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after section 138 the following:

''§ 139. Efficient environmental reviews for project decisionmaking

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

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

''(2) ENVIRONMENTAL IMPACT STATEMENT.—The term 'environmental impact statement' means the detailed statement of environmental impacts required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(3) ENVIRONMENTAL REVIEW PROCESS.—

''(A) IN GENERAL.—The term 'environmental review process' means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(B) INCLUSIONS.—The term 'environmental review process' includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(4) LEAD AGENCY.—The term 'lead agency' means the Department of Transportation and, if applicable, any State or local governmental entity serving as a joint lead agency pursuant to this section.

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

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

''(7) PROJECT SPONSOR.—The term 'project sponsor' means the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.

''(8) STATE TRANSPORTATION DEPARTMENT.—The term 'State transportation department' means any statewide agency of a State with responsibility for one or more modes of transportation.

''(b) APPLICABILITY.—

''(1) IN GENERAL.—The project development procedures in this section are applicable to all projects for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 and may be applied, to the extent determined appropriate by the Secretary, to other projects for which an environmental document is prepared pursuant to such Act.

''(2) FLEXIBILITY.—Any authorities granted in this section may be exercised for a project, class of projects, or program of projects.

''(c) LEAD AGENCIES.—

''(1) FEDERAL LEAD AGENCY.—The Department of Transportation shall be the Federal lead agency in the environmental review process for a project.

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

''(3) PROJECT SPONSOR AS JOINT LEAD AGENCY.—Any project sponsor that is a State or local governmental entity receiving funds under this title or chapter 53 of title 49 for the project shall serve as a joint lead agency with the Department for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 and may prepare any such environmental document required in support of any action or approval by the Secretary if the Federal lead agency furnishes guidance in such preparation and independently evaluates such document and the document is approved and adopted by the Secretary prior to the Secretary taking any subsequent action or making any approval based on such document, whether or not the Secretary's action or approval results in Federal funding.

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

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

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

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

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

''(d) PARTICIPATING AGENCIES.—

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

''(2) INVITATION.—The lead agency shall identify, as early as practicable in the environmental review process for a project, any other Federal and non-Federal agencies that may have an interest in the project, and shall invite such agencies to become participating agencies in the environmental review process for the project. The invitation shall set a deadline for responses to be submitted. The deadline may be extended by the lead agency for good cause.

''(3) FEDERAL PARTICIPATING AGENCIES.—Any Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency—

''(A) has no jurisdiction or authority with respect to the project;

''(B) has no expertise or information relevant to the project; and

''(C) does not intend to submit comments on the project.

''(4) EFFECT OF DESIGNATION.—Designation as a participating agency under this subsection shall not imply that the participating agency—

''(A) supports a proposed project; or

''(B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

''(5) COOPERATING AGENCY.—A participating agency may also be designated by a lead agency as a 'cooperating agency' under the regulations con tained in part 1500 of title 40, Code of Federal Regulations.

''(6) DESIGNATIONS FOR CATEGORIES OF PROJECTS.—The Secretary may exercise the authorities granted under this subsection for a project, class of projects, or program of projects.

''(7) CONCURRENT REVIEWS.—Each Federal agency shall, to the maximum extent practicable—

''(A) carry out obligations of the Federal agency under other applicable law concurrently, and in conjunction, with the review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so would impair the ability of the Federal agency to carry out those obligations; and

''(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

''(e) PROJECT INITIATION.—The project sponsor shall notify the Secretary of the type of work, termini, length and general location of the proposed project, together with a statement of any Federal approvals anticipated to be necessary for the proposed project, for the purpose of informing the Secretary that the environmental review process should be initiated.

''(f) PURPOSE AND NEED.—

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

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

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

''(A) achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan;

''(B) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or tribal plans; and

''(C) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

''(4) ALTERNATIVES ANALYSIS.—

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

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

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

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

''(g) COORDINATION AND SCHEDULING.—

''(1) COORDINATION PLAN.—

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

''(B) SCHEDULE.—

''(i) IN GENERAL.—The lead agency may establish as part of the coordination plan, after consultation with each participating agency for the project and with the State in which the project is located (and, if the State is not the project sponsor, with the project sponsor), a schedule for completion of the environmental review process for the project.

''(ii) FACTORS FOR CONSIDERATION.—In establishing the schedule, the lead agency shall consider factors such as—

''(I) the responsibilities of participating agencies under applicable laws;

''(II) resources available to the cooperating agencies;

''(III) overall size and complexity of the project;

''(IV) the overall schedule for and cost of the project; and

''(V) the sensitivity of the natural and historic resources that could be affected by the project.

''(C) CONSISTENCY WITH OTHER TIME PERIODS.—A schedule under subparagraph (B) shall be consistent with any other relevant time periods established under Federal law.

''(D) MODIFICATION.—The lead agency may—

''(i) lengthen a schedule established under subparagraph (B) for good cause; and

''(ii) shorten a schedule only with the concurrence of the affected cooperating agencies.

''(E) DISSEMINATION.—A copy of a schedule under subparagraph (B), and of any modifications to the schedule, shall be—

''(i) provided to all participating agencies and to the State transportation department of the State in which the project is located (and, if the State is not the project sponsor, to the project sponsor); and

''(ii) made available to the public.

''(2) COMMENT DEADLINES.—The lead agency shall establish the following deadlines for comment during the environmental review process for a project:

''(A) For comments by agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of such document, unless—

''(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

''(ii) the deadline is extended by the lead agency for good cause.

''(B) For all other comment periods established by the lead agency for agency or public comments in the environmental review process, a period of no more than 30 days from availability of the materials on which comment is requested, unless—

''(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

''(ii) the deadline is extended by the lead agency for good cause.

''(3) DEADLINES FOR DECISIONS UNDER OTHER LAWS.—In any case in which a decision under any Federal law relating to a project (including the issuance or denial of a permit or license) is required to be made by the later of the date that is 180 days after the date on which the Secretary made all final decisions of the lead agency with respect to the project, or 180 days after the date on which an application was submitted for the permit or license, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

''(A) as soon as practicable after the 180-day period, an initial notice of the failure of the Federal agency to make the decision; and

''(B) every 60 days thereafter until such date as all decisions of the Federal agency relating to the project have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

''(4) INVOLVEMENT OF THE PUBLIC.—Nothing in this subsection shall reduce any time period provided for public comment in the environmental review process under existing Federal law, including a regulation.

''(h) ISSUE IDENTIFICATION AND RESOLUTION.—

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

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

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

''(4) ISSUE RESOLUTION.—

''(A) MEETING OF PARTICIPATING AGENCIES.—At any time upon request of a project sponsor or the Governor of a State in which the project is located, the lead agency shall promptly convene a meeting with the relevant participating agencies, the project sponsor, and the Governor (if the meeting was requested by the Governor) to resolve issues that could delay completion of the environmental review process or could result in denial of any approvals required for the project under applicable laws.

''(B) NOTICE THAT RESOLUTION CANNOT BE ACHIEVED.—If a resolution cannot be achieved within 30 days following such a meeting and a determination by the lead agency that all information necessary to resolve the issue has been obtained, the lead agency shall notify the heads of all participating agencies, the project sponsor, the Governor, the Committee on Environment and Public Works of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Council on Environmental Quality, and shall publish such notification in the Federal Register.

''(i) PERFORMANCE MEASUREMENT.—The Secretary shall establish a program to measure and report on progress toward improving and expediting the planning and environmental review process.

''(j) ASSISTANCE TO AFFECTED STATE AND FEDERAL AGENCIES.—

''(1) IN GENERAL.—For a project that is subject to the environmental review process established under this section and for which funds are made available to a State under this title or chapter 53 of title 49, the Secretary may approve a request by the a State to provide funds so made available under this title or such chapter 53 to affected Federal agencies (including the Department of Transportation), State agencies, and Indian tribes participating in the environmental review process for the projects in that State or participating in a State process that has been approved by the Secretary for that State. Such funds may be provided only to support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in that State.

''(2) ACTIVITIES ELIGIBLE FOR FUNDING.—Activities for which funds may be provided under paragraph (1) include transportation planning activities that precede the initiation of the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements.

''(3) USE OF FEDERAL LANDS HIGHWAY FUNDS.—The Secretary may also use funds made available under section 204 for a project for the purposes specified in this subsection with respect to the environmental review process for the project.

''(4) AMOUNTS.—Requests under paragraph (1) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to meet the time limits for environmental review.

''(5) CONDITION.—A request under paragraph (1) to expedite time limits for environmental review may be approved only if such time limits are less than the customary time necessary for such review.

''(k) JUDICIAL REVIEW AND SAVINGS CLAUSE.—

''(1) JUDICIAL REVIEW.—Except as set forth under subsection (l), nothing in this section shall affect the reviewability of any final Federal agency action in a court of the United States or in the court of any State.

''(2) SAVINGS CLAUSE.—Nothing in this section shall be construed as superseding, amending, or modifying the National Environmental Policy Act of 1969 or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

''(3) LIMITATIONS.—Nothing in this section shall preempt or interfere with—

''(A) any practice of seeking, considering, or responding to public comment; or

''(B) any power, jurisdiction, responsibility, or authority that a Federal, State, or local government agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to projects, plans, or programs.

''(l) LIMITATIONS ON CLAIMS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency for a highway or public transportation capital project shall be barred unless it is filed within 180 days after publication of a notice in the Federal Register announcing that the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is allowed. Nothing in this subsection shall create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

''(2) NEW INFORMATION.—The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under section 771.130 of title 23, Code of Federal Regulations. The preparation of a supplemental environmental impact statement when required shall be considered a separate final agency action and the deadline for filing a claim for judicial review of such action shall be 180 days after the date of publication of a notice in the Federal Register announcing such action.''.

(b) EXISTING ENVIRONMENTAL REVIEW PROCESS.—Nothing in this section affects any existing State environmental review process, program, agreement, or funding arrangement approved by the Secretary under section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 232; 23 U.S.C. 109 note) as such section was in effect on the day preceding the date of enactment of the SAFETEA-LU.

(c) CONFORMING AMENDMENT.—The analysis for such subchapter is amended by inserting after the item relating to section 138 the following:

''139. Efficient environmental reviews for project decisionmaking.''.

(d) REPEAL.—Section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 232) is repealed.

SEC. 6003. STATE ASSUMPTION OF RESPONSIBILITIES FOR CERTAIN PROGRAMS AND PROJECTS.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code, is amended by inserting after section 324 the following:

''§ 325. State assumption of responsibilities for certain programs and projects

''(a) ASSUMPTION OF SECRETARY'S RESPONSIBILITIES UNDER APPLICABLE FEDERAL LAWS.—

''(1) PILOT PROGRAM.—

''(A) ESTABLISHMENT.—The Secretary may establish a pilot program under which States may assume the responsibilities of the Secretary under any Federal laws subject to the requirements of this section.

''(B) FIRST 3 FISCAL YEARS.—In the first 3 fiscal years following the date of enactment of the SAFETEA-LU, the Secretary may allow up to 5 States to participate in the pilot program.

''(2) SCOPE OF PROGRAM.—Under the pilot program, the Secretary may assign, and a State may assume, any of the Secretary's responsibilities (other than responsibilities relating to federally recognized Indian tribes) for environmental reviews, consultation, or decisionmaking or other actions required under any Federal law as such requirements apply to the following projects:

''(A) Projects funded under section 104(h).

''(B) Transportation enhancement activities under section 133, as such term is defined in section 101(a)(35).

''(b) AGREEMENTS.—

''(1) IN GENERAL.—The Secretary shall enter into a memorandum of understanding with a State participating in the pilot program setting forth the responsibilities to be assigned under subsection (a)(2) and the terms and conditions under which the assignment is being made.

''(2) CERTIFICATION.—Before the Secretary enters into a memorandum of understanding with a State under paragraph (1), the State shall certify that the State has in effect laws (including regulations) applicable to projects carried out and funded under this title and chapter 53 of title 49 that authorize the State to carry out the responsibilities being assumed.

''(3) MAXIMUM DURATION.—A memorandum of understanding with a State under this section shall be established for an initial period of no more than 3 years and may be renewed by mutual agreement on a periodic basis for periods of not more than 3 years.

''(4) COMPLIANCE.—

''(A) IN GENERAL.—After entering into a memorandum of understanding under paragraph (1), the Secretary shall review and determine compliance by the State with the memorandum of understanding.

''(B) RENEWALS.—The Secretary shall take into account the performance of a State under the pilot program when considering renewal of a memorandum of understanding with the State under the program.

''(5) SOLE RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

''(6) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

''(c) SELECTION OF STATES FOR PILOT PROGRAM.—

''(1) APPLICATION.—To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that contains such information as the Secretary may require. At a minimum, an application shall include—

''(A) a description of the projects or classes of projects for which the State seeks to assume responsibilities under subsection (a)(2); and

''(B) a certification that the State has the capability to assume such responsibilities.

''(2) PUBLIC NOTICE.—Before entering into a memorandum of understanding allowing a State to participate in the pilot program, the Secretary shall—

''(A) publish notice in the Federal Register of the Secretary's intent to allow the State to participate in the program, including a copy of the State's application to the Secretary and the terms of the proposed agreement with the State; and

''(B) provide an opportunity for public comment.

''(3) SELECTION CRITERIA.—The Secretary may approve the application of a State to assume responsibilities under the program only if—

''(A) the requirements under paragraph (2) have been met; and

''(B) the Secretary determines that the State has the capability to assume the responsibilities.

''(4) OTHER FEDERAL AGENCY VIEWS.—Before assigning to a State a responsibility of the Secretary that requires the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency.

''(d) STATE DEFINED.—With respect to the recreational trails program, the term 'State' means the State agency designated by the Governor of the State in accordance with section 206(c)(1).

''(e) PRESERVATION OF PUBLIC INTEREST CONSIDERATION.—Nothing in this section shall be construed to limit the requirements under any applicable law providing for the consideration and preservation of the public interest, including public participation and community values in transportation decisionmaking.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code, is amended by adding after the item relating to section 324 the following:

''325. State assumption of responsibilities for certain programs and projects.''.

SEC. 6004. STATE ASSUMPTION OF RESPONSIBILITY FOR CATEGORICAL EXCLUSIONS.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code, is further amended by inserting after section 325 the following:

''§ 326. State assumption of responsibility for categorical exclusions

''(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

''(1) IN GENERAL.—The Secretary may assign, and a State may assume, responsibility for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

''(2) SCOPE OF AUTHORITY.—A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary and only for types of activities specifically designated by the Secretary.

''(3) CRITERIA.—The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(b) OTHER APPLICABLE FEDERAL LAWS.—

''(1) IN GENERAL.—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, with the exception of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

''(2) SOLE RESPONSIBILITY.—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

''(c) MEMORANDA OF UNDERSTANDING.—

''(1) IN GENERAL.—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

''(2) TERM.—A memorandum of understanding—

''(A) shall have a term of not more than 3 years; and

''(B) shall be renewable.

''(3) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

''(4) MONITORING.—The Secretary shall—

''(A) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and

''(B) take into account the performance by the State when considering renewal of the memorandum of understanding.

''(d) TERMINATION.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.

''(e) STATE AGENCY DEEMED TO BE FEDERAL AGENCY.—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code, is further amended by adding after the item relating to section 325 the following:

''326. State assumption of responsibility for categorical exclusions.''.

SEC. 6005. SURFACE TRANSPORTATION PROJECT DELIVERY PILOT PROGRAM.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code, is further amended by inserting after section 326 the following:

''§ 327. Surface transportation project delivery pilot program

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary shall carry out a surface transportation project delivery pilot program (referred to in this section as the 'program').

''(2) ASSUMPTION OF RESPONSIBILITY.—

''(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to 1 or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(B) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

''(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental

review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project; but

''(ii) the Secretary may not assign—

''(I) responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506); or

''(II) any responsibility imposed on the Secretary by section 134 or 135.

''(C) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

''(D) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

''(E) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of Transportation, under applicable law (including regulations) with respect to a project.

''(b) STATE PARTICIPATION.—

''(1) NUMBER OF PARTICIPATING STATES.—The Secretary may permit not more than 5 States (including the States of Alaska, California, Ohio, Oklahoma, and Texas) to participate in the program.

''(2) APPLICATION.—Not later than 270 days after the date of enactment of this section, the Secretary shall promulgate regulations that establish requirements relating to information required to be contained in any application of a State to participate in the program, including, at a minimum—

''(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

''(B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and

''(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

''(3) PUBLIC NOTICE.—

''(A) IN GENERAL.—Each State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

''(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the State.

''(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

''(A) the regulatory requirements under paragraph (2) have been met;

''(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

''(C) the head of the State agency having primary jurisdiction over highway matters enters into a written agreement with the Secretary described in subsection (c).

''(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

''(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

''(1) be executed by the Governor or the top-ranking transportation official in the State who is charged with responsibility for highway construction;

''(2) be in such form as the Secretary may prescribe;

''(3) provide that the State—

''(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

''(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

''(C) certifies that State laws (including regulations) are in effect that—

''(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

''(ii) are comparable to section 552 of title 5, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

''(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed.

''(d) JURISDICTION.—

''(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

''(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

''(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

''(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (i).

''(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

''(g) AUDITS.—

''(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

''(A) semiannual audits during each of the first 2 years of State participation; and

''(B) annual audits during each subsequent year of State participation.

''(2) PUBLIC AVAILABILITY AND COMMENT.—

''(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

''(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

''(h) REPORT TO CONGRESS.—The Secretary shall submit to Congress an annual report that describes the administration of the program.

''(i) TERMINATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the program shall terminate on the date that is 6 years after the date of enactment of this section.

''(2) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

''(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

''(B) the Secretary provides to the State—

''(i) notification of the determination of noncompliance; and

''(ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

''(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by Secretary.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code, is further amended by adding after the item relating to section 326 the following:

''327. Surface transportation project delivery pilot program.''.

SEC. 6006. ENVIRONMENTAL RESTORATION AND POLLUTION ABATEMENT; CONTROL OF NOXIOUS WEEDS AND AQUATIC NOXIOUS WEEDS AND ESTABLISHMENT OF NATIVE SPECIES.

(a) MODIFICATION TO NHS/STP FOR ENVIRONMENTAL RESTORATION, POLLUTION ABATEMENT, CONTROL OF NOXIOUS WEEDS AND AQUATIC NOXIOUS WEEDS.—

(1) MODIFICATIONS TO NATIONAL HIGHWAY SYSTEM.—Section 103(b)(6) of title 23, United States Code, is amended by adding at the end the following:

''(Q) Environmental restoration and pollution abatement in accordance with section 328.

''(R) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.''.

(2) MODIFICATIONS TO SURFACE TRANSPORTATION PROGRAM.—Section 133(b) of title 23, is amended by striking paragraph (14) and inserting the following:

''(14) Environmental restoration and pollution abatement in accordance with section 328.

''(15) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.''.

(b) ELIGIBLE ACTIVITIES.—Chapter 3 of title 23, United States Code, is further amended by adding after section 327 the following:

''§ 328. Eligibility for environmental restoration and pollution abatement

''(a) IN GENERAL.—Subject to subsection (b), environmental restoration and pollution abatement to minimize or mitigate the impacts of any transportation project funded under this title (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) may be carried out to address water pollution or environmental degradation caused wholly or partially by a transportation facility.

''(b) MAXIMUM EXPENDITURE.—In a case in which a transportation facility is undergoing reconstruction, rehabilitation, resurfacing, or restoration, the expenditure of funds under this section for environmental restoration or pollution abatement described in subsection (a) shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration of the facility.

''§ 329. Eligibility for control of noxious weeds and aquatic noxious weeds and establishment of native species

''(a) IN GENERAL.—In accordance with all applicable Federal law (including regulations), funds made available to carry out this section may be used for the following activities if such activities are related to transportation projects funded under this title:

''(1) Establishment of plants selected by State and local transportation authorities to perform one or more of the following functions: abatement of stormwater runoff, stabilization of soil, and aesthetic enhancement.

''(2) Management of plants which impair or impede the establishment, maintenance, or safe use of a transportation system.

''(b) INCLUDED ACTIVITIES.—The establishment and management under subsection (a)(1) and (a)(2) may include—

''(1) right-of-way surveys to determine management requirements to control Federal or State noxious weeds as defined in the Plant Protection Act (7 U.S.C. 7701 et seq.) or State law,

and brush or tree species, whether native or nonnative, that may be considered by State or local transportation authorities to be a threat with respect to the safety or maintenance of transportation systems;

''(2) establishment of plants, whether native or nonnative with a preference for native to the maximum extent possible, for the purposes defined in subsection (a)(1);

''(3) control or elimination of plants as defined in subsection (a)(2);

''(4) elimination of plants to create fuel breaks for the prevention and control of wildfires; and

''(5) training.

''(c) CONTRIBUTIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), an activity described in subsection (a) may be carried out concurrently with, in advance of, or following the construction of a project funded under this title.

''(2) CONDITION FOR ACTIVITIES CONDUCTED IN ADVANCE OF PROJECT CONSTRUCTION.—An activity described in subsection (a) may be carried out in advance of construction of a project only if the activity is carried out in accordance with all applicable requirements of Federal law (including regulations) and State transportation planning processes.''.

(c) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23 is further amended by adding after the item relating to section 327 the following:

''328. Eligibility for environmental restoration and pollution abatement.
''329. Eligibility for control of noxious weeds and aquatic noxious weeds and establishment of native species.''.

SEC. 6007. EXEMPTION OF INTERSTATE SYSTEM.

Section 103(c) of title 23, United States Code, is amended by adding at the end the following:

''(5) EXEMPTION OF INTERSTATE SYSTEM.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Interstate System shall not be considered to be a historic site under section 303 of title 49 or section 138 of this title, regardless of whether the Interstate System or portions or elements of the Interstate System are listed on, or eligible for listing on, the National Register of Historic Places.

''(B) INDIVIDUAL ELEMENTS.—Subject to subparagraph (C), the Secretary shall determine, through the administrative process established for exempting the Interstate System from section 106 of the National Historic Preservation Act (16 U.S.C. 470f), those individual elements of the Interstate System that possess national or exceptional historic significance (such as a historic bridge or a highly significant engineering feature). Such elements shall be considered to be a historic site under section 303 of title 49 or section 138 of this title, as applicable.

''(C) CONSTRUCTION, MAINTENANCE, RESTORATION, AND REHABILITATION ACTIVITIES.—Subparagraph (B) does not prohibit a State from carrying out construction, maintenance, restoration, or rehabilitation activities for a portion of the Interstate System referred to in subparagraph (B) upon compliance with section 303 of title 49 or section 138 of this title, as applicable, and section 106 of the National Historic Preservation Act (16 U.S.C. 470f).''.

SEC. 6008. INTEGRATION OF NATURAL RESOURCE CONCERNS INTO TRANSPORTATION PROJECT PLANNING.

Section 109(c)(2) of title 23, United States Code, is amended—

(1) by striking ''consider the results'' and inserting ''consider—

''(A) the results'';

(2) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

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

''(C) 'Eight Characteristics of Process to Yield Excellence and the Seven Qualities of Excellence in Transportation Design' developed by the conference held during 1998 entitled 'Thinking Beyond the Pavement National Workshop on Integrating Highway Development with Communities and the Environment while Maintaining Safety and Performance'; and

''(D) any other material that the Secretary determines to be appropriate.''.

SEC. 6009. PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES.

(a) PROGRAMS AND PROJECTS WITH DE MINIMIS IMPACTS.—

(1) TITLE 23.—Section 138 of title 23, United States Code, is amended—

(A) in the first sentence, by striking ''it is hereby'' and inserting the following: ''(a) DECLARATION OF POLICY.—It is''; and

(B) by adding at the end the following:

''(b) DE MINIMIS IMPACTS.—

''(1) REQUIREMENTS.—

''(A) REQUIREMENTS FOR HISTORIC SITES.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

''(B) REQUIREMENTS FOR PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—The requirements of subsection (a)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (a)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

''(C) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

''(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

''(i) the transportation program or project will have no adverse effect on the historic site; or

''(ii) there will be no historic properties affected by the transportation program or project;

''(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

''(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

''(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

''(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.''.

(2) TITLE 49.—Section 303 of title 49, United States Code, is amended—

(A) by striking ''(c) The Secretary'' and inserting the following:

''(c) APPROVAL OF PROGRAMS AND PROJECTS.—Subject to subsection (d), the Secretary''; and

(B) by adding at the end the following:

''(d) DE MINIMIS IMPACTS.—

''(1) REQUIREMENTS.—

''(A) REQUIREMENTS FOR HISTORIC SITES.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

''(B) REQUIREMENTS FOR PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—The requirements of subsection (c)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (c)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

''(C) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

''(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

''(i) the transportation program or project will have no adverse effect on the historic site; or

''(ii) there will be no historic properties affected by the transportation program or project;

''(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

''(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

''(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

''(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

''(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.''.

(b) CLARIFICATION OF EXISTING STANDARDS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall (in consultation with affected agencies and interested parties) promulgate regulations that clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under section 138 of title 23 and section 303 of title 49, United States Code.

(2) REQUIREMENTS.—The regulations—

(A) shall clarify the application of the legal standards to a variety of different types of transportation programs and projects depending on the circumstances of each case; and

(B) may include, as appropriate, examples to facilitate clear and consistent interpretation by agency decisionmakers.

(c) IMPLEMENTATION STUDY.—

(1) IN GENERAL.—The Secretary shall—

(A) conduct a study on the implementation of this section and the amendments made by this section; and

(B) commission an independent review of the study plan and methodology, and any associated conclusions, by the Transportation Research Board of the National Academy of Sciences.

(2) COMPONENTS.—In conducting the study, the Secretary shall evaluate—

(A) the processes developed under this section and the amendments made by this section and the efficiencies that may result;

(B) the post-construction effectiveness of impact mitigation and avoidance commitments adopted as part of projects conducted under this section and the amendments made by this section; and

(C) the quantity of projects with impacts that are considered de minimis under this section and the amendments made by this section, including information on the location, size, and cost of the projects.

(3) REPORT REQUIREMENT.—The Secretary shall prepare—

(A) not earlier than the date that is 3 years after the date of enactment of this Act, a report on the results of the study conducted under this subsection; and

(B) not later than March 1, 2010, an update on the report required under subparagraph (A).

(4) REPORT RECIPIENTS.—The Secretary shall—

(A) submit the report, review of the report, and update required under paragraph (3) to—

(i) the appropriate committees of Congress;

(ii) the Secretary of the Interior; and

(iii) the Advisory Council on Historic Preservation; and

(B) make the report and update available to the public.

SEC. 6010. ENVIRONMENTAL REVIEW OF ACTIVITIES THAT SUPPORT DEPLOYMENT OF INTELLIGENT TRANSPORTATION SYSTEMS.

(a) CATEGORICAL EXCLUSIONS.—Not later than one year after the date of enactment of this Act, the Secretary shall initiate a rulemaking process to establish, to the extent appropriate, categorical exclusions for activities that support the deployment of intelligent transportation infrastructure and systems from the requirement that an environmental assessment or an environmental impact statement be prepared under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in compliance with the standards for categorical exclusions established by that Act.

(b) NATIONWIDE PROGRAMMATIC AGREEMENT.—

(1) DEVELOPMENT.—The Secretary shall develop a nationwide programmatic agreement governing the review of activities that support the deployment of intelligent transportation infrastructure and systems in accordance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and the regulations of the Advisory Council on Historic Preservation.

(2) CONSULTATION.—The Secretary shall develop the agreement under paragraph (1) in consultation with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation established under title II of the National Historic Preservation Act (26 U.S.C. 470i et seq.) and after soliciting the views of other interested parties.

(c) INTELLIGENT TRANSPORTATION INFRASTRUCTURE AND SYSTEMS DEFINED.—In this section, the term ''intelligent transportation infrastructure and systems'' means intelligent transportation infrastructure and intelligent transportation systems, as such terms are defined in subtitle C of title V of this Act.

SEC. 6011. TRANSPORTATION CONFORMITY.

(a) CONFORMITY REDETERMINATIONS.—Section 176(c)(2) of the Clean Air Act (42 U.S.C. 7506(c)) is amended by adding at the end the following:

''(E) The appropriate metropolitan planning organization shall redetermine conformity of existing transportation plans and programs not later than 2 years after the date on which the Administrator—

''(i) finds a motor vehicle emissions budget to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004);

''(ii) approves an implementation plan that establishes a motor vehicle emissions budget if that budget has not yet been determined to be adequate in accordance with clause (i); or

''(iii) promulgates an implementation plan that establishes or revises a motor vehicle emissions budget.''.

(b) FREQUENCY OF CONFORMITY DETERMINATION UPDATES.—Section 176(c)(4)(B)(ii) of the Clean Air Act (42 U.S.C. 7506(c)(4)(B)(ii)) is amended to read as follows:

''(ii) address the appropriate frequency for making conformity determinations, but the frequency for making conformity determinations on updated transportation plans and programs shall be every 4 years, except in a case in which—

''(I) the metropolitan planning organization elects to update a transportation plan or program more frequently; or

''(II) the metropolitan planning organization is required to determine conformity in accordance with paragraph (2)(E); and''.

(c) TIME HORIZON FOR CONFORMITY DETERMINATIONS IN NONATTAINMENT AREAS.—Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) is amended by adding at the end the following:

''(7) CONFORMITY HORIZON FOR TRANSPORTATION PLANS.—

''(A) IN GENERAL.—Each conformity determination required under this section for a transportation plan under section 134(i) of title 23, United States Code, or section 5303(i) of title 49, United States Code, shall require a demonstration of conformity for the period ending on either the final year of the transportation plan, or at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, the longest of the following periods:

''(i) The first 10-year period of any such transportation plan.

''(ii) The latest year in the implementation plan applicable to the area that contains a motor vehicle emission budget.

''(iii) The year after the completion date of a regionally significant project if the project is included in the transportation improvement program or the project requires approval before the subsequent conformity determination.

''(B) REGIONAL EMISSIONS ANALYSIS.—The conformity determination shall be accompanied by a regional emissions analysis for the last year of the transportation plan and for any year shown to exceed emission budgets by a prior analysis, if such year extends beyond the applicable period as determined under subparagraph (A).

''(C) EXCEPTION.—In any case in which an area has a revision to an implementation plan under section 175A(b) and the Administrator has found the motor vehicles emissions budgets from that revision to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or has approved the revision, the demonstration of conformity at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, shall be required to extend only through the last year of the implementation plan required under section 175A(b).

''(D) EFFECT OF ELECTION.—Any election by a metropolitan planning organization under this paragraph shall continue in effect until the metropolitan planning organization elects otherwise.

''(E) AIR POLLUTION CONTROL AGENCY DEFINED.—In this paragraph, the term 'air pollution control agency' means an air pollution control agency (as defined in section 302(b)) that is responsible for developing plans or controlling air pollution within the area covered by a transportation plan.''.

(d) SUBSTITUTION OF TRANSPORTATION CONTROL MEASURES.—Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) (as amended by subsection (c)) is amended by inserting after paragraph (7) the following:

''(8) SUBSTITUTION OF TRANSPORTATION CONTROL MEASURES.—

''(A) IN GENERAL.—Transportation control measures that are specified in an implementation plan may be replaced or added to the implementation plan with alternate or additional transportation control measures—

''(i) if the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as demonstrated with an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

''(ii) if the substitute control measures are implemented—

''(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

''(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after the implementation plan date but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

''(iii) if the substitute and additional control measures are accompanied with evidence of adequate personnel and funding and authority under State or local law to implement, monitor, and enforce the control measures;

''(iv) if the substitute and additional control measures were developed through a collaborative process that included—

''(I) participation by representatives of all affected jurisdictions (including local air pollution control agencies, the State air pollution control agency, and State and local transportation agencies);

''(II) consultation with the Administrator; and

''(III) reasonable public notice and opportunity for comment; and

''(v) if the metropolitan planning organization, State air pollution control agency, and the Administrator concur with the equivalency of the substitute or additional control measures.

''(B) ADOPTION.—(i) Concurrence by the metropolitan planning organization, State air pollution control agency and the Administrator as required by subparagraph (A)(v) shall constitute adoption of the substitute or additional control measures so long as the requirements of subparagraphs (A)(i), (A)(ii), (A)(iii) and (A)(iv) are met.

''(ii) Once adopted, the substitute or additional control measures become, by operation of law, part of the state implementation plan and become federally enforceable.

''(iii) Within 90 days of its concurrence under subparagraph (A)(v), the State air pollution control agency shall submit the substitute or additional control measure to the Administrator for incorporation in the codification of the applicable implementation plan. Notwithstanding any other provision of this Act, no additional State process shall be necessary to support such revision to the applicable plan.

''(C) NO REQUIREMENT FOR EXPRESS PERMISSION.—The substitution or addition of a transportation control measure in accordance with this paragraph and the funding or approval of such a control measure shall not be contingent on the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

''(D) NO REQUIREMENT FOR NEW CONFORMITY DETERMINATION.—The substitution or addition of a transportation control measure in accordance with this paragraph shall not require—

''(i) a new conformity determination for the transportation plan; or

''(ii) a revision of the implementation plan.

''(E) CONTINUATION OF CONTROL MEASURE BEING REPLACED.—A control measure that is being replaced by a substitute control measure under this paragraph shall remain in effect until the substitute control measure is adopted by the State pursuant to subparagraph (B).

''(F) EFFECT OF ADOPTION.—Adoption of a substitute control measure shall constitute rescission of the previously applicable control measure.''.

(e) LAPSE OF CONFORMITY.—Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) (as amended by subsections (c) and (d)) is amended by inserting after paragraph (8) the following:

''(9) LAPSE OF CONFORMITY.—If a conformity determination required under this subsection for a transportation plan under section 134(i) of title 23, United States Code, or section 5303(i) of title 49, United States Code, or a transportation improvement program under section 134(j) of such title 23 or under section 5303(j) of such title 49 is not made by the applicable deadline and such failure is not corrected by additional measures to either reduce motor vehicle emissions sufficient to demonstrate compliance with the requirements of this subsection within 12 months after such deadline or other measures sufficient to correct such failures, the transportation plan shall lapse.

''(10) LAPSE.—In this subsection, the term 'lapse' means that the conformity determination for a transportation plan or transportation improvement program has expired, and thus there is no currently conforming transportation plan or transportation improvement program.''.

(f) CONFORMING AMENDMENTS.—Section 176(c)(4) of the Clean Air Act (42 U.S.C. 7506(c)(4) (as amended by subsection (b)) is amended—

(1) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (D), (E), and (F), respectively;

(2) by striking ''(4)(A) No later than one year after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate'' and inserting the following:

''(4) CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY.—

''(A) IN GENERAL.—The Administrator shall promulgate, and periodically update,'';

(3) in the second sentence of subparagraph (A)—

(A) by striking ''No later than one year after such date of enactment, the Administrator, with the concurrence of the Secretary of Transportation, shall promulgate'' and inserting the following:

''(B) TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS.—The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update,''; and

(B) in the third sentence, by striking ''A suit'' and inserting the following:

''(C) CIVIL ACTION TO COMPEL PROMULGATION.—A civil action''; and

(4) by striking subparagraph (E) (as redesignated by paragraph (1)) and inserting the following:

''(E) INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—Not later than 2 years after the date of enactment of the SAFETEA-LU the procedures under subparagraph (A) shall include a requirement that each State include in the State implementation plan criteria and procedures for consultation required by subparagraph (D)(i), and enforcement and enforceability (pursuant to sections 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regulations) in accordance with the Administrator's criteria and procedures for consultation, enforcement and enforceability.''.

(g) REGULATIONS.—Not later than 2 years after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall promulgate revised regulations to implement the changes made by this section.

SEC. 6012. FEDERAL REFERENCE METHOD.

(a) IN GENERAL.—Section 6102(e) of the Transportation Equity Act for the 21st Century (42 U.S.C. 7407 note; 112 Stat. 464–465) is amended to read as follows:

''(e) FIELD STUDY.—Not later than 2 years after the date of enactment of the SAFETEA-LU, the Administrator shall—

''(1) conduct a field study of the ability of the $PM_{2.5}$ Federal Reference Method to differentiate those particles that are larger than 2.5 micrometers in diameter;

''(2) develop a Federal reference method to measure directly particles that are larger than 2.5 micrometers in diameter without reliance on subtracting from coarse particle measurements those particles that are equal to or smaller than 2.5 micrometers in diameter;

''(3) develop a method of measuring the composition of coarse particles; and

''(4) submit a report on the study and responsibilities of the Administrator under paragraphs (1) through (3) to—

''(A) the Committee on Energy and Commerce of the House of Representatives; and

''(B) the Committee on Environment and Public Works of the Senate.''.

SEC. 6013. AIR QUALITY MONITORING DATA INFLUENCED BY EXCEPTIONAL EVENTS.

(a) IN GENERAL.—Section 319 of the Clean Air Act (42 U.S.C. 7619) is amended—

(1) by striking the section heading and all that follows through ''after notice and opportunity for public hearing'' and inserting the following:

''SEC. 319. AIR QUALITY MONITORING.

''(a) IN GENERAL.—After notice and opportunity for public hearing''; and

(2) by adding at the end the following:

''(b) AIR QUALITY MONITORING DATA INFLUENCED BY EXCEPTIONAL EVENTS.—

''(1) DEFINITION OF EXCEPTIONAL EVENT.—In this section:

''(A) IN GENERAL.—The term 'exceptional event' means an event that—

''(i) affects air quality;

''(ii) is not reasonably controllable or preventable;

''(iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and

''(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

''(B) EXCLUSIONS.—In this subsection, the term 'exceptional event' does not include—

''(i) stagnation of air masses or meteorological inversions;

''(ii) a meteorological event involving high temperatures or lack of precipitation; or

''(iii) air pollution relating to source noncompliance.

''(2) REGULATIONS.—

''(A) PROPOSED REGULATIONS.—Not later than March 1, 2006, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

''(B) FINAL REGULATIONS.—Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling or air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

''(3) PRINCIPLES AND REQUIREMENTS.—

''(A) PRINCIPLES.—In promulgating regulations under this section, the Administrator shall follow—

''(i) the principle that protection of public health is the highest priority;

''(ii) the principle that timely information should be provided to the public in any case in which the air quality is unhealthy;

''(iii) the principle that all ambient air quality data should be included in a timely manner, an appropriate Federal air quality database that is accessible to the public;

''(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and

''(v) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

''(B) REQUIREMENTS.—Regulations promulgated under this section shall, at a minimum, provide that—

''(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

''(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

''(iii) there is a public process for determining whether an event is exceptional; and

''(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards.

''(4) INTERIM PROVISION.—Until the effective date of a regulation promulgated under paragraph (2), the following guidance issued by the Administrator shall continue to apply:

''(A) Guidance on the identification and use of air quality data affected by exceptional events (July 1986).

''(B) Areas affected by PM–10 natural events, May 30, 1996.

''(C) Appendices I, K, and N to part 50 of title 40, Code of Federal Regulations.''.

SEC. 6014. FEDERAL PROCUREMENT OF RECYCLED COOLANT.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the President shall conduct a review of Federal procurement policy of recycled coolant.

(b) ELEMENTS.—In conducting the review under subsection (a), the President shall consider recycled coolant produced from processes that—

(1) are energy efficient;

(2) generate no hazardous waste (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903));

(3) produce no emissions of air pollutants;

(4) present lower health and safety risks to employees at a plant or facility; and

(5) recover at least 97 percent of the glycols from used antifreeze feedstock.

SEC. 6015. CLEAN SCHOOL BUS PROGRAM.

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

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) ALTERNATIVE FUEL.—The term ''alternative fuel'' means—

(A) liquefied natural gas, compressed natural gas, liquefied petroleum gas, hydrogen, or propane;

(B) methanol or ethanol at no less than 85 percent by volume; or

(C) biodiesel conforming with standards published by the American Society for Testing and

Materials as of the date of enactment of this Act.

(3) CLEAN SCHOOL BUS.—The term ''clean school bus'' means a school bus with a gross vehicle weight of greater than 14,000 pounds that—

(A) is powered by a heavy duty engine; and

(B) is operated solely on an alternative fuel or ultra-low sulfur diesel fuel.

(4) ELIGIBLE RECIPIENT.—

(A) IN GENERAL.—Subject to subparagraph (B), the term ''eligible recipient'' means—

(i) one or more local or State governmental entities responsible for providing school bus service to one or more public school systems or the purchase of school buses;

(ii) one or more contracting entities that provide school bus service to one or more public school systems; or

(iii) a nonprofit school transportation association.

(B) SPECIAL REQUIREMENTS.—In the case of eligible recipients identified under clauses (ii) and (iii) of subparagraph (A), the Administrator shall establish timely and appropriate requirements for notice and may establish timely and appropriate requirements for approval by the public school systems that would be served by buses purchased or retrofit using grant funds made available under this section.

(5) RETROFIT TECHNOLOGY.—The term ''retrofit technology'' means a particulate filter or other emissions control equipment that is verified or certified by the Administrator or the California Air Resources Board as an effective emission reduction technology when installed on an existing school bus.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(7) ULTRA-LOW SULFUR DIESEL FUEL.—The term ''ultra-low sulfur diesel fuel'' means diesel fuel that contains sulfur at not more than 15 parts per million.

(b) PROGRAM FOR RETROFIT OR REPLACEMENT OF CERTAIN EXISTING SCHOOL BUSES WITH CLEAN SCHOOL BUSES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Administrator, in consultation with the Secretary and other appropriate Federal departments and agencies, shall establish a program for awarding grants on a competitive basis to eligible recipients for the replacement of, retrofit (including repowering, aftertreatment, and remanufactured engines) of, or purchase of alternative fuels for, certain existing school buses. The awarding of grants for the purchase of alternative fuels should be consistent with the historic funding levels of the program for such purchase.

(B) BALANCING.—In awarding grants under this section, the Administrator shall achieve, to the maximum extent practicable, achieve an appropriate balance between awarding grants—

(i) to replace school buses;

(ii) to install retrofit technologies; and

(iii) to purchase and use alternative fuel.

(2) PRIORITY OF GRANT APPLICATIONS.—

(A) REPLACEMENT.—In the case of grant applications to replace school buses, the Administrator shall give priority to applicants that propose to replace school buses manufactured before model year 1977.

(B) RETROFITTING.—In the case of grant applications to retrofit school buses, the Administrator shall give priority to applicants that propose to retrofit school buses manufactured in or after model year 1991.

(3) USE OF SCHOOL BUS FLEET.—

(A) IN GENERAL.—All school buses acquired or retrofitted with funds provided under this section shall be operated as part of the school bus fleet for which the grant was made for not less than 5 years.

(B) MAINTENANCE, OPERATION, AND FUELING.—New school buses and retrofit technology shall be maintained, operated, and fueled according to manufacturer recommendations or State requirements.

(4) RETROFIT GRANTS.—The Administrator may award grants under this section for up to 100 percent of the retrofit technologies and installation costs.

(5) REPLACEMENT GRANTS.—

(A) ELIGIBILITY FOR 50 PERCENT GRANTS.—The Administrator may award grants under this section for replacement of school buses in the amount of up to ½ of the acquisition costs (including fueling infrastructure) for—

(i) clean school buses with engines manufactured in model year 2005 or 2006 that emit not more than—

(I) 1.8 grams per brake horsepower-hour of non-methane hydrocarbons and oxides of nitrogen; and

(II) .01 grams per brake horsepower-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007, 2008, or 2009 that satisfy regulatory requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter to be applicable for school buses manufactured in model year 2010.

(B) ELIGIBILITY FOR 25 PERCENT GRANTS.—The Administrator may award grants under this section for replacement of school buses in the amount of up to ¼ of the acquisition costs (including fueling infrastructure) for—

(i) clean school buses with engines manufactured in model year 2005 or 2006 that emit not more than—

(I) 2.5 grams per brake horsepower-hour of non-methane hydrocarbons and oxides of nitrogen; and

(II) .01 grams per brake horsepower-hour of particulate matter; or

(ii) clean school buses with engines manufactured in model year 2007 or thereafter that satisfy regulatory requirements established by the Administrator for emissions of oxides of nitrogen and particulate matter from school buses manufactured in that model year.

(6) ULTRA-LOW SULFUR DIESEL FUEL.—

(A) IN GENERAL.—In the case of a grant recipient receiving a grant for the acquisition of ultra-low sulfur diesel fuel school buses with engines manufactured in model year 2005 or 2006, the grant recipient shall provide, to the satisfaction of the Administrator—

(i) documentation that diesel fuel containing sulfur at not more than 15 parts per million is available for carrying out the purposes of the grant; and

(ii) a commitment by the applicant to use that fuel in carrying out the purposes of the grant.

(7) DEPLOYMENT AND DISTRIBUTION.—The Administrator, to the maximum extent practicable, shall—

(A) achieve nationwide deployment of clean school buses through the program under this section; and

(B) ensure a broad geographic distribution of grant awards, with no State receiving more than 10 percent of the grant funding made available under this section during a fiscal year.

(8) ANNUAL REPORT.—

(A) IN GENERAL.—Not later than January 31 of each year, the Administrator shall submit to Congress a report that—

(i) evaluates the implementation of this section; and

(ii) describes—

(I) the total number of grant applications received;

(II) the number and types of alternative fuel school buses, ultra-low sulfur diesel fuel school buses, and retrofitted buses requested in grant applications;

(III) grants awarded and the criteria used to select the grant recipients;

(IV) certified engine emission levels of all buses purchased or retrofitted under this section;

(V) an evaluation of the in-use emission level of buses purchased or retrofitted under this section; and

(VI) any other information the Administrator considers appropriate.

(c) EDUCATION.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall develop an education outreach program to promote and explain the grant program.

(2) COORDINATION WITH STAKEHOLDERS.—The outreach program shall be designed and conducted in conjunction with national school bus transportation associations and other stakeholders.

(3) COMPONENTS.—The outreach program shall—

(A) inform potential grant recipients on the process of applying for grants;

(B) describe the available technologies and the benefits of the technologies;

(C) explain the benefits of participating in the grant program; and

(D) include, as appropriate, information from the annual report required under subsection (b)(8).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section, to remain available until expended—

(1) $55,000,000 for each of fiscal years 2006 and 2007; and

(2) such sums as are necessary for each of fiscal years 2008, 2009, and 2010.

SEC. 6016. SPECIAL DESIGNATION.

For the purpose of any applicable program under title 23, United States Code, the city of Norman, Oklahoma, shall be considered to be part of the Oklahoma City urbanized area.

SEC. 6017. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) IN GENERAL.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following:

''SEC. 6005. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

''(a) DEFINITIONS.—In this section:

''(1) AGENCY HEAD.—The term 'agency head' means—

''(A) the Secretary of Transportation; and

''(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

''(2) CEMENT OR CONCRETE PROJECT.—The term 'cement or concrete project' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

''(A) involves the procurement of cement or concrete; and

''(B) is carried out in whole or in part using Federal funds.

''(3) RECOVERED MINERAL COMPONENT.—The term 'recovered mineral component' means—

''(A) ground granulated blast furnace slag other than lead slag;

''(B) coal combustion fly ash;

''(C) blast furnace slag aggregate other than lead slag aggregate;

''(D) silica fume; and

''(E) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

''(b) IMPLEMENTATION OF REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section

(including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

''(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

''(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

''(c) FULL IMPLEMENTATION STUDY.—

''(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

''(2) MATTERS TO BE ADDRESSED.—The study shall—

''(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

''(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

''(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

''(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

''(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

''(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

''(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

''(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

''(2) eliminate barriers identified under subsection (c).

''(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding after the item relating to section 6004 the following:

''Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.''.

SEC. 6018. USE OF GRANULAR MINE TAILINGS.

(a) IN GENERAL.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) (as amended by section 6017(a)) is amended by adding at the end the following:

''SEC. 6006. USE OF GRANULAR MINE TAILINGS.

''(a) MINE TAILINGS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as 'chat', for—

''(A) cement or concrete projects; and

''(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

''(2) REQUIREMENTS.—In establishing criteria under paragraph (1), the Administrator shall consider—

''(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

''(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

''(3) PUBLIC PARTICIPATION.—In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

''(4) APPLICABILITY OF CRITERIA.—On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

''(b) EFFECT OF SECTIONS.—Nothing in this section or section 6005 affects any requirement of any law (including a regulation) in effect on the date of enactment of this section.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 6017(b)) is amended by adding after the item relating to section 6005 the following:

''Sec. 6006. Use of granular mine tailings.''.

TITLE VII—HAZARDOUS MATERIALS TRANSPORTATION

SEC. 7001. SHORT TITLE.

This title may be cited as the ''Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005''.

SEC. 7002. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

Subtitle A—General Authorities on Transportation of Hazardous Materials

SEC. 7101. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds with respect to hazardous materials transportation that—

(1) approximately 4,000,000,000 tons of regulated hazardous materials are transported each year and approximately 1,200,000 movements of hazardous materials occur each day, according to Department of Transportation estimates;

(2) the movement of hazardous materials in commerce is necessary to maintain economic vitality and meet consumer demands and must be conducted in a safe, secure, and efficient manner;

(3) accidents involving, or unauthorized access to, hazardous materials in transportation may result in a release of such materials and pose a serious threat to public health and safety;

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable; and

(5) in order to provide reasonable, adequate, and cost-effective protection from the risks posed by the transportation of hazardous materials, a network of well-trained State and local emergency response personnel and hazmat employees is essential.

(b) PURPOSE.—Section 5101 is amended by striking ''The purpose'' and all that follows through the period at the end and inserting the following: ''The purpose of this chapter is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce.''.

SEC. 7102. DEFINITIONS.

Section 5102 is amended as follows:

(1) COMMERCE.—Paragraph (1) is amended—

(A) by striking ''or'' after the semicolon in subparagraph (A);

(B) by striking ''State.'' in subparagraph (B) and inserting ''State; or''; and

(C) by adding at the end the following:

''(C) on a United States-registered aircraft.''.

(2) HAZMAT EMPLOYEE.—Paragraph (3)(A) is amended—

(A) by striking clause (i) and inserting the following:

''(i) who—

''(I) is employed on a full time, part time, or temporary basis by a hazmat employer; or

''(II) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and'';

(B) in clause (ii)—

(i) by striking ''course of employment'' and inserting ''course of such full time, part time, or temporary employment, or such self employment,''; and

(ii) by adding ''and'' after the semicolon;

(C) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B); and

(D) in subparagraph (B), as so redesignated—

(i) by striking ''employed by a hazmat employer,'' and inserting ''employed on a full time, part time, or temporary basis by a hazmat employer, or self employed,''; and

(ii) by striking clause (ii) and inserting the following:

''(ii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce;''.

(3) HAZMAT EMPLOYER.—Paragraph (4) is amended to read as follows:

''(4) 'hazmat employer'—

''(A) means a person—

''(i) who—

''(I) employs or uses at least 1 hazmat employee on a full time, part time, or temporary basis; or

''(II) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

''(ii) who—

''(I) transports hazardous material in commerce;

''(II) causes hazardous material to be transported in commerce; or

''(III) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or

sold as qualified for use in transporting hazardous material in commerce; and

''(B) includes a department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, carrying out an activity described in clause (ii).''.

(4) IMMINENT HAZARD.—Paragraph (5) is amended by inserting ''relating to hazardous material'' after ''of a condition''.

(5) MOTOR CARRIER.—Paragraph (7) is amended to read as follows:

''(7) 'motor carrier'—

''(A) means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102; but

''(B) does not include a freight forwarder, as so defined, if the freight forwarder is not performing a function relating to highway transportation.''.

(6) NATIONAL RESPONSE TEAM.—Paragraph (8) is amended—

(A) by striking ''national response team'' both places it appears and inserting ''National Response Team''; and

(B) by striking ''national contingency plan'' and inserting ''National Contingency Plan''.

(7) PERSON.—Paragraph (9)(A) is amended to read as follows:

''(A) includes a government, Indian tribe, or authority of a government or tribe that—

''(i) offers hazardous material for transportation in commerce;

''(ii) transports hazardous material to further a commercial enterprise; or

''(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; but''.

(8) SECRETARY OF TRANSPORTATION.—Section 5102 is further amended—

(A) by redesignating paragraphs (11), (12), and (13) as paragraphs (12), (13), and (14), respectively; and

(B) by inserting after paragraph (10) the following:

''(11) 'Secretary' means the Secretary of Transportation except as otherwise provided.''.

SEC. 7103. GENERAL REGULATORY AUTHORITY.

(a) DESIGNATING MATERIAL AS HAZARDOUS.—Section 5103(a) is amended—

(1) by striking ''etiologic agent'' and all that follows through ''corrosive material,'' and inserting ''infectious substance, flammable or combustible liquid, solid, or gas, toxic, oxidizing, or corrosive material,''; and

(2) by striking ''decides'' and inserting ''determines''.

(b) REGULATIONS FOR SAFE TRANSPORTATION.—Section 5103(b)(1)(A) is amended to read as follows:

''(A) apply to a person who—

''(i) transports hazardous material in commerce;

''(ii) causes hazardous material to be transported in commerce;

''(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce;

''(iv) prepares or accepts hazardous material for transportation in commerce;

''(v) is responsible for the safety of transporting hazardous material in commerce;

''(vi) certifies compliance with any requirement under this chapter; or

''(vii) misrepresents whether such person is engaged in any activity under clause (i) through (vi); and''.

(c) TECHNICAL AMENDMENT REGARDING CONSULTATION.—Section 5103 is amended—

(1) by striking subsection (b)(1)(C); and

(2) by adding at the end the following:

''(c) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary of Transportation.''.

SEC. 7104. LIMITATION ON ISSUANCE OF HAZMAT LICENSES.

(a) COVERED HAZARDOUS MATERIALS.—Section 5103a(b) is amended by striking ''with respect to—'' and all that follows and inserting ''with respect to any material defined as hazardous material by the Secretary for which the Secretary requires placarding of a commercial motor vehicle transporting that material in commerce.''.

(b) RECOMMENDATIONS ON CHEMICAL OR BIOLOGICAL MATERIALS.—Section 5103a is further amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following:

''(c) RECOMMENDATIONS ON CHEMICAL AND BIOLOGICAL MATERIALS.—The Secretary of Health and Human Services shall recommend to the Secretary of Transportation any chemical or biological material or agent for regulation as a hazardous material under section 5103(a) if the Secretary of Health and Human Services determines that such material or agent poses a significant risk to the health of individuals.''.

(c) CONFORMING AMENDMENT.—Section 5103a(a)(1) is amended by striking ''subsection (c)(1)(B),'' and inserting ''subsection (d)(1)(B),''.

SEC. 7105. BACKGROUND CHECKS FOR DRIVERS HAULING HAZARDOUS MATERIALS.

Section 5103a is further amended by adding at the end the following:

''(g) BACKGROUND CHECKS FOR DRIVERS HAULING HAZARDOUS MATERIALS.—

''(1) IN GENERAL.—

''(A) EMPLOYER NOTIFICATION.—Not later than 90 days after the date of enactment of this subsection, the Director of the Transportation Security Administration, after receiving comments from interested parties, shall develop and implement a process for notifying hazmat employers designated by an applicant of the results of the applicant's background record check, if—

''(i) such notification is appropriate considering the potential security implications; and

''(ii) the Director, in a final notification of threat assessment, served on the applicant determines that the applicant does not meet the standards set forth in regulations issued to carry out this section.

''(B) RELATIONSHIP TO OTHER BACKGROUND RECORDS CHECKS.—

''(i) ELIMINATION OF REDUNDANT CHECKS.—An individual with respect to whom the Transportation Security Administration—

''(I) has performed a security threat assessment under this section; and

''(II) has issued a final notification of no security threat,

is deemed to have met the requirements of any other background check that is required for purposes of any Federal law applicable to transportation workers if that background check is equivalent to, or less stringent than, the background check required under this section.

''(ii) DETERMINATION BY DIRECTOR.—Not later than 60 days after the date of issuance of the report under paragraph (5), but no later than 120 days after the date of enactment of this Act, the Director shall initiate a rulemaking proceeding, including notice and opportunity for comment, to determine which background checks required for purposes of Federal laws applicable to transportation workers are equivalent to, or less stringent than, those required under this section.

''(iii) FUTURE RULEMAKINGS.—The Director shall make a determination under the criteria established under clause (ii) with respect to any rulemaking proceeding to establish or modify required background checks for transportation workers initiated after the date of enactment of this subsection.

''(2) APPEALS PROCESS FOR MORE STRINGENT STATE PROCEDURES.—If a State establishes its own standards for applicants for a hazardous materials endorsement to a commercial driver's license, the State shall also provide—

''(A) an appeals process similar to and to the same extent as the process provided under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may appeal that denial; and

''(B) a waiver process similar to and to the same extent as the process provided under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may apply for a waiver.

''(3) CLARIFICATION OF TERM DEFINED IN REGULATIONS.—The term 'transportation security incident', as defined in part 1572 of title 49, Code of Federal Regulations, does not include a work stoppage or other nonviolent employee-related action resulting from an employer-employee dispute. Not later than 30 days after the date of enactment of this subsection, the Director shall modify the definition of that term to reflect the preceding sentence.

''(4) BACKGROUND CHECK CAPACITY.—Not later than October 1, 2005, the Director shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Homeland Security of the House of Representatives a report on the implementation of fingerprint-based security threat assessments and the adequacy of fingerprinting locations, personnel, and resources to accomplish the timely processing of fingerprint-based security threat assessments for individuals holding commercial driver's licenses who are applying to renew hazardous materials endorsements.

''(5) REPORT.—

''(A) IN GENERAL.—Not later than 60 days after the date of enactment of this subsection, the Director shall transmit to the committees referred to in paragraph (4) a report on the Director's plans to reduce or eliminate redundant background checks for holders of hazardous materials endorsements performed under this section.

''(B) CONTENTS.—The report shall—

''(i) include a list of background checks and other security or threat assessment requirements applicable to transportation workers under Federal laws for which the Department of Homeland Security is responsible and the process by which the Secretary of Homeland Security will determine whether such checks or assessments are equivalent to, or less stringent than, the background check performed under this section; and

''(ii) provide an analysis of how the Director plans to reduce or eliminate redundant background checks in a manner that will continue to ensure the highest level of safety and security.

''(h) COMMERCIAL MOTOR VEHICLE OPERATORS REGISTERED TO OPERATE IN MEXICO OR CANADA.—

''(1) IN GENERAL.—Beginning on the date that is 6 months after the date of enactment of this subsection, a commercial motor vehicle operator registered to operate in Mexico or Canada shall not operate a commercial motor vehicle transporting a hazardous material in commerce in the United States until the operator has undergone a background records check similar to the background records check required for commercial motor vehicle operators licensed in the United States to transport hazardous materials in commerce.

''(2) EXTENSION.—The Director of the Transportation Security Administration may extend the deadline established by paragraph (1) for a

period not to exceed 6 months if the Director determines that such an extension is necessary.

''(3) COMMERCIAL MOTOR VEHICLE DEFINED.—In this subsection, the term 'commercial motor vehicle' has the meaning given that term by section 31101.''.

SEC. 7106. REPRESENTATION AND TAMPERING.

(a) REPRESENTATION.—Section 5104(a)(1) is amended—

(1) by striking ''a container,'' and all that follows through ''packaging) for'' and inserting ''a package, component of a package, or packaging for''; and

(2) by striking ''the container'' and all that follows through ''packaging) meets'' and inserting ''the package, component of a package, or packaging meets''.

(b) TAMPERING.—Section 5104(b) is amended—

(1) by striking ''A person may not'' and inserting ''No person may''; and

(2) in paragraph (2) by inserting ''component of a package, or packaging,'' after ''package,''.

SEC. 7107. TECHNICAL AMENDMENTS.

Section 5105 is amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

SEC. 7108. TRAINING OF CERTAIN EMPLOYEES.

Section 5107 is amended—

(1) by striking subsection (e) and inserting the following:

''(e) TRAINING GRANTS.—

''(1) IN GENERAL.—Subject to the availability of funds under section 5128(c), the Secretary shall make grants under this subsection—

''(A) for training instructors to train hazmat employees; and

''(B) to the extent determined appropriate by the Secretary, for such instructors to train hazmat employees.

''(2) ELIGIBILITY.—A grant under this subsection shall be made to a nonprofit hazmat employee organization that demonstrates—

''(A) expertise in conducting a training program for hazmat employees; and

''(B) the ability to reach and involve in a training program a target population of hazmat employees.'';

(2) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively;

(3) by inserting after subsection (e) the following:

''(f) TRAINING OF CERTAIN EMPLOYEES.—The Secretary shall ensure that maintenance-of-way employees and railroad signalmen receive general awareness and familiarization training and safety training pursuant to section 172.704 of title 49, Code of Federal Regulations.''; and

(4) in subsection (g)(2) (as redesignated by paragraph (2) of this subsection) by striking ''sections 5106, 5108(a)–(g)(1) and (h), and 5109 of this title'' and inserting ''section 5106''.

SEC. 7109. REGISTRATION.

(a) PERSONS REQUIRED TO FILE.—

(1) REQUIREMENT TO FILE.—Section 5108(a)(1)(B) is amended by striking ''class A or B explosive'' and inserting ''Division 1.1, 1.2, or 1.3 explosive material''.

(2) AUTHORITY TO REQUIRE TO FILE.—Section 5108(a)(2)(B) is amended to read as follows:

''(B) a person designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.''.

(3) NO TRANSPORTATION WITHOUT FILING.—Section 5108(a)(3) is amended by striking ''manufacture,'' and all that follows through ''package or'' and inserting ''design, manufacture, fabricate, inspect, mark, maintain, recondition, repair, or test a package, container packaging component, or''.

(b) FORM AND CONTENT OF FILINGS.—Section 5108(b)(1)(C) is amended by striking ''the activity.'' and inserting ''any of the activities.''.

(c) FILING.—Section 5108(c) is amended to read as follows:

''(c) FILING.—Each person required to file a registration statement under subsection (a) shall file the statement in accordance with regulations prescribed by the Secretary.''.

(d) REGISTRATION.—As soon as practicable, the Administrator of the Pipeline and Hazardous Materials Safety Administration shall transmit to the Federal Motor Carrier Safety Administration hazardous material registrant information obtained before, on, or after the date of enactment of this Act under section 5108 of title 49, United States Code, together with any Department of Transportation identification number for each registrant.

(e) RELATIONSHIP TO OTHER LAWS.—Section 5108(i)(2)(B) is amended by inserting ''an Indian tribe,'' after ''subdivision of a State,''.

(f) FEES.—Section 5108(g) is amended—

(1) in paragraph (1) by striking ''may'' and inserting ''shall'';

(2) in paragraph (2)(A) by striking ''$5,000'' and inserting ''$3,000''; and

(3) by adding at the end the following:

''(3) FEES ON EXEMPT PERSONS.—Notwithstanding subsection (a)(4), the Secretary shall impose and collect a fee of $25 from a person who is required to register under this section but who is otherwise exempted by the Secretary from paying any fee under this section. The fee shall be used to pay the costs incurred by the Secretary in processing registration statements filed by such persons.''.

SEC. 7110. SHIPPING PAPERS AND DISCLOSURE.

(a) DISCLOSURE CONSIDERATIONS AND REQUIREMENTS.—Section 5110 is amended—

(1) by striking ''under subsection (b) of this section.'' in subsection (a) and inserting ''in regulations.'';

(2) by striking subsection (b); and

(3) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively.

(b) RETENTION OF PAPERS.—Subsection (d) of section 5110, as redesignated by subsection (a)(3) of this section, is amended to read as follows:

''(d) RETENTION OF PAPERS.—

''(1) SHIPPERS.—The person who provides the shipping paper under this section shall retain the paper, or an electronic format of it, for a period of 2 years after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the shipper's principal place of business.

''(2) CARRIERS.—The carrier required to keep the shipping paper under this section, shall retain the paper, or an electronic format of it, for a period of 1 year after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the carrier's principal place of business.

''(3) AVAILABILITY TO GOVERNMENT AGENCIES.—Any person required to keep a shipping paper under this subsection shall, upon request, make it available to a Federal, State, or local government agency at reasonable times and locations.''.

SEC. 7111. RAIL TANK CARS.

Section 5111, and the item relating to section 5111 in the analyis for chapter 51, are repealed.

SEC. 7112. UNSATISFACTORY SAFETY RATINGS.

(a) IN GENERAL.—The text of section 5113 is amended to read as follows: ''A violation of section 31144(c)(3) shall be considered a violation of this chapter, and shall be subject to the penalties in sections 5123 and 5124.''.

(b) CONFORMING AMENDMENTS.—The first subsection (c) of section 31144, relating to prohibited transportation, is amended—

(1) in paragraph (1) by striking ''sections 521(b)(5)(A) and 5113'' and inserting ''section 521(b)(5)(A)''; and

(2) by adding at the end of paragraph (3) the following: ''A violation of this paragraph by an owner or operator transporting hazardous material shall be considered a violation of chapter 51, and shall be subject to the penalties in sections 5123 and 5124.''.

(c) TECHNICAL CORRECTION.—The second subsection (c) of section 31144, relating to safety reviews of new operators, is redesignated as subsection (f).

SEC. 7113. TRAINING CURRICULUM FOR THE PUBLIC SECTOR.

(a) IN GENERAL.—Section 5115(a) is amended by striking the subsection designation and all that follows through the period at the end of the first sentence and inserting the following:

''(a) IN GENERAL.—In coordination with the Director of the Federal Emergency Management Agency, the Chairman of the Nuclear Regulatory Commission, the Administrator of the Environmental Protection Agency, the Secretaries of Labor, Energy, and Health and Human Services, and the Director of the National Institute of Environmental Health Sciences, and using existing coordinating mechanisms of the National Response Team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary of Transportation shall maintain, and update periodically, a current curriculum of courses necessary to train public sector emergency response and preparedness teams in matters relating to the transportation of hazardous material.''.

(b) REQUIREMENTS.—Section 5115(b) is amended—

(1) in the matter preceding paragraph (1) by striking ''developed'' and inserting ''maintained and updated''; and

(2) in paragraph (1)(C) by striking ''under other United States Government grant programs, including those'' and inserting ''with Federal financial assistance, including programs''.

(c) TRAINING ON COMPLYING WITH LEGAL REQUIREMENTS.—Section 5115(c)(3) is amended by inserting before the period at the end the following: ''and such other voluntary consensus standard-setting organizations as the Secretary of Transportation determines appropriate''.

(d) DISTRIBUTION AND PUBLICATION.—Section 5115(d) is amended—

(1) in the matter preceding paragraph (1) by striking ''national response team'' and inserting ''National Response Team'';

(2) in paragraph (1) by striking ''Director of the Federal Emergency Management Agency'' and inserting ''Secretary''; and

(3) in paragraph (2)—

(A) by inserting ''and distribute'' after ''publish''; and

(B) by striking ''programs that uses'' and all that follows before the period at the end and inserting ''programs and courses maintained and updated under this section and of any programs utilizing such courses''.

SEC. 7114. PLANNING AND TRAINING GRANTS; HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS FUND.

(a) MAINTENANCE OF EFFORT.—Sections 5116(a)(2)(A) and 5116(b)(2)(A) are amended by striking ''2 fiscal years'' and inserting ''5 fiscal years''.

(b) MONITORING AND TECHNICAL ASSISTANCE.—Section 5116(f) is amended by striking ''national response team'' and inserting ''National Response Team''.

(c) DELEGATION OF AUTHORITY.—Section 5116(g) is amended by striking ''Government grant programs'' and inserting ''Federal financial assistance''.

(d) HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS FUND.—

(1) NAME OF FUND.—Section 5116(i) is amended by inserting after ''an account in the Treasury'' the following: ''(to be known as the 'Hazardous Materials Emergency Preparedness Fund')''.

(2) PUBLICATION OF EMERGENCY RESPONSE GUIDE.—Section 5116(i) is further amended—

(A) by striking ''collects under section 5108(g)(2)(A) of this title and'';

(B) by striking ''and'' after the semicolon in paragraph (2);

(C) by redesignating paragraph (3) as paragraph (4);

(D) by inserting after paragraph (2) the following:

''(3) to publish and distribute an emergency response guide; and''; and

(E) in paragraph (4) (as redesignated by subparagraph (C) of this paragraph) by striking ''10 percent'' and inserting ''2 percent''.

(3) CONFORMING AMENDMENT.—Section 5108(g)(2)(C) is amended by striking ''the account the Secretary of the Treasury establishes'' and inserting ''the Hazardous Materials Emergency Preparedness Fund established''.

(e) REPORTS.—Section 5116(k) is amended—

(1) by striking the first sentence and inserting the following: ''The Secretary shall submit annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and make available to the public information on the allocation and uses of the planning grants allocated under subsection (a), training grants under subsection (b), and grants under subsection (j) of this section and under section 5107.''; and

(2) by striking ''Such report'' in the second sentence and inserting ''The report''.

SEC. 7115. SPECIAL PERMITS AND EXCLUSIONS.

(a) SECTION HEADING.—

(1) IN GENERAL.—Section 5117 is amended by striking the section designation and heading and inserting the following:

''§5117. Special permits and exclusions''.

(2) CONFORMING AMENDMENT.—The item relating to section 5117 in the analysis for chapter 51 is amended to read as follows:

''5117. Special permits and exclusions.''.

(b) SUBSECTION HEADING.—The heading for subsection (a) of section 5117 is amended by striking ''EXEMPT'' and inserting ''ISSUE SPECIAL PERMITS''.

(c) AUTHORITY TO ISSUE SPECIAL PERMITS.—Section 5117(a)(1) is amended—

(1) by striking ''an exemption'' and inserting '', modify, or terminate a special permit authorizing a variance''; and

(2) by striking ''transporting, or causing to be transported, hazardous material'' and inserting ''performing a function regulated by the Secretary under section 5103(b)(1)''.

(d) PERIOD OF SPECIAL PERMIT.—Section 5117(a)(2) is amended to read as follows:

''(2) A special permit issued under this section shall be effective for an initial period of not more than 2 years and may be renewed by the Secretary upon application for successive periods of not more than 4 years each or, in the case of a special permit relating to section 5112, for an additional period of not more than 2 years.''.

(e) APPLICATIONS.—Sections 5117(b) is amended—

(1) by striking ''an exemption'' each place it appears and inserting ''a special permit''; and

(2) by striking ''the exemption'' and inserting ''the special permit''.

(f) DEALING WITH APPLICATIONS PROMPTLY.—Section 5117(c) is amended by striking ''the exemption'' each place it appears and inserting ''the special permit''.

(g) LIMITATION ON AUTHORITY.—Section 5117(e) is amended—

(1) by striking ''an exemption'' and inserting ''a special permit''; and

(2) by striking ''be exempt'' and inserting ''be granted a variance''.

(h) REPEAL OF SECTION 5118.—Section 5118, and the item relating to such section in the analysis for chapter 51, are repealed.

SEC. 7116. UNIFORM FORMS AND PROCEDURES.

Section 5119 is amended to read as follows:

''§5119. Uniform forms and procedures

''(a) ESTABLISHMENT OF WORKING GROUP.—The Secretary shall establish a working group of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, the National Conference of State Legislatures, and the Alliance for Uniform Hazmat Transportation Procedures.

''(b) PURPOSE OF WORKING GROUP.—The purpose of the working group shall be to develop uniform forms and procedures for a State to register, and to issue permits to, persons that transport, or cause to be transported, hazardous material by motor vehicle in the State.

''(c) LIMITATION ON WORKING GROUP.—The working group may not propose to define or limit the amount of a fee a State may impose or collect.

''(d) PROCEDURE.—The Secretary shall develop a procedure for the working group to employ in developing recommendations for the Secretary to harmonize existing State registration and permit laws and regulations relating to the transportation of hazardous materials, with special attention paid to each State's unique safety concerns and interest in maintaining strong hazmat safety standards.

''(e) REPORT OF WORKING GROUP.—Not later than 18 months after the date of enactment of this subsection, the working group shall transmit to the Secretary a report containing recommendations for establishing uniform forms and procedures described in subsection (b).

''(f) REGULATIONS.—Not later than 18 months after the date the working group's report is delivered to the Secretary, the Secretary shall issue regulations to carry out such recommendations of the working group as the Secretary considers appropriate. In developing such regulations, the Secretary shall consider the State needs associated with the transition to and implementation of a uniform forms and procedures program.

''(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State from voluntarily participating in a program of uniform forms and procedures until such time as the Secretary issues regulations under subsection (f).''.

SEC. 7117. INTERNATIONAL UNIFORMITY OF STANDARDS AND REQUIREMENTS.

(a) CONSULTATION.—Section 5120(b) is amended by inserting ''and requirements'' after ''standards''.

(b) DIFFERENCES WITH INTERNATIONAL STANDARDS AND REQUIREMENTS.—Section 5120(c) is amended—

(1) in paragraph (1) by inserting ''or requirement'' after ''standard'' each place it appears; and

(2) in paragraph (2)—

(A) by inserting ''standard or'' before ''requirement'' each place it appears; and

(B) by striking ''included in a standard''.

SEC. 7118. ADMINISTRATIVE AUTHORITY.

(a) GENERAL AUTHORITY.—Section 5121(a) is amended—

(1) in the first sentence by inserting ''conduct tests,'' after ''investigate,'';

(2) in the second sentence by striking ''After'' and inserting ''Except as provided in subsections (c) and (d), after''; and

(3) by striking ''regulation prescribed'' and inserting ''regulation prescribed, or an order, special permit, or approval issued,''.

(b) RECORDS, REPORTS, AND INFORMATION.—Section 5121(b) is amended—

(1) in paragraph (1) by inserting ''and property'' after ''records''; and

(2) in paragraph (2)—

(A) by inserting ''property,'' after ''records,'';

(B) by inserting ''for inspection'' after ''available''; and

(C) by striking ''requests'' and inserting ''undertakes an investigation or makes a request''.

(c) ENHANCED AUTHORITY TO DISCOVER HIDDEN SHIPMENTS OF HAZARDOUS MATERIAL.—Section 5121(c) is amended to read as follows:

''(c) INSPECTIONS AND INVESTIGATIONS.—

''(1) IN GENERAL.—A designated officer, employee, or agent of the Secretary—

''(A) may inspect and investigate, at a reasonable time and in a reasonable manner, records and property relating to a function described in section 5103(b)(1);

''(B) except in the case of packaging immediately adjacent to its hazardous material contents, may gain access to, open, and examine a package offered for, or in, transportation when the officer, employee, or agent has an objectively reasonable and articulable belief that the package may contain a hazardous material;

''(C) may remove from transportation a package or related packages in a shipment offered for or in transportation for which—

''(i) such officer, employee, or agent has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

''(ii) such officer, employee, or agent contemporaneously documents such belief in accordance with procedures set forth in guidance or regulations prescribed under subsection (e);

''(D) may gather information from the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package, to ascertain the nature and hazards of the contents of the package;

''(E) as necessary, under terms and conditions specified by the Secretary, may order the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package to have the package transported to, opened, and the contents examined and analyzed, at a facility appropriate for the conduct of such examination and analysis; and

''(F) when safety might otherwise be compromised, may authorize properly qualified personnel to assist in the activities conducted under this subsection.

''(2) DISPLAY OF CREDENTIALS.—An officer, employee, or agent acting under this subsection shall display proper credentials when requested.

''(3) SAFE RESUMPTION OF TRANSPORTATION.—In instances when, as a result of an inspection or investigation under this subsection, an imminent hazard is not found to exist, the Secretary, in accordance with procedures set forth in regulations prescribed under subsection (e), shall assist—

''(A) in the safe and prompt resumption of transportation of the package concerned; or

''(B) in any case in which the hazardous material being transported is perishable, in the safe and expeditious resumption of transportation of the perishable hazardous material.''.

(d) EMERGENCY AUTHORITY FOR HAZARDOUS MATERIAL TRANSPORTATION.—Section 5121 is amended—

(1) by redesignating subsections (d) and (e) as subsections (f) and (h), respectively; and

(2) by inserting after subsection (c) the following:

''(d) EMERGENCY ORDERS.—

''(1) IN GENERAL.—If, upon inspection, investigation, testing, or research, the Secretary determines that a violation of a provision of this chapter, or a regulation prescribed under this chapter, or an unsafe condition or practice, constitutes or is causing an imminent hazard, the Secretary may issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

''(2) WRITTEN ORDERS.—The action of the Secretary under paragraph (1) shall be in a written emergency order that—

''(A) describes the violation, condition, or practice that constitutes or is causing the imminent hazard;

''(B) states the restrictions, prohibitions, recalls, or out-of-service orders issued or imposed; and

''(C) describes the standards and procedures for obtaining relief from the order.

''(3) OPPORTUNITY FOR REVIEW.—After taking action under paragraph (1), the Secretary shall provide for review of the action under section 554 of title 5 if a petition for review is filed within 20 calendar days of the date of issuance of the order for the action.

''(4) EXPIRATION OF EFFECTIVENESSS OF ORDER.—If a petition for review of an action is

filed under paragraph (3) and the review under that paragraph is not completed by the end of the 30-day period beginning on the date the petition is filed, the action shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the imminent hazard providing a basis for the action continues to exist.

''(5) OUT OF SERVICE ORDER DEFINED.—In this subsection, the term 'out-of-service order' means a requirement that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, potable tank, or other package not be moved until specified conditions have been met.

''(e) REGULATIONS.—

''(1) TEMPORARY REGULATIONS.—Not later than 60 days after the date of enactment of the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, the Secretary shall issue temporary regulations to carry out subsections (c) and (d). The temporary regulations shall expire on the date of issuance of the regulations under paragraph (2).

''(2) FINAL REGULATIONS.—Not later than 1 year after such date of enactment, the Secretary shall issue regulations to carry out subsections (c) and (d) in accordance with subchapter II of chapter 5 of title 5.''.

(e) GRANTS AND COOPERATIVE AGREEMENTS.—Section 5121 is amended by inserting after subsection (f) (as redesignated by subsection (d)(1) of this section) the following:

''(g) GRANTS AND COOPERATIVE AGREEMENTS.—The Secretary may enter into grants and cooperative agreements with a person, agency, or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in coordination with the Department of State), an educational institution, or other appropriate entity—

''(1) to expand risk assessment and emergency response capabilities with respect to the security of transportation of hazardous material;

''(2) to enhance emergency communications capacity as determined necessary by the Secretary, including the use of integrated, interoperable emergency communications technologies where appropriate;

''(3) to conduct research, development, demonstration, risk assessment, and emergency response planning and training activities; or

''(4) to otherwise carry out this chapter.''.

(f) REPORT.—Section 5121(h) (as redesignated by subsection (d)(1) of this section) is amended—

(1) in the matter preceding paragraph (1) by striking ''submit to the President for transmittal to the Congress'' and inserting ''transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate''; and

(2) in paragraph (4) by inserting ''relating to a function regulated by the Secretary under section 5103(b)(1)'' after ''activities''.

SEC. 7119. ENFORCEMENT.

(a) IN GENERAL.—Section 5122(a) is amended—

(1) in the first sentence by striking ''chapter or a regulation prescribed or order'' and inserting ''chapter or a regulation prescribed or order, special permit, or approval''; and

(2) by striking the second sentence and inserting the following: ''The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same penalty amounts and factors as prescribed for the Secretary in an administrative case under section 5123.''.

(b) IMMINENT HAZARDS.—Section 5122(b)(1)(B) is amended by striking ''or ameliorate the'' and inserting ''or mitigate the''.

SEC. 7120. CIVIL PENALTY.

(a) PENALTY.—Section 5123(a) is amended—

(1) in paragraph (1)—

(A) by striking ''regulation prescribed or order issued'' and inserting ''regulation, order, special permit, or approval issued''; and

(B) by striking ''$25,000'' and inserting ''$50,000'';

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following:

''(2) If the Secretary finds that a violation under paragraph (1) results in death, serious illness, or severe injury to any person or substantial destruction of property, the Secretary may increase the amount of the civil penalty for such violation to not more than $100,000.

''(3) If the violation is related to training, paragraph (1) shall be applied by substituting '$450' for '$250'.''.

(b) HEARING REQUIREMENT.—Section 5123(b) is amended by striking ''regulation prescribed'' and inserting ''regulation prescribed or order, special permit, or approval issued''.

(c) CIVIL ACTIONS TO COLLECT.—Section 5123(d) is amended by striking ''section.'' and inserting ''section and any accrued interest on the civil penalty as calculated in accordance with section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705). In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.''.

(d) EFFECTIVE DATES.—

(1) HEARING REQUIREMENT.—The amendment made by subsection (b) shall take effect on the date of enactment of this Act, and shall apply with respect to violations described in section 5123(a) of title 49, United States Code (as amended by this section), that occur on or after that date.

(2) CIVIL ACTIONS TO COLLECT.—The amendment made by subsection (c) shall apply with respect to civil penalties imposed on violations described in section 5123(a) of title 49, United States Code (as amended by this section), that occur on or after the date of enactment of this Act.

SEC. 7121. CRIMINAL PENALTY.

Section 5124 is amended to read as follows:

''§ 5124. Criminal penalty

''(a) IN GENERAL.—A person knowingly violating section 5104(b) or willfully or recklessly violating this chapter or a regulation, order, special permit, or approval issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to any person.

''(b) KNOWING VIOLATIONS.—For purposes of this section—

''(1) a person acts knowingly when—

''(A) the person has actual knowledge of the facts giving rise to the violation; or

''(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; and

''(2) knowledge of the existence of a statutory provision, or a regulation or a requirement required by the Secretary, is not an element of an offense under this section.

''(c) WILLFUL VIOLATIONS.—For purposes of this section, a person acts willfully when—

''(1) the person has knowledge of the facts giving rise to the violation; and

''(2) the person has knowledge that the conduct was unlawful.

''(d) RECKLESS VIOLATIONS.—For purposes of this section, a person acts recklessly when the person displays a deliberate indifference or conscious disregard to the consequences of that person's conduct.''.

SEC. 7122. PREEMPTION.

(a) SUBSTANTIVE DIFFERENCES.—Section 5125(b) is amended—

(1) by striking subparagraph (E) of paragraph (1) and inserting the following:

''(E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.''; and

(2) by striking ''prescribes after November 16, 1990. However, the'' in paragraph (2) and inserting ''prescribes. The''.

(b) DECISIONS ON PREEMPTION.—Section 5125(d)(1) is amended in the first sentence by inserting before the period at the end ''or section 5119(e)''.

(c) WAIVER OF PREEMPTION.—Section 5125(e) is amended in the first sentence by inserting before the period at the end ''or section 5119(b)''.

(d) STANDARDS.—Section 5125 is amended by adding at the end the following:

''(h) APPLICATION OF EACH PREEMPTION STANDARD.—Each standard for preemption in subsection (b), (c)(1), or (d), and in section 5119(b), is independent in its application to a requirement of a State, political subdivision of a State, or Indian tribe.

''(i) NON-FEDERAL ENFORCEMENT STANDARDS.—This section does not apply to any procedure, penalty, required mental state, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.''.

SEC. 7123. JUDICIAL REVIEW.

(a) REPEAL.—Section 5125 (as amended by section 7122 of this Act) is further amended—

(1) by striking subsection (f);

(2) by redesignating subsections (g), (h), and (i) as subsections (f), (g), and (h), respectively; and

(3) in subsection (f) (as so redesignated) by moving paragraph (2) (including subparagraphs (A) through (D)) 2 ems to the left.

(b) JUDICIAL REVIEW.—Chapter 51 is amended by redesignating section 5127 as section 5128 and by inserting after section 5126 the following:

''§ 5127. Judicial review

''(a) FILING AND VENUE.—Except as provided in section 20114(c), a person adversely affected or aggrieved by a final action of the Secretary under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not more than 60 days after the Secretary's action becomes final.

''(b) JUDICIAL PROCEDURES.—When a petition is filed under subsection (a), the clerk of the court immediately shall send a copy of the petition to the Secretary. The Secretary shall file with the court a record of any proceeding in which the final action was issued, as provided in section 2112 of title 28.

''(c) AUTHORITY OF COURT.—The court has exclusive jurisdiction, as provided in subchapter II of chapter 5 of title 5, to affirm or set aside any part of the Secretary's final action and may order the Secretary to conduct further proceedings.

''(d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing a final action under this section, the court may consider an objection to a final action of the Secretary only if the objection was made in the course of a proceeding or review conducted by the Secretary or if there was a reasonable ground for not making the objection in the proceeding.''.

(c) CONFORMING AMENDMENT.—The analysis for chapter 51 is amended by striking the item relating to section 5127 and inserting the following:

''5127. Judicial review.
''5128. Authorization of appropriations.''.

SEC. 7124. RELATIONSHIP TO OTHER LAWS.

Section 5126(a) is amended—

(1) by striking ''or causes to be transported hazardous material,'' and inserting ''hazardous material, or causes hazardous material to be transported,'';

(2) by striking ''manufactures,'' and all that follows through ''or sells'' and inserting ''designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented'';

(3) by striking ''must'' and inserting ''shall''; and

(4) by striking ''manufacturing,'' and all that follows through ''testing'' and inserting ''designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing''.

SEC. 7125. AUTHORIZATION OF APPROPRIATIONS.

Section 5128 (as redesignated by section 7123(b) of this Act) is amended to read as follows:

''§ 5128. Authorizations of appropriations

''(a) IN GENERAL.—In order to carry out this chapter (except sections 5107(e), 5108(g)(2), 5113, 5115, 5116, and 5119), the following amounts are authorized to be appropriated to the Secretary:

''(1) For fiscal year 2005, $24,940,000.

''(2) For fiscal year 2006, $29,000,000.

''(3) For fiscal year 2007, $30,000,000.

''(4) For fiscal year 2008, $30,000,000.

''(b) HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS FUND.—There shall be available to the Secretary, from the account established pursuant to section 5116(i), for each of fiscal years 2005 through 2008 the following:

''(1) To carry out section 5115, $200,000.

''(2) To carry out sections 5116(a) and (b), $21,800,000 to be allocated as follows:

''(A) $5,000,000 to carry out section 5116(a).

''(B) $7,800,000 to carry out section 5116(b).

''(C) Of the amount provided for by this paragraph for a fiscal year in excess of the suballocations in subparagraphs (A) and (B)—

''(i) 35 percent shall be used to carry out section 5116(a); and

''(ii) 65 percent shall be used to carry out section 5116(b),

except that the Secretary may increase the proportion to carry out section 5116(b) and decrease the proportion to carry out section 5116(a) if the Secretary determines that such reallocation is appropriate to carry out the intended uses of these funds as described in the applications submitted by States and Indian tribes.

''(3) To carry out section 5116(f), $150,000.

''(4) To publish and distribute the Emergency Response Guidebook under section 5116(i)(3), $625,000.

''(5) To carry out section 5116(j), $1,000,000.

''(c) HAZMAT TRAINING GRANTS.—There shall be available to the Secretary, from the account established pursuant to section 5116(i), to carry out section 5107(e) $4,000,000 for each of fiscal years 2005 through 2008.

''(d) ISSUANCE OF HAZMAT LICENSES.—There are authorized to be appropriated for the Department of Transportation such amounts as may be necessary to carry out section 5103a.

''(e) CREDITS TO APPROPRIATIONS.—The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

''(f) AVAILABILITY OF AMOUNTS.—Amounts made available by or under this section remain available until expended.''.

SEC. 7126. REFERENCES TO THE SECRETARY OF TRANSPORTATION.

Chapter 51 is amended by striking ''Secretary of Transportation'' each place it appears (other than the second place it appears in section 5108(g)(2)(C) and in sections 5102(11), 5103(c), 5103a(c), 5115(a), 5115(c)(3), 5116(i), and 5120(a)) and inserting ''Secretary''.

SEC. 7127. CRIMINAL MATTERS.

Section 845(a)(1) of title 18, United States Code, is amended to read as follows:

''(1) aspects of the transportation of explosive materials via railroad, water, highway, or air that pertain to safety, including security, and are regulated by the Department of Transportation or the Department of Homeland Security;''.

SEC. 7128. ADDITIONAL CIVIL AND CRIMINAL PENALTIES.

(a) TITLE 49 PENALTIES.—Section 46312 is amended—

(1) by striking ''part—'' in subsection (a) and inserting ''part or chapter 51—''; and

(2) by inserting ''or chapter 51'' in subsection (b) after ''under this part''.

(b) TITLE 18 PENALTIES.—Section 3663(a)(1)(A) of title 18, United States Code, is amended by inserting ''5124,'' before ''46312,''.

SEC. 7129. HAZARDOUS MATERIAL TRANSPORTATION PLAN REQUIREMENT.

(a) IN GENERAL.—Subpart I of part 172 of the Department of Transportation's regulations (49 C.F.R. 172.800 et seq.), or any subsequent Department of Transportation regulation in pari materia, does not apply to the surface transportation activities of a farmer that are—

(1) in direct support of the farmer's farming operations; and

(2) conducted within a 150-mile radius of those operations.

(b) FARMER DEFINED.—In this section, the term ''farmer'' means a person—

(1) actively engaged in the production or raising of crops, poultry, livestock, or other agricultural commodities; and

(2) whose gross receipts from the sale of such agricultural commodities or products do not exceed $500,000 annually.

SEC. 7130. DETERMINING AMOUNT OF UNDECLARED SHIPMENTS OF HAZARDOUS MATERIALS ENTERING THE UNITED STATES.

(a) STUDY.—The Comptroller General shall review existing options and determine additional options for discovering the amount of undeclared shipments of hazardous materials (as defined in section 5101 of title 49, United States Code) entering the United States.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

SEC. 7131. HAZARDOUS MATERIALS RESEARCH PROJECTS.

(a) IN GENERAL.—The Administrator of the Pipeline and Hazardous Materials Safety Administration shall enter into a contract with the National Academy of Sciences to carry out the 9 research projects called for in the 2005 Special Report 283 of the Transportation Research Board entitled ''Cooperative Research for Hazardous Materials Transportation: Defining the Need, Converging on Solutions''. In carrying out the research projects, the National Academy of Sciences shall consult with the Administrator.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the need to establish a cooperative research program on hazardous materials transportation.

(c) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act, $1,250,000 for each of fiscal years 2006 through 2009 shall be available to carry out this section.

SEC. 7132. NATIONAL FIRST RESPONDER TRANSPORTATION INCIDENT RESPONSE SYSTEM.

(a) IN GENERAL.—The Secretary shall provide funding to the Operation Respond Institute to design, build, and operate a seamless first responder hazardous materials incident detection, preparedness, and response system.

(b) EXPANSION.—This system shall include an expansion of the Operation Respond Emergency Information System (OREIS).

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section $2,500,000 for each of fiscal years 2005 through 2008.

SEC. 7133. COMMON CARRIER PIPELINE SYSTEM.

(a) STUDY.—The Secretary shall conduct a study of the economic, environmental, and homeland security advantages and disadvantages of operating a common carrier pipeline system in the States of Texas, Louisiana, Mississippi, and Alabama for the transportation of aromatic chemicals.

(b) EVALUATION.—In conducting the study, the Secretary shall evaluate the appropriateness of different Federal incentives for the construction and operation of such a pipeline system, including loan guarantees, other types of financial assistance, and various types of tax incentives.

(c) REPORT.—Not later than December 31, 2005, the Secretary shall transmit to Congress a report on the results of the study, including recommendations, if any, for legislation.

Subtitle B—Sanitary Food Transportation

SEC. 7201. SHORT TITLE.

This subtitle may be cited as the ''Sanitary Food Transportation Act of 2005''.

SEC. 7202. RESPONSIBILITIES OF SECRETARY OF HEALTH AND HUMAN SERVICES.

(a) UNSANITARY TRANSPORT DEEMED ADULTERATION.—Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) is amended by adding at the end the following:

''(i) If it is transported or offered for transport by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food under conditions that are not in compliance with regulations promulgated under section 416.''.

(b) SANITARY TRANSPORTATION REQUIREMENTS.—Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

''SEC. 416. SANITARY TRANSPORTATION PRACTICES.

''(a) DEFINITIONS.—In this section:

''(1) BULK VEHICLE.—The term 'bulk vehicle' includes a tank truck, hopper truck, rail tank car, hopper car, cargo tank, portable tank, freight container, or hopper bin, and any other vehicle in which food is shipped in bulk, with the food coming into direct contact with the vehicle.

''(2) TRANSPORTATION.—The term 'transportation' means any movement in commerce by motor vehicle or rail vehicle.

''(b) REGULATIONS.—The Secretary shall by regulation require shippers, carriers by motor vehicle or rail vehicle, receivers, and other persons engaged in the transportation of food to use sanitary transportation practices prescribed by the Secretary to ensure that food is not transported under conditions that may render the food adulterated.

''(c) CONTENTS.—The regulations under subsection (b) shall—

''(1) prescribe such practices as the Secretary determines to be appropriate relating to—

''(A) sanitation;

''(B) packaging, isolation, and other protective measures;

''(C) limitations on the use of vehicles;

''(D) information to be disclosed—

''(i) to a carrier by a person arranging for the transport of food; and

''(ii) to a manufacturer or other person that—

''(I) arranges for the transportation of food by a carrier; or

''(II) furnishes a tank vehicle or bulk vehicle for the transportation of food; and

''(E) recordkeeping; and

''(2) include—

''(A) a list of nonfood products that the Secretary determines may, if shipped in a bulk vehicle, render adulterated food that is subsequently transported in the same vehicle; and

''(B) a list of nonfood products that the Secretary determines may, if shipped in a motor vehicle or rail vehicle (other than a tank vehicle

or bulk vehicle), render adulterated food that is simultaneously or subsequently transported in the same vehicle.

''(d) WAIVERS.—

''(1) IN GENERAL.—The Secretary may waive any requirement under this section, with respect to any class of persons, vehicles, food, or nonfood products, if the Secretary determines that the waiver—

''(A) will not result in the transportation of food under conditions that would be unsafe for human or animal health; and

''(B) will not be contrary to the public interest.

''(2) PUBLICATION.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.

''(e) PREEMPTION.—

''(1) IN GENERAL.—A requirement of a State or political subdivision of a State that concerns the transportation of food is preempted if—

''(A) complying with a requirement of the State or political subdivision and a requirement of this section, or a regulation prescribed under this section, is not possible; or

''(B) the requirement of the State or political subdivision as applied or enforced is an obstacle to accomplishing and carrying out this section or a regulation prescribed under this section.

''(2) APPLICABILITY.—This subsection applies to transportation that occurs on or after the effective date of the regulations promulgated under subsection (b).

''(f) ASSISTANCE OF OTHER AGENCIES.—The Secretary of Transportation, the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the heads of other Federal agencies, as appropriate, shall provide assistance on request, to the extent resources are available, to the Secretary for the purposes of carrying out this section.''.

(c) INSPECTION OF TRANSPORTATION RECORDS.—

(1) REQUIREMENT.—Section 703 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 373) is amended—

(A) by striking the section heading and all that follows through ''For the purpose'' and inserting the following:

''SEC. 703. RECORDS.

''(a) IN GENERAL.—For the purpose''; and

(B) by adding at the end the following:

''(b) FOOD TRANSPORTATION RECORDS.—A shipper, carrier by motor vehicle or rail vehicle, receiver, or other person subject to section 416 shall, on request of an officer or employee designated by the Secretary, permit the officer or employee, at reasonable times, to have access to and to copy all records that the Secretary requires to be kept under section 416(c)(1)(E).''.

(2) CONFORMING AMENDMENT.—Subsection (a) of section 703 of the Federal Food, Drug, and Cosmetic Act (as designated by paragraph (1)(A)) is amended by striking ''carriers.'' and inserting ''carriers, except as provided in subsection (b).''.

(d) PROHIBITED ACTS; RECORDS INSPECTION.—Section 301(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(e)) is amended by inserting ''416,'' before ''504,'' each place it appears.

(e) UNSAFE FOOD TRANSPORTATION.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by adding at the end the following:

''(hh) The failure by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food to comply with the sanitary transportation practices prescribed by the Secretary under section 416.''.

SEC. 7203. DEPARTMENT OF TRANSPORTATION REQUIREMENTS.

Chapter 57 is amended to read as follows:

''CHAPTER 57—SANITARY FOOD TRANSPORTATION

''5701. Food Transportation safety inspections.

''§ 5701. Food transportation safety inspections

''(a) INSPECTION PROCEDURES.—

''(1) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture, shall establish procedures for transportation safety inspections for the purpose of identifying suspected incidents of contamination or adulteration of—

''(A) food in violation of regulations promulgated under section 416 of the Federal Food, Drug, and Cosmetic Act;

''(B) a carcass, part of a carcass, meat, meat food product, or animal subject to detention under section 402 of the Federal Meat Inspection Act (21 U.S.C. 672); and

''(C) poultry products or poultry subject to detention under section 19 of the Poultry Products Inspection Act (21 U.S.C. 467a).

''(2) TRAINING.—

''(A) IN GENERAL.—The Secretary of Transportation shall develop and carry out a training program to conduct enforcement of this chapter and regulations prescribed under this chapter or compatible State laws and regulations.

''(B) CONDUCT.—In carrying out this paragraph, the Secretary of Transportation shall train inspectors, including Department of Transportation personnel, State employees described under subsection (c), or personnel paid with funds authorized under sections 31102 and 31104, in the recognition of adulteration problems associated with the transportation of cosmetics, devices, drugs, food, and food additives and in the procedures for obtaining assistance of the appropriate departments, agencies, and instrumentalities of the Government and State authorities to support the enforcement.

''(3) APPLICABILITY.—The procedures established under paragraph (1) shall apply, at a minimum, to Department of Transportation personnel that perform commercial motor vehicle or railroad safety inspections.

''(b) NOTIFICATION OF SECRETARY OF HEALTH AND HUMAN SERVICES OR SECRETARY OF AGRICULTURE.—The Secretary of Transportation shall promptly notify the Secretary of Health and Human Services or the Secretary of Agriculture, as applicable, of any instances of potential food contamination or adulteration of a food identified during transportation safety inspections.

''(c) USE OF STATE EMPLOYEES.—The means by which the Secretary of Transportation carries out subsection (b) may include inspections conducted by State employees using funds authorized to be appropriated under sections 31102 through 31104.''.

SEC. 7204. EFFECTIVE DATE.

This subtitle takes effect on October 1, 2005.

Subtitle C—Research and Innovative Technology Administration

SEC. 7301. ADMINISTRATIVE AUTHORITY.

Section 112 is amended by adding at the end the following:

''(e) ADMINISTRATIVE AUTHORITIES.—The Administrator may enter into grants and cooperative agreements with Federal agencies, State and local government agencies, other public entities, private organizations, and other persons—

''(1) to conduct research into transportation service and infrastructure assurance; and

''(2) to carry out other research activities of the Administration.''.

TITLE VIII—TRANSPORTATION DISCRETIONARY SPENDING GUARANTEE

SEC. 8001. DISCRETIONARY SPENDING LIMITS FOR THE HIGHWAY AND MASS TRANSIT CATEGORIES.

(a) LIMITS.—Redesignate paragraphs (2) through (9) of section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 as paragraphs (6) through (13), respectively, and strike paragraph (1) of such section 251(c) and insert the following new paragraphs:

''(1) with respect to fiscal year 2005—

''(A) for the highway category: $31,277,000,000 in outlays;

''(B) for the mass transit category: $955,792,000 in new budget authority and $6,674,000,000 in outlays;

''(2) with respect to fiscal year 2006—

''(A) for the highway category: $33,942,000,000 in outlays;

''(B) for the mass transit category: $1,643,000,000 in new budget authority and $7,359,000,000 in outlays;

''(3) with respect to fiscal year 2007—

''(A) for the highway category: $36,960,000,000 in outlays;

''(B) for the mass transit category: $1,712,000,000 in new budget authority and $8,120,000,000 in outlays;

''(4) with respect to fiscal year 2008—

''(A) for the highway category: $39,123,000,000 in outlays;

''(B) for the mass transit category: $1,858,000,000 in new budget authority and $8,742,000,000 in outlays;

''(5) with respect to fiscal year 2009—

''(A) for the highway category: $40,660,000,000 in outlays;

''(B) for the mass transit category: $1,977,500,000 in new budget authority and $9,180,000,000 in outlays;''.

(b) DEFINITIONS.—Section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in subparagraph (B)—

(A) by striking ''the Transportation Equity Act for the 21st Century'' and all that follows through the colon and inserting: ''the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users:''; and

(B) by adding at the end thereof the following new clauses:

''(v) 69–8362–0–7–401 (National Driver Registry).

''(vi) 69–8159–0–7–401 (Motor Carrier Safety Operations and Programs).

''(vii) 06–8158–0–7–401 (Motor Carrier Safety Grants).''; and

(2) by striking subparagraph (C) and inserting the following:

''(C) MASS TRANSIT CATEGORY.—The term 'mass transit category' means the following budget accounts, or portions of the accounts, that are subject to the obligation limitations on contract authority provided in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users or for which appropriations are provided in accordance with authorizations contained in that Act:

''(i) 69–1120–0–1–401 (Administrative Expenses).

''(ii) 69–1134–0–1–401 (Capital Investment Grants).

''(iii) 69–8191–0–7–401 (Discretionary Grants).

''(iv) 69–1129–0–1–401 (Formula Grants).

''(v) 69–1127–0–1–401 (Interstate Transfer Grants—Transit).

''(vi) 69–1125–0–1–401 (Job Access and Reverse Commute).

''(vii) 69–1122–0–1–401 (Miscellaneous Expired Accounts).

''(viii) 69–1121–0–1–401 (Research, Training and Human Resources).

''(ix) 69–8350–0–7–401 (Trust Fund Share of Expenses).

''(x) 69–1137–0–1–401 (Transit Planning and Research).

''(xi) 69–1136–0–1–401 (University Transportation Research).

''(xii) 69–1128–0–1–401 (Washington Metropolitan Area Transit Authority).''.

SEC. 8002. ADJUSTMENTS TO ALIGN HIGHWAY SPENDING WITH REVENUES.

Subparagraphs (B) through (E) of section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 are amended to read as follows:

''(B) ADJUSTMENT TO ALIGN HIGHWAY SPENDING WITH REVENUES.—(i) When the President

submits the budget under section 1105 of title 31, United States Code, OMB shall calculate and the budget shall make adjustments to the highway category for the budget year and each outyear as provided in clause (ii)(I)(cc).

''(ii)(I)(aa) OMB shall take the actual level of highway receipts for the year before the current year and subtract the sum of the estimated level of highway receipts in subclause (II) plus any amount previously calculated under item (bb) for that year.

''(bb) OMB shall take the current estimate of highway receipts for the current year and subtract the estimated level of receipts for that year.

''(cc) OMB shall add one-half of the sum of the amount calculated under items (aa) and (bb) to the obligation limitations set forth in the section 8003 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users and, using current estimates, calculate the outlay change resulting from the change in obligations for the budget year and the first outyear and the outlays flowing therefrom through subsequent fiscal years. After making the calculations under the preceding sentence, OMB shall adjust the amount of obligations set forth in that section for the budget year and the first outyear by adding one-half of the sum of the amount calculated under items (aa) and (bb) to each such year.

''(II) The estimated level of highway receipts for the purposes of this clause are—

''(aa) for fiscal year 2005, $31,562,000,000;

''(bb) for fiscal year 2006, $33,712,000,000;

''(cc) for fiscal year 2007, $34,623,000,000

''(dd) for fiscal year 2008, $35,449,000,000; and

''(ee) for fiscal year 2009, $36,220,000,000.

''(III) In this clause, the term 'highway receipts' means the governmental receipts credited to the highway account of the Highway Trust Fund.

''(C) In addition to the adjustment required by subparagraph (B), when the President submits the budget under section 1105 of title 31, United States Code, for fiscal year 2007, 2008, or 2009, OMB shall calculate and the budget shall include for the budget year and each outyear an adjustment to the limits on outlays for the highway category and the mass transit category equal to—

''(i) the outlays for the applicable category calculated assuming obligation levels consistent with the estimates prepared pursuant to subparagraph (D), as adjusted, using current technical assumptions; minus

''(ii) the outlays for the applicable category set forth in the subparagraph (D) estimates, as adjusted.

''(D)(i) When OMB and CBO submit their final sequester report for fiscal year 2006, that report shall include an estimate of the outlays for each of the categories that would result in fiscal years 2007 through 2010 from obligations at the levels specified in section 8003 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users using current assumptions.

''(ii) When the President submits the budget under section 1105 of title 31, United States Code, for fiscal year 2007, 2008, 2009, or 2010, OMB shall adjust the estimates made in clause (i) by the adjustments by subparagraphs (B) and (C).

''(E) OMB shall consult with the Committees on the Budget and include a report on adjustments under subparagraphs (B) and (C) in the preview report.''.

SEC. 8003. LEVEL OF OBLIGATION LIMITATIONS.

(a) HIGHWAY CATEGORY.—For the purposes of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, the level of obligation limitations for the highway category is—

(1) for fiscal year 2005, $35,164,292,000;
(2) for fiscal year 2006, $37,220,843,903;
(3) for fiscal year 2007, $39,460,710,516;
(4) for fiscal year 2008, $40,824,075,404; and
(5) for fiscal year 2009, $42,469,970,178.

(b) MASS TRANSIT CATEGORY.—For the purposes of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, the level of obligation limitations for the mass transit category is—

(1) for fiscal year 2005, $7,646,336,000;
(2) for fiscal year 2006, $8,622,931,000;
(3) for fiscal year 2007, $8,974,775,000;
(4) for fiscal year 2008, $9,730,893,000; and
(5) for fiscal year 2009, $10,338,065,000.

For purposes of this subsection, the term ''obligation limitations'' means the sum of budget authority and obligation limitations.

SEC. 8004. ENFORCEMENT OF GUARANTEE.

Clause 3 of rule XXI of the Rules of the House of Representatives is amended—

(1) by striking ''section 8103 of the Transportation Equity Act for the 21st Century'' and inserting ''section 8003 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users''; and

(2) by adding at the end the following: ''For purposes of this clause, any obligation limitation relating to surface transportation projects under section 1602 of the Transportation Equity Act for the 21st Century and section 1702 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users shall be assumed to be administered on the basis of sound program management practices that are consistent with past practices of the administering agency permitting States to decide High Priority Project funding priorities within State program allocations.''.

SEC. 8005. TRANSFER OF FEDERAL TRANSIT ADMINISTRATIVE EXPENSES.

For purposes of clauses 2 and 3 of rule XXI of the House of Representatives, it shall be in order to transfer funds, in amounts specified in annual appropriation Acts to carry out the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (including the amendments made by that Act), from the Federal Transit Administration's administrative expenses account to other mass transit budget accounts under section 250(c)(4)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE IX—RAIL TRANSPORTATION

SEC. 9001. HIGH-SPEED RAIL CORRIDOR DEVELOPMENT.

(a) CORRIDOR DEVELOPMENT.—

(1) AMENDMENTS.—Section 26101 of title 49, United States Code, is amended—

*(A) in the section heading, by striking ''**planning**'' and inserting ''**development**'';*

(B) in the heading of subsection (a), by striking ''PLANNING'' and inserting ''DEVELOPMENT'';

(C) by striking ''corridor planning'' each place it appears and inserting ''corridor development'';

(D) in subsection (b)(1)—

(i) by inserting '', or if it is an activity described in subparagraph (M)'' after ''high-speed rail improvements'';

(ii) by striking ''and'' at the end of subparagraph (K);

(iii) by striking the period at the end of subparagraph (L) and inserting ''; and''; and

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

''(M) the acquisition of locomotives, rolling stock, track, and signal equipment.''; and

(E) in subsection (c)(2), by striking ''planning'' and inserting ''development''.

(2) CONFORMING AMENDMENT.—The item relating to section 26101 in the table of sections of chapter 261 of title 49, United States Code, is amended by striking ''planning'' and inserting ''development''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 26104 of title 49, United States Code, is amended to read as follows:

''§ 26104. Authorization of appropriations

''(a) FISCAL YEARS 2006 THROUGH 2013.—There are authorized to be appropriated to the Secretary—

''(1) $70,000,000 for carrying out section 26101; and

''(2) $30,000,000 for carrying out section 26102, for each of the fiscal years 2006 through 2013.

''(b) FUNDS TO REMAIN AVAILABLE.—Funds made available under this section shall remain available until expended.''.

(c) DEFINITION.—Section 26105(1) of title 49, United States Code, is amended by striking ''and cooperative agreements'' and inserting '', cooperative agreements, and other transactions''.

SEC. 9002. CAPITAL GRANTS FOR RAIL LINE RELOCATION PROJECTS.

(a) ESTABLISHMENT OF PROGRAM.—

(1) PROGRAM REQUIREMENTS.—Chapter 201 of title 49, United States Code, is amended by adding at the end of subchapter II the following:

''§ 20154. Capital grants for rail line relocation projects

''(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation shall carry out a grant program to provide financial assistance for local rail line relocation and improvement projects.

''(b) ELIGIBILITY.—A State is eligible for a grant under this section for any construction project for the improvement of the route or structure of a rail line that either—

''(1) is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development; or

''(2) involves a lateral or vertical relocation of any portion of the rail line.

''(c) CONSIDERATIONS FOR APPROVAL OF GRANT APPLICATIONS.—In determining whether to award a grant to an eligible State under this section, the Secretary shall consider the following factors:

''(1) The capability of the State to fund the rail line relocation project without Federal grant funding.

''(2) The requirement and limitation relating to allocation of grant funds provided in subsection (d).

''(3) Equitable treatment of the various regions of the United States.

''(4) The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce.

''(5) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

''(d) ALLOCATION REQUIREMENTS.—At least 50 percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each. The $20,000,000 amount shall be adjusted by the Secretary to reflect inflation for fiscal years beginning after fiscal year 2006.

''(e) NON-FEDERAL SHARE.—

''(1) PERCENTAGE.—A State or other non-Federal entity shall pay at least 10 percent of the shared costs of a project that is funded in part by a grant awarded under this section.

''(2) FORMS OF CONTRIBUTIONS.—The share required by paragraph (1) may be paid in cash or in kind.

''(3) IN-KIND CONTRIBUTIONS.—The in-kind contributions that are permitted to be counted under paragraph (2) for a project for a State or other non-Federal entity are as follows:

''(A) A contribution of real property or tangible personal property (whether provided by the State or a person for the State).

''(B) A contribution of the services of employees of the State or other non-Federal entity, calculated on the basis of costs incurred by the State or other non-Federal entity for the pay and benefits of the employees, but excluding overhead and general administrative costs.

''(C) A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that

were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

''(4) FINANCIAL CONTRIBUTION FROM PRIVATE ENTITIES.—

''(A) The Secretary shall require a State to submit a description of the anticipated public and private benefits associated with each rail line relocation or improvement project described in subsection (a). The determination of such benefits shall be developed in consultation with the owner and user of the rail line being relocated or improved or other private entity involved in the project.

''(B) The Secretary shall consider the feasibility of seeking financial contributions or commitments from private entities involved with the project in proportion to the expected benefits determined under subparagraph (A) that accrue to such entities from the project.

''(f) AGREEMENTS TO COMBINE AMOUNTS.—Two or more States (not including political subdivisions of States) may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section if—

''(1) the project will benefit each of the States entering into the agreement; and

''(2) the agreement is not a violation of a law of any such State.

''(g) REGULATIONS.—The Secretary shall prescribe regulations for carrying out this section.

''(h) DEFINITIONS.—In this section:

''(1) CONSTRUCTION.—The term 'construction' means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a project described under subsection (b)(1) of this section, including bond costs and other costs relating to the issuance of bonds or other debt financing instruments and costs incurred by the State in performing project related audits, and includes—

''(A) locating, surveying, and mapping;

''(B) track installation, restoration, and rehabilitation;

''(C) acquisition of rights-of-way;

''(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

''(E) elimination of obstacles and relocation of utilities; and

''(F) and other activities defined by the Secretary.

''(2) QUALITY OF LIFE.—The term 'quality of life' includes first responders' emergency response time, the environment, noise levels, and other factors as determined by the Secretary.

''(3) STATE.—The term 'State' includes, except as otherwise specifically provided, a political subdivision of a State, and the District of Columbia.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for use in carrying out this section $350,000,000 for each of the fiscal years 2006 through 2009.''.

(2) CLERICAL AMENDMENT.—The chapter analysis for such chapter is amended by adding at the end the following:

''20154. Capital grants for rail line relocation projects.''.

(b) REGULATIONS.—

(1) TEMPORARY REGULATIONS.—Not later than April 1, 2006, the Secretary of Transportation shall issue temporary regulations to implement the grant program under section 20154 of title 49, United States Code, as added by subsection (a). Subchapter II of chapter 5 of title 5, United States Code, shall not apply to the issuance of a temporary regulation under this subsection or of any amendment of such a temporary regulation.

(2) FINAL REGULATIONS.—Not later than October 1, 2006, the Secretary shall issue final regulations implementing the program.

SEC. 9003. REHABILITATION AND IMPROVEMENT FINANCING.

(a) DEFINITIONS.—Section 102(7) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 802(7)) is amended to read as follows:

''(7) 'railroad' has the meaning given that term in section 20102 of title 49, United States Code; and''.

(b) GENERAL AUTHORITY.—Section 502(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(a)) is amended to read as follows:

''(a) GENERAL AUTHORITY.—The Secretary shall provide direct loans and loan guarantees to—

''(1) State and local governments;

''(2) interstate compacts consented to by Congress under section 410(a) of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 nt);

''(3) government sponsored authorities and corporations;

''(4) railroads;

''(5) joint ventures that include at least 1 railroad; and

''(6) solely for the purpose of constructing a rail connection between a plant or facility and a second rail carrier, limited option rail freight shippers that own or operate a plant or other facility that is served by no more than a single railroad.''.

(c) PRIORITY PROJECTS.—Section 502(c) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(c)) is amended—

(1) by striking ''or'' after the semicolon in paragraph (5);

(2) by striking ''areas.'' in paragraph (6) and inserting ''areas;''; and

(3) by adding at the end the following:

''(7) enhance service and capacity in the national rail system; or

''(8) would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.''.

(d) EXTENT OF AUTHORITY.—Section 502(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(d)) is amended—

(1) by striking ''$3,500,000,000'' and inserting ''$35,000,000,000'';

(2) by striking ''$1,000,000,000'' and inserting ''$7,000,000,000''; and

(3) by adding at the end ''The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.''.

(e) COHORTS OF LOANS.—Section 502(f) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(f)) is amended—

(1) by striking ''and'' after the semicolon in subparagraph (D) of paragraph (2);

(2) by redesignating subparagraph (E) of paragraph (2) as subparagraph (F);

(3) by adding after subparagraph (D) of paragraph (2) the following:

''(E) the size and characteristics of the cohort of which the loan or loan guarantee is a member; and''; and

(4) by adding at the end of paragraph (4) ''A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee.''.

(f) CONDITIONS OF ASSISTANCE.—

(1) ASSURANCES.—Section 502(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(h)) is amended—

(A) by inserting ''(1)'' before ''The Secretary'';

(B) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C); and

(C) by adding at the end the following:

''(2) The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to provide collateral. Any collateral provided or thereafter enhanced shall be valued as a going concern after giving effect to the present value of improvements contemplated by the completion and operation of the project. The Secretary shall not require that an applicant for a direct loan or loan guarantee under this section have previously sought the financial assistance requested from another source.

''(3) The Secretary shall require recipients of direct loans or loan guarantees under this section to comply with—

''(A) the standards of section 24312 of title 49, United States Code, as in effect on September 1, 2002, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with such standards for construction work financed under an agreement made under section 24308(a) of that title; and

''(B) the protective arrangements established under section 504 of this Act, with respect to employees affected by actions taken in connection with the project to be financed by the loan or loan guarantee.''.

(2) TECHNICAL CORRECTION.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) is amended by striking ''offered;'' in subsection (f)(2)(A) and inserting ''offered, if any;''.

(g) TIME LIMIT AND REPAYMENT SCHEDULES.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) is amended by adding at the end the following:

''(i) TIME LIMIT FOR APPROVAL OR DISAPPROVAL.—Not later than 90 days after receiving a complete application for a direct loan or loan guarantee under this section, the Secretary shall approve or disapprove the application.

''(j) REPAYMENT SCHEDULES.—

''(1) IN GENERAL.—The Secretary shall establish a repayment schedule requiring payments to commence not later than the sixth anniversary date of the original loan disbursement.

''(2) ACCRUAL.—Interest shall accrue as of the date of disbursement, and shall be amortized over the remaining term of the loan beginning at the time the payments begin.''.

(h) EVALUATION CHARGE.—Section 503(k) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 823(k)) is amended—

(1) in the subsection heading, by striking ''INVESTIGATION'' and inserting ''EVALUATION'';

(2) by inserting ''the cost of evaluating the application, including'' after ''reasonable charge for''; and

(3) by adding at the end the following: ''Amounts collected under this subsection shall be credited directly to the Safety and Operations account of the Federal Railroad Administration, and shall remain available until expended to pay for the evaluation costs described in this subsection.''.

(i) FEES AND CHARGES.—Section 503 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 823) is amended by adding at the end the following new subsection:

''(l) FEES AND CHARGES.—Except as provided in this title, the Secretary may not assess any fees, including user fees, or charges in connection with a direct loan or loan guarantee provided under section 502.''.

(j) SUBSTANTIVE CRITERIA AND STANDARDS.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation shall publish in the Federal Register and post on the Department of Transportation website the substantive criteria and standards used by the Secretary to determine whether to approve or disapprove applications submitted under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822). The Secretary of Transportation shall ensure adequate procedures and guidelines are in place to permit the filing of complete applications within 30 days of such publication.

SEC. 9004. REPORT REGARDING IMPACT ON PUBLIC SAFETY OF TRAIN TRAVEL IN COMMUNITIES WITHOUT GRADE SEPARATION.

(a) STUDY.—The Secretary of Transportation shall, in consultation with State and local government officials, conduct a study of the impact of blocked highway-railroad grade crossings on the ability of emergency responders to perform public safety and security duties.

(b) REPORT ON THE IMPACT OF BLOCKED HIGHWAY-RAILROAD GRADE CROSSINGS ON EMERGENCY RESPONDERS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit the results of the study and recommendations for reducing the impact of blocked crossings on emergency response to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

SEC. 9005. WELDED RAIL AND TANK CAR SAFETY IMPROVEMENTS.

(a) TRACK STANDARDS.—Section 20142 of title 49, United States Code, is amended by adding at the end the following new subsection:

''(e) TRACK STANDARDS.—

''(1) IN GENERAL.—Within 90 days after the date of enactment of this subsection, the Federal Railroad Administration shall—

''(A) require each track owner using continuous welded rail track to include procedures (in its procedures filed with the Administration pursuant to section 213.119 of title 49, Code of Federal Regulations) to improve the identification of cracks in rail joint bars;

''(B) instruct Administration track inspectors to obtain copies of the most recent continuous welded rail programs of each railroad within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections; and

''(C) establish a program to review continuous welded rail joint bar inspection data from railroads and Administration track inspectors periodically.

''(2) INSPECTION.—Whenever the Administration determines that it is necessary or appropriate, the Administration may require railroads to increase the frequency of inspection, or improve the methods of inspection, of joint bars in continuous welded rail.''.

(b) TANK CAR STANDARDS.—

(1) AMENDMENT.—Subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following new section:

''§ 20155. Tank cars

''(a) STANDARDS.—The Federal Railroad Administration shall—

''(1) validate a predictive model to quantify the relevant dynamic forces acting on railroad tank cars under accident conditions within 1 year after the date of enactment of this section; and

''(2) initiate a rulemaking to develop and implement appropriate design standards for pressurized tank cars within 18 months after the date of enactment of this section.

''(b) OLDER TANK CAR IMPACT RESISTANCE ANALYSIS AND REPORT.—Within 1 year after the date of enactment of this section the Federal Railroad Administration shall conduct a comprehensive analysis to determine the impact resistance of the steels in the shells of pressure tank cars constructed before 1989. Within 6 months after completing that analysis the Administration shall transmit a report, including recommendations for reducing any risk of catastrophic fracture and separation of such cars, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. ''.

(2) TABLE OF SECTIONS AMENDMENT.—The table of sections for subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following new item:

''20155. Tank cars.''.

SEC. 9006. ALASKA RAILROAD.

(a) GRANTS.—The Secretary shall make grants to the Alaska Railroad for capital rehabilitation and improvements benefiting its passenger operations.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

SEC. 9007. STUDY OF RAIL TRANSPORTATION AND REGULATION.

(a) REQUIREMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall enter into an arrangement with the Transportation Research Board of the National Academy of Sciences to conduct a comprehensive study of the Nation's railroad transportation system since the enactment of the Staggers Rail Act of 1980. The study shall address and make recommendations on—

(1) the performance of the Nation's major railroads regarding service levels, service quality, and rates;

(2) the projected demand for freight transportation over the next two decades and the constraints limiting the railroads' ability to meet that demand;

(3) the effectiveness of public policy in balancing the need for railroads to earn adequate returns with those of shippers for reasonable rates and adequate service; and

(4) the future role of the Surface Transportation Board in regulating railroad rates, service levels, and the railroads' common carrier obligations, particularly as railroads may become revenue adequate.

(b) REPORT TO CONGRESS.—Not later than 1 year after the Secretary and the Transportation Research Board enter into the arrangement for the study, the Secretary shall transmit the results of the study conducted under subsection (a) to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $1,000,000 for fiscal year 2006 and $800,000 for fiscal year 2007 to carry out this section. Such sums are to remain available until expended.

SEC. 9008. HAWAII PORT INFRASTRUCTURE EXPANSION PROGRAM.

(a) IN GENERAL.—Amounts appropriated or otherwise made available for any fiscal year for an intermodal or marine facility comprising a component of the Hawaii Port Infrastructure Expansion Program, and any non-Federal contributions made available for that program, shall be—

(1) transferred to and administered by the Administrator of the Maritime Administration; and

(2) subject only to such conditions and requirements as may be required by the Maritime Administration.

(b) INTERMODAL AUTHORIZATIONS.—

(1) INTERMODAL CENTERS.—Notwithstanding any other provision of law, an intermodal or marine facility described in subsection (a) is eligible for funding under section 5309(m)(1)(C) of title 49, United States Code.

(2) INTERMODAL SURFACE FREIGHT TRANSFER FACILITY ELIGIBILITY.—Notwithstanding any other provision of law, an intermodal or marine facility described in subsection (a) is deemed to be eligible to be an intermodal surface freight transfer facility for the purposes of section 181(9)(D) of title 23, United States Code.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this section.

(2) NO LIMITATION.—Nothing in paragraph (1) shall be construed—

(A) to limit or prevent the transfer or administration under subsection (a) of any funds appropriated or otherwise made available pursuant to any other authorization of appropriations or by any appropriations Act; or

(B) to limit the application of subsection (b) to title 49, United States Code.

TITLE X—MISCELLANEOUS PROVISIONS

Subtitle A—Sportfishing and Recreational Boating Safety

SEC. 10101. SHORT TITLE.

This subtitle may be cited as the ''Sportfishing and Recreational Boating Safety Act of 2005''.

CHAPTER 1—DINGELL-JOHNSON SPORT FISH RESTORATION ACT AMENDMENTS

SEC. 10111. AMENDMENT OF DINGELL-JOHNSON SPORT FISH RESTORATION ACT.

Except as otherwise expressly provided, whenever in this chapter 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 Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 et seq.).

SEC. 10112. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 3 (16 U.S.C. 777b) is amended—

(1) by striking ''the succeeding fiscal year.'' in the third sentence and inserting ''succeeding fiscal years.''; and

(2) by striking ''in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation.'' and inserting ''to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States, as provided for in section 4(c).''.

(b) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—The first sentence of section 3 (16 U.S.C. 777b) is amended—

(A) by striking ''Sport Fish Restoration Account'' and inserting ''Sport Fish Restoration and Boating Trust Fund''; and

(B) by striking ''that Account'' and inserting ''that Trust Fund, except as provided in section 9504(c) of the Internal Revenue Code of 1986''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect on October 1, 2005.

SEC. 10113. DIVISION OF ANNUAL APPROPRIATIONS.

Section 4 (16 U.S.C. 777c) is amended—

(1) by striking subsections (a) through (c) and redesignating subsections (d), (e), (f), and (g) as subsections (b), (c), (d), and (e), respectively;

(2) by inserting before subsection (b), as redesignated by paragraph (1), the following:

''(a) IN GENERAL.—For each of fiscal years 2006 through 2009, the balance of each annual appropriation made in accordance with the provisions of section 3 remaining after the distributions for administrative expenses and other purposes under subsection (b) and for multistate conservation grants under section 14 shall be distributed as follows:

''(1) COASTAL WETLANDS.—An amount equal to 18.5 percent to the Secretary of the Interior for distribution as provided in the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3951 et seq.).

''(2) BOATING SAFETY.—An amount equal to 18.5 percent to the Secretary of the department in which the Coast Guard is operating for State recreational boating safety programs under section 13106 of title 46, United States Code.

''(3) CLEAN VESSEL ACT.—An amount equal to 2.0 percent to the Secretary of the Interior for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

''(4) BOATING INFRASTRUCTURE.—An amount equal to 2.0 percent to the Secretary of the Interior for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g–1(d)).

''(5) NATIONAL OUTREACH AND COMMUNICATIONS.—An amount equal to 2.0 percent to the Secretary of the Interior for the National Outreach and Communications Program under section 8(d) of this Act. Such amounts shall remain

available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary for that program may be expended by the Secretary under subsection (c) of this section.'';

(3) by striking (b)(1)(A), as redesignated by paragraph (1), and inserting the following:

''(A) SET-ASIDE FOR ADMINISTRATION.—From the annual appropriation made in accordance with section 3, for each of fiscal years 2006 through 2009, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in the implementation of this Act, in accordance with this section and section 9. The amount specified in subparagraph (B) for a fiscal year may not be included in the amount of the annual appropriation distributed under subsection (a) for the fiscal year.'';

(4) by striking ''Secretary of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), (c), and (d), respectively, and after deducting amounts used for grants under section 14, shall apportion the remainder'' in subsection (c), as redesignated by paragraph (1), and inserting ''Secretary, for each of fiscal years 2006 through 2009, after the distribution, transfer, use and deduction under subsection (b), and after deducting amounts used for grants under section 14 of this title, shall apportion 57 percent of the balance'';

(5) by striking ''per centum'' each place it appears in subsection (c), as redesignated by paragraph (1), and inserting ''percent'';

(6) by striking ''subsections (a), (b)(3)(A), (b)(3)(B), and (c)'' in paragraph (1) of subsection (e), as redesignated by paragraph (1), and inserting ''paragraphs (1), (3), (4), and (5) of subsection (a)''; and

(7) by adding at the end the following:

''(f) TRANSFER OF CERTAIN FUNDS.—Amounts available under paragraphs (3) and (4) of subsection (a) that are unobligated by the Secretary of the Interior after 3 fiscal years shall be transferred to the Secretary of the department in which the Coast Guard is operating and shall be expended for State recreational boating safety programs under section 13106(a) of title 46, United States Code.''.

SEC. 10114. MAINTENANCE OF PROJECTS.

Section 8 (16 U.S.C. 777g) is amended—

(1) by striking ''in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.'' in subsection (b)(2) and inserting ''to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States under section 4(c).''; and

(2) by striking ''subsection (c) or (d)'' in subsection (d)(3) and inserting ''subsection (a)(5) or subsection (b)''.

SEC. 10115. BOATING INFRASTRUCTURE.

Section 7404(d)(1) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g–1(d)(1)) is amended by striking ''section 4(b)(3)(B) of the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes,' approved August 9, 1950, as amended by this Act,'' and inserting ''section 4(a)(4) of the Dingell-Johnson Sport Fish Restoration Act''.

SEC. 10116. REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES FOR ADMINISTRATION.

Section 9 (16 U.S.C. 777h) is amended—

(1) by striking ''section 4(d)(1)'' in subsection (a) and inserting ''section 4(b)''; and

(2) by striking ''section 4(d)(1)'' in subsection (b)(1) and inserting ''section 4(b)''.

SEC. 10117. PAYMENTS OF FUNDS TO AND COOPERATION WITH PUERTO RICO, THE DISTRICT OF COLUMBIA, GUAM, AMERICAN SAMOA, THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS.

Section 12 (16 U.S.C. 777k) is amended by striking ''in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.'' and inserting ''to supplement the 57 percent of the balance of each annual appropriation to be apportioned among the States under section 4(b) of this Act.''.

SEC. 10118. MULTISTATE CONSERVATION GRANT PROGRAM.

Section 14 (16 U.S.C. 777m) is amended—

(1) by striking so much of subsection (a) as precedes paragraph (2) and inserting the following:

''(a) IN GENERAL.—

''(1) AMOUNT FOR GRANTS.—For each of fiscal years 2006 through 2009, not more than $3,000,000 of each annual appropriation made in accordance with the provisions of section 3 shall be distributed to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.'';

(2) by striking ''section 4(e)'' each place it appears in subsection (a)(2)(B) and inserting ''section 4(c)''; and

(3) by striking ''Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 for each fiscal year and after deducting amounts used for grants under subsection (a)—'' in subsection (e) and inserting ''Of amounts made available under section 4(b) for each fiscal year—''.

SEC. 10119. EXPENDITURE OF REMAINING BALANCE IN BOAT SAFETY ACCOUNT.

The Act is amended by redesignating section 15 (16 U.S.C. 777 note) as section 16, and by inserting after section 14 the following:

''SEC. 15. EXPENDITURE OF REMAINING BALANCE IN BOAT SAFETY ACCOUNT.

''Amounts remaining in the Boat Safety Account on October 1, 2005, and amounts thereafter credited to the Account under section 9602(b) of the Internal Revenue Code of 1986, shall be available, without further appropriation, for making expenditures before October 1, 2010, to carry out the purposes of this section and shall be distributed as follows:

''(1) In fiscal year 2006, $28,155,000 shall be distributed—

''(A) under section 4 of this Act in the following manner:

''(i) $11,200,000 to be added to funds available under subsection (a)(2) of that section;

''(ii) $1,245,000 to be added to funds available under subsection (a)(3) of that section;

''(iii) $1,245,000 to be added to funds available under subsection (a)(4) of that section;

''(iv) $1,245,000 to be added to funds available under subsection (a)(5) of that section; and

''(v) $12,800,000 to be added to funds available under subsection (b) of that section; and

''(B) under section 14 of this Act, $420,000, to be added to funds available under subsection (a)(1) of that section.

''(2) In fiscal year 2007, $22,419,000 shall be distributed—

''(A) under section 4 of this Act in the following manner:

''(i) $8,075,000 to be added to funds available under subsection (a)(2) of that section;

''(ii) $713,000 to be added to funds available under subsection (a)(3) of that section;

''(iii) $713,000 to be added to funds available under subsection (a)(4) of that section;

''(iv) $713,000 to be added to funds available under subsection (a)(5) of that section; and

''(v) $11,925,000 to be added to funds available under subsection (b) of this Act; and

''(B) under section 14 of this Act, $280,000 to be added to funds available under subsection (a)(1) of that section.

''(3) In fiscal year 2008, $17,139,000 shall be distributed—

''(A) under section 4 of this Act in the following manner:

''(i) $6,800,000 to be added to funds available under subsection (a)(2) of that section;

''(ii) $333,000 to be added to funds available under subsection (a)(3) of that section;

''(iii) $333,000 to be added to funds available under subsection (a)(4) of that section;

''(iv) $333,000 to be added to funds available under subsection (a)(5) of that section; and

''(v) $9,200,000 to be added to funds available under subsection (b) of that section; and

''(B) under section 14 of this Act, $140,000, to be added to funds available under subsection (a)(1) of that section.

''(4) In fiscal year 2009, $12,287,000 shall be distributed—

''(A) under section 4 of this Act in the following manner:

''(i) $5,100,000 to be added to funds available under subsection (a)(2) of that section;

''(ii) $48,000 to be added to funds available under subsection (a)(3) of that section;

''(iii) $48,000 to be added to funds available under subsection (a)(4) of that section;

''(iv) $48,000 to be added to funds available under subsection (a)(5) of that section; and

''(v) $6,900,000 to be added to funds available under subsection (b) of that section; and

''(B) under section 14 of this Act, $143,000, to be added to funds available under subsection (a)(1) of that section.

''(5) In fiscal year 2010, all remaining funds in the Account shall be distributed under section 4 of this Act in the following manner:

''(A) one-third to be added to funds available under subsection (b); and

''(B) two-thirds to be added to funds available under subsection (h).''.

CHAPTER 2—CLEAN VESSEL ACT OF 1992 AMENDMENTS

SEC. 10131. GRANT PROGRAM.

Section 5604(c)(2) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note) is amended—

(1) by striking subparagraph (A);

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(3) in subparagraph (A), as so redesignated, by striking ''receptions'' and inserting ''reception''.

CHAPTER 3—RECREATIONAL BOATING SAFETY PROGRAM AMENDMENTS

SEC. 10141. TECHNICAL CORRECTION.

Section 13102(a) of title 46, United States Code, is amended by striking ''the Boat Safety Account'' and inserting ''the Sport Fish Restoration and Boating Trust Fund''.

SEC. 10142. AVAILABILITY OF ALLOCATIONS.

Section 13104(a) of title 46, United States Code, is amended—

(1) by striking ''2 years'' in paragraph (1) and inserting ''3 years''; and

(2) by striking ''2-year'' in paragraph (2) and inserting ''3-year''.

SEC. 10143. AUTHORIZATION OF APPROPRIATIONS FOR STATE RECREATIONAL BOATING SAFETY PROGRAMS.

Section 13106 of title 46, United States Code, is amended—

(1) in subsection (a)(1) by striking ''the amount appropriated from the Boat Safety Account for that fiscal year'' and inserting ''the amount made available from the Boat Safety Account for that fiscal year under section 10119 of the Sportfishing and Recreational Boating Safety Act of 2005'';

(2) in subsection (a)(1) by striking ''section 4(b) of the Act of August 9, 1950 (16 U.S.C. 777c(b))'' and inserting ''subsection (a)(2) of section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)(2))'';

(3) in subsection (a)(2) by striking ''not less than one percent and'';

(4) in subsection (c)(1)—

(A) by striking ''Secretary of Transportation under paragraph (5)(C) of section 4(b)'' and inserting ''Secretary under subsection (a)(2) of section 4'';

(B) by striking ''(16 U.S.C. 777c(b))'' and inserting ''(16 U.S.C. 777c(a)(2))'';

(C) by striking ''$3,333,336'' and inserting ''$4,266,666'';

(D) by striking ''$1,333,336'' and inserting ''not less than $2,083,333''; and

(5) in subsection (c)(3) by striking ''until expended.'' and inserting ''during the 2 succeeding fiscal years. Any amount that is unexpected or unobligated at the end of the 3-year period during which it is available shall be withdrawn by the Secretary and allocated to the States in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.''.

Subtitle B—Other Miscellaneous Provisions

SEC. 10201. NOTICE REGARDING PARTICIPATION OF SMALL BUSINESS CONCERNS.

The Secretary shall notify each State or political subdivision of a State to which the Secretary awards a grant or other Federal funds of the criteria for participation by a small business concern in any program or project that is funded, in whole or in part, by the Federal Government under section 155 of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (15 U.S.C. 567g).

SEC. 10202. EMERGENCY MEDICAL SERVICES.

(a) FEDERAL INTERAGENCY COMMITTEE ON EMERGENCY MEDICAL SERVICES.—

(1) ESTABLISHMENT.—The Secretary of Transportation, the Secretary of Health and Human Services, and the Secretary of Homeland Security, acting through the Under Secretary for Emergency Preparedness and Response, shall establish a Federal Interagency Committee on Emergency Medical Services.

(2) MEMBERSHIP.—The Interagency Committee shall consist of the following officials, or their designees:

(A) The Administrator, National Highway Traffic Safety Administration.

(B) The Director, Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security.

(C) The Administrator, Health Resources and Services Administration, Department of Health and Human Services.

(D) The Director, Centers for Disease Control and Prevention, Department of Health and Human Services.

(E) The Administrator, United States Fire Administration, Directorate of Emergency Preparedness and Response of the Department of Homeland Security.

(F) The Administrator, Centers for Medicare & Medicaid Services, Department of Health and Human Services.

(G) The Under Secretary of Defense for Personnel and Readiness.

(H) The Director, Indian Health Service, Department of Health and Human Services.

(I) The Chief, Wireless Telecommunications Bureau, Federal Communications Commission.

(J) A representative of any other Federal agency appointed by the Secretary of Transportation or the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response, in consultation with the Secretary of Health and Human Services, as having a significant role in relation to the purposes of the Interagency Committee.

(K) A State emergency medical services director appointed by the Secretary.

(3) PURPOSES.—The purposes of the Interagency Committee are as follows:

(A) To ensure coordination among the Federal agencies involved with State, local, tribal, or regional emergency medical services and 9–1–1 systems.

(B) To identify State, local, tribal, or regional emergency medical services and 9–1–1 needs.

(C) To recommend new or expanded programs, including grant programs, for improving State, local, tribal, or regional emergency medical services and implementing improved emergency medical services communications technologies, including wireless 9–1–1.

(D) To identify ways to streamline the process through which Federal agencies support State, local, tribal or regional emergency medical services.

(E) To assist State, local, tribal or regional emergency medical services in setting priorities based on identified needs.

(F) To advise, consult, and make recommendations on matters relating to the implementation of the coordinated State emergency medical services programs.

(4) ADMINISTRATION.—The Administrator of the National Highway Traffic Safety Administration, in cooperation with the Administrator of the Health Resources and Services Administration of the Department of Health and Human Services and the Director of the Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security, shall provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

(5) LEADERSHIP.—The members of the Interagency Committee shall select a chairperson of the Committee each year.

(6) MEETINGS.—The Interagency Committee shall meet as frequently as is determined necessary by the chairperson of the Committee.

(7) ANNUAL REPORTS.—The Interagency Committee shall prepare an annual report to Congress regarding the Committee's activities, actions, and recommendations.

SEC. 10203. HUBZONE PROGRAM.

Section 3(p)(4)(B)(ii) of the Small Business Act (15 U.S.C. 632(p)(4)(B)(ii)) is amended—

(1) in subclause (I) by striking ''or'' at the end;

(2) in subclause (II) by striking the period at the end and inserting ''; or''; and

(3) by adding after subclause (II) the following:

''(III) there is located a difficult development area, as designated by the Secretary of Housing and Urban Development in accordance with section 42(d)(5)(C)(iii) of the Internal Revenue Code of 1986, within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States.''.

SEC. 10204. CATASTROPHIC HURRICANE EVACUATION PLANS.

(a) IN GENERAL.—The Secretary and the Secretary of Homeland Security (referred to in this section as the ''Secretaries''), in coordination with the Gulf Coast States and contiguous States, shall jointly review and assess Federal and State evacuation plans for catastrophic hurricanes impacting the Gulf Coast Region and report its findings and recommendations to Congress.

(b) CONSULTATION.—In carrying out this section, the Secretaries shall consult with appropriate Federal, State, and local transportation and emergency management agencies.

(c) CONTENTS.—In conducting the review, the Secretaries shall consider, at a minimum—

(1) all practical modes of transportation available for evacuations;

(2) the extent to which evacuation plans are coordinated with neighboring States;

(3) methods of communicating evacuation plans and preparing citizens in advance of evacuations; and

(4) methods of coordinating communication with evacuees during plan execution.

(d) REPORT.—The Secretaries shall submit to Congress a report of their findings under this section and recommendations not later than October 1, 2006.

SEC. 10205. INTERMODAL TRANSPORTATION FACILITY EXPANSION.

Any funds provided for the Federal share, and any funds provided for the non-Federal share, for an intermodal transportation maritime facility at the Port of Anchorage, Alaska, or for access to that facility shall be transferred to and administered by the Administrator of the Maritime Administration.

SEC. 10206. ELIGIBILITY TO PARTICIPATE IN WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM.

A community shall be eligible to participate in the western Alaska community development quota program established under section 305(i) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(i)) if the community—

(1) is listed in table 7 to part 679 of title 50, Code of Federal Regulations, as in effect on March 8, 2004; or

(2) was determined to be eligible participate in such program by the National Marine Fisheries Service on April 19, 1999.

SEC. 10207. RAIL REHABILITATION AND BRIDGE REPAIR.

There are authorized to be appropriated to the Secretary of Transportation for rail rehabilitation and bridge repair in the State of Alabama for the period encompassing fiscal years 2006 through 2010 such sums as may be necessary, for work on—

(1) the Luxapalila Valley Railroad from the Mississippi and Alabama State line east to Belk, Alabama;

(2) the Meridian & Bigbee Railroad from the Mississippi and Alabama State line east to Burkeville, Alabama;

(3) the Three Notch Railroad from Georgiana, Alabama, to Andalusia, Alabama;

(4) the Wiregrass Railroad in Alabama;

(5) the Alabama & Gulf Coast Railroad from the Mississippi and Alabama State line southeast to Mobile and Atmore in Alabama; and

(6) the railroad bridge that spans the Coosa River, connecting the east and west sides of the City of Gadsden, Alabama.

SEC. 10208. RENTED OR LEASED MOTOR VEHICLES.

(a) IN GENERAL.—Subchapter I of chapter 301 of title 49, United States Code, is amended by adding at the end the following:

''§ 30106. Rented or leased motor vehicle safety and responsibility

''(a) IN GENERAL.—An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—

''(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

''(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

''(b) FINANCIAL RESPONSIBILITY LAWS.—Nothing in this section supersedes the law of any State or political subdivision thereof—

''(1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or

''(2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.

''(c) APPLICABILITY AND EFFECTIVE DATE.—Notwithstanding any other provision of law, this section shall apply with respect to any action commenced on or after the date of enactment of this section without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment.

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

''(1) AFFILIATE.—The term 'affiliate' means a person other than the owner that directly or indirectly controls, is controlled by, or is under common control with the owner. In the preceding sentence, the term 'control' means the

power to direct the management and policies of a person whether through ownership of voting securities or otherwise.

''(2) OWNER.—The term 'owner' means a person who is—

''(A) a record or beneficial owner, holder of title, lessor, or lessee of a motor vehicle;

''(B) entitled to the use and possession of a motor vehicle subject to a security interest in another person; or

''(C) a lessor, lessee, or a bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles, having the use or possession thereof, under a lease, bailment, or otherwise.

''(3) PERSON.—The term 'person' means any individual, corporation, company, limited liability company, trust, association, firm, partnership, society, joint stock company, or any other entity.''.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is amended by inserting after the item relating to section 30105 the following:

''30106. Rented or leased motor vehicle safety and responsibility.''.

SEC. 10209. MIDWAY ISLAND.

(a) GRANTS.—In order to provide for both the safety of commercial and military aviation operations and the support of resource management in the remote Pacific, the Commandant of the Coast Guard, in consultation with the Secretary of Transportation and the Undersecretary of Commerce for Oceans and Atmosphere, shall develop such memoranda of understanding as may be necessary, and to make grants or otherwise provide funding, to provide for the operation of the Midway Airport, the rightsizing of necessary infrastructure and support facilities, the maintenance and development of the Airport, and other related matters.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the United States Coast Guard, the Department of Transportation, and the National Oceanic and Atmospheric Administration such sums as may be necessary to carry out this section for fiscal years 2006 through 2009.

SEC. 10210. DEMONSTRATION OF DIGITAL PROJECT SIMULATION.

(a) IN GENERAL.—

(1) DIGITAL PROJECT SIMULATION DEMONSTRATION PROJECT.—The Secretary shall establish a demonstration initiative using digital project simulation to plan, design, and construct the project listed in item 31 designated in section 1934 of the SAFETEA–LU.

(2) COOPERATION.—To be eligible to receive funds made available for the project referred to in paragraph (1), the project sponsor, including private entities working with the project sponsor on the project, and the State shall enter into an agreement to work cooperatively with the Secretary to use digital project simulation for such project and to evaluate the effectiveness of using such simulation.

(b) SIMULATION PROGRAM DEVELOPMENT.—

(1) IN GENERAL.—In establishing the demonstration initiative under subsection (a), the Secretary shall provide, to the extent practicable, that—

(A) the planning, design, and construction of the project is carried out by using digital project simulation to achieve savings and efficiency in investment planning, project delivery coordination, and facility management; and

(B) in constructing such project, the project sponsor use digital lifecycle management techniques, including the use of embedded electronics and software to monitor performance of the infrastructure and provide safety and security information to the project sponsor.

(2) COLLABORATION.—The Secretary, the State, and the project sponsor may consult with technology companies and educational institutions that strive to develop and enhance technologies, including digital project simulation, that save money and time by using efficient methods of design, construction, and operation for transportation infrastructure projects.

(c) REPORT.—

(1) IN GENERAL.—Not later than one year after completion of the project described in subsection (a), the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a detailed report comparing the application of digital project simulation for such project to more traditional approaches to planning, design, and construction.

(2) PERFORMANCE MEASURES AND RECOMMENDATIONS.—The report shall also include—

(A) a description of the performance measures applied, including cost comparisons and length of construction; and

(B) recommendations, if any, for administrative or legislative action.

(d) DEFINITION.—For purposes of this section, the term ''digital project simulation'' means computer-assisted three-dimensional technology and digital lifecycle management.

SEC. 10211. ENVIRONMENTAL PROGRAMS.

(a) OKLAHOMA.—Notwithstanding any other provision of law, if the Administrator of the Environmental Protection Agency (referred to in this section as the ''Administrator'') determines that a regulatory program submitted by the State of Oklahoma for approval by the Administrator under a law administered by the Administrator meets applicable requirements of the law, and the Administrator approves the State to administer the State program under the law with respect to areas in the State that are not Indian country, on request of the State, the Administrator shall approve the State to administer the State program in the areas of the State that are in Indian country, without any further demonstration of authority by the State.

(b) TREATMENT AS STATE.—Notwithstanding any other provision of law, the Administrator may treat an Indian tribe in the State of Oklahoma as a State under a law administered by the Administrator only if—

(1) the Indian tribe meets requirements under the law to be treated as a State; and

(2) the Indian tribe and the agency of the State of Oklahoma with federally delegated program authority enter into a cooperative agreement, subject to review and approval of the Administrator after notice and opportunity for public hearing, under which the Indian tribe and that State agency agree to treatment of the Indian tribe as a State and to jointly plan administer program requirements.

SEC. 10212. RESCISSION OF UNOBLIGATED BALANCES.

(a) IN GENERAL.—On September 30, 2009, $8,543,000,000 of the unobligated balances of funds apportioned before such date to the States for the Interstate maintenance, national highway system, bridge, congestion mitigation and air quality improvement, surface transportation (other than the STP set-aside programs), metropolitan planning, minimum guarantee, Appalachian development highway system, recreational trails, safe routes to school, freight intermodal connectors, coordinated border infrastructure, high risk rural road, and highway safety improvement programs, and each of the STP set-aside programs, is rescinded.

(b) ALLOCATION AMONG STATES.—The Secretary shall determine each State's share of the amount to be rescinded by subsection (a) on September 30, 2009, by multiplying $8,543,000,000 by the ratio of the aggregate amount apportioned to such State for fiscal years 2004 through 2009 for all the programs referred to in subsection (a) to the aggregate amount apportioned to all States for such fiscal years for those programs.

(c) CALCULATIONS.—To determine the allocation of the amount to be rescinded for a State under subsection (b) among the programs referred to in subsection (a), the Secretary shall make the following calculations:

(1) The Secretary shall multiply such amount to be rescinded by the ratio that the aggregate amount of unobligated funds available to the State on September 30, 2009, for each such program bears to the aggregate amount of unobligated funds available to the State on September 30, 2009, for all such programs.

(2) The Secretary shall multiply such amount to be rescinded by the ratio that the aggregate of the amount apportioned to the State for each such program for fiscal years 2004 through 2009 bears to the aggregate amount apportioned to the State for all such programs for fiscal years 2004 through 2009.

(d) ALLOCATION AMONG PROGRAMS.—

(1) IN GENERAL.—The Secretary, in consultation with the State, shall rescind for the State from each program referred to in subsection (a) the amount determined for the program under subsection (c)(1).

(2) SPECIAL RULE.—

(A) RESTORATION OF FUNDS FOR COVERED PROGRAMS.—If the rescission calculated under subsection (c)(1) for a covered program exceeds the amount calculated for the covered program under subsection (c)(2), the State shall immediately restore to the apportionment account for the covered program from the unobligated balances of programs referred to in subsection (a) (other than covered programs) the amount of funds required so that the net rescission from the covered program does not exceed the amount calculated for the covered program under subsection (c)(2).

(B) TREATMENT OF RESTORED FUNDS.—Any funds restored under subparagraph (A) shall be deemed to be the funds that were rescinded for the purposes of obligation.

(3) COVERED PROGRAM DEFINED.—In paragraph (2), the term ''covered program'' means a program authorized under sections 130 and 152 of title 23, United States Code, paragraph (2) or (3) of section 133(d) of that title, section 144 of that title, section 149 of that title, or section 1404 of this Act.

(e) TREATMENT OF SAFETY PROGRAMS.—In making calculations under subsections (c)(1), (c)(2), and (d)(2), the Secretary shall treat the STP set-aside program for safety programs and the highway safety improvement program as a single program.

(f) STP SET-ASIDE PROGRAM DEFINED.—In this section, the term ''STP set-aside program'' means the amount set aside under section 133(d) of title 23, United States Code, for each of the safety programs, transportation enhancement activities, and division between urbanized areas of over 200,000 population and other areas.

SEC. 10213. TRIBAL LAND.

Section 707(a) of Public Law 106–568 (25 U.S.C. 1041e(a)) is amended—

(1) in paragraph (1) by striking ''(1) IN GENERAL.—''; and

(2) by striking paragraph (2).

Subtitle C—Specific Vehicle Safety-related Rulings

SEC. 10301. VEHICLE ROLLOVER PREVENTION AND CRASH MITIGATION.

(a) IN GENERAL.—Subchapter II of chapter 301 is amended by adding at the end the following:

''§ 30128. Vehicle rollover prevention and crash mitigation

''(a) IN GENERAL.—The Secretary shall initiate rulemaking proceedings, for the purpose of establishing rules or standards that will reduce vehicle rollover crashes and mitigate deaths and injuries associated with such crashes for motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

''(b) ROLLOVER PREVENTION.—One of the rulemaking proceedings initiated under subsection (a) shall be to establish performance criteria to reduce the occurrence of rollovers consistent with stability enhancing technologies. The Secretary shall issue a proposed rule in this proceeding by rule by October 1, 2006, and a final rule by April 1, 2009.

''(c) OCCUPANT EJECTION PREVENTION.—

''(1) IN GENERAL.—The Secretary shall also initiate a rulemaking proceeding to establish performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions. In formulating the standards the Secretary shall consider various ejection mitigation systems. The Secretary shall issue a final rule under this paragraph no later than October 1, 2009.

''(2) DOOR LOCKS AND DOOR RETENTION.—The Secretary shall complete the rulemaking proceeding initiated to upgrade Federal Motor Vehicle Safety Standard No. 206, relating to door locks and door retention, no later than 30 months after the date of enactment of this section.

''(d) PROTECTION OF OCCUPANTS.—One of the rulemaking proceedings initiated under subsection (a) shall be to establish performance criteria to upgrade Federal Motor Vehicle Safety Standard No. 216 relating to roof strength for driver and passenger sides. The Secretary may consider industry and independent dynamic tests that realistically duplicate the actual forces transmitted during a rollover crash. The Secretary shall issue a proposed rule by December 31, 2005, and a final rule by July 1, 2008.

''(e) DEADLINES.—If the Secretary determines that the deadline for a final rule under this section cannot be met, the Secretary shall—

''(1) notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce and explain why that deadline cannot be met; and

''(2) establish a new deadline.''.

SEC. 10302. SIDE-IMPACT CRASH PROTECTION RULEMAKING.

(a) RULEMAKING.—The Secretary shall complete a rulemaking proceeding under chapter 301 of title 49, United States Code, to establish a standard designed to enhance passenger motor vehicle occupant protection, in all seating positions, in side impact crashes. The Secretary shall issue a final rule by July 1, 2008.

(b) DEADLINES.—If the Secretary determines that the deadline for a final rule under this section cannot be met, the Secretary shall—

(1) notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce and explain why that deadline cannot be met; and

(2) establish a new deadline.

SEC. 10303. TIRE RESEARCH.

Within 2 years after the date of enactment of this Act, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce on research conducted to address tire aging. The report shall include a summary of any Federal agency findings, activities, conclusions, and recommendations concerning tire aging and recommendations for potential rulemaking regarding tire aging.

(a) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 is amended by inserting after the item relating to section 30127 the following:

''30128. Vehicle accident ejection protection.''.

SEC. 10304. VEHICLE BACKOVER AVOIDANCE TECHNOLOGY STUDY.

(a) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration shall conduct a study of effective methods for reducing the incidence of injury and death outside of parked passenger motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds attributable to movement of such vehicles. The Administrator shall complete the study within 1 year after the date of enactment of this Act and report its findings to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce not later than 15 months after the date of enactment of this Act.

(b) SPECIFIC ISSUES TO BE COVERED.—The study required by subsection (a) shall—

(1) include an analysis of backover prevention technology;

(2) identify, evaluate, and compare the available technologies for detecting people or objects behind a motor vehicle with a gross vehicle weight rating of not more than 10,000 pounds for their accuracy, effectiveness, cost, and feasibility for installation; and

(3) provide an estimate of cost savings that would result from widespread use of backover prevention devices and technologies in motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds, including savings attributable to the prevention of—

(A) injuries and fatalities; and

(B) damage to bumpers and other motor vehicle parts and damage to other objects.

SEC. 10305. NONTRAFFIC INCIDENT DATA COLLECTION.

(a) IN GENERAL.—In conjunction with the study required in section 10304, the National Highway Traffic Safety Administration shall establish a method to collect and maintain data on the number and types of injuries and deaths involving motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds in non-traffic incidents.

(b) DATA COLLECTION AND PUBLICATION.—The Secretary of Transportation shall publish the data collected under subsection (a) no less frequently than biennially.

SEC. 10306. STUDY OF SAFETY BELT USE TECHNOLOGIES.

The Secretary shall conduct a review of safety belt use technologies to consider possible revisions in strategies for achieving further gains in safety belt use. The Secretary shall complete the study by July 1, 2008.

SEC. 10307. AMENDMENT OF AUTOMOBILE INFORMATION DISCLOSURE ACT.

(a) SAFETY LABELING REQUIREMENT.—Section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232) is amended—

(1) by striking ''and'' after the semicolon in subsection (e);

(2) by inserting ''and'' after the semicolon in subsection (f)(3);

(3) by striking ''(3).'' in subsection (f)(4) and inserting ''(3);''; and

(4) by adding at the end the following:

''(g) if 1 or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—

''(1) includes a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;

''(2) refers to frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests);

''(3) contains information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including http://www.safecar.gov; and

''(4) is presented in a legible, visible, and prominent fashion and covers at least—

''(A) 8 percent of the total area of the label; or

''(B) an area with a minimum length of 4 ½ inches and a minimum height of 3 ½ inches; and

''(h) if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect.''.

(b) REGULATIONS.—The Secretary of Transportation shall issue regulations to ensure that the labeling requirements under subsections (g) and (h) of section 3 of the Automobile Information Disclosure Act, as added by subsection (a), are implemented by September 1, 2007.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation, to accelerate the testing processes and increasing the number of vehicles tested under the New Car Assessment Program of the National Highway Traffic Safety Administration—

(1) $15,000,000 for fiscal year 2006;
(2) $8,134,065 for fiscal year 2007;
(3) $8,418,760 for fiscal year 2008;
(4) $8,713,410 for fiscal year 2009; and
(5) $9,018,385 for fiscal year 2010.

SEC. 10308. POWER WINDOW SWITCHES.

The Secretary shall upgrade Federal Motor Vehicle Safety Standard 118 to require that power windows in motor vehicles not in excess of 10,000 pounds have switches that raise the window only when the switch is pulled up or out. The Secretary shall issue a final rule implementing this section by April 1, 2007.

SEC. 10309. 15-PASSENGER VAN SAFETY.

(a) TESTING.—

(1) IN GENERAL.—The Secretary of Transportation shall require the testing of 15-passenger vans as part of the rollover resistance program of the National Highway Traffic Safety Administration's new car assessment program.

(2) 15-PASSENGER VAN DEFINED.—In this subsection, the term ''15-passenger van'' means a vehicle that seats 10 to 14 passengers, not including the driver.

(b) PROHIBITION OF PURCHASE, RENTAL, OR LEASE OF NONCOMPLYING 15-PASSENGER VANS FOR SCHOOL USE.—Section 30112(a) is amended—

(1) by inserting ''(1)'' before ''Except as provided''; and

(2) by adding at the end the following:

''(2) Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a school or school system may not purchase or lease a new 15-passenger van if it will be used significantly by, or on behalf of, the school or school system to transport preprimary, primary, or secondary school students to or from school or an event related to school, unless the 15-passenger van complies with the motor vehicle standards prescribed for school buses and multifunction school activity buses under this title. This paragraph does not apply to the purchase or lease of a 15-passenger van under a contract executed before the date of enactment of this paragraph.''.

(c) PENALTY.—Section 30165(a) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

''(2) SCHOOL BUSES.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), the maximum amount of a civil penalty under this paragraph shall be $10,000 in the case of—

''(i) the manufacture, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in section 30125(a) of this title) in violation of section 30112(a)(1) of this title; or

''(ii) a violation of section 30112(a)(2) of this title.

''(B) RELATED SERIES OF VIOLATIONS.—A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by that section. The maximum penalty under this paragraph for a related series of violations is $15,000,000.''.

SEC. 10310. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out this subtitle, chapter 301 of title 49, and part C of subtitle VI of title 49, United States Code—

(1) $136,000,000 for fiscal year 2006;
(2) $142,800,000 for fiscal year 2007;
(3) $149,900,000 for fiscal year 2008; and
(4) $157,400,000 for fiscal year 2009.

TITLE XI—HIGHWAY REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION

SEC. 1100. 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. 1101. EXTENSION OF HIGHWAY-RELATED TAXES AND TRUST FUNDS.

(a) EXTENSION OF TAXES.—

(1) IN GENERAL.—The following provisions are each amended by striking ''2005'' each place it appears and inserting ''2011'':

(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) (relating to certain alcohol fuels).

(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).

(2) EXTENSION OF TAX, ETC., ON USE OF CERTAIN HEAVY VEHICLES.—The following provisions are each amended by striking ''2006'' each place it appears and inserting ''2011'':

(A) Section 4481(f) (relating to period tax in effect).

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

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

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

(A) by striking ''2005'' each place it appears and inserting ''2011'', and

(B) by striking ''2006'' each place it appears and inserting ''2012''.

(b) EXTENSION OF CERTAIN EXEMPTIONS.—

(1) CERTAIN TAX-FREE SALES.—Section 4221(a) (relating to certain tax-free sales) is amended by striking ''2005'' and inserting ''2011''.

(2) TERMINATION OF EXEMPTIONS FOR HIGHWAY USE TAX.—Section 4483(h) (relating to termination of exemptions for highway use tax) is amended by striking ''2006'' and inserting ''2011''.

(c) EXTENSION OF TRANSFERS OF CERTAIN TAXES.—

(1) IN GENERAL.—Paragraphs (1) and (2) of subsection (b), and paragraphs (2) and (3) of subsection (c), of section 9503 (relating to the Highway Trust Fund) are each amended—

(A) by striking ''2005'' each place it appears and inserting ''2011'', and

(B) by striking ''2006'' each place it appears and inserting ''2012''.

(2) MOTORBOAT AND SMALL-ENGINE FUEL TAX TRANSFERS.—

(A) IN GENERAL.—Subparagraph (A) of section 9503(c)(5) is amended by striking ''2005'' and inserting ''2011''.

(B) 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. 460l–11(b)) is amended—

(i) by striking ''2003'' and inserting ''2011'', and

(ii) by striking ''2004'' each place it appears and inserting ''2012''.

(d) EXTENSION AND EXPANSION OF EXPENDITURES FROM TRUST FUNDS.—

(1) HIGHWAY TRUST FUND.—

(A) HIGHWAY ACCOUNT.—Paragraph (1) of section 9503(c) of such Code is amended to read as follows:

''(1) FEDERAL-AID HIGHWAY PROGRAM.—Except as provided in subsection (e), amounts in the Highway Trust Fund shall be available, as provided by appropriation Acts, for making expenditures before September 30, 2009 (October 1, 2009, in the case of expenditures for administrative expenses), to meet those obligations of the United States heretofore or hereafter incurred which are authorized to be paid out of the Highway Trust Fund under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users or any other provision of law which was referred to in this paragraph before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act).''.

(B) MASS TRANSIT ACCOUNT.—Paragraph (3) of section 9503(e) of such Code is amended to read as follows:

''(3) EXPENDITURES FROM ACCOUNT.—Amounts in the Mass Transit Account shall be available, as provided by appropriation Acts, for making capital or capital related expenditures (including capital expenditures for new projects) before October 1, 2009, in accordance with the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users or any other provision of law which was referred to in this paragraph before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act).''.

(C) EXCEPTION TO LIMITATION ON TRANSFERS.—Subparagraph (B) of section 9503(b)(6) is amended by striking ''July 31, 2005'' and inserting ''September 30, 2009 (October 1, 2009, in the case of expenditures for administrative expenses)''.

(2) AQUATIC RESOURCES TRUST FUND.—

(A) SPORT FISH RESTORATION ACCOUNT.—Paragraph (2) of section 9504(b) is amended by striking ''Surface Transportation Extension Act of 2005, Part V'' each place it appears and inserting ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users''.

(B) EXCEPTION TO LIMITATION ON TRANSFERS.—Paragraph (2) of section 9504(d) is amended by striking ''July 31, 2005'' and inserting ''October 1, 2009''.

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

SEC. 1102. 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—Excise Tax Reform and Simplification

PART 1—HIGHWAY EXCISE TAXES

SEC. 1111. MODIFICATION OF GAS GUZZLER TAX.

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

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on October 1, 2005.

SEC. 1112. EXCLUSION FOR TRACTORS WEIGHING 19,500 POUNDS OR LESS FROM FEDERAL EXCISE TAX ON HEAVY TRUCKS AND TRAILERS.

(a) IN GENERAL.—Subsection (a) of section 4051 (relating to imposition of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) EXCLUSION FOR TRACTORS WEIGHING 19,500 POUNDS OR LESS.—The tax imposed by paragraph (1) shall not apply to tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer if—

''(A) such tractor has a gross vehicle weight of 19,500 pounds or less (as determined by the Secretary), and

''(B) such tractor, in combination with a trailer or semitrailer, has a gross combined weight of 33,000 pounds or less (as determined by the Secretary).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after September 30, 2005.

SEC. 1113. VOLUMETRIC EXCISE TAX CREDIT FOR ALTERNATIVE FUELS.

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—Section 4041(a)(2)(B) (relating to rate of tax) is amended—

(A) by adding ''and'' at the end of clause (i),

(B) by striking clauses (ii) and (iii),

(C) by striking the last sentence, and

(D) by adding after clause (i) the following new clause:

''(ii) in the case of liquefied natural gas, any liquid fuel (other than ethanol and methanol) derived from coal (including peat), and liquid hydrocarbons derived from biomass (as defined in section 29(c)(3)), 24.3 cents per gallon.''.

(2) TREATMENT OF COMPRESSED NATURAL GAS.—Section 4041(a)(3) (relating to compressed natural gas) is amended—

(A) by striking ''48.54 cents per MCF (determined at standard temperature and pressure)'' in subparagraph (A) and inserting ''18.3 cents per energy equivalent of a gallon of gasoline'', and

(B) by striking ''MCF'' in subparagraph (C) and inserting ''energy equivalent of a gallon of gasoline''.

(3) NEW REFERENCE.—The heading for paragraph (2) of section 4041(a) is amended by striking ''SPECIAL MOTOR FUELS'' and inserting ''ALTERNATIVE FUELS''.

(b) CREDIT FOR ALTERNATIVE FUEL AND ALTERNATIVE FUEL MIXTURES.—

(1) IN GENERAL.—Section 6426(a) (relating to allowance of credits) is amended to read as follows:

''(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit—

''(1) against the tax imposed by section 4081 an amount equal to the sum of the credits described in subsections (b), (c), and (e), and

''(2) against the tax imposed by section 4041 an amount equal to the sum of the credits described in subsection (d).

No credit shall be allowed in the case of the credits described in subsections (d) and (e) unless the taxpayer is registered under section 4101.''.

(2) ALTERNATIVE FUEL AND ALTERNATIVE FUEL MIXTURE CREDIT.—Section 6426 (relating to credit for alcohol fuel and biodiesel mixtures) is amended by redesignating subsections (d) and (e) as subsections (f) and (g) and by inserting

after subsection (c) the following new subsections:

''(d) ALTERNATIVE FUEL CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alternative fuel credit is the product of 50 cents and the number of gallons of an alternative fuel or gasoline gallon equivalents of a nonliquid alternative fuel sold by the taxpayer for use as a fuel in a motor vehicle or motorboat, or so used by the taxpayer.

''(2) ALTERNATIVE FUEL.—For purposes of this section, the term 'alternative fuel' means—

''(A) liquefied petroleum gas,

''(B) P Series Fuels (as defined by the Secretary of Energy under section 13211(2) of title 42, United States Code),

''(C) compressed or liquefied natural gas,

''(D) liquefied hydrogen,

''(E) any liquid fuel derived from coal (including peat) through the Fischer-Tropsch process, and

''(F) liquid hydrocarbons derived from biomass (as defined in section 29(c)(3)).

Such term does not include ethanol, methanol, or biodiesel.

''(3) GASOLINE GALLON EQUIVALENT.—For purposes of this subsection, the term 'gasoline gallon equivalent' means, with respect to any nonliquid alternative fuel, the amount of such fuel having a Btu content of 124,800 (higher heating value).

''(4) TERMINATION.—This subsection shall not apply to any sale or use for any period after September 30, 2009 (September 30, 2014, in the case of any sale or use involving liquefied hydrogen).

''(e) ALTERNATIVE FUEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alternative fuel mixture credit is the product of 50 cents and the number of gallons of alternative fuel used by the taxpayer in producing any alternative fuel mixture for sale or use in a trade or business of the taxpayer.

''(2) ALTERNATIVE FUEL MIXTURE.—For purposes of this section, the term 'alternative fuel mixture' means a mixture of alternative fuel and taxable fuel (as defined in subparagraph (A), (B), or (C) of section 4083(a)(1)) which—

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

''(B) is used as a fuel by the taxpayer producing such mixture.

''(3) TERMINATION.—This subsection shall not apply to any sale or use for any period after September 30, 2009 (September 30, 2014, in the case of any sale or use involving liquefied hydrogen).''.

(3) CONFORMING AMENDMENTS.—

(A) The section heading for section 6426 is amended by striking ''alcohol fuel and biodiesel'' and inserting ''alcohol fuel, biodiesel, and alternative fuel''.

(B) The table of sections for subchapter B of chapter 65 is amended by striking ''alcohol fuel and biodiesel'' in the item relating to section 6426 and inserting ''alcohol fuel, biodiesel, and alternative fuel''.

(C) Section 6427(e) is amended—

(i) by inserting ''or the alternative fuel mixture credit'' after ''biodiesel mixture credit'' in paragraph (1),

(ii) by redesignating paragraph (2) as paragraph (3) and paragraph (4) as paragraph (5),

(iii) by inserting after paragraph (1) the following new paragraph:

''(2) ALTERNATIVE FUEL.—If any person sells or uses an alternative fuel (as defined in section 6426(d)(2)) for a purpose described in section 6426(d)(1) in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alternative fuel credit with respect to such fuel.'',

(iv) by striking ''under paragraph (1) with respect to any mixture'' in paragraph (3) (as redesignated by clause (ii)) and inserting ''under paragraph (1) or (2) with respect to any mixture or alternative fuel'',

(v) by inserting after paragraph (3) (as so redesignated) the following new paragraph:

''(4) REGISTRATION REQUIREMENT FOR ALTERNATIVE FUELS.—The Secretary shall not make any payment under this subsection to any person with respect to any alternative fuel credit or alternative fuel mixture credit unless the person is registered under section 4101.'',

(vi) by striking ''and'' at the end of paragraph (5)(A) (as redesignated by clause (ii)),

(vii) by striking the period at the end of paragraph (5)(B) (as so redesignated) and inserting a comma,

(viii) by adding at the end of paragraph (5) (as so redesignated) the following new subparagraphs:

''(C) except as provided in subparagraph (D), any alternative fuel or alternative fuel mixture (as defined in subsection (d)(2) or (e)(3) of section 6426) sold or used after September 30, 2009, and

''(D) any alternative fuel or alternative fuel mixture (as so defined) involving liquefied hydrogen sold or used after September 30, 2014.'', and

(ix) by striking ''OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES'' in the heading and inserting '', BIODIESEL, OR ALTERNATIVE FUEL''.

(c) ADDITIONAL REGISTRATION REQUIREMENTS.—Section 4101(a)(1) (relating to registration) is amended by striking ''4041(a)(1)'' and inserting ''4041(a)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any sale or use for any period after September 30, 2006.

PART 2—AQUATIC EXCISE TAXES

SEC. 1115. ELIMINATION OF AQUATIC RESOURCES TRUST FUND AND TRANSFORMATION OF SPORT FISH RESTORATION ACCOUNT.

(a) SIMPLIFICATION OF FUNDING FOR BOAT SAFETY ACCOUNT.—

(1) IN GENERAL.—Paragraph (4) of section 9503(c) (relating to transfers from Trust Fund for motorboat fuel taxes) is amended—

(A) by striking so much of that paragraph as precedes subparagraph (D),

(B) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively, and

(C) by inserting before subparagraph (C) (as so redesignated) the following:

''(4) TRANSFERS FROM THE TRUST FUND FOR MOTORBOAT FUEL TAXES.—

''(A) TRANSFER TO LAND AND WATER CONSERVATION FUND.—

''(i) IN GENERAL.—The Secretary shall pay from time to time from the Highway Trust Fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965 amounts (as determined by the Secretary) equivalent to the motorboat fuel taxes received on or after October 1, 2005, and before October 1, 2011.

''(ii) LIMITATION.—The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $1,000,000.

''(B) EXCESS FUNDS TRANSFERRED TO SPORT FISH RESTORATION AND BOATING TRUST FUND.—Any amounts in the Highway Trust Fund—

''(i) which are attributable to motorboat fuel taxes, and

''(ii) which are not transferred from the Highway Trust Fund under subparagraph (A),

shall be transferred by the Secretary from the Highway Trust Fund into the Sport Fish Restoration and Boating Trust Fund.''.

(2) CONFORMING AMENDMENT.—Paragraph (5) of section 9503(c) is amended by striking ''Account in the Aquatic Resources'' in subparagraph (A) and inserting ''and Boating''.

(b) MERGING OF ACCOUNTS.—

(1) IN GENERAL.—Subsection (a) of section 9504 is amended to read as follows:

''(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Sport Fish Restoration and Boating Trust Fund'. Such Trust Fund shall consist of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(4), section 9503(c)(5), or section 9602(b).''.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (b) of section 9504, as amended by section 1101 of this Act, is amended—

(i) by striking ''ACCOUNT'' in the heading thereof and inserting ''AND BOATING TRUST FUND'',

(ii) by striking ''Account'' both places it appears in paragraphs (1) and (2) and inserting ''and Boating Trust Fund'', and

(iii) by striking ''ACCOUNT'' both places it appears in the headings for paragraphs (1) and (2) and inserting ''TRUST FUND''.

(B) Subsection (d) of section 9504, as amended by section 1101 of this Act, is amended—

(i) by striking ''AQUATIC RESOURCES'' in the heading thereof,

(ii) by striking ''any Account in the Aquatic Resources'' in paragraph (1) and inserting ''the Sport Fish Restoration and Boating'', and

(iii) by striking ''any such Account'' in paragraph (1) and inserting ''such Trust Fund''.

(C) Subsection (e) of section 9504 is amended by striking ''Boat Safety Account and Sport Fish Restoration Account'' and inserting ''Sport Fish Restoration and Boating Trust Fund''.

(D) Section 9504 is amended by striking ''aquatic resources'' in the heading thereof and inserting ''sport fish restoration and boating''.

(E) The item relating to section 9504 in the table of sections for subchapter A of chapter 98 is amended by striking ''aquatic resources'' and inserting ''sport fish restoration and boating''.

(F) Paragraph (2) of section 1511(e) of the Homeland Security Act of 2002 (6 U.S.C. 551(e)) is amended by striking ''Aquatic Resources Trust Fund of the Highway Trust Fund'' and inserting ''Sport Fish Restoration and Boating Trust Fund''.

(c) PHASEOUT OF BOAT SAFETY ACCOUNT.—Subsection (c) of section 9504 is amended to read as follows:

''(c) EXPENDITURES FROM BOAT SAFETY ACCOUNT.—Amounts remaining in the Boat Safety Account on October 1, 2005, and amounts thereafter credited to the Account under section 9602(b), shall be available, without further appropriation, for making expenditures before October 1, 2010, to carry out the purposes of section 15 of the Dingell-Johnson Sport Fish Restoration Act (as in effect on the date of the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users). For purposes of section 9602, the Boat Safety Account shall be treated as a Trust Fund established by this subchapter.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2005.

SEC. 1116. REPEAL OF HARBOR MAINTENANCE TAX ON EXPORTS.

(a) IN GENERAL.—Subsection (d) of section 4462 (relating to definitions and special rules) is amended to read as follows:

''(d) NONAPPLICABILITY OF TAX TO EXPORTS.—The tax imposed by section 4461(a) shall not apply to any port use with respect to any commercial cargo to be exported from the United States.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 4461(c)(1) is amended by adding ''or'' at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

(2) Section 4461(c)(2) is amended by striking ''imposed—'' and all that follows through ''in any other case,'' and inserting ''imposed''.

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

SEC. 1117. CAP ON EXCISE TAX ON CERTAIN FISHING EQUIPMENT.

(a) IN GENERAL.—Paragraph (1) of section 4161(a) (relating to sport fishing equipment) is amended to read as follows:

''(1) IMPOSITION OF TAX.—

''(A) IN GENERAL.—There is hereby imposed on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

''(B) LIMITATION ON TAX IMPOSED ON FISHING RODS AND POLES.—The tax imposed by subparagraph (A) on any fishing rod or pole shall not exceed $10.''.

(b) CONFORMING AMENDMENTS.—Section 4161(a)(2) is amended by striking ''paragraph (1)'' both places it appears and inserting ''paragraph (1)(A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005.

PART 3—AERIAL EXCISE TAXES

SEC. 1121. CLARIFICATION OF EXCISE TAX EXEMPTIONS FOR AGRICULTURAL AERIAL APPLICATORS AND EXEMPTION FOR FIXED-WING AIRCRAFT ENGAGED IN FORESTRY OPERATIONS.

(a) NO WAIVER BY FARM OWNER, TENANT, OR OPERATOR NECESSARY.—Subparagraph (B) of section 6420(c)(4) (relating to certain farming use other than by owner, etc.) is amended to read as follows:

''(B) if the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes.''.

(b) EXEMPTION INCLUDES FUEL USED BETWEEN AIRFIELD AND FARM.—Section 6420(c)(4), as amended by subsection (a), is amended by adding at the end the following new flush sentence: ''In the case of an aerial applicator, gasoline shall be treated as used on a farm for farming purposes if the gasoline is used for the direct flight between the airfield and 1 or more farms.''.

(c) EXEMPTION FROM TAX ON AIR TRANSPORTATION OF PERSONS FOR FORESTRY PURPOSES EXTENDED TO FIXED-WING AIRCRAFT.—Subsection (f) of section 4261 (relating to tax on air transportation of persons) is amended to read as follows:

''(f) EXEMPTION FOR CERTAIN USES.—No tax shall be imposed under subsection (a) or (b) on air transportation—

''(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

''(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel use or air transportation after September 30, 2005.

SEC. 1122. MODIFICATION OF RURAL AIRPORT DEFINITION.

(a) IN GENERAL.—Section 4261(e)(1)(B) (defining rural airport) is amended—

(1) by inserting ''(in the case of any airport described in clause (ii)(III), on flight segments of at least 100 miles)'' after ''by air'' in clause (i), and

(2) by striking ''or'' at the end of subclause (I) of clause (ii), by striking the period at the end of subclause (II) of clause (ii) and inserting '', or'', and by adding at the end of clause (ii) the following new subclause:

''(III) is not connected by paved roads to another airport.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2005.

SEC. 1123. EXEMPTION FROM TAXES ON TRANSPORTATION PROVIDED BY SEAPLANES.

(a) IN GENERAL.—Section 4261 (relating to imposition of tax) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

''(i) EXEMPTION FOR SEAPLANES.—No tax shall be imposed by this section or section 4271 on any air transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airways Trust Fund.''.

(b) RATE OF FUEL TAX FOR SEAPLANES SUBJECT TO EXEMPTION.—Subsection (b) of section 4083 is amended by striking ''section 4261(h)'' and inserting ''subsection (h) or (i) of section 4261''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transportation beginning after September 30, 2005.

SEC. 1124. CERTAIN SIGHTSEEING FLIGHTS EXEMPT FROM TAXES ON AIR TRANSPORTATION.

(a) IN GENERAL.—Section 4281 (relating to small aircraft on nonestablished lines) is amended by adding at the end the following new sentence: ''For purposes of this section, an aircraft shall not be considered as operated on an established line at any time during which such aircraft is being operated on a flight the sole purpose of which is sightseeing.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to transportation beginning after September 30, 2005, but shall not apply to any amount paid before such date for such transportation.

PART 4—TAXES RELATING TO ALCOHOL

SEC. 1125. REPEAL OF SPECIAL OCCUPATIONAL TAXES ON PRODUCERS AND MARKETERS OF ALCOHOLIC BEVERAGES.

(a) REPEAL OF OCCUPATIONAL TAXES.—

(1) IN GENERAL.—The following provisions of part II of subchapter A of chapter 51 (relating to occupational taxes) are hereby repealed:

(A) Subpart A (relating to proprietors of distilled spirits plants, bonded wine cellars, etc.).

(B) Subpart B (relating to brewer).

(C) Subpart D (relating to wholesale dealers) (other than sections 5114 and 5116).

(D) Subpart E (relating to retail dealers) (other than section 5124).

(E) Subpart G (relating to general provisions) (other than sections 5142, 5143, 5145, and 5146).

(2) NONBEVERAGE DOMESTIC DRAWBACK.—Section 5131 is amended by striking '', on payment of a special tax per annum,''.

(3) INDUSTRIAL USE OF DISTILLED SPIRITS.—Section 5276 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) The heading for part II of subchapter A of chapter 51 and the table of subparts for such part are amended to read as follows:

''PART II—MISCELLANEOUS PROVISIONS

''Subpart A. Manufacturers of stills.
''Subpart B. Nonbeverage domestic drawback claimants.
''Subpart C. Recordkeeping by dealers.
''Subpart D. Other provisions.''.

(B) The table of parts for such subchapter A is amended by striking the item relating to part II and inserting the following new item:

''Part II. Miscellaneous provisions.''.

(2) Subpart C of part II of such subchapter (relating to manufacturers of stills) is redesignated as subpart A.

(3)(A) Subpart F of such part II (relating to nonbeverage domestic drawback claimants) is redesignated as subpart B and sections 5131 through 5134 are redesignated as sections 5111 through 5114, respectively.

(B) The table of sections for such subpart B, as so redesignated, is amended—

(i) by redesignating the items relating to sections 5131 through 5134 as relating to sections 5111 through 5114, respectively, and

(ii) by striking ''and rate of tax'' in the item relating to section 5111, as so redesignated.

(C) Section 5111, as redesignated by subparagraph (A), is amended—

(i) by striking ''***AND RATE OF TAX***'' in the section heading,

(ii) by striking the subsection heading for subsection (a), and

(iii) by striking subsection (b).

(4) Part II of subchapter A of chapter 51 is amended by adding after subpart B, as redesignated by paragraph (3), the following new subpart:

''Subpart C—Recordkeeping and Registration by Dealers

''Sec. 5121. Recordkeeping by wholesale dealers.
''Sec. 5122. Recordkeeping by retail dealers.
''Sec. 5123. Preservation and inspection of records, and entry of premises for inspection.
''Sec. 5124. Registration by dealers.''.

(5)(A) Section 5114 (relating to records) is moved to subpart C of such part II and inserted after the table of sections for such subpart.

(B) Section 5114 is amended—

(i) by striking the section heading and inserting the following new heading:

''SEC. 5432. RECORDKEEPING BY WHOLESALE DEALERS.''

, and

(ii) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) WHOLESALE DEALERS.—For purposes of this part—

''(1) WHOLESALE DEALER IN LIQUORS.—The term 'wholesale dealer in liquors' means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

''(2) WHOLESALE DEALER IN BEER.—The term 'wholesale dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer.

''(3) DEALER.—The term 'dealer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

''(4) PRESUMPTION IN CASE OF SALE OF 20 WINE GALLONS OR MORE.—The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer.''.

(C) Paragraph (3) of section 5121(d), as so redesignated, is amended by striking ''section 5146'' and inserting ''section 5123''.

(6)(A) Section 5124 (relating to records) is moved to subpart C of part II of subchapter A of chapter 51 and inserted after section 5121.

(B) Section 5124 is amended—

(i) by striking the section heading and inserting the following new heading:

''SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.'',

(ii) by striking ''section 5146'' in subsection (c) and inserting ''section 5123'', and

(iii) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

''(c) RETAIL DEALERS.—For purposes of this section—

''(1) RETAIL DEALER IN LIQUORS.—The term 'retail dealer in liquors' means any dealer (other than a retail dealer in beer or a limited retail dealer) who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a dealer.

''(2) RETAIL DEALER IN BEER.—The term 'retail dealer in beer' means any dealer (other than a limited retail dealer) who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

''(3) LIMITED RETAIL DEALER.—The term 'limited retail dealer' means any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization making sales of distilled spirits, wine or beer on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, or any person making sales of distilled spirits, wine or beer to the members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or other similar outings, if such organization or person is not otherwise engaged in business as a dealer.

''(4) DEALER.—The term 'dealer' has the meaning given such term by section 5121(c)(3).''.

(7) Section 5146 is moved to subpart C of part II of subchapter A of chapter 51, inserted after section 5122, and redesignated as section 5123.

(8) Subpart C of part II of subchapter A of chapter 51, as amended by paragraph (7), is amended by adding at the end the following new section:

''SEC. 5124. REGISTRATION BY DEALERS.

''Every dealer who is subject to the recordkeeping requirements under section 5121 or 5122 shall register with the Secretary such dealer's name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In the case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.''.

(9) Section 7012 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) For provisions relating to registration by dealers in distilled spirits, wines, and beer, see section 5124.''.

(10) Part II of subchapter A of chapter 51 is amended by inserting after subpart C the following new subpart:

''Subpart D—Other Provisions

''Sec. 5131. Packaging distilled spirits for industrial uses.
''Sec. 5132. Prohibited purchases by dealers.''.

(11) Section 5116 is moved to subpart D of part II of subchapter A of chapter 51, inserted after the table of sections, redesignated as section 5131, and amended by inserting ''(as defined in section 5121(c))'' after ''dealer'' in subsection (a).

(12) Subpart D of part II of subchapter A of chapter 51 is amended by adding at the end the following new section:

''SEC. 5132. PROHIBITED PURCHASES BY DEALERS.

''(a) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, it shall be unlawful for a dealer to purchase distilled spirits for resale from any person other than a wholesale dealer in liquors who is required to keep the records prescribed by section 5121.

''(b) LIMITED RETAIL DEALERS.—A limited retail dealer may lawfully purchase distilled spirits for resale from a retail dealer in liquors.

''(c) PENALTY AND FORFEITURE.—

''For penalty and forfeiture provisions applicable to violations of subsection (a), see sections 5687 and 7302.''.

(13) Subsection (b) of section 5002 is amended—

(A) by striking ''section 5112(a)'' and inserting ''section 5121(c)(3)'',

(B) by striking ''section 5112'' and inserting ''section 5121(c)'', and

(C) by striking ''section 5122'' and inserting ''section 5122(c)''.

(14) Subparagraph (A) of section 5010(c)(2) is amended by striking ''section 5134'' and inserting ''section 5114''.

(15) Subsection (d) of section 5052 is amended to read as follows:

''(d) BREWER.—For purposes of this chapter, the term 'brewer' means any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e).''.

(16) The text of section 5182 is amended to read as follows:

''For provisions requiring recordkeeping by wholesale liquor dealers, see section 5112, and by retail liquor dealers, see section 5122.''.

(17) Subsection (b) of section 5402 is amended by striking ''section 5092'' and inserting ''section 5052(d)''.

(18) Section 5671 is amended by striking ''or 5091''.

(19)(A) Part V of subchapter J of chapter 51 is hereby repealed.

(B) The table of parts for such subchapter J is amended by striking the item relating to part V.

(20)(A) Sections 5142, 5143, and 5145 are moved to subchapter D of chapter 52, inserted after section 5731, redesignated as sections 5732, 5733, and 5734, respectively, and amended by striking ''this part'' each place it appears and inserting ''this subchapter''.

(B) Section 5732, as redesignated by subparagraph (A), is amended by striking ''(except the tax imposed by section 5131)'' each place it appears.

(C) Paragraph (2) of section 5733(c), as redesignated by subparagraph (A), is amended by striking ''liquors'' both places it appears and inserting ''tobacco products and cigarette papers and tubes''.

(D) The table of sections for subchapter D of chapter 52 is amended by adding at the end the following:

''Sec. 5732. Payment of tax.
''Sec. 5733. Provisions relating to liability for occupational taxes.
''Sec. 5734. Application of State laws.''.

(E) Section 5731 is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(21) Subsection (c) of section 6071 is amended by striking ''section 5142'' and inserting ''section 5732''.

(22) Paragraph (1) of section 7652(g) is amended—

(A) by striking ''subpart F'' and inserting ''subpart B'', and

(B) by striking ''section 5131(a)'' and inserting ''section 5111''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2008, but shall not apply to taxes imposed for periods before such date.

SEC. 1126. INCOME TAX CREDIT FOR DISTILLED SPIRITS WHOLESALERS AND FOR DISTILLED SPIRITS IN CONTROL STATE BAILMENT WAREHOUSES FOR COSTS OF CARRYING FEDERAL EXCISE TAXES ON BOTTLED DISTILLED SPIRITS.

(a) IN GENERAL.—Subpart A of part I of subchapter A of chapter 51 (relating to gallonage and occupational taxes) is amended by adding at the end the following new section:

''SEC. 5011. INCOME TAX CREDIT FOR AVERAGE COST OF CARRYING EXCISE TAX.

''(a) IN GENERAL.—For purposes of section 38, the amount of the distilled spirits credit for any taxable year is the amount equal to the product of—

''(1) in the case of—

''(A) any eligible wholesaler, the number of cases of bottled distilled spirits—

''(i) which were bottled in the United States, and

''(ii) which are purchased by such wholesaler during the taxable year directly from the bottler of such spirits, or

''(B) any person which is subject to section 5005 and which is not an eligible wholesaler, the number of cases of bottled distilled spirits which are stored in a warehouse operated by, or on behalf of, a State or political subdivision thereof, or an agency of either, on which title has not passed on an unconditional sale basis, and

''(2) the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year.

''(b) ELIGIBLE WHOLESALER.—For purposes of this section, the term 'eligible wholesaler' means any person which holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits which is not a State or political subdivision thereof, or an agency of either.

''(c) AVERAGE TAX-FINANCING COST.—

''(1) IN GENERAL.—For purposes of this section, the average tax-financing cost per case for any calendar year is the amount of interest which would accrue at the deemed financing rate during a 60-day period on an amount equal to the deemed Federal excise tax per case.

''(2) DEEMED FINANCING RATE.—For purposes of paragraph (1), the deemed financing rate for any calendar year is the average of the corporate overpayment rates under paragraph (1) of section 6621(a) (determined without regard to the last sentence of such paragraph) for calendar quarters of such year.

''(3) DEEMED FEDERAL EXCISE TAX PER CASE.—For purposes of paragraph (1), the deemed Federal excise tax per case is $25.68.

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

''(1) CASE.—The term 'case' means 12 80-proof 750-milliliter bottles.

''(2) NUMBER OF CASES IN LOT.—The number of cases in any lot of distilled spirits shall be determined by dividing the number of liters in such lot by 9.''.

(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 (18), by striking the period at the end of paragraph (19), and inserting '', plus'', and by adding at the end the following new paragraph:

''(20) the distilled spirits credit determined under section 5011(a).''.

(c) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter A of chapter 51 is amended by adding at the end the following new item:

''Sec. 5011. Income tax credit for average cost of carrying excise tax.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after September 30, 2005.

SEC. 1127. QUARTERLY EXCISE TAX FILING FOR SMALL ALCOHOL EXCISE TAXPAYERS.

(a) IN GENERAL.—Subsection (d) of section 5061 (relating to time for collecting tax on distilled spirits, wines, and beer) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) TAXPAYERS LIABLE FOR TAXES OF NOT MORE THAN $50,000.—

''(A) IN GENERAL.—In the case of any taxpayer who reasonably expects to be liable for not more than $50,000 in taxes imposed with respect to distilled spirits, wines, and beer under subparts A, C, and D and section 7652 for the calendar year and who was liable for not more than $50,000 in such taxes in the preceding calendar year, the last day for the payment of tax on withdrawals, removals, and entries (and articles brought into the United States from Puerto Rico) under bond for deferred payment shall be the 14th day after the last day of the calendar quarter during which the action giving rise to the imposition of such tax occurs.

''(B) NO APPLICATION AFTER LIMIT EXCEEDED.—Subparagraph (A) shall not apply to any taxpayer for any portion of the calendar year following the first date on which the aggregate amount of tax due under subparts A, C, and D and section 7652 from such taxpayer during such calendar year exceeds $50,000, and any tax under such subparts which has not been paid on such date shall be due on the 14th day after the last day of the semimonthly period in which such date occurs.

''(C) CALENDAR QUARTER.—For purposes of this paragraph, the term 'calendar quarter' means the three-month period ending on March 31, June 30, September 30, or December 31.''.

(b) CONFORMING AMENDMENT.—Section 5061(d)(6), as redesignated by subsection (a), is amended by striking ''paragraph (4)'' and inserting ''paragraph (5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to quarterly periods beginning on and after January 1, 2006.

PART 5—SPORT EXCISE TAXES

SEC. 1131. CUSTOM GUNSMITHS.

(a) SMALL MANUFACTURERS EXEMPT FROM FIREARMS EXCISE TAX.—Section 4182 (relating to exemptions) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) SMALL MANUFACTURERS, ETC.—

''(1) IN GENERAL.—The tax imposed by section 4181 shall not apply to any pistol, revolver, or firearm described in such section if manufactured, produced, or imported by a person who manufactures, produces, and imports less than an aggregate of 50 of such articles during the calendar year.

''(2) CONTROLLED GROUPS.—All persons treated as a single employer for purposes of subsection (a) or (b) of section 52 shall be treated as one person for purposes of paragraph (1).''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005.

(2) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments.

Subtitle C—Miscellaneous Provisions

SEC. 1141. 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 with respect to motor fuel taxes;

(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 to the President and Congress 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) 6 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 as of the close of September 30, 2009.

SEC. 1142. NATIONAL SURFACE TRANSPORTATION INFRASTRUCTURE FINANCING COMMISSION.

(a) ESTABLISHMENT.—There is established a National Surface Transportation Infrastructure Financing Commission (in this section referred to as the ''Commission''). The Commission shall hold its first meeting within 90 days of the appointment of the eighth individual to be named to the Commission.

(b) FUNCTION.—

(1) IN GENERAL.—The Commission shall, with respect to the period beginning on the date of the enactment of this Act and ending before 2016—

(A) make a thorough investigation and study of revenues flowing into the Highway Trust Fund under current law, including the individual components of the overall flow of such revenues;

(B) consider whether the amount of such revenues is likely to increase, decline, or remain unchanged, absent changes in the law, particularly by taking into account the impact of possible changes in public vehicular choice, fuel use, or travel alternatives that could be expected to reduce or increase revenues into the Highway Trust Fund;

(C) consider alternative approaches to generating revenues for the Highway Trust Fund, and the level of revenues that such alternatives would yield;

(D) consider highway and transit needs and whether additional revenues into the Highway Trust Fund, or other Federal revenues dedicated to highway and transit infrastructure, would be required in order to meet such needs;

(E) consider a program that would exempt all or a portion of gasoline or other motor fuels used in a State from the Federal excise tax on such gasoline or other motor fuels if such State elects not to receive all or a portion of Federal transportation funding, including—

(i) whether such State should be required to increase State gasoline or other motor fuels taxes by the amount of the decrease in the Federal excise tax on such gasoline or other motor fuels;

(ii) whether any Federal transportation funding should not be reduced or eliminated for States participating in such program; and

(iii) whether there are any compliance problems related to enforcement of Federal transportation-related excise taxes under such program; and

(F) study such other matters closely related to the subjects described in the preceding subparagraphs as it may deem appropriate.

(2) PREPARATION OF REPORT.—Based on such investigation and study, the Commission shall develop a final report, with recommendations and the bases for those recommendations, indicating policies that should be adopted, or not adopted, to achieve various levels of annual revenue for the Highway Trust Fund and to enable the Highway Trust Fund to receive revenues sufficient to meet highway and transit needs. Such recommendations shall address, among other matters as the Commission may deem appropriate—

(A) what levels of revenue are required by the Federal Highway Trust Fund in order for it to meet needs to maintain and improve the condition and performance of the Nation's highway and transit systems;

(B) what levels of revenue are required by the Federal Highway Trust Fund in order to ensure that Federal levels of investment in highways and transit do not decline in real terms; and

(C) the extent, if any, to which the Highway Trust Fund should be augmented by other mechanisms or funds as a Federal means of financing highway and transit infrastructure investments.

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 15 members, appointed as follows:

(A) 7 members appointed by the Secretary of Transportation, in consultation with the Secretary of the Treasury.

(B) 2 members appointed by the Chairman of the Committee on Ways and Means of the House of Representatives.

(C) 2 members appointed by the Ranking Minority Member of the Committee on Ways and Means of the House of Representatives.

(D) 2 members appointed by the Chairman of the Committee on Finance of the Senate.

(E) 2 members appointed by the Ranking Minority Member of the Committee on Finance of the Senate.

(2) QUALIFICATIONS.—Members appointed pursuant to paragraph (1) shall be appointed from among individuals knowledgeable in the fields of public transportation finance or highway and transit programs, policy, and needs, and may include representatives of interested parties, such as State and local governments or other public transportation authorities or agencies, representatives of the transportation construction industry (including suppliers of technology, machinery, and materials), transportation labor (including construction and providers), transportation providers, the financial community, and users of highway and transit systems.

(3) TERMS.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(5) 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.

(6) CHAIRMAN.—The Chairman of the Commission shall be elected by the members.

(d) STAFF.—The Commission may appoint and fix the pay of such personnel as it considers appropriate.

(e) FUNDING.—Funding for the Commission shall be provided by the Secretary of the Treasury and by the Secretary of Transportation, out of funds available to those agencies for administrative and policy functions.

(f) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any department or agency of the United States may detail any of the personnel of that department or agency to the Commission to assist in carrying out its duties under this section.

(g) 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.

(h) REPORT.—Not later than 2 years after the date of its first meeting, the Commission shall transmit its final report, including recommendations, to the Secretary of Transportation, the Secretary of the Treasury, and the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(i) TERMINATION.—The Commission shall terminate on the 180th day following the date of transmittal of the report under subsection (h). All records and papers of the Commission shall thereupon be delivered to the Administrator of General Services for deposit in the National Archives.

SEC. 1143. TAX-EXEMPT FINANCING OF HIGHWAY PROJECTS AND RAIL-TRUCK TRANSFER FACILITIES.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to exempt facility bond) is amended by striking ''or'' at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting '', or'', and by adding at the end the following new paragraph:

''(15) qualified highway or surface freight transfer facilities.''.

(b) QUALIFIED HIGHWAY OR SURFACE FREIGHT TRANSFER FACILITIES.—Section 142 is amended by adding at the end the following:

''(m) QUALIFIED HIGHWAY OR SURFACE FREIGHT TRANSFER FACILITIES.—

''(1) IN GENERAL.—For purposes of subsection (a)(15), the term 'qualified highway or surface freight transfer facilities' means—

''(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection),

''(B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under title 23, United States Code (as so in effect), or

''(C) any facility for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as so in effect).

''(2) NATIONAL LIMITATION ON AMOUNT OF TAX-EXEMPT FINANCING FOR FACILITIES.—

''(A) NATIONAL LIMITATION.—The aggregate amount allocated by the Secretary of Transportation under subparagraph (C) shall not exceed $15,000,000,000.

''(B) ENFORCEMENT OF NATIONAL LIMITATION.—An issue shall not be treated as an issue described in subsection (a)(15) if the aggregate face amount of bonds issued pursuant to such issue for any qualified highway or surface freight transfer facility (when added to the aggregate face amount of bonds previously so issued for such facility) exceeds the amount allocated to such facility under subparagraph (C).

''(C) ALLOCATION BY SECRETARY OF TRANSPORTATION.—The Secretary of Transportation shall allocate the amount described in subparagraph (A) among qualified highway or surface freight transfer facilities in such manner as the Secretary determines appropriate.

''(3) EXPENDITURE OF PROCEEDS.—An issue shall not be treated as an issue described in subsection (a)(15) unless at least 95 percent of the net proceeds of the issue is expended for qualified highway or surface freight transfer facilities within the 5-year period beginning on the date of issuance. If at least 95 percent of such net proceeds is not expended within such 5-year period, an issue shall be treated as continuing to meet the requirements of this paragraph if the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 5-year period. The Secretary, at the request of the issuer, may extend such 5-year period if the issuer establishes that any failure to meet such period is due to circumstances beyond the control of the issuer.

''(4) EXCEPTION FOR CURRENT REFUNDING BONDS.—Paragraph (2) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(15) if—

''(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(C) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).''.

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) of the Internal Revenue Code of 1986 (relating to exception for certain bonds) is amended by striking ''or (14)'' and all that follows through the end of the paragraph and inserting ''(14), or (15) of section 142(a), and''.

(d) EFFECTIVE DATE.—The amendments made by this section apply to bonds issued after the date of the enactment of this Act.

SEC. 1144. 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 from the highway motor fuels excise taxes, and, if such exemptions are technically and administratively feasible, shall propose options for implementing such exemptions for—

(i) mobile machinery (as defined in section 4053(8) of the Internal Revenue Code of 1986) whose nonpropulsive fuel use exceeds 50 percent, and

(ii) any highway vehicle which consumes fuel for both transportation- and non-transportation-related equipment, using a single motor,

(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, 2007, 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. 1145. DIESEL FUEL TAX EVASION REPORT.

Not later than 360 days after the date of the enactment of this Act, the Commissioner of the Internal Revenue shall report to the Committees on Finance and Environment and Public Works of the Senate and the Committees on Ways and Means and Transportation and Infrastructure of the House of Representatives on—

(1) the availability of new technologies, including forensic or chemical molecular markers, that can be employed to enhance collections of the excise tax on diesel fuel and the plans of the Internal Revenue Service to employ such technologies,

(2) the design of a test to place forensic or chemical molecular markers in any excluded liquid (as defined in section 48.4081–1(b) of title 26, Code of Federal Regulations),

(3) the design of a test, in consultation with the Department of Defense, to place forensic or chemical molecular markers in all nonstrategic bulk fuel deliveries of diesel fuel to the military, and

(4) the design of a test to place forensic or chemical molecular markers in all diesel fuel bound for export utilizing the Gulf of Mexico.

SEC. 1146. TAX TREATMENT OF STATE OWNERSHIP OF RAILROAD REAL ESTATE INVESTMENT TRUST.

(a) IN GENERAL.—If a State owns all of the outstanding stock of a corporation—

(1) which is a real estate investment trust on the date of the enactment of this Act,

(2) which is a non-operating class III railroad, and

(3) substantially all of the activities of which consist of the ownership, leasing, and operation by such corporation of facilities, equipment, and other property used by the corporation or other persons for railroad transportation and for economic development purposes for the benefit of the State and its citizens, then, to the extent such activities are of a type which are an essential governmental function within the meaning of section 115 of the Internal Revenue Code of 1986, income derived from such activities by the

corporation shall be treated as accruing to the State for purposes of section 115 of such Code.

(b) GAIN OR LOSS NOT RECOGNIZED ON CONVERSION.—Notwithstanding section 337(d) of the Internal Revenue Code of 1986—

(1) no gain or loss shall be recognized under section 336 or 337 of such Code, and

(2) no change in basis of the property of such corporation shall occur, because of any change of status of a corporation to a tax-exempt entity by reason of the application of subsection (a).

(c) TAX-EXEMPT FINANCING.—

(1) IN GENERAL.—Any obligation issued by a corporation described in subsection (a) at least 95 percent of the net proceeds (as defined in section 150(a) of the Internal Revenue Code of 1986) of which are to be used to provide for the acquisition, construction, or improvement of railroad transportation infrastructure (including railroad terminal facilities)—

(A) shall be treated as a State or local bond (within the meaning of section 103(c) of such Code), and

(B) shall not be treated as a private activity bond (within the meaning of section 103(b)(1) of such Code) solely by reason of the ownership or use of such railroad transportation infrastructure by the corporation.

(2) NO INFERENCE.—Except as provided in paragraph (1), nothing in this subsection shall be construed to affect the treatment of the private use of proceeds or property financed with obligations issued by the corporation for purposes of section 103 of the Internal Revenue Code of 1986 and part IV of subchapter B of such Code.

(d) DEFINITIONS.—For purposes of this section:

(1) REAL ESTATE INVESTMENT TRUST.—The term ''real estate investment trust'' has the meaning given such term by section 856(a) of the Internal Revenue Code of 1986.

(2) NON-OPERATING CLASS III RAILROAD.—The term ''non-operating class III railroad'' has the meaning given such term by part A of subtitle IV of title 49, United States Code (49 U.S.C. 10101 et seq.), and the regulations thereunder.

(3) STATE.—The term ''State'' includes—

(A) the District of Columbia and any possession of the United States, and

(B) any authority, agency, or public corporation of a State.

(e) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply on and after the date on which a State becomes the owner of all of the outstanding stock of a corporation described in subsection (a) through action of such corporation's board of directors.

(2) EXCEPTION.—This section shall not apply to any State which—

(A) becomes the owner of all of the voting stock of a corporation described in subsection (a) after December 31, 2003, or

(B) becomes the owner of all of the outstanding stock of a corporation described in subsection (a) after December 31, 2006.

SEC. 1147. LIMITATION ON TRANSFERS TO THE LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) IN GENERAL.—Section 9508 is amended by adding at the end the following new subsection:

''(e) LIMITATION ON TRANSFERS TO LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no amount may be appropriated to the Leaking Underground Storage Tank Trust Fund on and after the date of any expenditure from the Leaking Underground Storage Tank Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

''(A) any provision of law which is not contained or referenced in this title or in a revenue Act, and

''(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

''(2) EXCEPTION FOR PRIOR OBLIGATIONS.—Paragraph (1) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before October 1, 2011, in accordance with the provisions of this section.''.

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

Subtitle D—Highway-Related Technical Corrections

SEC. 1151. HIGHWAY-RELATED TECHNICAL CORRECTIONS.

(a) AMENDMENTS RELATED TO SECTION 301 OF THE AMERICAN JOBS CREATION ACT OF 2004.—Section 6427 is amended—

(1) by striking subsection (f), and

(2) by striking subsection (o) and redesignating subsection (p) as subsection (o).

(b) AMENDMENTS RELATED TO SECTION 853 OF THE AMERICAN JOBS CREATION ACT OF 2004.—

(1) Subparagraph (C) of section 4081(a)(2) is amended by striking ''for use in commercial aviation'' and inserting ''for use in commercial aviation by a person registered for such use under section 4101''.

(2) So much of paragraph (2) of section 4081(d) as precedes subparagraph (A) is amended to read as follows:

''(2) AVIATION FUELS.—The rates of tax specified in clauses (ii) and (iv) of subsection (a)(2)(A) shall be 4.3 cents per gallon—''.

(3) Section 6421(f)(2) is amended—

(A) by striking ''noncommercial aviation (as defined in section 4041(c)(2))'' in subparagraph (A) and inserting ''aviation which is not commercial aviation (as defined in section 4083(b))'', and

(B) by striking ''aviation which is not noncommercial aviation'' in subparagraph (B) and inserting ''commercial aviation''.

(c) AMENDMENT RELATED TO SECTION 9005 OF THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—The last sentence of paragraph (2) of section 9504(b) is amended by striking ''subparagraph (B)'', and inserting ''subparagraph (C)''.

(d) AMENDMENT RELATED TO SECTION 1306 OF THE ENERGY POLICY ACT OF 2005.—

(1) Subsection (b) of section 1306 of the Energy Tax Incentives Act of 2005 is amended by striking ''Transportation Equity Act: A Legacy for Users'' and inserting ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users''.

(2) If the Energy Policy Act of 2005 is enacted before the date of the enactment of this Act, for purposes of executing any amendments made by the Energy Policy Act of 2005 to section 38(b) of the Internal Revenue Code of 1986, the amendments made by section 1126(b) of this Act shall be treated as having been executed before such amendments made by the Energy Policy Act of 2005.

(e) CLERICAL AMENDMENTS.—

(1) Subparagraph (A) of section 9504(b)(2) is amended by striking ''the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes', approved August 9, 1950'' and inserting ''the Dingell-Johnson Sport Fish Restoration Act''.

(2) Sections 6426(d)(2)(F) and 4041(a)(2)(B)(ii) are both amended by striking ''section 29(c)(3)'' and inserting ''section 45K(c)(3)''.

(f) EFFECTIVE DATES.—

(1) AMERICAN JOBS CREATION ACT OF 2004.—The amendments made by subsections (a) and (b) shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 to which they relate.

(2) TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—The amendment made by subsection (c) shall take effect as if included in the provision of the Transportation Equity Act for the 21st Century to which it relates.

(3) ENERGY POLICY ACT OF 2005.—The amendments made by subsections (d)(1) and (e)(2) shall take effect as if included in the provision of the Energy Tax Incentives Act of 2005 to which they relate.

Subtitle E—Preventing Fuel Fraud

SEC. 1161. TREATMENT OF KEROSENE FOR USE IN AVIATION.

(a) ALL KEROSENE TAXED AT HIGHEST RATE.—

(1) IN GENERAL.—Section 4081(a)(2)(A) (relating to rates of tax) is amended by adding ''and'' at the end of clause (ii), by striking '', and'' at the end of clause (iii) and inserting a period, and by striking clause (iv).

(2) EXCEPTION FOR USE IN AVIATION.—Subparagraph (C) of section 4081(a)(2) is amended to read as follows:

''(C) TAXES IMPOSED ON FUEL USED IN AVIATION.—In the case of kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in aviation, the rate of tax under subparagraph (A)(iii) shall be—

''(i) in the case of use for commercial aviation by a person registered for such use under section 4101, 4.3 cents per gallon, and

''(ii) in the case of use for aviation not described in clause (i), 21.8 cents per gallon.''.

(3) APPLICABLE RATE IN CASE OF CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS.—Section 4081(a)(3) (relating to certain refueler trucks, tankers, and tank wagons treated as terminals) is amended—

(A) by striking ''a secured area of'' in subparagraph (A)(i), and

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

''(D) APPLICABLE RATE.—For purposes of paragraph (2)(C), in the case of any kerosene treated as removed from a terminal by reason of this paragraph—

''(i) the rate of tax specified in paragraph (2)(C)(i) in the case of use described in such paragraph shall apply if such terminal is located within a secured area of an airport, and

''(ii) the rate of tax specified in paragraph (2)(C)(ii) shall apply in all other cases.''.

(4) CONFORMING AMENDMENTS.—

(A) Sections 4081(a)(3)(A) and 4082(b) are amended by striking ''aviation-grade'' each place it appears.

(B) Section 4081(a)(4) is amended by striking ''paragraph (2)(C)'' and inserting ''paragraph (2)(C)(i)''.

(C) The heading for paragraph (4) of section 4081(a) is amended by striking ''AVIATION-GRADE''.

(D) Section 4081(d)(2) is amended by striking so much as precedes subparagraph (A) and inserting the following:

''(2) AVIATION FUELS.—The rates of tax specified in subsections (a)(2)(A)(ii) and (a)(2)(C)(ii) shall be 4.3 cents per gallon—''.

(E) Subsection (e) of section 4082 is amended—

(i) by striking ''aviation-grade'',

(ii) by striking ''section 4081(a)(2)(A)(iv)'' and inserting ''section 4081(a)(2)(A)(iii)'',

(iii) by adding at the end the following new sentence: ''For purposes of this subsection, any removal described in section 4081(a)(3)(A) shall be treated as a removal from a terminal but only if such terminal is located within a secure area of an airport.'', and

(iv) by striking ''AVIATION-GRADE KEROSENE'' in the heading thereof and inserting ''KEROSENE REMOVED INTO AN AIRCRAFT''.

(b) REDUCED RATE FOR USE OF CERTAIN LIQUIDS IN AVIATION.—

(1) IN GENERAL.—Subsection (c) of section 4041 (relating to imposition of tax) is amended—

(A) by striking ''aviation-grade kerosene'' in paragraph (1) and inserting ''any liquid for use as a fuel other than aviation gasoline'',

(B) by striking ''aviation-grade kerosene'' in paragraph (2) and inserting ''liquid for use as a fuel other than aviation gasoline'',

(C) by striking paragraph (3) and inserting the following new paragraph:

''(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be 21.8 cents per gallon (4.3 cents per gallon with respect to any sale or use for commercial aviation).'', and

(D) by striking ''AVIATION-GRADE KEROSENE'' in the heading thereof and inserting ''CERTAIN LIQUIDS USED AS A FUEL IN AVIATION''.

(2) PARTIAL REFUND OF FULL RATE.—

(A) IN GENERAL.—Paragraph (2) of section 6427(l) (relating to nontaxable uses of diesel fuel, kerosene and aviation fuel) is amended to read as follows:

''(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax.''.

(B) REFUNDS FOR NONCOMMERCIAL AVIATION.—Section 6427(l) (relating to nontaxable uses of diesel fuel, kerosene and aviation fuel) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) REFUNDS FOR KEROSENE USED IN NONCOMMERCIAL AVIATION.—

''(A) IN GENERAL.—In the case of kerosene used in aviation not described in paragraph (4)(A) (other than any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax), 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)(iii) as does not exceed the rate specified in section 4081(a)(2)(C)(ii).

''(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—The amount which would be paid under paragraph (1) with respect to any kerosene shall be paid only to the ultimate vendor of such kerosene. A payment shall be made to such vendor 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).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 4041(a)(1)(B) is amended by striking the last sentence.

(B) The heading for subsection (l) of section 6427 is amended by striking '', Kerosene and Aviation Fuel'' and inserting ''and Kerosene''.

(C) Section 4082(d)(2)(B) is amended by striking ''section 6427(l)(5)(B)'' and inserting ''section 6427(l)(6)(B)''.

(D) Section 6427(i)(4)(A) is amended—

(i) by striking ''paragraph (4)(B) or (5)'' both places it appears and inserting ''paragraph (4)(B), (5), or (6)'', and

(ii) by striking ''subsection (b)(4) and subsection (l)(5)'' in the last sentence and inserting ''subsections (b)(4), (l)(5), and (l)(6)''.

(E) Paragraph (4) of section 6427(l) is amended—

(i) by striking ''aviation-grade'' in subparagraph (A),

(ii) by striking ''section 4081(a)(2)(A)(iv)'' and inserting ''section 4081(a)(2)(iii)'',

(iii) by striking ''aviation-grade kerosene'' in subparagraph (B) and inserting ''kerosene used in commercial aviation as described in subparagraph (A)'', and

(iv) by striking ''AVIATION-GRADE KEROSENE'' in the heading thereof and inserting ''KEROSENE USED IN COMMERCIAL AVIATION''.

(F) Section 6427(l)(6)(B), as redesignated by paragraph (2)(B), is amended by striking ''aviation-grade kerosene'' and inserting ''kerosene used in aviation''.

(c) TRANSFERS FROM HIGHWAY TRUST FUND OF TAXES ON FUELS USED IN AVIATION TO AIRPORT AND AIRWAY TRUST FUND.—

(1) IN GENERAL.—Section 9503(c) (relating to expenditures from Highway Trust Fund) is amended by adding at the end the following new paragraph:

''(7) TRANSFERS FROM THE TRUST FUND FOR CERTAIN AVIATION FUEL TAXES.—The Secretary shall pay at least monthly from the Highway Trust Fund into the Airport and Airway Trust Fund amounts (as determined by the Secretary) equivalent to the taxes received on or after October 1, 2005, and before October 1, 2011, under section 4081 with respect to so much of the rate of tax as does not exceed—

''(A) 4.3 cents per gallon of kerosene with respect to which a payment has been made by the Secretary under section 6427(l)(4), and

''(B) 21.8 cents per gallon of kerosene with respect to which a payment has been made by the Secretary under section 6427(l)(5).

Transfers under the preceding sentence shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred. Any amount allowed as a credit under section 34 by reason of paragraph (4) or (5) of section 6427(l) shall be treated for purposes of subparagraphs (A) and (B) as a payment made by the Secretary under such paragraph.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 9502(a) is amended by striking ''appropriated or credited to the Airport and Airway Trust Fund as provided in this section or section 9602(b)'' and inserting ''appropriated, credited, or paid into the Airport and Airway Trust Fund as provided in this section, section 9503(c)(7), or section 9602(b)''.

(B) Section 9502(b)(1) is amended—

(i) by striking ''subsections (c) and (e) of section 4041'' in subparagraph (A) and inserting ''section 4041(c)'', and

(ii) by striking ''and aviation-grade kerosene'' in subparagraph (C) and inserting ''and kerosene to the extent attributable to the rate specified in section 4081(a)(2)(C)''.

(C) Section 9503(b) is amended by striking paragraph (3).

(d) CERTAIN REFUNDS NOT TRANSFERRED FROM AIRPORT AND AIRWAY TRUST FUND.—

(1) Section 9502(d)(2) (relating to transfers from Airport and Airway Trust Fund on account of certain refunds) is amended by inserting ''(other than subsections (l)(4) and (l)(5) thereof)'' after ''or 6427 (relating to fuels not used for taxable purposes)''.

(2) The text of section 9502(d)(3) (relating to transfers from Airport and Airway Trust Fund on account of certain section 34 credits) is amended by inserting ''(other than payments made by reason of paragraph (4) or (5) of section 6427(l))'' after ''section 34''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to fuels or liquids removed, entered, or sold after September 30, 2005.

SEC. 1162. REPEAL OF ULTIMATE VENDOR REFUND CLAIMS WITH RESPECT TO FARMING.

(a) IN GENERAL.—Subparagraph (A) of section 6427(l)(6) (relating to registered vendors to administer claims for refund of diesel fuel or kerosene sold to farmers and State and local governments), as redesignated by section 1161, 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) CONFORMING AMENDMENT.—The heading of paragraph (6) of section 6427(l), as so redesignated, is amended by striking ''FARMERS AND''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after September 30, 2005.

SEC. 1163. REFUNDS OF EXCISE TAXES ON EXEMPT SALES OF FUEL BY CREDIT CARD.

(a) REGISTRATION OF PERSON EXTENDING CREDIT ON CERTAIN EXEMPT SALES OF FUEL.—Section 4101(a) (relating to registration) is amended by adding at the end the following new paragraph:

''(4) REGISTRATION OF PERSONS EXTENDING CREDIT ON CERTAIN EXEMPT SALES OF FUEL.—The Secretary shall require registration by any person which—

''(A) extends credit by credit card to any ultimate purchaser described in subparagraph (C) or (D) of section 6416(b)(2) for the purchase of taxable fuel upon which tax has been imposed under section 4041 or 4081, and

''(B) does not collect the amount of such tax from such ultimate purchaser.''.

(b) REFUNDS OF TAX ON GASOLINE.—

(1) IN GENERAL.—Paragraph (4) of section 6416(a) (relating to condition to allowance) is amended—

(A) by inserting ''except as provided in subparagraph (B),'' after ''For purposes of this subsection,'' in subparagraph (A),

(B) by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) CREDIT CARD ISSUER.—For purposes of this subsection, if the purchase of gasoline described in subparagraph (A) (determined without regard to the registration status of the ultimate vendor) is made by means of a credit card issued to the ultimate purchaser, paragraph (1) shall not apply and the person extending the credit to the ultimate purchaser shall be treated as the person (and the only person) who paid the tax, but only if such person—

''(i) is registered under section 4101, and

''(ii) has established, under regulations prescribed by the Secretary, that such person—

''(I) has not collected the amount of the tax from the person who purchased such article, or

''(II) has obtained the written consent from the ultimate purchaser to the allowance of the credit or refund, and

''(iii) has so established that such person—

''(I) has repaid or agreed to repay the amount of the tax to the ultimate vendor,

''(II) has obtained the written consent of the ultimate vendor to the allowance of the credit or refund, or

''(III) has otherwise made arrangements which directly or indirectly provides the ultimate vendor with reimbursement of such tax.

If clause (i), (ii), or (iii) is not met by such person extending the credit to the ultimate purchaser, then such person shall collect an amount equal to the tax from the ultimate purchaser and only such ultimate purchaser may claim such credit or payment.'',

(C) by striking ''subparagraph (A)'' in subparagraph (C), as redesignated by paragraph (2), and inserting ''subparagraph (A) or (B)'',

(D) by inserting ''or credit card issuer'' after ''vendor'' in subparagraph (C), as so redesignated, and

(E) by inserting ''OR CREDIT CARD ISSUER'' after ''VENDOR'' in the heading thereof.

(2) CONFORMING AMENDMENT.—Section 6416(b)(2) is amended by adding at the end the following new sentence: ''Subparagraphs (C) and (D) shall not apply in the case of any tax imposed on gasoline under section 4081 if the requirements of subsection (a)(4) are not met.''.

(c) DIESEL FUEL OR KEROSENE.—Paragraph (6) of section 6427(l) (relating to nontaxable uses of diesel fuel and kerosene), as redesignated by section 1161, is amended—

(1) by striking ''The amount'' in subparagraph (C) and inserting ''Except as provided in subparagraph (D), the amount'', and

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

''(D) CREDIT CARD ISSUER.—For purposes of this paragraph, if the purchase of any fuel described in subparagraph (A) (determined without regard to the registration status of the ultimate vendor) is made by means of a credit card issued to the ultimate purchaser, the Secretary shall pay to the person extending the credit to the ultimate purchaser the amount which would have been paid under paragraph (1) (but for subparagraph (A)), but only if such person meets the requirements of clauses (i), (ii), and (iii) of section 6416(a)(4)(B). If such clause (i),

(ii), or (iii) is not met by such person extending the credit to the ultimate purchaser, then such person shall collect an amount equal to the tax from the ultimate purchaser and only such ultimate purchaser may claim such amount.''.

(d) CONFORMING PENALTY AMENDMENTS.—

(1) Section 6206 (relating to special rules applicable to excessive claims under sections 6420, 6421, and 6427) is amended—

(A) by striking ''Any portion'' in the first sentence and inserting ''Any portion of a refund made under section 6416(a)(4) and any portion'',

(B) by striking ''payments under sections 6420'' in the first sentence and inserting ''refunds under section 6416(a)(4) and payments under sections 6420'',

(C) by striking ''section 6420'' in the second sentence and inserting ''section 6416(a)(4), 6420'', and

*(D) by striking ''**SECTIONS 6420, 6421, AND 6427**'' in the heading thereof and inserting ''**CERTAIN SECTIONS**''.*

(2) Section 6675(a) is amended by inserting ''section 6416(a)(4) (relating to certain sales of gasoline),'' after ''made under''.

(3) Section 6675(b)(1) is amended by inserting ''6416(a)(4),'' after ''under section''.

(4) The item relating to section 6206 in the table of sections for subchapter A of chapter 63 is amended by striking ''sections 6420, 6421, and 6427'' and inserting ''certain sections''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2005.

SEC. 1164. REREGISTRATION IN EVENT OF CHANGE IN OWNERSHIP.

(a) IN GENERAL.—Section 4101(a) (relating to registration) is amended by adding at the end the following new paragraph:

''(4) REREGISTRATION IN EVENT OF CHANGE IN OWNERSHIP.—Under regulations prescribed by the Secretary, a person (other than a corporation the stock of which is regularly traded on an established securities market) shall be required to reregister under this section if after a transaction (or series of related transactions) more than 50 percent of ownership interests in, or assets of, such person are held by persons other than persons (or persons related thereto) who held more than 50 percent of such interests or assets before the transaction (or series of related transactions).''.

(b) CONFORMING AMENDMENTS.—

(1) CIVIL PENALTY.—Section 6719 (relating to failure to register) is amended—

(A) by inserting ''or reregister'' after ''register'' each place it appears,

(B) by inserting ''OR REREGISTER'' after ''REGISTER'' in the heading for subsection (a), and

*(C) by inserting ''**OR REREGISTER**'' after ''**REGISTER**'' in the heading thereof.*

(2) CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4101, false representations of registration status, etc.) is amended—

(A) by inserting ''or reregister'' after ''register'',

(B) by inserting ''or reregistration'' after ''registration'', and

*(C) by inserting ''**OR REREGISTER**'' after ''**REGISTER**'' in the heading thereof.*

(3) ADDITIONAL CIVIL PENALTY.—Section 7272 (relating to penalty for failure to register) is amended—

(A) by inserting ''or reregister'' after ''failure to register'' in subsection (a),

*(B) by inserting ''**OR REREGISTER**'' after ''**REGISTER**'' in the heading thereof.*

(4) CLERICAL AMENDMENTS.—The item relating to section 6719 in the table of sections for part I of subchapter B of chapter 68, the item relating to section 7232 in the table of sections for part II of subchapter A of chapter 75, and the item relating to section 7272 in the table of sections for subchapter B of chapter 75 are each amended by inserting ''or reregister'' after ''register''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions, or failures to act, after the date of the enactment of this Act.

SEC. 1165. 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) TRANSMISSION OF DATA.—Pursuant to paragraph (2), not later than 1 year after the date of enactment of this paragraph, the Secretary of Homeland Security, after consultation with the Secretary of the Treasury, shall establish an electronic data interchange system through which the United States Customs and Border Protection shall transmit to the Internal Revenue Service information pertaining to cargoes of any taxable fuel (as defined in section 4083 of the Internal Revenue Code of 1986) that the United States Customs and Border Protection has obtained electronically under its regulations adopted in accordance with paragraph (1). For this purpose, not later than 1 year after the date of enactment of this paragraph, all filers of required cargo information for such taxable fuels (as so defined) must provide such information to the United States Customs and Border Protection through such electronic data interchange system.''.

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

SEC. 1166. TREATMENT OF DEEP-DRAFT VESSELS.

(a) IN GENERAL.—On and after the date of the enactment of this Act, the Secretary of the Treasury shall require that a vessel described in section 4042(c)(1) of the Internal Revenue Code of 1986 be considered a vessel for purposes of the registration of the operator of such vessel under section 4101 of such Code, unless such operator uses such vessel exclusively for purposes of the entry of taxable fuel.

(b) EXEMPTION FOR DOMESTIC BULK TRANSFERS BY DEEP-DRAFT VESSELS.—

(1) IN GENERAL.—Subparagraph (B) of section 4081(a)(1) (relating to tax on removal, entry, or sale) is amended to read as follows:

''(B) EXEMPTION FOR BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.—

''(i) IN GENERAL.—The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel (except as provided in clause (ii)), and the operator of such terminal or refinery are registered under section 4101.

''(ii) NONAPPLICATION OF REGISTRATION TO VESSEL OPERATORS ENTERING BY DEEP-DRAFT VESSEL.—For purposes of clause (i), a vessel operator is not required to be registered with respect to the entry of a taxable fuel transferred in bulk by a vessel described in section 4042(c)(1).''.

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

SEC. 1167. PENALTY WITH RESPECT TO CERTAIN ADULTERATED FUELS.

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

''SEC. 6720A. PENALTY WITH RESPECT TO CERTAIN ADULTERATED FUELS.

''(a) IN GENERAL.—Any person who knowingly transfers for resale, sells for resale, or holds out for resale any liquid for use in a diesel-powered highway vehicle or a diesel-powered train which does not meet applicable EPA regulations (as defined in section 45H(c)(3)), shall pay a penalty of $10,000 for each such transfer, sale, or holding out for resale, in addition to the tax on such liquid (if any).

''(b) PENALTY IN THE CASE OF RETAILERS.—Any person who knowingly holds out for sale (other than for resale) any liquid described in subsection (a), shall pay a penalty of $10,000 for each such holding out for sale, in addition to the tax on such liquid (if any).''.

(b) DEDICATION OF REVENUE.—Paragraph (5) of section 9503(b) (relating to certain penalties) is amended by inserting ''6720A,'' after ''6719,''.

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

''Sec. 6720A. Penalty with respect to certain adulterated fuels.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any transfer, sale, or holding out for sale or resale occurring after the date of the enactment of this Act.

And the Senate agree to the same.

From the Committee on Transportation and Infrastructure, for consideration of the House bill (except title X) and the Senate amendment (except title V), and modifications committed to conference:

DON YOUNG,
THOMAS E. PETRI,
SHERWOOD BOEHLERT,
HOWARD COBLE,
JOHN J. DUNCAN, Jr.,
JOHN L. MICA,
PETE HOEKSTRA,
STEVEN C. LATOURETTE,
SPENCER BACHUS,
RICHARD H. BAKER,
GARY G. MILLER,
ROBIN HAYES,
ROB SIMMONS,
HENRY E. BROWN, Jr.
SAM GRAVES,
BILL SHUSTER,
JOHN BOOZMAN,
JAMES L. OBERSTAR,
NICK RAHALL,
PETER A. DEFAZIO,
JERRY F. COSTELLO,
ELEANOR HOLMES NORTON,
JERROLD NADLER,
ROBERT MENENDEZ,
CORRINE BROWN,
BOB FILNER,
EDDIE BERNICE JOHNSON,
GENE TAYLOR,
JUANITA MILLENDER-MCDONALD,
ELIJAH E. CUMMINGS,
EARL BLUMENAUER,
ELLEN O. TAUSCHER,

From the Committee on the Budget, for consideration of secs. 8001–8003 of the House bill, and title III of the Senate amendment, and modifications committed to conference:

JIM NUSSLE,
MARIO DIAZ-BALART,
JOHN SPRATT,

From the Committee on Education and the Workforce, for consideration of secs. 1118, 1605, 1809, 3018, and 3030 of the House bill, and secs. 1304, 1819, 6013, 6031, 6038, and 7603 of the Senate amendment, and modifications committed to conference:

RIC KELLER,
JOHN BARROW,

From the Committee on Energy and Commerce, for consideration of provisions in the House bill and Senate amendment relating to Clean Air Act provisions of transportation planning contained in secs. 6001 and 6006 of the House bill, and secs. 6005 and 6006 of the Senate amendment; and secs. 1210, 1824, 1833, 5203, and 6008 of the House bill, and secs. 1501, 1511, 1522, 1610–1619, 1622, 4001, 4002, 6016, 6023, 7218, 7223, 7251, 7252, 7256–7262, 7324, 7381, 7382, and 7384 of the Senate amendment, and modifications committed to conference:

JOE BARTON,
CHIP PICKERING,
JOHN D. DINGELL,

From the Committee on Government Reform, for consideration of sec. 4205 of the

House bill, and sec. 2101 of the Senate amendment, and modifications committed to conference:

TOM DAVIS,
TODD R. PLATTS,

From the Committee on Homeland Security, for consideration of secs. 1834, 6027, 7324, and 7325 of the Senate amendment, and modifications committed to conference:

CHRIS COX,
DANIEL E. LUNGREN,
BENNIE G. THOMPSON,

From the Committee on the Judiciary, for consideration of secs. 1211, 1605, 1812, 1832, 2013, 2017, 4105, 4201, 4202, 4214, 7018–7020, and 7023 of the House bill, and secs. 1410, 1512, 1513, 6006, 6029, 7108, 7113, 7115, 7338, 7340, 7343, 7345, 7362, 7363, 7406, 7407, and 7413 of the Senate amendment, and modifications committed to conference:

LAMAR SMITH,
JOHN CONYERS,

From the Committee on Resources, for consideration of secs. 1119, 3021, 6002, and 6003 of the House bill, and secs. 1501, 1502, 1505, 1511, 1514, 1601, 1603, 6040, and 7501–7518 of the Senate amendment, and modifications committed to conference:

GREG WALDEN,
RON KIND,

From the Committee on Rules, for consideration of secs. 8004 and 8005 of the House bill, and modifications committed to conference:

DAVID DREIER,
SHELLEY MOORE CAPITO,
JIM MCGOVERN,

From the Committee on Science, for consideration of secs. 2010, 3013, 3015, 3034, 3039, 3041, 4112, and title V of the House bill, and title II and secs. 6014, 6015, 6036, 7118, 7212, 7214, 7361, and 7370 of the Senate amendment, and modifications committed to conference:

VERNON J. EHLERS,
DAVID REICHERT,
BART GORDON,

From the Committee on Ways and Means, for consideration of title X of the House bill, and title V of the Senate amendment, and modifications committed to conference:

WILLIAM M. THOMAS,
JIM MCCRERY,

For consideration of the House bill and Senate amendment, and modifications committed to conference:

TOM DELAY
Managers on the Part of the House.

JAMES M. INHOFE,
JOHN WARNER,
KIT BOND,
GEORGE V. VOINOVICH,
LINCOLN CHAFEE,
LISA MURKOWSKI,
JOHN THUNE,
JIM DEMINT,
JOHNNY ISAKSON,
DAVID VITTER,
CHUCK GRASSLEY,
ORRIN HATCH,
RICHARD SHELBY,
WAYNE ALLARD,
TED STEVENS,
TRENT LOTT,
JIM JEFFORDS,
MAX BAUCUS,
JOE LIEBERMAN,
BARBARA BOXER,
TOM CARPER,
HILLARY RODHAM CLINTON,
FRANK R. LAUTENBERG,
BARACK OBAMA,
KEN T. CONRAD,
DANIEL K. INOUYE,
JAY ROCKEFELLER,
PAUL SARBANES,
JACK REED,
TIM JOHNSON,
Managers on the Part of the Senate.

JOINT EXPLANATORY KSTATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3), to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The difference between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Authorizations of Programs

SEC. 1101. AUTHORIZATION OF APPROPRIATIONS

House Bill

Sec. 1101.

Subsection (a) authorizes funds out of the Highway Trust Fund (other than the Mass Transit Account) for the following highway programs: Interstate Maintenance Program, National Highway System, Bridge Program, Highway Safety Improvements Program, Surface Transportation Program, Congestion Mitigation and Air Quality Improvement Program, Appalachian Development Highway System Program, Recreational Trails Program, Federal Lands Highways Program, National Corridor Infrastructure Improvement Program, Coordinated Border Infrastructure Program, Projects of National and Regional Significance Program, Construction of Ferry Boats and Ferry Terminal Facilities, National Scenic Byways Program, Congestion Pricing Pilot Program, Deployment of 511 Traveler Information Program, High Priority Projects Program, Freight Intermodal Connector Program, High Risk Rural Road Safety Improvement Program, Highway Use Tax Evasion Program, Pedestrian and Cyclist Equity, Dedicated Truck Lanes, Highways for LIFE Program, and Commonwealth of Puerto Rico Program.

Subsection (b) continues the disadvantaged business enterprise (DBE) program with minor changes. The Committee finds there is a continuing compelling need for the DBE program. In enacting TEA 21 in 1998, Congress compiled an extensive record on the effects of discrimination in transportation contracting. Much of this information remains valid today. We agree with those courts that have observed that evidence concerning the exclusion of disadvantaged groups remains relevant over a considerable period of time. The Committee has relied on the information that Congress used in 1998 in finding a continuing compelling need for the DBE program.

The Committee has also taken notice of data about the period between 1998 and today. The data demonstrates the continuing need for the program, as DBEs are still not able to compete on the same basis as other businesses. First, the regulation, found constitutional in a series of recent court rulings, tells recipients to set overall goals. Under the rules, recipients may set DBE contract goals only for that portion of the overall goal that cannot be achieved by completely race-neutral means. Highway and transit program data for 2000–2002 shows that the overwhelming majority of recipients have to set DBE contract goals to achieve all or part of their overall goals. Unfortunately, race-neutral means alone cannot overcome the persisting effects of discrimination.

Second, in several States for which DOT has comparative 2002 data, participation by minority- and women-owned businesses in State-funded highway contracts to which no contract goals applied fell well short both of DBE overall goals and DBE participation in federally-assisted contracts. If states are to ensure equal opportunity for DBEs, contract goal programs remain essential. Third, DOT provided 15 detailed studies from states and cities that found disparities between the availability and utilization of minority- and women-owned businesses in government contracting. The courts agree that it is fair to make an inference of discriminatory exclusion from such disparities.

Senate Bill

Sec. 1101.

This section authorizes sums out of the Highway Trust Fund (other than Mass Transit Account) for the Interstate Maintenance Program, National Highway System, Bridge Program, Surface Transportation Program, Congestion Mitigation and Air Quality Improvement Program, Highway Safety Improvement Program, Appalachian Development Highway System Program, Recreational Trails Program, Federal Lands Highway Program, Multi-State Corridor Planning Program, Border, Planning, Operations and Technology Program, National Scenic Byways Program, Infrastructure Performance and Maintenance Program, Construction of Ferry Boats and Ferry Terminal Facilities, Puerto Rico Highway Program, Public-Private Partnerships Pilot Program, Denali Access System, Delta Region Transportation Development Program, and Intermodal Passenger Facilities.

The authorizing amounts to be appropriated are as follows:

Interstate Maintenance Program: $5,799,188,140 for fiscal year 2005, $6,032,059,334 for fiscal year 2006, $6,049,378,729 for fiscal year 2007, $6,351,069,528 for fiscal year 2008, and $6,443,591,248 for fiscal year 2009

National Highway System: $7,054,146,316 for fiscal year 2005, $7,333,629,462 for fiscal year 2006, $7,354,650,712 for fiscal year 2007, $7,720,825,041 for fiscal year 2008, and $7,833,068,496 for fiscal year 2009

Bridge Program: $4,970,732,691 for fiscal year 2005, $5,157,180,500 for fiscal year 2006, $5,141,987,920 for fiscal year 2007, $5,429,922,039 for fiscal year 2008, and $5,509,052,458 for fiscal year 2009

Surface Transportation: $7,318,023,129 for fiscal year 2005, $7,597,631,986 for fiscal year 2006, $7,619,446,491 for fiscal year 2007, $7,999,438,719 for fiscal year 2008, and $8,116,064,782 for fiscal year 2009

Congestion Mitigation and Air Quality Improvement: $1,979,088,016 for fiscal year 2005, $2,049,058,323 for fiscal year 2006, $2,054,941,629 for fiscal year 2007, $2,157,424,382 for fiscal year 2008, and $2,188,954,810 for fiscal year 2009

Highway Safety Improvement Program: $1,196,657,870 for fiscal year 2005, $1,234,248,870 for fiscal year 2006, $1,246,818,516 for fiscal year 2007, $1,308,999,063 for fiscal year 2008, and $1,328,233,842 for fiscal year 2009

Appalachian Development Highway System Program: $532,518,499 for fiscal years 2005 through 2009

Recreational Trails Program: $54,154,424 for fiscal years 2005 through 2009

Federal Lands Highway Program Indian Reservation Roads: $291,251,572 for fiscal year 2005, $312,578,616 for fiscal year 2006,

$334,905,660 for fiscal year 2007, $357,232,704 for fiscal year 2008, and $379,559,748 for fiscal year 2009

Recreation Roads: $44,654,088 for each fiscal years 2005 through 2009

Park Roads and Parkways: $276,855,346 for fiscal year 2005, and $285,786,164 for fiscal years 2006 through 2009

Refuge Roads: $26,792,453 for fiscal years 2005 through 2009

Public Lands Highways: $267,924,258 for fiscal years 2005 through 2009

Safety: $35,723,270 for fiscal years 2005 through 2009

Multi-State Corridor Planning Program: $120,566,038 for fiscal year 2005, $140,660,377 for fiscal year 2006, $160,754,717 for fiscal year 2007, $180,849,057 for fiscal year 2008, and $200,943,396 for fiscal year 2009

Border Planning, Operations, and Technology Program: $120,566,038 for fiscal year 2005, $140,660,377 for fiscal year 2006, $160,754,717 for fiscal year 2007, $180,849,057 for fiscal year 2008, and $200,943,396 for fiscal year 2009

National Scenic Byways Program: $31,257,862 for fiscal year 2005, $32,150,943 for fiscal year 2006, $33,044,025 for fiscal year 2007, and $34,830,189 for fiscal years 2008 and 2009

Infrastructure Performance and Maintenance Program: $0

Construction of Ferry Boats and Terminal Facilities Program: $54,154,424 for fiscal years 2005 through 2009

Puerto Rico Highway Program: $129,496,855 for fiscal year 2005, $133,069,182 for fiscal year 2006, $137,534,591 for fiscal year 2007, $142,893,082 for fiscal year 2008, and $145,572,327 for fiscal year 2009

Public-Private Partnerships Pilot Program: $8,930,818 for fiscal years 2005 through 2009

Denali Access System: $26,792,453 for fiscal years 2005 through 2009

Delta Region Transportation Development Program: $71,446,541 for fiscal years 2005 through 2009

Intermodal Passenger Facilities: $8,930,818 for fiscal years 2005 through 2009

Conference Substitute

The Conference adopts the Senate provision with modifications. This provision authorizes funds out of the Highway Trust Fund (other than the Mass Transit Account) for the highway programs: Interstate Maintenance Program, National Highway System, Bridge Program, Highway Safety Improvements Program, Surface Transportation Program, Congestion Mitigation and Air Quality Improvement Program, Appalachian Development Highway System Program, Recreational Trails Program, Federal Lands Highways Program, National Corridor Infrastructure Improvement Program, Coordinated Border Infrastructure Program, Projects of National and Regional Significance Program, Construction of Ferry Boats and Ferry Terminal Facilities, National Scenic Byways Program, High Priority Projects Program, Safe Routes to School Program, Highways for LIFE Program, and Puerto Rico Highway Program.

Subsection (b) continues the disadvantaged business enterprise (DBE) program with minor changes. The Committee finds there is a continuing compelling need for the DBE program. In enacting TEA 21 in 1998, Congress compiled an extensive record on the effects of discrimination in transportation contracting. Much of this information remains valid today. We agree with those courts that have observed that evidence concerning the exclusion of disadvantaged groups remains relevant over a considerable period of time. The Committee has relied on the information that Congress used in 1998 in finding a continuing compelling need for the DBE program. Under DBE, not less than 10 percent of the funds provided under titles I and II of this Act shall be expended with small businesses owned and controlled by socially and economically disadvantaged individuals, except to the extent the Secretary of Transportation determines otherwise. The provision in current law requiring a review of the program by the Comptroller General of the United States has been eliminated. The Comptroller General completed the required review in June 2001.

SEC. 1102. OBLIGATION CEILING

House Bill

Sec. 1102.

This section provides the obligation limitation for the federal-aid highway and highway safety construction programs. Subsection (b) addresses the exemptions to the obligation limitation. Paragraphs 1–8 in this subsection are identical to TEA 21. Paragraph (9) is added to address three year obligation authority (OA) made available under TEA 21 for research programs and ''no-year'' OA made available for certain programs and projects under TEA 21 or in subsequent appropriations acts. Subsections (c),(d),(e),(f),(g),(h), and (i) address how the obligation authority is distributed, the redistribution of unused obligation authority, and the limitation on obligations for administrative expenses are virtually identical to TEA 21.

Senate Bill

Sec. 1102.

This section sets limits on obligations for spending.

The general limitation on spending shall be as follows:

$34,425,380,000 for fiscal year 2005,
$37,154,999,523 for fiscal year 2006,
$37,450,167,691 for fiscal year 2007,
$38,816,364,417 for fiscal year 2008, and
$40,321,257,845 for fiscal year 2009.

Conference Substitute

The Conference adopts provisions from both House and Senate bills with modified funding levels and a funding flexibility provision for fiscal year 2005. This flexibility provision allows states to obligate funds from 1301 and 1302 of this Act and sections 117 and 144(g) of title 23 on core formula programs.

SEC. 1103. APPORTIONMENTS

House Bill

Sec. 1103.

This section makes changes to the process by which apportionments are made pursuant to Section 104 of Title 23. Subsection (a) of this section amends the way administrative expenses for FHWA and FMCSA are provided. These expenses were formerly funded as a takedown and are now a specific authorized amount.

Subsection (b) of this section changes the set-aside amount for the Alaska Highway and the set-asides for the U.S. Territories under the National Highway System program apportionment formula.

Subsection (c) of this section requires the report mandated by Section 104(j) of Title 23 be available on the Internet.

Subsection (d) of this section makes a conforming amendment to the metropolitan planning set-aside formula to reflect the fact that administrative expenses are no longer funded as a takedown.

Subsection (e) of this section updates the reference for the Puerto Rico Highway program, replacing the TEA 21 reference with a TEA LU reference.

Senate Bill

Sec. 1103.

This section makes amendments to current apportionments. It authorizes the appropriation of funds for the administrative expenses of the Federal Highway Administration and details the use of these funds.

This section amends the amounts authorized for administrative expenses, for specified programs to:

$415,283,019 for fiscal year 2005,
$428,679,245 for fiscal year 2006,
$442,075,472 for fiscal year 2007,
$455,471,698 for fiscal year 2008, and
$468,867,925 for fiscal year 2009.

Funds authorized in this section shall be used for the Federal-aid highway program and programs authorized under chapter 2 of title 23, USC. Such sums as the Secretary determines to be appropriate shall be transferred to the Appalachian Regional Commission for administrative activities associated with the Appalachian highway development system.

The bill increases the set-aside for metropolitan planning to 1.5 percent from the same programs as under TEA–21 and, additionally, the new Highway Safety Program and Equity Bonus Program. Because the 2000 Census establishes 46 new Metropolitan Planning Organizations (MPOs), an increase in funding for metropolitan planning is required. Under the law, each MPO is directed to assume the responsibility for carrying out specific, costly and detailed Federal analysis as required under NEPA, Air Quality Conformity, Long Range Planning, Transportation Improvement Program planning, transportation modeling, operations, and public involvement. This bill further enhances MPO planning for habitat plan development, freight movement, transportation security, deployment of ITS systems including operating and managing traffic centers and incident management programs, and interacting with emergency management officials regarding homeland security issues.

Conference Substitute

The Conference agrees to provisions from both House and Senate bills with modifications. This section amends current apportionments. It authorizes the appropriation of funds for the administrative expenses of the Federal Highway Administration and details the use of these funds.

This provision increases the set-aside amount for the Alaska Highway and the set-asides for the U.S. Territories under the National Highway System program apportionment formula. Changes are also made to the Operation Lifesaver and High-Speed Rail Corridor programs from set-asides to become individually-funded programs.

The Conference adopts the Senate CMAQ provision with modifications. The addition of a weighting factor for PM2.5 nonattainment areas is not included in the substitute. The Senate language regarding an additional adjustment factor for carbon monoxide is adopted with no modifications.

For areas in ozone nonattainment, the Conference applies a weighting factor of 1.0 for areas designated under subpart 1 of part D of title I of the Clean Air Act. The Conference maintains the current system of varied weighting factors for areas classified under subpart 2 and intends it to apply to 8-hour nonattainment areas in the same manner it did to 1–hour nonattainment areas. For example, an 8-hour ozone nonattainment area that is classified by EPA as moderate pursuant to subpart 2 would receive a weighting factor of 1.1, while an 8–hour nonattainment area classified by EPA as serious pursuant to subpart 2 would receive a weighting factor of 1.2.

SEC. 1104. EQUITY BONUS PROGRAM

House Bill

Sec. 1104.

This section retains the Minimum Guarantee program that was created in TEA–21.

Senate Bill

Sec. 1104.

This section strikes and replaces the Minimum Guarantee Program under Section 105 of Title 23, United States Code with the Equity Bonus Program.

The Secretary shall ensure that the percentages of apportionments of each State is sufficient to ensure that no State's percentage return from the Highway Trust Fund is less than 92 percent in each of the fiscal years 2005–2009. The rate of return shall include from each State, the total apportionments made for the fiscal year for the Interstate Maintenance Program, the National Highway System Program, the Bridge Program, the Surface Transportation Program, the Congestion Mitigation and Air Quality Improvement Program, the Highway Safety Improvement Program, the Appalachian Development Highway System Program, the Recreational Trails Program, the Infrastructure Performance and Maintenance Program, the Metropolitan Planning Program, and the Equity Bonus Program.

Special rules protect the calculations for States with a population density of less than 20 persons per square mile, a population less than 1 million, a median household income less than $35,000, or a State with a fatality rate during 2002 on Interstate highways greater than 1 fatality per 100 million vehicle miles traveled on Interstate highways. Further, no State receives apportionments less than 110 percent of the average annual apportionments for specified programs during 1998–2003. There is a cap on the Equity Bonus such that no State may receive apportionments more than a specified percentage of their average for 1998–2003. The scope, or percent funding included in the Equity Bonus program, remains the same as TEA–21 at 92.5 percent.

Conference Substitute

The conference adopts the Senate structure with modifications. The Secretary shall ensure that the percentages of apportionments of each State is sufficient to ensure that no State's percentage return from the Highway Trust Fund is less than 90.5% in fiscal year 2005 and 2006, 91.5% in 2007, and 92% in 2008 and 2009. The rate of return shall include from each State, the total apportionments made for the fiscal year for the Interstate Maintenance Program, the National Highway System Program, the Bridge Program, the Surface Transportation Program, the Congestion Mitigation and Air Quality Improvement Program, the Highway Safety Improvement Program, the Appalachian Development Highway System Program, the Recreational Trails Program, the Safe Routes to School Program, the Metropolitan Planning Program, the High Priority Project Program, the Railway-Highway Crossings Program, the Coordinated Border Infrastructure Program, and the Equity Bonus Program.

Special rules protect the share of apportionments to be provided to any State meeting any one or more of the following criteria: total population density of less than 40 persons per square mile, as reported in the decennial census conducted by the Federal Government in 2000, having at least 1.25 percent of its total acreage in Federal ownership based on GSA's ''Federal Real Property Profile, as of September 30, 2004'' report; or a population less than 1 million as reported in that census; or a median household income less than $35,000 as reported in that census; or a State with a fatality rate during 2002 on Interstate highways greater than 1 fatality per 100 million vehicle miles traveled on Interstate highways; or a State with an indexed, state motor fuels excise tax rate higher than 150 percent of the Federal motor fuels excise tax rate on the date of enactment of this Act.

Further, no State receives apportionments less than certain percentages above their TEA–21 average annual apportionments for specified programs during 1998–2003. (FY 2005—117 percent; FY 2006—118 percent; FY 2007—119 percent; FY 2008—120 percent; and FY 2009—121 percent)

SEC. 1105. REVENUE ALIGNED BUDGET AUTHORITY

House Bill

Sec. 1108.

This section continues the revenue aligned budget authority, but in a way that ensures greater stability in program funding level adjustments.

Senate Bill

Sec. 1105.

This section changes the calculation of Revenue Aligned Budget Authority under Section 110 of Title 23, United States Code.

A new method of determining RABA is established in this section. This provision amends section 110 of Title 23, to extend the RABA provision through FY 2009. It also amends section 110 to provide that if the RABA adjustment in a fiscal year is negative, the amount of contract authority apportioned to the States for that year shall be reduced by an amount equal to the negative RABA. Under TEA–21, negative adjustments were delayed until the succeeding fiscal year. Under the new method, no reduction to apportionments are made for RABA for a fiscal year if the cash balance of the highway trust fund (other than the mass transit account) exceeds $6,000,000,000 on October 1 of that fiscal year.

Conference Substitute

The Conference adopts concepts from both the House and Senate provisions. This provision changes the calculation of Revenue Aligned Budget Authority under Section 110 of Title 23 to ensure greater stability in program funding level adjustments.

A new method of determining RABA is established in this section. This provision amends section 110 of Title 23, to extend the RABA provision through FY 2009. RABA calculations will be spread over 2 fiscal years, rather than in a single year as in TEA–21.

For fiscal year 2007, any positive RABA amounts will be applied to increasing the minimum rate of return for donor States as close to 92 percent as possible. Any remaining funds are to be distributed proportionally.

Under the new method, no reduction to apportionments are made for RABA for a fiscal year if the cash balance of the highway trust fund (other than the mass transit account) exceeds $6,000,000,000 on October 1 of that fiscal year.

SEC. 1106. FUTURE INTERSTATE SYSTEM ROUTES

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1801.

This section replaces the 12-year requirement with a 20-year requirement to provide States more time to substantially complete construction of highways designated as future Interstate System routes, before the States forfeit future Interstate designation status. This section also extends the time limitation contained in existing agreements from 12 years to 20 years.

Conference Substitute

The Conference adopts the Senate provision with a modification to change the timeframes from 20 years to 25 years.

SEC. 1107. METROPOLITAN PLANNING

House Bill

Sec. 1816.

This section requires the States to distribute planning funds to the metropolitan planning organizations within 30 days of receipt of such funds from the Secretary.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision with a modification to increase the set-aside for metropolitan planning funds from 1 percent to 1.25 percent.

SEC. 1108. TRANSFER OF HIGHWAY AND TRANSIT FUNDS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1302.

This section clarifies and authorizes the transferability of funds from the Highway Trust Fund.

This provision clarifies that Title 23 funds may be transferred by the Secretary to the Federal Transit Administration for other than a transit capital project, provided such project is eligible for Title 23 assistance.

This section also allows funds derived from the HTF to be transferred, at the request of a State, to another State or States or to a Federal agency provided that they are expended on Title 23 eligible projects.

An equal amount of obligation authority is transferred with funds transferred from one State to another State. Funds may only be used for the same purpose and in the same manner for which they were authorized.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1109. RECREATIONAL TRAILS

House Bill

Sec. 1119.

This section makes various improvements to the recreational trails program established in section 206 of Title 23, U.S. Code.

Subsection (a) amends 23 USC 104(h) to permit the use of administrative funds for training and deletes reference to the National Recreational Trails Advisory Committee.

Subsection (b) amends 23 USC 206(d)(2) regarding permissible uses of funds to include assessment of trail conditions and to clarify that new trails on Federal lands must be recommended in a statewide comprehensive outdoor recreation plan.

Subsection (c) strikes 23 USC 206 (b)(3)(C), which permits States to waive requirements regarding distribution of funds for various types of projects.

Subsection (d) amends 23 USC 206(f) to provide that the federal share for recreational trails projects shall be determined in accordance with section 120(b) of Title 23 and allows recreational trails funds to be used toward the Federal share of certain other Federal programs.

Subsection (e) amends 23 USC 206(h)(1) to provide that pre-approval planning and environmental compliance costs can be credited toward the non-Federal share of a project.

Subsection (f) directs the Secretary to encourage the States to use qualified youth conservation or service corps to complete trail projects.

Senate Bill

Sec. 1603.

This section allows funds to be used to provide and maintain recreational trails for motorized and nonmotorized recreational trail uses.

The changes in section 206 of Title 23 amend the permissible uses of funds apportioned to States under this program. Eligible categories are added to permit trail assessment for accessibility and maintenance, and to hire trail crews, youth conservation, or service corps to perform recreational trails activities. Non-law enforcement trail safety and trail-use monitoring patrols, and trail-related training are now activities eligible for Recreational Trails Program (RTP) educational funds. However, funds provided under this program are not intended to support routine law enforcement.

Under this section, pre-approval planning and environmental compliance costs may be credited toward the non-Federal share for RTP projects, limited to costs incurred less than 18 months prior to project approval.

Since projects in this section are much smaller than typical highway projects, this program is relieved of several requirements, which, while appropriate for large highway projects, are excessively burdensome for small trail projects. RTP projects are not subject to sections 112, 114, 116, 134, 135, 138, 217, and 301, of Title 23 and section 303 of title 49.

Conference Substitute

The Conference adopts the House provision with a modification to add the Senate provision (H) under ''Permissible Uses'' which allows for the development and dissemination of publications and operation of educational programs to promote safety and environmental protection, supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training. The Conferees change the administrative expenses from a percentage of program funding to a specific annual authorization.

SEC. 1110. TEMPORARY TRAFFIC CONTROL DEVICES

House Bill

Sec. 1107.

This section amends Section 109(e) of Title 23 and Section 112 of Title 23 to require that contracts for federally funded highway construction projects include costs for appropriate safety measures. The amendment to Section 109 requires that temporary traffic control devices be installed and maintained during construction and maintenance projects in order to provide protection for construction workers. The amendment to Section 112 requires the Secretary to issue regulations establishing the conditions for and the appropriate use of Federal funds for uniformed law enforcement officers, positive protective measures between traffic and workers, and installation of temporary traffic control devices during construction and maintenance projects.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House position.

SEC. 1111. SET-ASIDES FOR INTERSTATE DISCRETIONARY PROJECTS

House Bill

Sec. 1115.

This section eliminates the Interstate Maintenance Discretionary program in Section 118 of Title 23. The Committee does not intend to have any changes to this program affect any projects that have already been funded under this program.

Senate Bill

Sec. 1805.

This section continues the interstate discretionary project set-aside listed in section 118(c)(1) of title 23 for fiscal years 2005 through 2009 and increases the amount.

Conference Substitute

The Conference adopts the Senate position.

SEC. 1112. EMERGENCY RELIEF

House Bill

Sec. 1110.

This section authorizes additional amounts for this program above the $100 million per year to be derived from the General Fund. It is the Committee's intent that if there is a need for additional funds over and above the annually authorized level of $100 million that those funds be appropriated from the General Fund.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House version.

SEC. 1113. SURFACE TRANSPORTATION PROGRAM

House Bill

Sec. 1111.

This section continues the requirement in Section 133(f)(1) of Title 23 that States suballocate a portion of their Surface Transportation Program funds to urbanized areas with over 200,000 individuals.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision with a modification to add eligibility for projects relating to intersections that have high accident rates or high levels of congestion on the Federal-aid system.

SEC. 1114. HIGHWAY BRIDGE PROGRAM

House Bill

Sec. 1116.

Subsection (a) retains the principles for applications for and approval of Federal assistance for bridge replacement or rehabilitation allowed in current law. It also includes additional language to allow Federal participation in preventive maintenance on a bridge, as well as, installing scour countermeasures to a bridge.

Subsection (b) continues the discretionary bridge program and subsection (c) changes the lower bound for the off-system set-aside from 15 percent to 20 percent.

Senate Bill

Sec. 1807.

The Highway Bridge Program provides funds to assist States in improving the condition of their bridges, through replacement, rehabilitation, and systematic preventive maintenance.

The changes to section 144 allow the use of bridge funds for: (1) preventive maintenance activities consistent with the section 116(d) of the NHS Designation Act, (2) preventive maintenance on off-system bridges, and (3) scour countermeasures without regard to eligibility. This section also increased bridge discretionary funding to $133,962,264.

Conference Substitute

The Conference agrees to accept the House provision with modifications. The off-system bridge set-aside is to remain as current law at 15 percent and the Federal share for highway bridges projects is now eligible for up to 90 percent.

SEC. 1115. HIGHWAY USE TAX EVASION PROJECTS

House Bill

Sec. 1112.

This section continues the existing program to combat highway use tax evasion and makes changes designed to reduce tax evasion and increase receipts into the Highway Trust Fund.

The Highway Use Tax Evasion program supports State and Federal efforts to enhance motor fuel tax enforcement. To make the program more effective, this provision would amend section 143 of title 23 to: (1) dedicate funding for intergovernmental enforcement efforts; (2) allow projects for identification of tax evasion in the area of foreign imported fuel; (3) assist States and Indian Tribes in addressing issues related to the collection of State motor fuel taxes; and (4) provide for annual reporting on examinations, criminal investigations, and audits by the States and the Internal Revenue Service (IRS).

Senate Bill

Comparable provision in Senate finance title.

Conference Substitute

The Conference agrees to the House provision with funding modifications.

SEC. 1116. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM

House Bill

Sec. 1113.

This section directs the Secretary to apportion funds made available for the Appalachian Development Highway System (ADHS) among the states on the basis of the estimated cost to complete the system. It specifies that such funds are subject to title 23 requirements and are available to construct ADHS highways and access roads. It also prohibits the use of toll revenues as non-federal match for the construction, improvement, and maintenance of highways, bridges, or tunnels.

Senate Bill

Sec. 1808.

The Appalachian Development Highway System program provides funds for the construction of the Appalachian corridor highways in thirteen States and for the establishment of a State-Federal framework to meet the needs of the region.

This section prescribes how funds made available for the Appalachian development highway system are to be apportioned to the States in the Appalachian region. The latest cost estimate is to be used as the basis for apportionments. The funding shall remain available until expended and the Federal share is delineated in section 201 of the Appalachian Regional Development Act of 1965. This section also prohibits the use of toll credits on projects funded under the Appalachian development highway system program under subtitle IV of title 40.

Conference Substitute

The Conference adopts the House version.

SEC. 1117. TRANSPORTATION, COMMUNITY, AND SYSTEM PRESERVATION PROGRAM

House Bill

Sec. 1117.

This section reauthorizes the program for fiscal years 2004 through 2009. It prohibits funds made available for this program from being transferred to other programs, and establishes the federal cost share for projects carried out under this program in accordance with section 120(b) of title 23. Subsection (c) establishes a pilot program to support transportation planning and public participation in decision making.

Senate Bill

Sec. 1813.

This section continues the Transportation and Community and System Preservation (TCSP) Pilot Program, a comprehensive initiative of research and implementation grants to investigate the relationships between transportation and community and system preservation, as well as private sector-based initiatives. This section also makes TCSP projects STP eligible.

This section requires the Secretary to establish a comprehensive program to facilitate the planning, development, and implementation of strategies by States, metropolitan planning organizations, Federally-recognized Indian tribes, and local governments to integrate transportation, community, and system preservation plans and practices.

Conference Substitute

The conference agrees to the Senate provision with modifications to drop subsection (b)(18) from the Senate passed bill and move (19) to an eligible activity under the Surface Transportation Program. The conference also agreed to not codify this program.

SEC. 1118. TERRITORIAL HIGHWAY PROGRAM

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1818.

The changes made in section 215 of title 23 update and consolidate the statutory provisions governing the territorial highway program.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1119. FEDERAL LANDS HIGHWAYS

House Bill

Sec. 1120.

Subsection (a) amends the contracting provisions of the Indian reservation roads program in section 202(d)(3) of title 23. This section was added to the United States Code in TEA 21. The Committee felt at that time that the congressional intent with regard to tribal contracting authority was clear. Unfortunately, the Committee now believes the full intent of the TEA 21 amendments has not been fulfilled. This subsection aims to clarify the intent of the Committee on this important point for the Indian tribes.

The Committee is aware that certain tribes currently possess the ability to carry out themselves, or contract directly with outside providers, highway, bridge, and transit projects that are located on Indian reservations or that provide access to the reservations, including planning, research, engineering, and construction activities relating to such projects. Other tribes are developing their ability to perform those functions.

This amendment to section 202(d)(3) of title 23 is intended to empower Indian tribes that have the ability and interest to carry out the activities in-house or to contract directly with outside providers for the activities consistent with the Indian Self-Determination and Education Assistance Act. It allows tribes to choose, on a project-by-project basis, those activities that they want to perform themselves or to contract directly with outside providers. At the same time, existing capabilities within the Bureau of Indian Affairs are retained to support tribes that do not have such ability or interest. It directs that funds be paid directly by the Federal Highway Administration (FHWA) to the Indian tribal government when a tribe carries out, or contracts directly with outside providers for a planning, research, engineering, or construction activity relating to a highway, bridge, or transit project located on an Indian reservation or that provides access to the reservation. Furthermore, it directs FHWA to determine the amount of funds for such activity and project that is to be received by the Indian tribe according to the funding formula established under section 202(d) of title 23, without deducting from it any non-project-related administrative takedown or project management costs imposed by the Bureau of Indian Affairs or the Department of the Interior.

Senate Bill

Sec. 1806.

The Federal Lands Highway Program provides funding for a coordinated program of public roads and transit facilities serving Federal and Indian lands.

Section 101 of title 23 is amended to include new definitions for 'recreation roads' and 'public forest service roads,' to reflect new classes of Federal lands highways. It also changes the definitions of 'forest development roads and trails' and 'forest road or trail' to reflect current U.S. Forest Service definitions and a new class of Federal lands highways.

The Federal Lands Highways program allocation in section 202 of title 23, USC is amended to: (1) revise the date on which the Indian Reservation Road fund distribution formula regulation is published, from April 1999 to April 2004, and the year in which the new formula is implemented, from October 1999 to October 2004; (2) allow the use of Indian Reservation Road Bridge funds to be used for design, engineering and preconstruction as well as construction; (3) limit the amounts that the Bureau of Indian Affairs may use to pay the costs of administering the Indian reservation roads program (including the administrative expenses relating to individual projects associated with the Indian reservation roads program) to 6 percent; (4) require not later than 30 days after the date on which funds are made available to the Secretary of the Interior the distribution and availability of such funds for immediate use by eligible Indian tribes; (5) establish a demonstration program under which eligible tribes may enter into contracts and agreements with the Secretary of Transportation under the Indian Self-Determination and Education Assistance Act; (6) authorize $13,396,226 annually for IRR bridge planning, design, engineering, preconstruction, construction and inspection; and (7) make Indian reservation road maintenance expenses eligible for funding up to certain amounts.

Section 204 of title 23 is amended to: (1) allow the Secretary to enter into agreements as well as contracts, and (2) expand the use of refuge road funds to be used for interpretive signage, maintenance of public roads in National Fish hatcheries, payment of the non-Federal share of Federal-aid highway and transit projects, and maintenance and improvement of recreational trails. Funding used for trails would be limited to 5 percent of available funding per fiscal year.

Maintenance and improvement projects on recreation roads consistent with or identified in a land use plan do not need any additional environmental reviews or assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if there is no new information and no significant changes to the proposal bearing on environmental concerns. Improvement projects include those consisting of one or more of the following elements: roadway widening, adding shoulders, paving of gravel roads, gravelling of earth roads, rebuilding of the roadway subgrade, reshaping the roadway surface, replacing culverts, rehabilitation or widening of bridges, minor grade and curvature adjustments to short sections of roads, and the installation of signs, pavement striping, guardrails and other safety hardware.

A safety funding category is created to provide dedicated funds for transportation safety improvement projects, collection of safety information, development and operation of safety management systems, highway safety education programs, and other eligible activities under section 402 of title 23. Safety funding is distributed among the Bureau of Reclamation, the Bureau of Indian Affairs, the Bureau of Land Management, the Forest Service, the Fish and Wildlife Service, and the Army Corps of Engineers.

A recreation roads funding category is created to provide dedicated funds for improvement projects for public roads under the jurisdiction of the Bureau of Land Management, Bureau of Reclamation, Forest Service, Department of Defense, and Army Corps of Engineers, and that are owned by the U.S. Government.

Conference Substitute

The conference adopts the Senate provision with several modifications. New funding and eligibility categories for safety and recreation roads are eliminated. Specific dollar amounts are identified for program management oversight and project-related administrative expenses of the Bureau of Indian Affairs equaling roughly 6 percent of each year's program allocation. These amounts are still subject to reduction upon a tribe's request for use in carrying out contracts and agreements in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

In addition to contracts and agreements currently permitted under section 202(d)(3) of title 23 between tribes and the Secretary of the Interior in accordance with the Indian Self-Determination and Education Assistance Act (ISDEAA), tribes will also be able to enter into contracts and agreements in accordance with ISDEAA for IRR programs or projects with the Secretary of Transportation.

Amounts authorized for Indian reservation road bridges is increased to $14 million annually. Within the office of the Secretary is created a new Deputy Assistant Secretary for Tribal Government Affairs. The Secretary is also directed to conduct a national IRR survey, and to conduct a study of methods to reduce collisions between motor vehicles and wildlife.

SEC. 1120. PUERTO RICO HIGHWAY PROGRAM

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1811.

Section 173 of title 23 authorizes the continuation of the Puerto Rico Highway Program to carry out a highway program in the Commonwealth of Puerto Rico.

The committee continues the requirement to distribute the lump sum authorized each year to programs in the same proportions that Puerto Rico received apportionments of such funds in 1997. The funds are subject to the penalties under titles 23 and 49 that would apply to apportionments from the programs.

Conference Substitute

The Conference adopts the Senate language with minor modifications.

SEC. 1121. HOV FACILITIES

House Bill

Sec. 1208.

This section adds a new section 168 to title 23 that authorizes the use of High Occupancy Vehicle lanes. Subsection (a) of the proposed section 168 in title 23 allows a state agency to establish the occupancy requirements of vehicles operating on an HOV facility except that no fewer than 2 occupants per vehicle may be required for use of a HOV facility.

This section also provides the exemptions for the HOV occupancy requirements including motorcycles, bicycles, public transportation vehicles, and High Occupancy Toll (HOT) vehicles and low emission and energy-efficient vehicles.

For HOT lanes the state agency must charge operators of vehicles with less than the established occupancy requirements a fee. The agency must also establish a program that addresses how motorists can enroll and participate in the toll program, automatically collects tolls, and establishes policies and procedures to manage demand by varying the toll, enforce violations, and permit low-income drivers to pay a reduced toll.

For inherently low emission vehicles, a state may allow the use of HOV lanes even if the occupancy requirements are not met so long as the vehicles are certified pursuant to section 88.311–93 of title 40, Code of Federal Regulations. The state agency may also allow other low emission and energy efficient vehicles to pay a toll to use HOV lanes even if the occupancy requirements are not met if those vehicles meet the certification requirements that the EPA is directed to develop in subsection (e). The toll amount charged to low emission vehicles not certified pursuant to the CFR and other energy efficient vehicles may be less than other HOT lane vehicles, or the toll may be zero.

This section also sets requirements applicable to tolls on HOV lanes. This subsection verifies that HOV facilities on the interstate can be tolled pursuant to the provisions of this section. The subsection also states that the state agency must first use the toll revenue to repay debt and provide a reasonable rate of return on investments and then must give priority consideration to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety, including projects that improve safety by providing increased capacity.

This section addresses HOV facility management, operation, monitoring and enforcement. If a state agency allows single occupancy HOV vehicles to use the facility it must ensure that vehicles maintain a minimum operating speed 90 percent of the time over a 6-month period during weekday peak travel periods.

Senate Bill

Sec. 1606.

This section amends section 102(a) of title 23 to clarify existing law and provide more flexibility to State and local agencies for effective management of HOV facilities.

This section identifies the types of vehicles that are exempt from meeting the minimum occupancy requirements for HOV facilities. This provision also identifies the possible options that responsible agencies may select from and use as operational strategies to maximize the use of existing and planned future HOV facilities and highway capacity, mitigate congestion, and reduce fuel consumption. Motorcycles shall not be considered single-occupant vehicles and shall be allowed to use HOV facilities, consistent with the provisions of section 163 of the Surface Transportation Assistance Act of 1982.

Responsible agencies may allow low-emission and energy-efficient vehicles to use HOV facilities provided that the agency: (1) creates a program that defines how such qualifying vehicles are selected and certified, (2) establishes a method to label qualifying vehicles (3) continuously monitors, evaluates, reports to the Secretary on performance, (4) and imposes restrictions on the use of HOV lanes by vehicles that do not meet established requirements.

Responsible agencies are provided with the option of charging vehicles a toll for the use of an HOV facility if these vehicles do not meet the minimum occupancy requirements, and if the requirements of section 129 of title 23 are met.

A responsible agency under this section includes a State department of transportation, local transportation agency, or other public or private entity designated by a State to collect a toll on HOV lanes.

Conference Substitute

The conference agrees to the House provision, with certain accommodations to the Senate language, to add a new section 168 to title 23 that authorizes the use of HOV lanes. Subsection (a) of the new section 168 in title 23 allows a state agency to establish the occupancy requirements of vehicles operating on an HOV facility except that no fewer than 2 occupants per vehicle may be required for use of a HOV facility.

The conferees intend for this provision to provide exemptions for the HOV occupancy requirements including motorcycles, bicycles, public transportation vehicles, inherently low emission vehicles, low emission and energy-efficient vehicles, and High Occupancy Toll (HOT) vehicles.

For inherently low emission vehicles, the conferees accept the House provisions that the state may allow the use of HOV lanes even if the occupancy requirements are not met so long as the vehicles are certified pursuant to section 88.311–93 of title 40, Code of Federal Regulations. The state agency may also allow other low emission and energy efficient vehicles to pay a toll to use HOV lanes even if the occupancy requirements are not met if those vehicles meet the certification requirements that the EPA is directed to develop in subsection (e). The toll amount charged to low emission vehicles not certified pursuant to the CFR and other energy efficient vehicles may be less than other HOT lane vehicles, or the toll may be zero.

The House recedes to the Senate on the definition of low emission and energy efficient vehicles. Under this language, the Administrator of EPA must certify that a low emission or energy efficient vehicles operating in the HOV lane with fewer than 2 passengers meets Tier II emissions levels established under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model vehicle. In addition to meeting Tier II, a low emission or energy efficient vehicles must meet one of two additional requirements: it must be an alternative fuel vehicle operating on alternative fuel or, if it is propelled by on-board hybrid technologies, it must meet particular fuel economy performance requirements.

For the purposes of this section, Senate recedes to the House on the definition of alternative fuel vehicles with one clarification that such fuels include additional substantially non-petroleum fuels regulated under 10 C.F.R. 490.

With respect to the determination of fuel economy performance requirements for a low emission or energy efficient vehicle not meeting occupancy requirements that is propelled by on-board hybrid technologies, the conferees have agreed to accept language in the Senate-passed legislation. Under this subsection, a low emission or energy efficient vehicle propelled by hybrid technology may access the HOV lane if the EPA certifies that it has achieved not less than a 50–percent increase in city fuel economy or not less than a 25–percent increase in combined city-highway fuel economy. The conferees also have made conforming changes to the section to ensure that states have the ability to increase either of these percentages as part of their HOV management programs. The conferees intend to give the states broad discretion to increase these percentages for individual vehicles as a way of managing vehicle access, maintaining air quality and preventing lane degradation.

The conferees note that some current hybrid manufacturers make hybrid versions of a vehicle and do not make a gasoline counterpart. In such cases, the conferees feel that EPA and the states should compare the hybrid vehicle to a group or class of gasoline vehicles of similar size, weight and performance.

This section also sets requirements applicable to tolls on HOV lanes. This subsection verifies that HOV facilities on the Interstate can be tolled pursuant to the provisions of this section. The subsection also states that the state agency must first use the toll revenue to repay debt and provide a reasonable rate of return on investments and then must give priority consideration to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety, including projects that improve safety by providing increased capacity.

This section addresses HOV facility management, operation, monitoring and enforcement. If a state agency allows single occupancy HOV vehicles to use the facility it must ensure that vehicles maintain a minimum operating speed 90 percent of the time over a 6–month period during weekday peak travel periods. The conferees intend that a state agency include a public authority or a public or private entity designated by the state agency.

SEC. 1122. BIA INDIAN ROAD PROGRAM

SEC. 1123. DEFINITIONS

House Bill

This section adds ''Advanced Truck Stop Electrification System'' to the definitions in section 101.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

The Conference adopts the House provision with a modification to add an additional provision to amend the definition of ''Transportation Enhancement Activity'' to include the acquisition of historic battlefields and to clarify that inventory for outdoor advertising is currently and shall continue to be an eligible activity.

Inventory control may include, but not be limited to, data collection, acquisition and maintenance of digital aerial photography, video logging, scanning and imaging of data, developing and maintaining an inventory and control database, and hiring of outside legal counsel.

Subtitle B—Congestion Releif

SEC. 1201. REAL-TIME SYSTEM MANAGEMENT INFORMATION PROGRAM

House Bill

Sec. 1203.

This section requires the Secretary to establish a program that provides to all States the capability to monitor, in real-time, the traffic and travel conditions of the nation's major highways and to share the information with other States, local governments, and the traveling public.

The Secretary is required to establish a steering committee to provide guidance regarding the content and uniformity of data exchange formats to ensure that data can be shared.

With approval from the Secretary, States may obligate certain formula funds for activities related to the planning and deployment of this program.

Senate Bill

Sec. 1702.

This section encourages the deployment of systems to monitor the condition of key surface transportation facilities.

Changes made to 23 USC 169(c) in this section require the States to establish an incident reporting system within two years of enactment of this section. If a State demonstrates that it cannot meet this deadline,

the Secretary may extend this deadline up to 5 years after date of enactment.

The purpose of the proposed real-time system management information program is to provide the nationwide capability to monitor and disseminate real-time traffic and travel conditions of major highways. The committee hopes this program will improve the security of the surface transportation system, address congestion problems, support improved response to weather events, and facilitate national and regional traveler information.

Specifically, this section requires the Secretary to establish data exchange formats within one year of enactment of this bill. Within two years of enactment of this bill, each State will be required to establish a statewide incident reporting system, unless a waiver is received from the Secretary that allows up to 3 additional years. In exercising this discretion, the committee expects that the Secretary will only provide the State the minimum extension necessary to complete development of its reporting system.

The committee expects State and local governments to explicitly address real-time highway and transit needs and the systems needed to meet those needs including coverage, monitoring systems, data fusion and archiving, and methods of information sharing and exchange within their intelligent transportation system regional architecture.

Activities related to the planning and deployment of real-time monitoring elements would be eligible for Surface Transportation Program and National Highway System funds. Under this section, a State may obligate State Planning and Research funds for activities related to the planning of real-time monitoring elements.

Conference Substitute

The Conference agrees to accept the House provision with one exception in dropping the provision to establish a National Steering Committee.

Subtitle C—Mobility and Efficiency

SEC. 1301. PROJECTS OF NATIONAL AND REGIONAL SIGNIFICANCE

House Bill

Sec. 1304.

This section establishes a program to finance critical, high-cost transportation infrastructure that address critical national economic and transportation needs. These projects of national and regional significance will improve the safe, secure, and efficient movement of people and goods throughout the United States and improve the health and welfare of the national economy by increasing economic productivity, facilitating international trade, relieving transportation congestion, and enhancing transportation safety.

The program will fund the construction of high-cost surface transportation projects, including freight railroad projects eligible under title 23. To be eligible for assistance under this program, eligible project costs must equal or exceed the lesser of $500 million or 75 percent of the State's highway apportionment for the prior fiscal year. The Secretary of Transportation will conduct a national solicitation for applications for projects of national and regional significance and award grants on a competitive basis. The program creates a rigorous review process for project applicants similar to the Federal Transit Administration's review process for transit new start projects.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

The Conference agrees to adopt the House provision.

SEC. 1302. NATIONAL CORRIDOR INFRASTRUCTURE IMPROVEMENT PROGRAM

House Bill

Sec. 1301.

This section directs the Secretary to establish and implement a program to allocate funding to States for highway construction projects in corridors of national significance. A State must submit applications to the Secretary for funds.

The Secretary shall give priority to corridor projects that are part of, or will be designated as part of, the Dwight D. Eisenhower National System of Interstate and Defense highways and to any project that will be complete in five years. The Secretary shall consider such factors as mobility, economic growth, linking two existing segments of Interstate, commercial vehicle traffic due to NAFTA, reduction of travel time, value of the cargo traveling through the corridor, economic costs, and the financing associated with the project.

Senate Bill

Sec. 1809.

The program supports and encourages multistate transportation planning and facilitates both project development and decision-making for multistate corridors. State transportation departments or metropolitan planning organizations may receive and administer the funds provided under this section for multistate highway and multimodal planning studies and construction.

Freight demand is forecasted to increase significantly in the coming years. The committee's goal is to meet this growing demand by improving highways and intermodal connections in the nation's key corridors. Funds provided by the Corridor Program should supplement other public and private funding to support strategic improvements, expanding both capacity and efficiency.

The Secretary shall select studies and projects to be carried out under this program based on: 1) the existence and significance of binding agreements; 2) the endorsement of the study or project by elected representative; 3) prospects for early completion; and 4) whether the study or project was listed in 1105(c) of ISTEA.

The committee expects that the Secretary will encourage States and other jurisdictions to work together and shall give priority to projects that increase mobility, freight productivity, access to marine or inland ports, safety and security, and reliability.

Conference Substitute

The Conference agrees to continue this program as current law with a modification for the funding to be as such sums as necessary out of the General Fund.

SEC. 1303. COORDINATED BORDER INFRASTRUCTURE PROGRAM

House Bill

Sec. 1302.

This section establishes a new formula program for border infrastructure projects. The Secretary apportions funds to the States based upon several factors: incoming commercial trucks passing through land border ports of entry; the number of incoming personal motor vehicles and buses passing through the land border ports of entry; the weight of incoming cargo by commercial trucks passing through such ports of entry; and the number of land border ports of entry.

Definitions—''Border region'' means any portion of a border State within 20 miles in an international land border with Canada or Mexico. ''Border State'' means any State that has an international land border with Canada or Mexico. ''Commercial Truck'' means a commercial motor vehicle as defined in section 31301(4) (other than subparagraph (B)) of title 49, U.S.C.

Senate Bill

Sec. 1810.

The purpose of this program is to support the coordination and improvement of bi-national transportation planning, operations, efficiency, capacity, information exchange, safety, and security at the international borders of the United States with Canada and Mexico. The term border State in this section means any of the States of Alaska, Arizona, California, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New Mexico, New York, North Dakota, Texas, Vermont, and Washington.

The committee is aware of the ever growing strain on the nation's points of entry caused by the demands of a global economy. As with the Corridors Program, the committee has elected to expand funding for the Borders program in hopes that both capacity and operational efficiency can be improved to meet future freight mobility needs.

The General Services Administration (GSA) is authorized to receive funding under this section at the request of a border State. The committee intends transportation improvement projects undertaken with funds directly transferred by the Secretary to the GSA to be designed and constructed in coordination with State transportation officials. State transportation departments and metropolitan planning organizations at or near an international land border in a border State may receive and administer funds allocated under this program to carry out the eligible activities listed in this section.

For each fiscal year, the Secretary shall allocate funds based on the specified formula listed in this section. In choosing projects, it is the hope of the committee that border States choose projects that emphasize multimodal planning, improvements in infrastructure, and improvements that stress both the environment and a desire to promote increased safety, security, freight capacity, and highway access to rail, marine, and air services.

Conference Substitute

The Conference agrees to the House provision with a change to the definition of Border region being any portion of a border State within 100 miles in an international land border with Canada or Mexico. Under this section a border state may use funds apportioned to it for this program for, among other things, highway projects located within 100 geographic miles of an international land border, and for planning and environmental studies for such projects. Such projects are considered to be within a border region and as facilitating cross-border motor vehicle and cargo movements and motor vehicle and cargo movements related to international trade. The Conferees intend funding provided under this program be used to improve highway infrastructure or highway safety for the purpose of facilitating movement of people and goods. Under the provision, various features of title 23 are incorporated by reference, including the sliding scale match provision of 23 USC 120.

SEC. 1304. HIGH PRIORITY CORRIDORS ON THE NATIONAL HIGHWAY SYSTEM

House Bill

Sec. 1804.

This section adds new corridor designations to the high priority corridor list in ISTEA.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference agrees to House provision with modifications adding additional corridors.

SEC. 1305. TRUCK PARKING FACILITIES

House Bill

Sec. 1306.

This section establishes a pilot program in cooperation with appropriate State, regional, and local governments to address the shortage of long-term parking for commercial motor vehicles on the National Highway System.

This section allows State, regional, and local governments to address the safety problem of fatigued drivers through a pilot program designed to allow for the creation of new rest stops, as stated in section 120(c) of title 23, addition of new commercial motor vehicle parking facilities adjacent to commercial truck stops or travel plazas, or opening existing weigh stations or park-and-ride facilities to commercial motor vehicle parking. Pilot programs may also include using intelligent transportation systems, or other means, to promote the availability of public or privately available parking facilities.

The Committee developed this pilot project after working closely with the Administration, industry, State safety and construction agencies, and truck plaza and rest stop operators. It is the Committee's intent that the projects funded from this pilot program only address adding parking facilities in corridors with an identified truck parking shortage. This pilot program is not intended to compete with local businesses or commercial enterprises.

Not later than five years after the enactment of this bill, the Secretary shall transmit a report on the results of the pilot programs developed under this section.

Senate Bill

Sec. 1814.

This section creates the Commercial Truck Parking and the Corridor and Fringe Parking Pilot Programs. This section also authorizes the Secretary to appropriate funds for these programs.

The committee aims to create additional parking on the National Highway System by creating two different pilot programs: the Commercial Truck Parking Pilot Program and the Corridor and Fringe Parking Pilot Program. The section authorizes the Secretary to appropriate $8,930,818 in grants from the Highway Trust Fund for each of these programs.

The Commercial Truck Parking Pilot Program allows funds to be used for construction of safety rest areas that include truck parking, commercial vehicle parking facilities adjacent to commercial truck stops, and projects designed to improve accessibility for truck parking on or near the National Highway System. The committee expects priority for these funds will be given to States with a severe shortage of commercial vehicle parking, as well as potential for positive effects on safety, congestion, and air quality from improved parking facility.

The committee also recognized the importance of adequate and accessible parking for car pooling, van pooling, ride sharing, commuting, and high occupancy vehicle travel. The committee notes that these practices have a definitive impact on congestion, air quality and traffic safety and proposes the Corridor and Fringe Parking Pilot Program to be given to the States for the construction of parking facilities, costs to promote public awareness of the facilities, and geometric design improvement on adjoining roadways.

Conference Substitute

The Conference agrees to adopt the House provision.

SEC. 1306. FREIGHT INTERMODAL DISTRIBUTION PILOT GRANT PROGRAM

House Bill

Sec. 1307.

This provision establishes a pilot program to demonstrate the feasibility of developing inland intermodal port facilities that can accommodate short-haul rail shipments, relieve traffic congestion, and improve safety at coastal ports in metropolitan areas on the West Coast. Priority will be given to projects that will reduce congestion into and out of international ports in the U.S., reduce the need to move empty containers into and out of ports, and establish or expand intermodal facilities that encourage the development of inland freight distribution centers. Eligible projects may include developing and constructing intermodal freight distribution and transfer facilities at inland ports or at facilities serving inland ports.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The conference adopts the House provision with modifications that eliminate the preference for West Coast ports and names six projects to carry out the pilot program.

SEC. 1307. DEPLOYMENT OF MAGNETIC LEVITATION TRANSPORTATION PROJECTS

House Bill

Sec. 1118.

This section details the funding and eligibility requirements for constructing fixed guideway infrastructure, as well as the related components necessary for the construction, but not including costs incurred for a new station. Eligible projects under this section must involve a segment or segments of high speed ground transportation corridor, result in an operating transportation facility that provides a revenue-producing service and be approved by the Secretary. It is the Committee's intent for this program to be administered as a new program and not the continuation of any previously authorized program.

Senate Bill

Sec. 1819.

This section continues the authorization of the Magnetic Levitation Transportation Technology Deployment program (MAGLEV) in section 322 of title 23.

Section 322 of title 23 is amended to allow the Secretary to solicit additional applications from States or authorities designated by one or more States, for financial assistance for planning, design, and construction of eligible MAGLEV projects. Authorized from the Highway Trust Fund for this program is $357,232,704 for fiscal year 2005, $370,628,931 for fiscal year 2006, $379,559,748 for fiscal year 2007, $388,490,566 for fiscal year 2008, $401,886,792 for fiscal year 2009.

Conference Substitute

The Conference adopts the House provision.

SEC. 1308. DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1824.

This section creates section 178 of title 23, the Delta Regional Transportation Development Program.

The Delta Regional Transportation Development Program is a discretionary program to assist the Delta Regional Authority in developing adequate transportation infrastructure in the 8-state region served by the authority. The committee feels that this investment will remedy severe economic distress by stimulating development in the region through the mobilization of people and goods through a safe transportation program. Funds under this program may be used for multi-state highway and transit planning, development, and construction.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1309. EXTENSION OF PUBLIC TRANSIT VEHICLE EXEMPTION FROM AXLE WEIGHT RESTRICTIONS

House Bill

Sec. 1830.

This section extends the exemption that public transit vehicles and over-the-road buses have from axle weight restrictions.

Senate Bill

Sec. 1404.

This section amends section 127 of title 23, relating to axle weight limitations for vehicles using the interstate system.

This section amends section 127 of title 23 to exempt any over-the-road bus (as defined in section 301 of the Americans With Disabilities Act of 1990) or any vehicle that is regularly and exclusively used as an intrastate public agency transit passenger bus using the National System of Interstate and Defense Highways from the maximum gross weight limitations imposed by any State.

Conference Substitute

The Conference adopts the House provision.

SEC. 1310. INTERSTATE OASIS PROGRAM

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1815.

This section establishes an interstate oasis program.

This section requires the Secretary to establish an interstate oasis program for designating interstate oases that provide products and services to the public, 24 hour access to restroom, and parking for automobiles and heavy trucks. The Secretary shall also take into account the appearance of the facility as well as the proximity of the system to the interstate for its designation.

Conference Substitute

The Conference adopts the Senate provision.

Subtitle D—Highway Safety

SEC. 1401. HIGHWAY SAFETY IMPROVEMENT PROGRAM

House Bill

Sec. 1401.

This section amends title 23 by eliminating the requirement that States set aside 10 percent of their section 133, Surface Transportation Program, funds to carry out section 130 of title 23, the Railway-Highway Crossing program and section 152, the Hazard Elimination program. This section also establishes a separate funding authorization for a combined section 130 and 152 called Highway Safety Improvement Program. However, the authorizing language for the two programs still resides in Section 130 and Section 152.

In subsection (a) the definition of Safety Improvement Project as used in Section 101(a)(30) of title 23 is expanded to include the installation of fluorescent, yellow-green signs at pedestrian or bicycle crossings or school zones.

Subsection (b) amends title 23 to move the set-aside for Operation Lifesaver from the apportionment under the Surface Transportation Program to the apportionment for Section 130. It also increases the amount for this program from $500,000 to $600,000.

Subsection (c) increases the amount of the set-aside for hazard elimination in high-speed rail corridors designated under 104(d)(2) of title 23 and for the Minneapolis/St. Paul—Chicago segment of the Midwest High-Speed Rail Corridor. The subsection also adds the Northern New England High Speed Rail Corridor and expands the South Central Corridor to section 104(d)(2) of title 23.

Subsection (d) adds a special rule to allow States to use funds for protective devices on other section 130 activities if the State demonstrates to the Secretary that it has met the needs in such State for protective devices. The apportionment formula for rail highway crossings is amended to distribute funds 50 percent based on the STP formula and 50 percent based on the number of rail highway crossings. Each state shall receive at least a minimum of one half of one percent. The federal share will be 90 percent. States will be required to report to Congress every two years and can use up to two percent of their funds for analysis and data collection.

Subsection (e) makes technical changes.

Subsection (f) amends section 152(a)(1) of title 23 to include in the state survey dangers to the disabled from hazardous road conditions. It also includes a requirement that States identify the roadway safety improvements for hazardous locations. It also adds four new activities for which the funds can be used. The Secretary will use the STP apportionment formula to apportion funds to the States for the Hazard Elimination program. Each State shall receive at least one half of one percent from funds apportioned to the States. The federal share will be 90 percent. The Secretary is required to report to Congress every two years the results of this program, including projects completed, the effectiveness of the projects, adequacy of funding and recommendation of improvements to the program.

Subsection (g) makes the amendments in subsection (d), (e) and (f) effective September 30, 2005 since there is no funding for the new Highway Safety Improvement Program in fiscal year 2005.

Senate Bill

Sec. 1401.

This program authorizes a new core Federal-aid funding program for the Highway Safety Improvement Program (HSIP) in section 148 of title 23.

The Committee heard compelling testimony that further progress was needed to project the safety of the traveling public. While rates of highway fatalities have decreased in recent years, 42,000 Americans still lose their lives on the nation's highways each year. In response, the committee has elected to create and apportion funds for a new core program, the Highway Safety Improvement Program. Recognizing that needs and circumstances vary in each State, the committee has sought to provide flexibility to the States on how the new program funds are spent. To ensure that such flexibility is well applied, the Committee will require each State to develop a safety plan and restrict spending under the program to projects or activities arising from that plan.

Section 133 of title 23, is amended by eliminating the current provision that requires States to set-aside a minimum of 10% of Surface Transportation Program funds for safety programs. Section 148 is subject to three set-asides: (1) $178,616,352 for the elimination of hazards and the installation of protective devices at railway-highway crossings; (2) $22,327,044 for the improvement of traffic signs and pavement markings to accommodate older drivers and pedestrians, and (3) $62,515,723 for the Safe Routes to Schools program under section 150 of title 23.

Section 1401 eliminates the Hazard Elimination Program under Section 152 of title 23, and incorporates it into 23 USC 148 the new HSIP. Additional categories eligible for funding under this section have been added to what is currently eligible under subsection (f) and (g) of section 152, title 23.

The HSIP directs State transportation departments to establish and implement a State strategic highway safety plan in their State. In order to receive funds for this program, States must have a process in place to analyze highway safety problems and opportunities and to produce strategies to mitigate identified safety problems. States must also submit an annual report to the Secretary that identifies hazardous locations and elements, and assesses the costs and impediments to eliminating the hazards.

States that have developed a strategic highway safety plan are also permitted to use up to 25% of their section 148 funds on safety projects carried out under any other section of title 23 as long as the project is consistent with the State's strategic highway safety plan.

The development of a strategic highway safety plan does not require changes in existing planning processes, plans, or programs of other State transportation or highway safety agencies.

Sec. 1402.

This section increases the funding level for Operation Lifesaver from $500,000 to $535,849 for each fiscal year and moves the source of funding from the Surface Transportation Program to section 148, the Highway Safety Improvement Program.

Conference Substitute

The Conference adopts the Senate provision with modifications. The program set-asides within the Senate HSIP structure were modified: (1) to eliminate the set-aside for the Safe Routes to School program, making it a separately funded program; (2) eliminating the mandatory set-aside for bicycle and pedestrian improvements; (3) added a set-aside of $90,000,000 annually for construction and operational improvements on high risk rural roads; (4) increasing the set-aside for the installation of protective devices at railway-highway crossings to $220,000,000; and (5) increasing the set-aside for Operation Lifesaver to $560,000.

With regards to the State strategic highway safety plans, States are given until October 1, 2007 to develop the plan. If such a plan has not been developed by October 1, 2007, a State's HSIP apportionment for subsequent fiscal years will be frozen at fiscal year 2007 levels, until the State completes development of the strategic highway safety plan. States that have developed a strategic highway safety plan and also certify to the Secretary that they have met their State's needs relating to railway-highway crossings and infrastructure highway safety improvement projects, are also permitted to use up to 10% of their HSIP funds on safety projects carried out under any other section of title 23 (e.g. section 402 Highway Safety programs), consistent with the State's strategic highway safety plan. If a State certifies that it has met all of its needs for installation of protective devices at railway-highway crossings, the State may use funds set-aside for section 130 Railway-Highway Crossings to pay for any other safety projects eligible under the HSIP, consistent with that State's strategic safety plan. If a State certifies that it has met all of its needs for construction and operational improvements on high risk rural roads, the State may use funds set-aside for that purpose to pay for any other safety projects eligible under the HSIP, consistent with that State's strategic safety plan. The high risk rural roads program requires the Secretary to ensure States set aside an aggregate of $90 million a year to improve the safety of rural roads. The Conferees intend for the set-aside to be applied proportionally to each States' share of the HSIP apportionment.

With regards to the distribution formula used to apportion funds for the HSIP program to the States, the Conference abandons the Surface Transportation Program formula previously used to distribute funds for sections 152 and 130. Adopted in its place is the following formula for distributing funds apportioned for the HSIP program: ⅓ of the funds are apportioned based on each State's percentage of lane miles of Federal-aid highways; ⅓ of the funds are apportioned based on each State's percentage of vehicle miles traveled on Federal-aid highways; and ⅓ of the funds are apportioned based on the each State's percentage of fatalities on the Federal-aid system. Additionally, of the amounts set-aside from the HSIP for the elimination of hazards and the installation of protective devices at railway-highway crossings under section 130(e), ½ of the funds are apportioned based on the formula set forth in section 104(b)(3)(A) and ½ of the funds are apportioned based on each State's percentage of railway-highway crossings.

SEC. 1402. WORKER INJURY PREVENTION AND FREE FLOW OF VEHICULAR TRAFFIC

House Bill

Sec. 1402.

The Secretary shall, within one year, issue regulations requiring workers whose duties place them in close proximity to a Federal-aid highway to wear high visibility garments.

Senate Bill

Sec. 1408.

This section ensures increased worker safety and assists with the free flow of vehicular traffic.

This section directs the Secretary to promulgate regulations recommending workers near a Federal-aid highway to wear high-visibility clothing, and to recommend any other worker-safety measures that the Secretary deems necessary to minimize worker injuries and maintain the free flow of vehicular traffic.

Conference Substitute

The Conference adopts the House provision and finds the provisions in both the House and Senate to be substantially equivalent.

SEC. 1403. TOLL FACILITIES WORKPLACE SAFETY STUDY

House Bill

Sec. 1807.

This section directs the Secretary to conduct a study to determine the safety of highway toll collection facilities for toll collectors who work in and around such facilities. It requires the Secretary to submit within 1 year a report on the results of the study and recommendations for improving workplace safety at toll facilities to the congressional committees of jurisdiction.

Senate Bill

Sec. 7214.

This program is reauthorized for FYs 2006 through 2009 at an average annual funding level of $142 million. These programs focus on the research and development of safety countermeasures related to impaired driving, occupant protection, traffic law enforcement and criminal justice, licensing, motorcycle, pedestrian, bicycle, teen drivers and emergency medical services. The States use this research to model their safety programs for the most impact on saving lives and reducing injuries. This section also would provide $24 million a year to NHTSA to launch

national advertising campaigns to increase seat belt use and reduce drunk driving during holiday periods. Launching these advertising campaigns at the national level is much more cost effective than individual States buying advertising at the local level.

Conference Substitute

The Conference adopts the House provision. It is the intent of the conference that those agencies operating such toll facilities shall, at the request of the Secretary, provide data as necessary to adhere to this provision.

SEC. 1404. SAFE ROUTES TO SCHOOL PROGRAM

House Bill

Sec. 1122(a).

This section establishes two new programs—a Safe Routes to School Program and a Nonmotorized Transportation Pilot Program.

Subsection (a) establishes a Safe Routes to School Program for the benefit of children in primary and middle schools. The purposes of the program are to enable and encourage children, including those with disabilities, to walk and bicycle to school; to make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and to facilitate the planning, development and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools.

Funding is made available by formula to state departments of transportation on the basis of student enrollment in primary and middle schools. No state will receive less than $2 million annually. Funds will be used by the state to provide financial assistance to state, local and regional agencies, including nonprofit organizations, which demonstrate an ability to meet the requirements of this section.

The program funds two distinct types of projects: infrastructure projects and non-infrastructure related activities. States should be encouraged to create competitive application forms, criteria, and evaluations that are appropriate for the two different types of projects.

The creation of a state level safe routes to school coordinator position provides a central point of contact for the program. Funding for the state level safe routes to school coordinator position is not included in the 10 to 30 percent of funds required to be used for non-infrastructure related activities under this subsection. The state coordinator's position is to be funded from the balance of the state's safe routes to school funds.

The safe routes to school clearinghouse provides an important opportunity to insure successful implementation of the program. As a new program, states will be interested in guidance on implementing the program effectively and efficiently. The clearinghouse can provide case studies, gather and disseminate information, track implementation, and monitor the program.

Given the broad scope of safe routes to school activities, the Committee acknowledges the need to include a broad range of agencies and organizations in the Task Force authorized by this section. In addition to representatives from federal agencies, additional task force members could include representatives from state and local agencies as well as relevant non-profit organizations and associations including organizations or associations that represent automobile drivers.

Senate Bill

Sec. 1405.

This section creates a new Safe Routes to Schools Program, section 150 of title 23. The Secretary shall establish and carry out a safe routes to schools program for the benefit of children who walk and bicycle to school.

The Safe Routes to Schools program works towards this goal by making bicycling and walking a safer and more appealing transportation alternatives. For this program, the Secretary shall set-aside $65,704,024 from section 148 to facilitate the planning, development, and implementation of projects and activities that will improve safety within two miles of primary and secondary schools. The Secretary shall distribute these funds using the formula established in section 148.

Conference Substitute

The Conference adopts the House provision with a modification to reduce the minimum state apportionment to $1 million.

SEC. 1405. ROADWAY SAFETY IMPROVEMENTS FOR OLDER DRIVERS AND PEDESTRIANS

House Bill

No comparable provision in Senate bill.

Senate Bill

Sec. 1401.

As part of the Highway Safety Improvement Program, $23,465,723 is authorized for projects to improve traffic signs and pavement markings in a manner consistent with the recommendations included in the publication of the Federal Highway Administration entitled ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians (FHWA–RD–01–103)''.

Conference Substitute

The Conference adopts the Senate provision with a modification to authorize such sums as necessary for the eligible projects.

SEC. 1406. SAFETY INCENTIVE GRANTS FOR USE OF SEAT BELTS

House Bill

Sec. 1405.

This section authorizes $112,000,000 for each of fiscal years 2004 and 2005 for grants to States that have met certain requirements with regards to seatbelts.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1407. SAFETY INCENTIVES TO PREVENT OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

House Bill

Sec. 1406.

Subsection (a) codifies the penalty against States for not enacting and enforcing a 0.08 drunk driving law. This penalty was originally enacted in the 2001 DOT appropriations bill.

Subsection (b) authorizes $110,000,000 for each of fiscal years 2004 and 2005 for grants to States that have enacted 0.08 laws.

Subsection (c) repeals the appropriations language that enacted the penalty in 2001.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1408. IMPROVEMENT OR REPLACEMENT OF HIGHWAY FEATURES ON NATIONAL HIGHWAY SYSTEM

House Bill

Sec. 1408.

This section instructs the Secretary to conduct a rulemaking to determine the standards to which a State should replace or repair damaged highway features after they have been damaged.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision with modifications. The Secretary is required to issue guidance when choosing to improve or replace highway features on the NHS in lieu of a rulemaking. The conferees deleted the word ''repair'' that was in the House provision. Only planned capital projects to ''replace'' or ''improve'' NHS features are covered by the conference provision.

SEC. 1409. WORK ZONE SAFETY GRANTS

House Bill

Sec. 1809.

This section directs the Secretary to establish a work zone safety grant program to provide training to prevent or reduce highway work zone injuries and fatalities.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference agrees to adopt the House provision with a modification to subsection (d) Construction Work in Alaska.

SEC. 1410. NATIONAL WORK ZONE SAFETY INFORMATION CLEARINGHOUSE

House Bill

Sec. 1823.

This section provides grants to establish and operate a National Work Zone Safety Information Clearinghouse.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1411. ROADWAY SAFETY

House Bill

Sec. 1125.

Subsection (a) directs the Secretary to enter into an agreement with an organization to develop a public service campaign to educate transportation officials, public safety officials, and motorists regarding the extent to which road hazards and design features are a factor in motor vehicle crashes.

Subsection (b) directs the Secretary to make grants to an organization to operate a national bicycle and pedestrian clearinghouse, to disseminate techniques and strategies for improving bicycle and pedestrian safety, and to develop information and educational programs related to pedestrian activities and cycling.

Senate Bill

Sec. 1607.

This section makes minor amendments to section 217 of Title 23.

These changes explicitly allow the use of STP and CMAQ funds for non-construction pedestrian safety programs whereby current law only mentions bicycle safety. It also explicitly mentions pedestrian use on bridges, whereby current law only mentions bicycle use.

The current practice of charging user fees for shared-use paths is now explicitly allowed. The fees collected by a State must be used for maintenance and operation of shared use paths within the State. This provision restricts the application of a user fee to shared-use paths not within a highway right-of-way and prohibits extension of user fees to sidewalks or bicycle lanes.

In order to address concerns regarding bicycle and pedestrian safety, the national bicycle and pedestrian clearinghouse first authorized in section 1212(i) of TEA–21 is reauthorized. A new subsection (i) provides funding and contract authority for these safety efforts for fiscal years 2004 through 2009.

This section also provides that the bicycle and safety grants are to be funded by a set-aside from the Surface Transportation Program.

Conference Substitute

The Conference adopts the House provision.

SEC. 1412. IDLING REDUCTION FACILITIES IN INTERSTATE RIGHTS-OF-WAY

House Bill

Sec. 1828.

This section includes a definition for Advanced Truck Stop Electrification Systems in Title 23 and clarifies that such systems are eligible under CMAQ.

Senate Bill

Sec. 1608.

This section creates an exception to the prohibition of the placement of commercial establishments in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System.

The purpose of this exception allows States (either directly or through contracts) to place electrification or other idling reduction facilities in rest areas that can be used to provide heating, air conditioning, electricity, and communication to motor vehicles used for commercial purposes. Through these facilities, operators of such motor vehicles are able to receive these services without turning on their engines, thereby reducing vehicle emissions. States, other public agencies, and private entities that are already allowed to operate on the Interstate System, may charge for the services provided under this authority.

Conference Substitute

The Conference adopted both the House and Senate provision with modifications.

Subtitle E—Construction and Contract Efficiency

SEC. 1501. PROGRAM EFFICIENCIES

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1804.

This section amends 23 U.S.C. 115, Advance construction, and 23 U.S.C. 118, Availability of funds.

Section 115 is amended to remove the restriction that a State must obligate all of its allocated or apportioned funds, or demonstrate that it will use all obligation authority allocated to it for Federal-aid highways and highway safety construction prior to approval of advance construction projects.

The revisions clarify that advance construction procedures can be used for all categories of Federal-aid highway funds and that when a project is converted to a regular Federal-aid project, any available Federal-aid funds may be used to convert the project.

This section further modifies section 115 to remove the requirement that the Secretary must first approve an application of the State prior to authorizing the payment of the Federal share of the cost of the project when additional funds are later apportioned or allocated to the State. The new provision allows the Secretary to obligate the Federal share or a portion of the Federal share of cost of the project by executing a project agreement.

Section 118 of Title 23, is amended to clarify the method used by FHWA to account for Federal-aid funds and determine amounts subject to lapse. This revision results in no change to current practice but simplifies the language to reduce ambiguity.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1502. HIGHWAYS FOR LIFE PILOT PROGRAM

House Bill

Sec. 1504.

The Committee intends with this pilot program to incentivize the use of innovative technologies and practices in the construction of highways and bridges. The Committee expects that safe, efficient highways and bridges can be built faster, and with greater durability, if innovative practices and technologies are utilized. This pilot authorizes the Secretary to allocate funds for projects deemed to satisfy the requirements of the project. The selection criteria are designed to identify projects that employ material and technique innovations which will produce more quickly constructed, longer lasting, high-quality and cost-effective projects.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference agrees to accept the House provision with a modification to allow 15 projects at the most each fiscal year.

SEC. 1503. DESIGN-BUILD

House Bill

Sec. 1501.

Subsection (a) amends section 112 of title 23 with the intent of clarifying and improving the design-build authority provided. During the rulemaking process for the design-build regulation required by section 1307 of TEA 21, which also amended 23 U.S.C. 112, FHWA received several comments regarding the restrictive nature of the ''qualified project'' definition with respect to the project cost threshold. Approximately 85 percent of the design-build projects that have been evaluated under the FHWA experimental contracting program (Special Experimental Project No. 14 (SEP–14—Innovative Contracting) are too small to meet the definition of ''qualified project.'' Based on the Haw's experience with design-build projects under SEP–14, there is no need to limit design-build projects to those costing more than $5 million in the case of a project that involves installation of an intelligent transportation system and to those costing more than $50 million in the case of any other project.

Subsection (b) similarly amends section 112 of title 23 making clear the parameters of the authority for the use of project evaluation criteria. The subsection also makes clear that this amendment does not disturb any other authority that the Secretary has under current law or that is being carried out by the Secretary as of the date of enactment.

Senate Bill

Sec. 1803.

This section amends section 112(b)(3) of title 23, to include intermodal facilities in the definition of qualified projects.

Conference Substitute

The Conference adopts the Senate provision. The Conferees intend that the Secretary's required concurrence is based in part on a determination that activities a state of local transportation agency plans to undertake will not influence the environmental review of those activities under NEPA.

Subtitle F—Finance

SEC. 1601. TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT AMENDMENTS

House Bill

Sec. 1601.

This section makes programmatic changes to the TIFIA program.

Subsection (a) makes technical changes to the definitions in Section 181 of title 23.

Subsection (b) amends section 182 of title 23 to clarify the requirements regarding statewide and metropolitan planning. This subsection also decreases the minimum eligible project costs to $50,000,000 and to $15,000,000 for ITS projects.

Subsection (c) makes technical changes to the project selection process in section 182 of title 23.

Subsection (d) makes technical changes to section 183 of Title 23. The change to section 183(a)(4) codifies a DOT regulation that requires the project's senior obligations to receive an investment-grade rating in order to execute a secured loan agreement. The change to section 183(b)(2) ensures that the amount of the TIFIA credit instrument may not exceed that of the senior project obligations. The elimination of section 183(c)(3) deletes the description of sources of repayment funds because the subject is already covered in section 183(b)(3).

Subsection (e)(1) makes changes to section 184(b)(3) to ease the restrictions on funding draws on a line of credit in order to help a borrower avoid a payment default. The changes to section 184(b)(4) conform the interest rate setting mechanism for the line of credit with that for secured loans. The change to section 184(b)(5) has the same purpose as the changes to sections 183(b)(3) and 182(a)(4).

Subsection (e)(2) makes changes to Section 184(c) to clarify language regarding the scheduling of principal and interest repayments. The elimination of section 184(c)(3) deletes the description of sources of repayment funds because the subject is already covered in section 184(b)(5)(A)(i).

The changes to sections 185(a), 185(b), and 185(c) in subsection (f) clarify that the Secretary may establish fees to cover the cost of servicing TIFIA credit instruments. The change to section 185(d) clarifies that the program may retain outside counsel to assist in the underwriting and servicing of TIFIA credit instruments.

Subsection (g) sets the funding levels for the TIFIA program, including administrative expenses and limitations on credit amounts.

Senate Bill

Sec. 1303.

This section makes amendments to the TIFIA program under sections 181 through 189 of title 23.

The change to section 181(8)(D), as redesignated, expands the definition of freight-related projects eligible for TIFIA assistance. The provision also allows for a group of such related projects to be eligible, each of which individually might not meet the threshold requirements to apply for TIFIA credit assistance.

The change to section 182(a)(1) clarifies the provision regarding statewide and metropolitan planning requirements. The existing provision contained language that could be misinterpreted to constrain TIFIA assistance in the case of a project with a construction timetable that extended beyond the typical three-year approved State Transportation Improvement Program (STIP).

The changes to section 182(a)(3) lowers the threshold cost for eligible projects to $50 million, and also allows to be eligible projects that are equal to or exceed 20 percent of the Federal highway funds apportioned to that State in the most recently completed fiscal year.

The change to section 183(a)(4) codifies current regulation requiring a project's senior obligations to receive an investment-grade rating in order to execute a secured loan agreement.

The changes to section 184(b)(4) conform the interest rate setting mechanism for the

line of credit with that for secured loans. This change allows the Department to execute both agreements on the same date at the same interest rate if a borrower utilizes both a secured loan and a line of credit for the same project.

Section 188(a)(2) allows all collected fees to be available to the Secretary without further appropriation to carry out this section.

Section 188(a)(3) maintains the limit on administrative costs.

Conference Substitute

The Conference agrees to adopt provisions from both the House and Senate. This section makes programmatic changes to the TIFIA program. Subsection (a) makes technical changes to the definitions in Section 181 of title 23.

The conferees eliminated section 181(7) to reflect the Department's decision not to use local servicers to perform the enumerated duties on behalf of the Secretary. Conferees also believe that ongoing servicing of TIFIA loans should be managed by a single entity as it has done so to date.

These provisions also expand the definition of freight-related projects eligible for TIFIA assistance to allow private rail facilities that serve a public benefit for highway users. The provision also makes eligible a group of such related projects, each of which separately might not meet the threshold requirements, to apply for TIFIA assistance.

Subsection (b) amends Section 182 of title 23 to clarify the requirements regarding statewide and metropolitan planning. This subsection also decreases the minimum eligible project costs to from $100 million to $50 million, $50,000,000 and to $15,000,000 for ITS projects, and changes clause (ii) by striking 50 and inserting 33.3 to ensure that smaller states have the opportunity to benefit from this program as well.

Subsection (d) makes technical changes to Section 183 of Title 23. The change to section 183(a)(4) codifies a DOT regulation that requires the project's senior obligations to receive an investment-grade rating in order to execute a secured loan agreement. The change to section 183(b)(2) ensures that the amount of the TIFIA credit instrument may not exceed that of the senior project obligations. The elimination of section 183(c)(3) deletes the description of sources of repayment funds because the subject is already covered in section 183(b)(3). It was the intent of the conference to allow agreements to refinance long-term project obligations or Federal credit instruments, if such refinancing provides additional funding capacity for the completion enhancement or expansion of any project selected under section 602 or that otherwise meets the requirements of section 602.

The changes to section 184(b) conform the interest rate setting mechanism for the line of credit with that for secured loans. This change allows the Department to execute both agreements on the same date at the same interest rate if a borrower utilizes both a secured loan and a line of credit for the same project. The changes to this section also eliminate the 20% cap on what a borrower can draw. It is the conference's understanding that the line of credit tool has not been widely used and the elimination of this cap could incentivize this credit instrument.

The changes in section 185 clarify that the Secretary may establish, collect and spend fees to cover the cost of servicing TIFIA credit instruments. This section also clarifies that the program may retain outside counsel to assist in the underwriting and servicing of TIFIA credit instruments.

Sections 181–189 are redesignated to 601–609.

SEC. 1602. STATE INFRASTRUCTURE BANKS

House Bill

Sec. 1602.

Subsection (a) of this section codifies a state infrastructure bank (SIB) program in Section 189 of title 23.

Subsection (a) of section 189 provides definitions for the SIB program. Subsection (b) permits the Secretary to enter into a cooperative agreement with a State for the establishment of a SIB. Subsection (c) allows two or more States to enter into a cooperative agreement with the Secretary to establish a multi-state SIB. Subsection (d) establishes funding requirements for SIBs, restricting the amount of federal funding that a State can deposit in their highway, transit, and rail SIB accounts. Subsection (e) establishes the forms of assistance that a SIB can offer. Subsection (f) describes the eligible projects that are allowed to be funded by the SIB.

Subsection (g) establishes the requirements that a State must adhere to when establishing a SIB. Subsection (h) speaks to the applicability of Federal law in the SIBs program. Subsection (i) states that the United States is not obligated by any commitment made by a state SIB. Subsection (k) limits the amount of federal funds that can be used to administer the state SIB to 2 percent of the federal funds contributed to the SIB.

Subsection (b), (c), (d), and (e) of Section 1602 establishes a new chapter 6 in title 23 for infrastructure finance.

Senate Bill

Sec. 1306.

This section amends 1511(b)(1)(A) of TEA–21, which named the following States: Missouri, Rhode Island, California, and Florida. This change extends the program to any State that seeks to establish a State infrastructure bank.

This bill reauthorizes the State Infrastructure Bank (SIB) program under which all States are authorized to enter into cooperative agreements with the Secretary to set up infrastructure revolving funds eligible to be capitalized with Federal transportation funds authorized for the FY 2005–2009 period.

The SIB program gives States the capacity to increase the efficiency of their transportation investment and significantly leverage Federal resources by attracting non-Federal public and private investment. The program provides greater flexibility to the States by allowing other types of project assistance in addition to the traditional reimbursable grant.

SIBs provide various forms of non-grant assistance to eligible projects, including at or below-market rate subordinate loans, interest rate buy-downs on third party loans, and guarantees and other forms of credit enhancement. Any debt that the SIB issues or guarantees must be of investment grade caliber.

Conference Substitute

The Conference adopts the House provision.

SEC. 1603. USE OF EXCESS FUNDS AND FUNDS FOR INACTIVE PROJECTS

House Bill

Sec. 1106.

This section allows states to audit projects funded with apportionments under sections 104 and 144 of title 23 to determine whether there are excess project funds. If the audit reveals that there are excess funds, the state may develop a plan for spending the apportionment for the design or construction of other similar eligible projects. The state must certify to the Secretary that an audit was conducted and has developed a plan. Excess funds used to carry out a project under this section are subject to the requirements of this title that are applicable to the program for which the funds were originally apportioned.

Senate Bill

Sec. 1106.

This provision allows States to convert demonstration projects that were designated prior to 1998 to the Surface Transportation Program (STP). This section also requires States to certify to the Secretary that inactive funds will not be used in order to reobligate them under STP.

Conference Substitute

The Conference adopts the Senate provision with modifications. States can convert demonstration projects that were designated prior to 1991 in public law or a report accompanying public law and reprogram them under STP. States can also convert funds from projects that have no expenditures during any 1–year period or if a State certifies that a project is unlikely to be advanced, it can be converted to STP.

The Secretary is required to submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on what each state has reprogrammed.

It is the Sense of the Congress that funds released from demonstration projects are required to reprogram those funds into the same geographic area for which they were originally allocated.

SEC. 1604. TOLLING

The Conference agrees to combine all tolling programs under one section.

House Bill

Sec. 1209.

This section amends the congestion pricing pilot program established under the Intermodal Surface Transportation Equity Act of 1991 to expand the authority to conduct such projects to all States, although the number of congestion pricing pilot projects is limited to 25. The limit of 25 projects includes all projects previously approved under this section (prior to the enactment of TEA LU) that collect tolls. This section also requires that any congestion pricing toll programs include a program for low-income drivers to pay a reduced toll. This section also sets aside $3 million a year for congestion pricing programs that do not include tolls.

Senate Bill

Sec. 1827.

This section amends section 1012(b) of ISTEA by continuing the program for fiscal year 2005 and each fiscal year thereafter.

Conference Substitute

The Conference agrees to continue the 15 tolling programs under current law and set aside one third of the total funding for the 15 programs to go toward non-tolling programs.

House Bill

Sec. 1603.

This section establishes an interstate system reconstruction and rehabilitation pilot program similar to the one authorized in TEA 21. The new program is limited to three facilities and requires states to show that tolling is the most efficient and economical way to finance the project. The previous program required that states prove that tolling was the only way to finance the interstate reconstruction or rehabilitation project. The new program also requires that the state agency collect tolls electronically and that the agency include a program to permit low-income drivers to pay a reduced toll amount.

Senate Bill

This section amends section 1216(b) or TEA–21 to expand the criteria by which

states can apply. It is further amended by only allowing the state of Virginia to be eligible for funding under this program if accepted.

Conference Substitute

The Conference agrees to drop both provisions and continue current law.

House Bill

Sec. 1604.

This section establishes a new pilot program for projects involving the construction of new interstate facilities. The program is limited to three facilities (multi-state corridor projects may be considered as one facility) and states must show that tolling is the most efficient and economical way to finance the project. The new program also requires that the state agency collect tolls electronically and that the agency include a program to permit low-income drivers to pay a reduced toll amount.

It is the Committee's intent that this program be used only for the construction of new interstate facilities and that the pilot program authorized in Section 1603 be used only for rehabilitation and reconstruction of existing interstate facilities.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

The Conference adopts the House provision.

Sec. 1609.

House Bill

No comparable provision in the House bill.

Senate Bill

This section modifies the Interstate System Reconstruction and Rehabilitation Program and establishes a new Fast and Sensible Toll Lanes Program. The Interstate System Reconstruction and Rehabilitation Pilot Program, established in TEA–21 is amended to ease the eligibility criteria for participation in the pilot program. The Fast and Sensible Lanes Program replaces the Value Pricing Pilot Program under TEA–21.

The change to the Interstate System Reconstruction and Rehabilitation Pilot Program eases the requirement for States to demonstrate that financing the improvements through tolls is the most efficient, economical, or expeditious way to advance the project. It is the intent of the committee that States may use variable pricing under this program. The pilot program remains limited to 3 facilities in 3 different States. A modification to this section designates that one of the facilities be located in Virginia.

This section also establishes the Fast and Sensible Toll (FAST) Lanes program to manage congestion, reduce emissions in a nonattainment or maintenance area, or to finance the addition of one or more lanes to an interstate to reduce congestion. The Secretary may permit a State to place tolls on highway, bridge or tunnel that are facilities that currently collect tolls, existing HOV facilities, or facilities that are upgraded for additional tolled capacity. Revenues may be used for debt service on highway or transit projects, a reasonable return on investment of any private financing, operational and maintenance costs, or any other purpose related to highway or transit projects under titles 23 or 49. The program also allows for the States to vary in price a toll according to time of day or level of traffic, as appropriate to manage congestion or improve air quality. To be eligible to participate in this program, a State must provide to the Secretary a description of the congestion and air quality problems to be addressed, a description of the congestion and air quality problems to be addressed, and the goals to be achieved. The committee realizes that commercial trucks utilize more capacity on roads than other vehicles, and States may toll trucks under this program to fairly reflect the additional capacity that they utilize on a facility. It is not the intent of the committee for States to unfairly charge trucks under a variable toll pricing program.

This section also permits any State or public authority currently operating under the authority of a cooperative agreement developed under the value pricing pilot program from TEA–21 to continue under the terms of that agreement and states that any State or public authority shall be allowed to continue tolling under that authority.

Conference Substitute

The Conference agrees to the Senate provision with a modification that this program will be a pilot program. The name of this program is changed to ''EXPRESS Lanes''.

Subtitle G—High Priority Projects

SEC. 1701. HIGH PRIORITY PROJECTS PROGRAM

House Bill

Sec. 1701.

This section updates the current high priority projects program to reflect the funding and year-by-year allocations provided in TEA LU.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House version.

SEC. 1702. PROJECT AUTHORIZATIONS

House Bill

Sec. 1702.

This section lists the State, project description, and dollar amount for each high priority project.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision with additional projects listed.

SEC. 1703. TECHNICAL AMENDMENTS TO TEA–21 PROJECTS

House Bill

Sec. 1822.

This section makes changes to projects authorized in TEA–21.

Senate Bill

Sec. 1835, Sec. 1836.

These sections make changes to projects authorized in TEA–21.

Conference Substitute

The Conference agrees to accept all technical changes provided in the sections from both bodies.

Subtitle H—Environment

SEC. 1801. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES

House Bill

Sec. 1114.

Subsections (a) and (b) codify the existing Ferry Boat Discretionary Program authorized in Section 1064 of ISTEA. Subsection (c) requires the Secretary to establish a national ferry database. It is the Committee's intent that the information collected and maintained in this database will be used as part of the decision making process for funding allocations under this program.

Senate Bill

Sec. 1204.

This bill codifies the Ferry Boat Program and requires the Secretary to carry out a program for the construction of ferry boats and ferry facilities in accordance with section 129(c). The section specifies projects to be given priority.

In allocating these funds, the Secretary shall give priority to ferry boat services that carry the greatest number of passengers and vehicles, as well as those that provide critical access to areas that are not well-served by other modes of transportation.

Conference Substitute

The Conference agrees to accept and merge both provisions.

SEC. 1802. NATIONAL SCENIC BYWAYS PROGRAM

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1602.

This section amends section 162 of title 23, the National Scenic Byways Program.

Section 162 of title 23 is amended to recognize that the Secretary already promotes a collection of National Scenic Byways and All-American Roads as 'America's Byways.' If State and byway representatives reach consensus on establishing a single designation category, then these amendments will provide the Secretary with the authority to use any of the three terms—National Scenic Byways, All-American Roads, or America's Byways—as the single designation.

A new subsection is added to authorize the Secretary to form public-private partnerships to carry out technical assistance, marketing, market research, and promotion with respect to National Scenic Byways, All-American Roads, or America's Byways. The National Scenic Byways and All-American Roads currently are promoted collectively as America's Byways.

Conference Substitute

The Conference adopts the Senate provision with the modification to drop subsection (d) Research, Technical Assistance, Marketing, and promotion.

SEC. 1803. AMERICA'S BYWAYS RESOURCE CENTER

House Bill

Sec. 1811.

This section reauthorizes the America's Byways Resource Center. The Byways Resource Center provides technical support and conducts educational activities for the National Scenic Byways program. Technical support and educational activities will provide local officials and organizations with proactive, technical, and on-site customized assistance, including training, communications (including a public awareness series), publications, conferences, on-site meetings, and other assistance considered appropriate to develop and sustain Scenic Byways and All-American Roads.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1804. NATIONAL HISTORIC COVERED BRIDGE PRESERVATION

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1812.

This section authorizes the Secretary to make grants to States for covered bridges that are listed or eligible for listing on the National Register of Historic Places.

Subject to the availability of appropriations, the Secretary shall make grants to States demonstrating a need for assistance in carrying out 1 or more historic covered bridge projects described in this section.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1805. USE OF DEBRIS FROM DEMOLISHED BRIDGES AND OVERPASSES

House Bill

Sec. 1820.

This section specifies that any debris from a demolished Federal-aid bridge or overpass can be used for beneficial public use by Federal, State, and local governments.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision with a modification.

SEC. 1806. ADDITIONAL AUTHORIZATION OF CONTRACT AUTHORITY FOR STATES WITH INDIAN RESERVATIONS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1826.

Section 1826 increases funding for roads that are adjacent to or provide access to Indian reservations.

This section increases funds that supplement maintenance funds provided by the Bureau of Indian Affairs from $1,500,000 to $1,607,547 for fiscal years 2005 through 2009. The committee intends these funds to be shared equally by States (except Arizona) that have Indian reservations larger than 10 million acres. These funds shall be used for roads that are adjacent to or provide access to Indian reservations, as well as roads used by a school bus to transport children to a school or Headstart program.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1807. NONMOTORIZED TRANSPORTATION PILOT PROGRAM

House Bill

Sec. 1122(b).

This section establishes two new programs—a Safe Routes to School Program and a Nonmotorized Transportation Pilot Program.

Subsection (b) establishes a Nonmotorized Transportation Pilot Program to construct a network of nonmotorized transportation infrastructure facilities in four communities to demonstrate the extent to which bicycling and walking can carry a significant part of the transportation load. This program is designed to develop the statistical information necessary to properly evaluate the impact of investments in nonmotorized travel and increases in pedestrian and bicycle trips on congestion, energy usage, clean air and public health. It recognizes that only complete, comprehensive and connected networks of nonmotorized transportation facilities will provide the opportunity for the pedestrian and bicycle usage needed for the measurement of impacts.

In making grants, the Secretary may select public agencies that are suitably equipped and organized to carry out the requirements of this subsection. An agency that receives a grant under this subsection may work with and provide grant funds to a nonprofit organization to assist in carrying out the program.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision with a modification to name four communities to carry out the pilot program. The Minnesota Department of Transportation shall provide funds for the Minneapolis nonmotorized pilot program grant to Transit for Livable Communities.

SEC. 1808. ADDITION TO CMAQ-ELIGIBLE PROJECTS

House Bill

Sec. 1210.

This section clarifies that transportation system management and operations are an eligible activity under this program.

Sec. 1833.

This section specifies that advanced truck stop electrification system is an eligible activity under CMAQ.

Senate Bill

Sec. 1612.

Subsection (a) of section 1612 makes the following projects and programs eligible activities under the CMAQ program: the purchase of alternative fuel (as defined in the Energy Policy Act of 1992) and biodiesel fuel; the purchase of integrated, interoperable emergency communications equipment; diesel retrofit technologies for on-road vehicles and non-road vehicles and engines used in construction projects located in ozone or particulate matter nonattainment or maintenance areas and funded in whole or in part under Title 23; and outreach activities to provide information and technical assistance to the owners and operators of diesel equipment and vehicles.

Subsection (b) of this section ensures that States that receive the minimum apportionment can use CMAQ money to fund projects for the purpose of congestion mitgation or improving air quality, instead of only being able to use CMAQ dollars for projects that can be funded under the surface transportation program.

Subsection (c) of this section provides for reducing air emissions from the construction equipment used in projects funded under Title 23 by requiring emission reduction strategies. The subsection includes requirements and limitations to be applied in these strategies, but does not affect a State's current authority under the Clean Air Act. EPA is directed to publish guidance to support the development of the strategies. Finally, the subsection establishes a funding priority for diesel retrofits and other cost-effective emission reduction activities identified in the strategies developed under the section.

Subsection (d) authorizes the State of Maine to use CMAQ funds for the operation of passenger rail service between Boston, Massachusetts, and Portland, Maine.

Subsection (e) authorizes the State of Montana to use CMAQ funds for the operation of public transit activities that serve a nonattainment or maintenance area.

Currently, CMAQ funds can be used for a wide array of purposes designed to improve air quality, including improvements to transit systems, capital improvements to ITS projects, bicycle and pedestrian facilities, traffic flow improvements, alternative fuel infrastructure, inspection and maintenance programs, and shared ride services. The Clean Air Act (CAA) and EPA encourage the use of alternative fuels to assist areas in reducing criteria pollutants. CMAQ provisions in TEA–21/ISTEA include a specific subsection authorizing the use of CMAQ funds on alternative fuel infrastructure. Section 1612 further facilitates the use of alternative fuels by also allowing purchase of alternative fuels with CMAQ funds. The purchase of integrated, interoperable emergency communications equipment with CMAQ funds is also authorized under this subsection.

Subsection (b) of this section remedies an oversight that exists in the current law by providing States that receive the minimum amount of CMAQ funding the ability to use the money for air quality and congestion mitigation projects, if they so choose. States that receive the minimum apportionment either do not have nonattainment and maintenance areas, or have a nonattainment or maintenance area with a small enough population that they would only receive the guaranteed minimum ½ of 1 percent based on the population apportionment formula. This section of the bill allows these States to fund CMAQ-type projects with their CMAQ funds. It allows these areas to fund projects that would otherwise be eligible under section 149(b), regardless of the fact that section 149(b) specifically states that the eligible projects may only be funded in nonattainment or maintenance areas. This change is in keeping with the overall purpose of the CMAQ program.

Just as the bill adjusts the CMAQ apportionment formula to reflect the importance of reducing fine particulate matter (PM2.5), section 1612(c) adjusts the list of eligible activities to include cost-effective means of reducing PM2.5. Specifically, this subsection addresses emissions from construction equipment (both on-road and non-road) used in Federally-funded highway projects. Reducing emissions from long-term construction activities in the middle of a non-attainment area will provide great improvements to the immediate non-attainment area. For example, in 2000, the Massachusetts Department of Environmental Protection estimated that in five years the diesel retrofit program instituted at the Central Artery Tunnel Project in Boston would reduce construction emissions, including PM2.5, by an amount equivalent to eliminating 96 million truck miles or removing 1,300 diesel-powered public buses for a year.

These activities are also very cost-effective, particularly as compared to the cost-effectiveness of other CMAQ-eligible projects. For example, early estimates by the Environmental Protection Agency are that retrofitting a diesel engine bulldozer costs $15,000–20,000 per ton of fine particulate matter reduced. In contrast, the Transportation Research Board reported in its 2002 assessment of the CMAQ program that traditional CMAQ activities cost significantly more per ton of pollution reduced (bicycle and pedestrian facilities at $84,100 per ton; telework programs at $251,800 per ton; and park-and-ride lots at $43,000).

The Senate is also aware that some confusion remains in DOT and EPA field and regional offices regarding whether projects to control the extended idling of vehicles, such as advanced truck stop electrification projects, are eligible for CMAQ funding. Such confusion has led to delays in project approvals. Advanced truck stop electrification projects dramatically reduce emissions, and therefore improve air quality, by allowing long-haul drivers to turn off their engines during extended stops (e.g., during USDOT-mandated rest periods); mitigate congestion by providing drivers timely information regarding road congestion and alternative routes; enhance energy independence by reducing diesel fuel consumption; enhance highway safety by providing drivers a quieter, more restful sleep environment; and reduce noise impacts to nearby neighborhoods. Furthermore, advanced truck stop electrification projects can qualify for CMAQ funding, whether they are implemented through public-private partnerships; involve private ownership of land, project facilities or other physical assets, emission reduction credits and offsets; or are located on public or private land or rights-of-way. Such programs are clearly authorized under section 108(f)(1)(A)(xi) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)(xi) and associated Federal guidance (65 Fed. Reg. 9040 (Feb. 23, 2000)). Therefore, the committee directs the Secretary of Transportation and the Administrator of the Environmental Protection Agency to issue

guidance to all appropriate Federal, State and local agencies that interpret and implement CMAQ and/or Clean Air Act programs informing such agencies as to the foregoing.

Section 1613 requires the Secretary to encourage States and metropolitan planning organizations (MPOs) to consult with State and local air quality agencies in nonattainment and maintenance areas on the estimated emissions reductions from proposed congestion mitigation and air quality improvement programs and projects.

The purpose of the Congestion Mitigation and Air Quality Improvement program is to help States meet their air quality goals of attaining or maintaining the air quality standards. This section has been added to acknowledge that State and local air quality agencies have valuable input with regard to which projects can best serve this purpose in their particular areas, and their participation in selecting projects, while not mandated, is to be encouraged. States, MPOs, and transit agencies, in consultation with State and local air quality agencies, are encouraged to work cooperatively in developing criteria for project selection and in making decisions over which projects and programs to fund under the CMAQ program.

Section 1614 requires DOT to evaluate and assess a representative sample of CMAQ projects in consultation with EPA, maintain and disseminate a database of CMAQ projects, and consider the recommendations and findings of the NAS CMAQ report in consultation with EPA.

Evaluation and information sharing are important aspects of the CMAQ program, and should be used to direct CMAQ funding toward the most cost-effective projects and programs. CMAQ funding can be used to innovative projects that contribute to improved air quality. If a particular type of project is successful in achieving emissions reductions, the goals of the program are furthered if that information is shared widely with other nonattainment and maintenance areas. DOT, in consultation with EPA, must consider the NAS report recommendations and finding to improve the operation and evaluation of the program. The committee's interest is to ensure that the information from previous effort and expense is used wisely.

Conference Substitute

The Conference adopts Senate provisions with additions and modifications. First, the Conference includes authorization to use CMAQ funds in areas that are required to prepare and file with the Administrator maintenance plans under the Clean Air Act. This provision is intended to benefit those areas that were designated nonattainment under the 1-hour ozone standard, which was revoked in June 2005, but are designated attainment for the new 8-hour ozone standard. These areas still must file maintenance plans for a period of time and while that is a requirement, the areas will be eligible to receive CMAQ funds.

The adopted language amends the eligibility requirements to limit eligibility of transportation control measures and projects under section 108(f)(1)(A) of the Clean Air Act to those that are likely to contribute to a high level of effectiveness in reducing air pollution, where sufficient information is available in the database established by this section to make a determination of their relative effectiveness. The language also clarifies that only transportation systems management and operations that mitigate congestion and improve air quality are eligible activities.

The requirement for States to develop emission reduction strategies, with the accompanying considerations, limitations and EPA guidance to support the strategies, is not adopted. EPA is still directed to publish guidance regarding diesel retrofit technologies and supporting technical information.

The Senate language establishing a CMAQ funding priority is amended to include cost-effective congestion mitigation activities, in addition to diesel retrofits and other cost-effective emission reduction activities. The substitute clarifies that the priority need only apply to funds a State receives based on its population in nonattainment or maintenance areas. A State receiving the minimum apportionment under the program need not consider the priority when determining how to distribute that portion of CMAQ funds apportioned to the State to raise the State's funding to the minimum apportionment level. The priority is further clarified to ensure that governmental agencies retain existing authorities and roles in making final project selections. These clarifications to the original Senate priority language are intended to retain needed flexibility in utilizing CMAQ funds while providing States with direction to focus on cost-effectiveness as an important consideration in distributing program funds.

The Conference retains Senate language encouraging interagency consultation on the estimated emission reductions from proposed CMAQ projects and requiring the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to evaluate and assess a representative sample of CMAQ projects for their effectiveness.

The Conference adopts several CMAQ eligibility provisions for certain States authorizing: use in Montana of CMAQ funds for the operation of public transit activities that serve a nonattainment or maintenance area; use in Missouri, Iowa, Minnesota, Wisconsin, Illinois, Indiana, and Ohio of CMAQ funds for the purchase of alternative fuel (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) or biodiesel; use in Michigan of CMAQ funds for the operation and maintenance of intelligent transportation system strategies that serve a nonattainment or maintenance area; use in Maine of CMAQ funds to support operation of passenger rail service between Boston, Massachusetts, and Portland, Maine; and use in Oregon of CMAQ funds to support operation of passenger rail service between Portland, Oregon and Eugene, Oregon.

Subtitle I—Miscellaneous

SEC. 1901. INCLUSION OF REQUIREMENTS FOR SIGNS IDENTIFYING FUNDING SOURCES IN TITLE 23

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1903.

Section 154 of the Federal-Aid Highway Act of 1987 (23 U.S.C. 101 note; 101 Stat. 209) establishes the basis for erecting signs at Federally assisted highway projects identifying the source and amount of funding being used. This section transfers the provision to 23 U.S.C. 321 and makes a needed conforming amendment.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1902. DONATIONS AND CREDITS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1820.

Section 323 of title 23 is amended to give States and local governments additional flexibility to match Federal funds and expedite project implementation.

This provision expands section 323 to include the value of donated services provided by local government employees to be credited to the non-Federal share for projects funded under title 23 funds.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1903. INCLUSION OF BUY AMERICA REQUIREMENTS IN TITLE 23

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1904.

This section sets forth the ''Buy America'' provision and designates it as 23 U.S.C. 321. The provision makes non-substantive, conforming amendments to the text needed because of the transfer, simplifies the text, and deletes an executed report requirement.

Conference Substitute

The Conference agrees with language from both the House and Senate bills.

SEC. 1904. STEWARDSHIP AND OVERSIGHT

House Bill

Sec. 1105.

This section amends the Financial Plan portion of section 106 of title 23 requiring states with a project that costs $500 million or more to submit an annual financial plan.

Senate Bill

Sec. 1802.

This section requires the Secretary to establish an oversight program to monitor the effective and efficient use of funds authorized under title 23, with a specific focus on financial integrity and project delivery.

The Secretary shall require the States to annually certify the adequacy of their financial management systems and project delivery systems to meet all requirements for financial integrity. As part of the financial integrity oversight, the Secretary is required to develop minimum standards for estimating project costs and to periodically evaluate States' practices for estimating project costs, awarding contracts, and reducing project costs. States are required to determine that subrecipients of Federal funds have sufficient accounting controls and project delivery systems.

Under section 1802, recipients of Federal financial assistance are required to prepare an annual financial plan for projects that receive $100,000,000 or more in Federal financial assistance and that are not subject to the requirements for major projects.

This section also mandates debarment of contractors who have been convicted of fraud related to Federal-aid highway or transit programs and suspension of contractors who have been indicted for offenses relating to fraud. In addition, it requires that portions of monetary judgments won in Federal criminal and civil cases against contractors pertaining to Federal-aid highway and transit program fraud be shared with the State or local transit agency injured by the fraud.

Finally, this section requires a value engineering analysis, as defined in this section, for all projects over $25 million and bridge projects over $20 million.

Conference Substitute

The Conference agrees to accept provisions from both the House and Senate with modifications. The Secretary is required to establish an oversight program to monitor the effective and efficient use of funds with a specific focus on financial integrity and project delivery. States will have to annually certify their financial management systems and project delivery systems to meet all requirements for financial integrity.

The conference adopted the House provision to require a project sponsor who receives Federal financial assistance and who has a total project cost of $500,000,000 or more be required to submit a project management plan and an annual financial plan for projects to the Secretary or for any project as determined by the Secretary.

Finally, this section requires a value engineering analysis for any project on the Federal-aid system with an estimated cost of $25 million or more, for bridge projects $20 million or more, or for any other project the Secretary determines to be appropriate.

SEC. 1905. TRANSPORTATION DEVELOPMENT CREDITS

House Bill

Sec. 1841.

This provision allows states to use toll credits toward the states' match of a project.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1906. GRANT PROGRAM TO PROHIBIT RACIAL PROFILING

House Bill

Sec. 1810.

On February 27, 2001, in the Address to a Joint Session of Congress, President George W. Bush declared that racial profiling is ''wrong and we will end it in America''. The President issued a Memorandum for the Attorney General that directed the Attorney General to review the use of Federal law enforcement authorities use of race in conducting stops, searches, and other investigative procedures. In particular, the President asked the Attorney General to work with Congress to develop methods or mechanisms to collect any relevant data from Federal law enforcement agencies and to work in cooperation with state and local law enforcement agencies in order to asses the extent and nature of any such policies.

In response to the efforts of the President to end the use of racial profiling, this section establishes a new incentive grant program to encourage states to enact and to enforce laws that prohibit the use of racial profiling in the enforcement of traffic laws on Federal-aid highways. The incentive grant program will assist the states with the compilation of data to support efforts to eliminate the use of race or ethnicity as a key factor in whether to make a traffic stop.

Subsection (a) authorizes the Secretary to make a grant to a State that has enacted and is enforcing a law that prohibits the use of racial profiling in the enforcement of traffic laws on Federal-aid highways. To be eligible for a grant, a State must maintain and allow public inspection of statistical information for each motor vehicle stop in the state showing the race and ethnicity of the driver and any passengers. Also, a State may receive a grant if the State provides assurances satisfactory to the Secretary that the State is undertaking activities that will lead to compliance with the requirements to this section.

Subsection (b) authorizes the eligible activities for which a grant may be used by the State. In the case of a state eligible for a grant under subsection (a) (1), the grant may be used for: collecting and maintaining of data on traffic stops; evaluating the results of the data; and developing and implementing programs to reduce the occurrence of racial profiling. An eligible State receiving a grant by providing assurances to the Secretary that the State is undertaking activities that will lead to compliance with this section may use the grant for any eligible activity under this section. The collection, maintenance, and evaluation of data relating to traffic stops could be used to determine whether race has been a key factor in motor vehicle stops. According to the report published by the Comptroller General entitled Racial Profiling, more information is needed to determine the extent to which race, as opposed to other factors, is a key factor for traffic stops.

Subsection (c) clarifies the meaning of racial profiling as it pertains to making routine or spontaneous law enforcement decisions, such as ordinary traffic stops. The racial profiling provisions under this section is not intended to affect the ability of law enforcement officers from considering race or ethnicity whenever there is trustworthy information available that links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization.

Subsection (d) limits the maximum amount for which a state may receive a grant to not more than 5 percent of the amount authorized in a fiscal year to carry out this section. A state that provides assurances to the Secretary that the state is undertaking activities that will lead to compliance with the requirements of this section may not receive a grant in more than two fiscal years.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1907. PAVEMENT MARKING SYSTEMS DEMONSTRATION PROJECTS

House Bill

Sec. 1808.

This section directs the Secretary to conduct demonstration projects in Alaska and Tennessee to study the impacts of increasing the minimum width for pavement markings from four inches to six inches and report the results to Congress by June 30, 2009.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1908. INCLUSION OF CERTAIN ROUTE SEGMENTS ON THE INTERSTATE SYSTEM AND NHS

House Bill

Sec. 1839.

This section amends 1105 (e)(5) of ISTEA to designate US 41 in Wisconsin as I–41.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

This provision was added in conference to makes two changes to section 1105 of ISTEA and to designate segments of the Interstate System and routes on the National Highway System.

SEC. 1909. FUTURE OF SURFACE TRANSPORTATION SYSTEM

House Bill

Sec. 1123.

This section establishes two commissions, one to study future revenue sources to support the Highway Trust Fund and another to study the future of the Interstate Highway System. Both commissions are established using the same criteria for the selection of the members. This section also amends section 101 of title 23 to include a declaration of policy regarding the study of the Interstate Highway System.

The Commission on Future Revenue Sources to Support the Highway Trust Fund will study alternative short-term sources of revenue for the Highway Trust Fund, as well as evaluating alternative long-term sources of revenue to support the Highway Trust Fund. When studying the long-term sources, the Commission is directed to consider the findings, conclusions, and recommendations of a recent study completed by the Transportation Research Board of the National Academy of Sciences on alternatives to the user fee to support highway financing.

The Commission is directed to develop ways to generate revenues to accomplish the requirements of section 1125; oversee a comprehensive investigation of alternatives to replace the user fee as the principal source of revenue for the Highway Trust Fund; consult with the Secretaries of Transportation and Treasury to ensure that their views concerning essential revenue alternatives are understood; consider State transportation agencies views on alternative revenue sources for the Highway Trust Fund; and make specific recommendations regarding their findings and necessary actions to Congress.

When considering alternative sources of revenue, the Commission shall address the advantages or disadvantages of alternative revenue sources and identify the most promising revenue sources to support long-term financing requirements. The Commission shall also establish a time frame for which the necessary actions must be taken and a broad transition strategy to move from the current user fee base to new funding mechanisms, including the time frame for the transition strategy.

Not later than September 30, 2005, the Commission shall transmit to Congress a report on revenues to support actions necessary to meet the requirements of section 1125. The Commission has until September 30, 2006 to transmit to Congress a report on the alternative long-term sources of revenue for the Highway Trust Fund.

The Commission on the Future of the Interstate Highway System will study the current condition and future of the Dwight D. Eisenhower National System of Interstate and Defense Highways (the ''Interstate System''). The study will include a conceptual plan with alternative approaches for the future of the Interstate System and will assure that the Interstate System will continue to serve its National needs.

The Commission is directed to consider the views of State transportation agencies and make specific recommendations regarding design standards, Federal policies, and legislative changes that must be made to assure that national interests in meeting future needs are addressed.

When conducting the study, the Commission is specifically directed to address all issues that could impact the Interstate system including, demographics; usage; natural disasters; design standards; system-wide needs; potential expansion, upgrades, or other changes; community values; environmental issues; and system performance.

The Commission has until September 30, 2006 to transmit to Congress a report on the results of the study.

Senate Bill

Sec. 1202.

Actions under this section shall address the future transportation needs in the interest of preserving and enhancing the surface transportation system to meet the needs of the United States for the 21st Century.

Section 101 of title 23 is amended by changing the declaration of policy to include additional language to support the transportation needs of the 21st century. The Secretary shall conduct a complete investigation and study of the current conditions and the future needs of the surface transportation system. This section describes the

specific issues to be addressed and what shall be reported to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

Conference Substitute

The Conference adopts language from both the House and Senate provisions. This section establishes a 12 member commission comprised of individuals with knowledge and experience in the area of surface transportation policy and revenue who will make recommendations to Congress about the future transportation policy considerations that will need to be considered in future legislation. The Commission will conduct a comprehensive, thorough study of current and future needs of the surface transportation system, short and long term revenue sources and alternatives, other forms of revenue that might be needed, and the impact changing dynamics will have upon the Highway Trust Fund and other revenue sources. A plan to address these needs will be presented in coordination with the Secretary and other government entities across the United States.

SEC. 1910. MOTORIST INFORMATION CONCERNING FULL SERVICE RESTAURANTS

House Bill

Sec. 1803.

This section requires the Secretary to do a rulemaking to determine whether to give priority to full service restaurants on at least two of the panels for highway food service signs.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1911. APPROVAL AND FUNDING FOR CERTAIN CONSTRUCTION PROJECTS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1829.

This provision allows the State of Georgia to receive project approval by the Secretary for the project stated in the bill. This project was previously listed on the State's Transportation Improvement Plan and was erroneously removed, subsequently, not eligible for project approval.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1912. LEAD AGENCY DESIGNATION

House Bill

Sec. 1819.

This section specifies that a specific agency in California be the lead agency for a highway project authorized in 1991.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1913. BRIDGE CONSTRUCTION, NORTH DAKOTA

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1832.

This provision increases the Federal share for a specific bridge project in North Dakota from 80 percent to 90 percent.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1914. MOTORCYCLIST ADVISORY COUNCIL

House Bill

Sec. 1831.

This section establishes an advisory council to address relevant highway infrastructure issues as they relate to motorcyclists.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1915. LOAN FORGIVENESS

House Bill

Sec. 1818.

This section specifies that a loan has satisfied its repayment obligations.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1916. TREATMENT OF OFF RAMP

House Bill

Sec. 1817.

This section specifies that an off-ramp in California meets the requirements of title 23 that govern the approval of the placement of ramps off a Federal-aid Highway.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference agrees to the House provision. It is the Committee's intent that notwithstanding any other provision of law, the New Harbor Boulevard North Off-Ramp project along the Interstate 405 Collector-Distributor Road in Costa Mesa, California (Susan Street Slip Ramp) is hereby deemed to satisfy all Federal requirements, and the California State Department of Transportation shall authorize any final environmental, engineering, or design analyses necessary to approve, as expeditiously as possible, construction of the project consistent with applicable California State Operational and Safety standards.

SEC. 1917. OPENING OF INTERSTATE RAMPS

House Bill

Sec. 1212.

This section provides for opening a ramp connecting I–495 and Arena Drive in the State of Maryland.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference agrees to House provision with a modification to that the State DOT certifies to the Secretary that the opening of this ramp does not present a safety risk.

SEC. 1918. CREDIT TO STATE OF LOUISIANA FOR STATE MATCHING FUNDS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1828.

This provision allows the State of Louisiana to receive a credit in an amount equal to the cost of any planning, engineering, design, or construction work carried out by the State on any project numbered 202 under section 1602 of TEA–21.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1919. ROAD USER FEES

House Bill

Sec. 1813.

The issue of future financing of the Highway Trust Fund is a critical one that Congress must begin to address. The Trust Fund is currently financed primarily through fuel excise taxes and certain truck taxes. When the Trust Fund was established in the 1950s, it was legitimate to have the gas tax serve as a surrogate for road usage and be the basis for the user-pays system of the federal highway program. But with the advent of hybrid cars, alternative fuels, the potential for fuel cell technology, increased fuel efficiency and other technological developments, the relationship between the gas tax and road usage is diminishing.

On July 16, 2002, the Subcommittee on Highways, Transit, and Pipelines held a hearing on this and related topics. Testimony was received from representatives of the Public Policy Center of the University of Iowa regarding research that was then in progress, though now completed, to develop a new approach for charging vehicles that travel on the public roads. A consortium of the Federal Highway Administration and 15 state departments of transportation funded the study. The purpose of the study was to evaluate how intelligent transportation system technology (GPS and on-board computers, smart cards and collection centers) can be used to assess mileage-based road user charges.

This section provides funding and authorization for the Secretary to conduct a pilot project to test the technology and feasibility of the system. It is contemplated that various cars will be equipped with the technology in different regions of the country with a diverse set of drivers. An important element of the study is measuring the public acceptance of such a system and to ensure that privacy concerns of drivers are met.

The finding of this study will provide useful information as the Congress strives to identify a funding source to finance the federal-aid highway programs that is stable, accurate, fairer and more flexible than the current gas tax.

Senate Bill

The Senate has a comparable provision in title V of the Senate passed bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1920. TRANSPORTATION AND LOCAL WORKFORCE INVESTMENT

House Bill

Sec. 1836.

This section expresses the sense of the Congress that Federal transportation projects should facilitate and encourage the collaboration between interested persons to help leverage scarce training and community resources and to help encourage local participation in the building of transportation projects.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1921. UPDATE OF OBSOLETE TEXT

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1901.

Letting of Contracts: This amendment deletes the obsolete exception.

Fringe and Corridor Parking Facilities: The amendment would substitute a meaningful reference for the obsolete term.

Repeal of obsolete sections of title 23: This section repeals obsolete sections of title 23: Priority Primary Routes (23 U.S.C. 147); Development of a National Scenic and Recreational Highway (23 U.S.C. 148); and Access

Highways to Public Recreational Areas on Certain Lakes (23 U.S.C. 155).

Conference Substitute

The Conferees adopts the Senate provision.

SEC. 1922. TECHNICAL AMENDMENTS TO NONDISCRIMINATION SECTION

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1905.

This section makes several technical amendments to section 140 of title 23.

Technical changes made include:

Eliminating gender-based language;

Clarifying that funding made available to carry out this section has the same broad availability as the source from which the funds are made available (an STP takedown);

Removing the $2.5 million funding cap on highway construction and technology training programs established for fiscal year 1976 as no longer necessary;

Correcting a typographical error; and

Clarifying the purpose and intent of subsection (d) by modifying the title to remove the reference to Indian contracting.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1923. TRANSPORTATION ASSETS AND NEEDS OF DELTA REGION

House Bill

Sec. 1806.

This section authorizes the Secretary to contract with the Delta Regional Authority (DRA) to conduct a study on the Delta region's transportation assets and needs for all modes of transportation, including passenger and freight transportation. This section also directs the DRA to report to Congress the results of the study and establish a regional strategic plan to implement the report's recommendations.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1924. ALASKA WAY VIADUCT STUDY

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1831.

This provision requires the Secretary to study and report to Congress the damage of the Viaduct from the Nisqually earthquake in Seattle, WA.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1925. COMMUNITY ENHANCEMENT STUDY

House Bill

Sec. 1835.

This section directs the Secretary to make a grant to, or enter into a cooperative agreement or contract with, a national organization representing architects who have expertise in the design of a wide range or transportation and infrastructure projects to conduct a study on the role of well-designed transportation projects in promoting community enhancement.

Senate Bill

Sec. 1833.

This section directs the Secretary to make a grant to, or enter into a cooperative agreement or contract with, a national organization who have expertise in the design of a wide range or transportation and infrastructure projects to conduct a study on the role of well-designed transportation projects in promoting community enhancement.

Conference Substitute

The Conference adopts the House provision.

SEC. 1926. BUDGET JUSTIFICATION

House Bill

Sec. 1801.

This section requires the Department of Transportation and each agency therein to submit to the Committee on Transportation and Infrastructure a budget justification concurrently with the President's Annual Budget submission.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision with a modification to add the Committee on Environment and Public Works to also receive a copy of the budget justification.

SEC. 1927. 14TH AMENDMENT HIGHWAY AND 3RD INFANTRY DIVISION HIGHWAY

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1524.

This provision requires the Secretary to conduct a study and report on the construction of a route linking cities in Georgia to cities in Mississippi and Tennessee.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1928. SENSE OF CONGRESS REGARDING BUY AMERICA

House Bill

Sec. 1834.

The Committee is concerned that the intent of Congress in the original Buy America (P.L. 97–424 §165) is being misinterpreted on federally funded bridge projects. The Buy America provision provides that domestic iron and steel be used in federal transportation projects unless its use would increase the ''overall project contract'' by more than 25 percent. The problem that is emerging in the highway bridge industry is that project managers are attempting to circumvent the Buy America requirement by breaking bridge projects into component parts and applying the 25% test separately to each of the component parts, rather than to the entire bridge project as required by law. The intent of the Buy America/domestic content law was to ensure that when taxpayer money is invested on direct federal government procurement and infrastructure projects, these expenditures stimulate U.S. production and employment. This provision is intended to end any confusion or misinterpretation of the law by making clear that it is the Sense of Congress that the Buy America test applies to the overall bridge project.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Committee is concerned that the States are inconsistently interpreting certain Buy America provisions of Federally-funded highway projects. To clear up these inconsistencies, we are reiterating our intent concerning the proper application of the ''minimal use'' exception to Buy America in these projects.

''Minimal use'' of foreign steel and iron materials is only allowed on a project using Federal highway funds when the cost of the steel and iron materials does not exceed the higher of (a) 0.1 percent of the total contract cost or (b) $2,500. For the purpose of determining compliance with this ''minimal use'' exception, the ''combined project cost'' of the materials is to be used. ''Combined project cost'' is the unit cost as shown in the executed contract, multiplied by the quantity of units on the project. The contractor's cost of the actual material is irrelevant and is not to be considered. This procedure is to be followed with respect to procurements involving both prime contractors and subcontractors, so that the cost to the subcontractor of materials supplied to a prime contractor under a project is not to be considered, but rather, the amount being charged to the prime contractor by the subcontractor for the materials.

For the purpose of this provision, if a contract contains a quantity of five units of a particular bid item, if even one of the units is of foreign origin, the total ''combined project cost'' of all five units is to be used to determine compliance with the ''minimal use'' requirement. In addition, if any component of a bid item is foreign, the entire bid item is considered foreign. In turn, the unit cost as shown in the executed contract, multiplied by the quantity of units used on the project, is to be used to determine compliance with the ''minimal use'' requirement.

For the purpose of this provision, the North American Free Trade Agreement (NAFTA) has no effect. Iron and steel products from Canada and Mexico are considered to be of foreign origin.

SEC. 1929. DESIGNATION OF DANIEL PATRICK MOYNIHAN INTERSTATE HIGHWAY

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1205.

This section designates Interstate Highway 86 in the State of New York as the Daniel Patrick Moynihan Interstate Highway and the 3 mile segment of Interstate 86 between New York State Route 15 in the vicinity of Painted Post, New York and State Route 352 in the vicinity of Corning, New York as the Amo Houghton Bypass.

Conference Substitute

The Conference adopts the Senate provision with a modification to provide a separate section in law for each of these requests.

SEC. 1930. DESIGNATION OF THOMAS P. ''TIP'' O'NEILL, JR. TUNNEL

House Bill

Sec. 1814.

This section designates that, in honor of his service to the Commonwealth of Massachusetts and to the United States, and in recognition of his contributions toward the construction of the Central Artery project in Boston, Massachusetts, the Central Artery Tunnel should be named as the ''Thomas P. 'Tip' O'Neill, Jr. Tunnel''.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1931. RICHARD NIXON PARKWAY, CALIFORNIA

House Bill

This section designates the segment of the Imperial Highway located between California State Route 91 and Esperanza Road to be known and designated as the Richard Nixon Parkway.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 1932. AMO HOUGHTON BYPASS

House Bill

Sec. 1838.

This provision designates a 3–mile segment in New York as the Amo Houghton Bypass.

Senate Bill

Sec. 1205(b).

This provision designates a 3–mile segment in New York as the Amo Houghton Bypass. Any reference in any way to this highway segment shall be deemed to be a reference to the Amo Houghton Bypass.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 1933. BILL TAUZIN ENERGY CORRIDOR

SEC. 1934. TRANSPORTATION IMPROVEMENTS

House Bill

No comparable provision.

Senate Bill

No comparable provision.

Conference Substitute

This provision was added in conference to provide states with such sums as necessary as required in this provision in order to carry out projects in the table contained in subsection (c) of this program.

SEC. 1935. PROJECT FLEXIBILITY

House Bill

No comparable provision in the House bill.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

The Conference added this provision to provide States with the flexibility to transfer funds from projects allocated under this section to any other project in the state so long as the funding for each project in this section is not ultimately reduced.

SEC. 1936. ADVANCES

House Bill

No comparable provision in the House bill.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

The Conference added this provision to allow states to obligate funds from 104(b) to carry out any project designated in any of sections 1301 (Projects of National and Regional Significance), 1302 (Corridors), 1306 (Freight Intermodal Pilot) and 1933 (Transportation Projects) as well as for sections 117 (High Priority Projects) and 144(g) Bridge Discretionary of title 23. The amount authorized to obligate under this section shall not exceed the amount authorized for that project and it can only be funded by programs by which the project would be eligible. These funds must be restored from funds allocated for that project.

SEC. 1937. ROADS IN CLOSED BASINS

House Bill

No comparable provision in the House bill.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

The Conference included this provision to require the Secretary to provide advancement or reimbursement under the emergency relief program to North Dakota for the State to carry out the construction of necessary improvements at Devils Lake. These improvements shall be in accordance with the options and needs identified in the ''Roadways Serving as Water Barriers'' report dated May 2000, any needs relating to Devils Lake identified after May 2000, and any monitoring, study, or design or preliminary engineering associated with evaluating or constructing the measures.

SEC. 1938. TECHNOLOGY

House Bill

Sec. 1829.

This section encourages states to consider using a new technology to detect cracks in bridges.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

The Conference adopts the House provision.

RV-FRIENDLY LOGO

The conference applauds the FHWA for their commitment to alleviating the concerns of RV users by alerting them to facilities equipped to accommodate their special needs through the use of an RV-friendly logo. The conference is aware that states are beginning to enact regulations concerning RV-friendly signage and believes it is important for the FHWA to establish uniform road signs. The conference encourages the FHWA to expedite approval of the new RV-friendly signage by immediately issuing an interim rule and completing the process by September 30, 2006.

SOLID WASTE DISPOSAL

This section amends the Solid Waste Disposal to require the Administrator of the Environmental Protection Agency and each agency head to take necessary actions to implement fully all procurement requirements and incentives that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects. An agency head is required to give priority to achieving greater use of recovered mineral component for which it has not been historically used or used minimally. This section also requires the Administrator, in cooperation with the Secretaries of Transportation and Energy, to conduct a study to determine the extent to which current procurement requirements may realize energy savings and environmental benefits attainable with the substitution of recovered mineral component in cement used in cement or concrete projects. Additionally, this section requires the Administrator, in consultation with other agency heads, to establish criteria for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as 'chat', for cement or concrete projects, and transportation projects, including those that use asphalt, that are carried out using Federal funds. In establishing the criteria, the Administrator is required to consider current and previous uses of 'chat,' and any environmental and public health risks and benefits derived from removal, transportation and use of 'chat.'

CLARIFICATION OF DATE.

This section restates, as a calendar date, a date in title 23 that currently is expressed as a reference to a date of enactment of law, making it difficult to understand. No change in the actual date is made.

DISCRETIONARY BRIDGES

Of the amounts appropriated to the Bridge Discretionary Program Section 1114(e) for the State of Vermont, Congress intends that the State shall allocate $1,000,000 for the Community Center Bridge in Springfield, VT; $5,000,000 for the River Street Bridge in Rutland City; $4,500,000 for Bridge 4 in Tunbridge, VT; $3,000,000 for Bridge 30 in Stockbridge, VT; $2,100,000 for Bridge 1 in Reading, VT; $6,000,000 for the bridge over the New Haven River on VT RT 116 in Bristol, VT; $4,000,000 for Bridge 9 in Cornwall, VT; $3,900,000 for Bridge 31 in Bethel, VT; and $2,500,000 for the East Street Bridge in Huntington, VT.

STREETSCAPE, TRAIL AND ROAD

Of the amounts appropriated in section 1934 for item # to the State of Vermont for streetscape, multi-use trail, and road improvements in Lamoille, Caledonia, Grand Isle and Chittenden Counties, Congress intends that the State allocate $500,000 for planning and construction of pedestrian walkways in Morrisville, VT; $835,000 for construction of pedestrian walkways in Stowe, VT; $1,000,000 for construction of a multi-use trail in Hardwick, VT; $750,000 for streetscape improvements in Jericho, VT; $330,000 for downtown street improvements in Alburg, VT; and $585,000 for improvements to Hogback Road in Waterville, Cambridge, and Johnson, VT.

SMALL BRIDGES

Of the amounts appropriated in section 1934 for item # to the State of Vermont for small bridge improvements, Congress intends that the State shall allocate $500,000 for Bridge 15 in Granville, VT; $1,100,000 for Bridge 48 in Lincoln, VT; $660,000 for Bridge 17 in Ripton, VT; $1,500,000 for Bridge 14 in Sunderland, VT; $940,000 for Bridge 31 in Readsboro, VT; $1,600,000 for Bridge 16 and Bridge 17 in Burke, VT; $770,000 for Bridge 24 in Montgomery, VT; $1,000,000 for Bridge 3 in Stowe, VT; $730,000 for Bridge 30 in Albany, VT; $1,290,000 for Bridge 61 in Barton, VT; $650,000 for Bridge 16 in Charleston, VT; $750,000 for Bridge 50 in Wallingford, VT; $600,000 for Bridge 37 in Shrewsbury, VT; $730,000 for Bridge 24 in Clarendon, VT; $760,000 for Bridge 37 in Cabot, VT; $890,000 for Bridge 56 in Guilford, VT; $640,000 for Bridge 33 in Jamaica, VT; $1,600,000 for Bridge 17 in Newfane, VT; $2,700,000 for Bridge 50 in Woodstock, VT; $490,000 for Bridge 8 in Barnard, VT; $2,000,000 for the bridge on Bridge Street over the Stevens Branch of the Winooski River in Barre Town, VT; $1,700,000 for Bridge 29 in Saint Johnsbury, VT; $1,140,000 for Bridge 45 in Cavendish, VT; $320,000 for Bridge 20 in Vershire, VT; $680,000 for Bridge 25 in Reading, VT; $1,340,000 for Bridge 26 in New Haven and Weybridge, VT; $810,000 for Bridge 63 in Chester, VT; $980,000 for Bridge 34 in Corinth, VT; and $1,130,000 for Bridge 22 in Bradford, VT.

WESTERN RAIL CORRIDOR

Of the amounts appropriated in Section 1934 for item # to the State of Vermont for improvements to the Western Rail Corridor between Alburg, St Albans, Burlington, Middlebury, Rutland, Manchester, Bennington and west to Hoosick Junction, New York, priority shall be given to completing the Middlebury Rail Spur, upgrading the rail line for passenger service between Manchester, Rutland and Charlotte and improving the movement of freight rail through major cities, including Rutland.

GATEWAY RURAL IMPROVEMENT PROGRAM

Section 1946 authorizes a new Gateway Rural Improvement Program in Vermont to demonstrate the impact of a freight transportation gateway program on a rural rail corridor. Funding preferences shall be given to a corridor in Western Vermont that includes, but is not limited to, the Middlebury Rail Spur, Rutland rail improvements, St. Albans intermodal facilities, and the Albany, Bennington, Rutland, Burlington & Essex rail upgrades. User fees may be used to provide part or all of the cost of a project under this section.

COVERED BRIDGES

Of the amounts appropriated in section 1934 for item # to the State of Vermont for the rehabilitation of historic covered

bridges, Congress intends that the State shall allocate $450,000 for the Creamery/West Hill Covered Bridge in Montgomery, VT; $450,000 for the Bowers Covered Bridge in West Windsor, VT; $500,000 for the Quinlan Covered Bridge in Charlotte, VT; $500,000 for the Gifford Covered Bridge in Randolph, VT; $500,000 for the Worrall Covered Bridge in Rockingham, VT; $450,000 for the Kingsbury Covered Bridge in Randolph, VT; $1,500,000 for the Taftsville Covered Bridge in Woodstock, VT; and $1,800,000 on the Pulp Mill Covered Bridge in Middlebury-Weybridge, VT.

HIGHWAY DISCHARGE MITIGATION

Of the amounts appropriated in section 1934 item # to the State of Vermont, the Secretary shall allocate $3,000,000 for the Vermont Local Roads Program in Colchester, VT for the purpose of providing financial assistance grants to towns, cities and villages in Vermont for projects to reduce water pollution generated by, or directly associated with existing public roads and road maintenance activities; and $3,000,000 for the Champlain Water District in Vermont for the purpose of providing financial assistance to towns, cities and villages in Chittenden County for water quality improvements through projects to mitigate water pollution associated with existing town roads, federal aid highways and road maintenance activities.

TOLLING

The provisions of the Express Lanes Program are intended to give State departments of transporation maximum flexibility to toll facilities on the Interstate System in order to (a) manage high levels of congestion; (b) reduce emissions in areas in nonattainment or maintenance for the Clean Air Act; and, (c) finance the expansion of a highway, for the purpose of reducing traffic congestion.

CMAQ EXPANDED ELIGIBILITY

This provision provides the State of Montana with expanded ability to use CMAQ funds for transit operating assistance. In addition to all currently eligible projects, Montana CMAQ funds may be used for the operation of public transit activities that serve a nonattainment or maintenance area beyond the current US Department of Transportation restriction of three years. In addition, as referenced in this provision, activities that serve a nonattainment or maintenance area include activities that are undertaken partly within and partly outside a nonattainment or maintenance area.

GOING-TO-THE-SUN ROAD

The $50 million in funding provided by this section for work to resurface, repair, rehabilitate, and reconstruct the Going to the Sun Road is intended to accelerate completion of the needed reconstruction work on that important park road. These funds are not sufficient to complete the project, however, and these funds are intended to supplement, not supplant funding from the park roads and parkways program for this important project.

BEARTOOTH HIGHWAY

This provision provides flexibility for the State of Montana to use funds allocated for the development and construction of the US 212 Red Lodge North highway in this bill to first be used for the emergency repair of the Beartooth Highway. The Beartooth Highway has suffered extreme damage from 13 mudslides in the spring of 2005. The Montana Department of Transportation has submitted and obtained approval for federal Emergency Relief (ER) funding—estimated to be $24 million for this project. It is intended that the use of the funds on the Beartooth Highway will not require a non-Federal match, as they are being applied to an emergency relief project. Upon reimbursement by the Federal Highway Administration, a match will be required when the funds are applied to the US 212 project.

Upon reimbursement of the ER application by the Federal Highway Administration, this provision allows the reimbursed funds to then be transferred to the US 212 Red Lodge North project for use in the development and construction of that highway.

PRIORITIES PROVISION IN DIESEL RETROFIT

Under new 49 USC 149(f)(3) States shall give priority to certain listed items in distributing CMAQ funds apportioned to them under 23 USC 104(b)(2)(B) and (C) or new 23 USC 104(b)(2)(D). This paragraph does not apply to the use of funds apportioned under the CMAQ minimum apportionment provision (former 23 USC 104(b)(2)(D)) or to the use of any other funds.

The listed priorities are: (1) cost-effective diesel retrofits and other cost-effective emission reduction activities, taking into consideration air quality and health effects; and (2) cost-effective congestion mitigation activities that provide air quality benefits. Each of these items, to qualify for priority, must be ''cost-effective.'' If a State determines that it does not have cost-effective opportunities to undertake the listed activities, the priorities do not apply. The State could then use applicable CMAQ funds for other CMAQ eligible activities, such as particulate reduction or transit initiatives.

Moreover, even if a State has the opportunity to pursue cost effective activities listed in this paragraph, it does not mean that the State must expend all or most of its applicable CMAQ funds on those activities, to the exclusion of other possible uses of those funds. Conferees expect that other priorities can still be pursued with applicable funds. Priority is not absolute and exclusive. That is one reason why the paragraph also includes language establishing that this paragraph is not intended to disturb existing authorities and roles in making project selections.

In short, this new provision on CMAQ priorities is intended to give more funding focus to the listed priorities while continuing to provide states needed flexibility in utilizing the funds that are subject to this paragraph.

NIGHT-TIME CONSTRUCTION

Presently the federal government is investing more than $30 billion annually on roadway construction projects. This significant investment is creating increased motorist exposures to roadway work zones. Since 1997 the number of fatalities in roadway work zones for both motorists and construction workers has grown by over 70 percent. With nearly 1,200 fatalities and 40,000 injuries occurring annually in roadway construction zones, work zone safety is a serious public health concern.

Since most road work today involves reconstruction, rehabilitation and maintenance of existing roadways, it is conducted adjacent to traffic. As a result, more and more jurisdictions across the country are looking to night-time construction as a way to reduce motorist delay and inconvenience by scheduling work when traffic is lighter.

The Committee is concerned about the impact of night-time construction on motorists, workers and communities. Current information is not comprehensive or well communicated to public and private entities and individuals that need it most.

The Committee directs the Federal Highway Administration to conduct and compile research on many aspects of night-time road construction, including:

- Comparisons between work zone-related crash rates daytime and night-time construction operations;
- Rates and frequencies of incidents caused by drivers under the influence of alcohol, drugs and/or other substances causing driver impairment;
- Rates and frequencies of incidents caused by drivers and workers who are tired or sleep deprived;
- Impacts on worker health and welfare;
- Impacts on adjacent communities;
- Impacts on construction quality and work schedules; and
- General impact on roadway construction worker safety.

The Committee directs the Federal Highway Administration to report to the Committee two years after passage of this legislation on the results of its research.

CATHODIC BRIDGE PROTECTION STUDY

The issue of the increased cost to repair/replace concrete bridges due to the corrosion of steel rebar in bridges caused by exposure to a chlorine environment is a critical one that Congress must begin to address. The Committee directs the Secretary to study the application of cathodic protection technology to concrete bridges in order to extend the life of the bridge and reduce future repair costs.

The Committee also directs the Secretary to report to Congress on the results of any study.

TRAFFIC CONTROL AT HIGHWAY-RAILWAY CROSSINGS

With respect to increasing safety at grade crossings, the Committee notes that 1,431 people have been killed in 11,860 accidents at public crossings with crossbuck devices during the past ten years. The size, weight, and design of trains prevent them from being able to stop and start as quickly as an automobile or truck. Given the importance of safety at highway-rail crossings, the Committee urges the Secretary of Transportation to revise the Manual of Uniform Traffic Control Devices and such other regulations and agreements of the Federal Highway Administration as may be necessary to require ''yield'' signs be installed at all public highway-rail crossings without automatic traffic control, save for those crossings which, in the judgment of the roadway authority, require ''stop'' signs, together with appropriate advance warning signs at all crossings.

In October of 2004, Federal Highway Administration (FHWA) was requested to issue an interim order amending the Manual on Uniform Traffic Control Devices to include a standard that ''yield'' signs be installed at all public crossings with passive devices, except at those which the roadway authority deemed to require a ''stop'' sign based on an exhaustive study contained in National Cooperative Highway Research Program (NCHRP) Report 470. Considering that the NCHRP Report 470 was completed in at the end of 2001, the Committee urges the Secretary to act immediately consider appropriate changes to the Manual of Uniform Traffic Control Devices.

HIGHWAY-TRANSIT FUNDING TRANSFER AUTHORITY

In 1991, the Intermodal Surface Transportation Efficiency Act (ISTEA) provided additional authority for states to transfer Federal funds between highway and transit programs. In 1998, Congress continued and expanded this transfer authority. Many States have actively used this authority to transfer Federal funds between highway and transit programs. The committee believes it is important to review how the States and public transit authorities have used this transfer authority and directs the Government Accountability Office to report to Congress on the use of this transfer authority by the

States and public transit authorities, the highway and transit projects funded with these funds, and the U.S. Department of Transportation administrative mechanisms to track the use of these transferred funds. This report should be completed as soon as practicable and no later than two years after the date of enactment.

REQUEST FOR TECHNICAL ASSISTANCE

The Committee notes that, in the Design Standards Manual for construction of Interstates and their improvement, the requirements for control of access at ramp terminals in urban areas is 100 feet and 300 feet in rural areas. The Committee instructs the Federal Highway Administrator within 180 days to provide an explanation to the Committee for the different treatment of rural and urban access control at ramp terminals.

TITLE II—HIGHWAY SAFETY

SEC. 2001. AUTHORIZATION OF APPROPRIATIONS

House Bill

Sec. 2001.

This section authorizes funds for section 402 highway safety grant program; occupant protection incentive grants under section 405; alcohol-impaired driving countermeasures incentive grants under section 410; state traffic safety information improvements under section 412; the national driver register; and the high visibility enforcement program.

The Secretary is provided the flexibility to transfer any amounts remaining available under the occupant protection incentive grant program, the alcohol-impaired driving countermeasures program, and the state traffic safety information system improvements program to ensure, to the maximum extent possible, that each state receives the maximum amount of incentive grants under these programs for which the state is eligible.

Senate Bill

Sec. 7212.

This section would authorize amounts from the Highway Trust Fund for safety programs administered by NHTSA. The aggregate proposed authorization is approximately $696 million for FY 2006, $711 million for FY 2007, $728 million for FY 2008, and $746 million for FY 2009. In addition, this section provides that, if revenue to the Highway Trust Fund for a given fiscal year is lower than the amounts authorized in subtitle A, such a reduction would not affect the highway safety programs provided for in this bill. Finally, this section would provide for a proportional increase for NHTSA's grant programs if revenue to the Highway Trust Fund increases above currently authorized amounts.

Conference Substitute

This section authorizes funds for section 402 highway safety grant program; highway safety research and development under section 403, occupant protection incentive grants under section 405; safety belt performance grants under section 406; state traffic safety information improvements under section 408; alcohol-impaired driving countermeasures incentive grants under section 410; the national driver register; the high visibility impaired driving and seat belt enforcement program; motorcyclist safety; child safety and child booster seat safety incentive grants; and administrative expenses.

The Secretary is provided the flexibility to transfer any amounts remaining available under the occupant protection incentive grants, alcohol-impaired driving countermeasures program, and the state traffic safety information system improvements program to ensure, to the maximum extent possible, that each state receives the maximum amount of incentive grants under these programs for which the state is eligible.

SEC. 2002. HIGHWAY SAFETY PROGRAMS

House Bill

Sec. 2009.

This section adds driver fatigue to the list of safety factors that must be included in state highway safety programs in accordance with uniform guidelines promulgated by the Secretary under section 402. The Committee wishes to acknowledge the contribution of ''Maggie's Law'' to its deliberations on this issue.

Sec. 2014.

This section adds '11–15 passenger vans used for school transportation purposes' to the list of safety factors that must be included in state highway safety programs in accordance with uniform guidelines promulgated by the Secretary under section 402.

Sec. 2016.

This section increases the minimum State apportionments of 402 funds from one-half of one percent to three-quarters of one percent.

Senate Bill

Sec. 7213.

This program is reauthorized for FYs 2006 through 2009 at an average annual funding level of $217 million, a 40 percent increase from the TEA–21 level, and increases the minimum share of Indian tribes through the Bureau of Indian Affairs from ¾ of one percent to 2 percent. These grants, allocated according to a formula, fund States' safety programs, such as safety belts, drunk driving, motorcycle, pedestrian and bicycle safety, emergency medical services, traffic law enforcement and roadway safety.

Conference Substitute

The Conference incorporates House provisions into Senate structure with modifications, including removal of ''15 passenger van'' language and consolidation of House and Senate ''driver fatigue'' language. Senate language is also modified for ''unsafe driving behavior,'' ''administration of state programs,'' and ''law enforcement chase training.'' Minimum 402 funding for Indian tribes and States is increased.

SEC. 2003. HIGHWAY SAFETY RESEARCH AND OUTREACH PROGRAM

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7214.

This program is reauthorized for FYs 2006 through 2009 at an average annual funding level of $142 million. These programs focus on the research and development of safety countermeasures related to impaired driving, occupant protection, traffic law enforcement and criminal justice, licensing, motorcycle, pedestrian, bicycle, teen drivers and emergency medical services. The States use this research to model their safety programs for the most impact on saving lives and reducing injuries. This section also would provide $24 million a year to NHTSA to launch national advertising campaigns to increase seat belt use and reduce drunk driving during holiday periods. Launching these advertising campaigns at the national level is much more cost effective than individual States buying advertising at the local level.

Conference Substitute

The Conference adopts the Senate provision with the addition of motorcycle safety to the list of research priorities and moves the national advertising campaigns to a new stand alone section.

SEC. 2004. OCCUPANT PROTECTION INCENTIVE GRANTS

House Bill

Sec. 2002.

This section extends the occupant protection incentive grant program through the term of the legislation. A state may become eligible for these grants by either having a seatbelt usage rate of at least 85 percent or by implementing at least four of the six safety incentives under the program.

Senate Bill

Sec. 7216.

This is a new program funded at an average annual level of $154 million. The program would grant money to States that enact a new primary seat belt law and to States that have already enacted a primary seat belt law. States that have already enacted a primary seat belt law would receive a one-time grant over the life of the bill equal to 250 percent of their FY 2003 grant from section 402. States that enact a new primary seat belt law after December 31, 2002 would receive a one-time grant over the life of the bill equal to 500 percent of their FY 2003 grant from section 402. Most of this grant money may be used for highway safety construction purposes.

Conference Substitute

The Conference adopts elements of both the House and Senate provisions by creating two seat belt related programs. This provision outlines an extension of the current 405 Occupant Protection Incentive Grants Program.

SEC. 2005. GRANTS FOR PRIMARY SAFETY BELT USE LAWS

House Bill

Sec. 2002.

This section extends the occupant protection incentive grant program through the term of the legislation. A state may become eligible for these grants by either having a seatbelt usage rate of at least 85 percent or by implementing at least four of the six safety incentives under the program.

Senate Bill

Sec. 7216.

This is a new program funded at an average annual level of $154 million. The program would grant money to States that enact a new primary seat belt law and to States that have already enacted a primary seat belt law. States that have already enacted a primary seat belt law would receive a one-time grant over the life of the bill equal to 250 percent of their FY 2003 grant from section 402. States that enact a new primary seat belt law after December 31, 2002 would receive a one-time grant over the life of the bill equal to 500 percent of their FY 2003 grant from section 402. Most of this grant money may be used for highway safety construction purposes.

Conference Substitute

The Conference adopts elements of both the House and Senate provisions by creating two seat belt related programs. This section adopts the Senate provision for one-time grants to states that pass or have passed primary seat belt laws with the modification to allow a state to also become eligible for the grant by demonstrating at least 85 percent seat belt use rates for two consecutive years and by changing the grant amounts to 200 percent for the FY 2003 section 402 grant for states with existing primary belt laws and 475 percent for states that enact new laws.

SEC. 2006. STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS

House Bill

Sec. 2004.

This section authorizes a new section 412 program for state traffic safety information

system incentive grants to encourage states to adopt and implement effective safety data systems. The Secretary is required to determine the model data elements necessary to analyze trends in crash occurrences, rates, outcomes, and circumstances. To receive a grant, a state must comply with safety data system requirements under this section and use the grant only to implement such requirements.

Senate Bill

Sec. 7221.

This is a new discretionary grant program, funded at a $45 million level each FY 2006 through 2009 to encourage States to improve their traffic records systems by increasing the efficiency and uniformity of data collection and access through upgrading data collection systems. The purpose is to develop a more accurate database of vehicle crash characteristics that will allow traffic safety professionals to better identify traffic safety problems, and develop effective countermeasures on a more timely basis.

Conference Substitute

The Conference adopts the Senate provision modified to remove the requirement for data audit/assessment as a requirement for eligibility in the first year.

SEC. 2007. ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES

House Bill

Sec. 2003.

This section extends the alcohol-impaired driving countermeasures program over the term of the legislation. The criteria for eligibility under the Basic Grant A program is expanded to included states that have an alcohol-related fatality rate of 0.5 or less per 100 million vehicle miles traveled. The eligibility criteria for Basic Grant A is amended, under the administrative license revocation requirement, to permit a state to allow a first time offender who has had his or her license suspended to operate a motor vehicle, after a 15–day suspension period, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on the vehicle. Similarly, a state may allow a repeat offender who has had his or her license suspended or revoked to operate a motor vehicle, after a 45–day suspension or revocation period, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on the vehicle.

Under the Basic Grant A criteria, four new eligibility requirements are added in lieu of eliminating the young adult drinking awareness program. The new requirements are a judicial and prosecutorial outreach program, a self-sustaining drunk driving prevention program, programs for effective alcohol rehabilitation, and a program for impounding vehicles of drunk drivers. States may become eligible for Basic Grant A by implementing at least six eligibility criteria for fiscal years 2005 and 2006 and at least seven criteria for the following fiscal years.

The criteria for the eligibility for a Basic Grant B is amended to permit a state to receive a grant if its alcohol-related fatality rate is 0.8 or more per 100 million vehicle miles traveled and the state establishes a task force to evaluate and recommend changes to the state's drunk driving programs. The supplemental grant program is repealed.

Senate Bill

Sec. 7220.

This program is reauthorized for FYs 2006 through 2009 at an average annual funding level of $132 million. States can qualify for a grant by enacting four out of the following seven criteria in FY 2006 and FY 2007, and by enacting five out of the following seven criteria in FY 2008 and FY 2009. States may choose from the following menu of policy options: (1) impaired driving check points and saturation patrols; (2) outreach to judges and prosecutors to improve prosecution of drunk driving cases; (3) create an information system for government use that tracks drunk driving arrests and convictions; (4) reduce for two years in a row the percentage of fatally injured drivers with a blood alcohol content of 0.08 percent; (5) a program that returns State and local fines collected for drunk driving offenses back into drunk driving prevention programs; (6) enact a law that creates greater penalties for drivers convicted of driving with a blood alcohol content of 0.15 percent or higher; and (7) create specialized courts for handling only impaired driving cases. The ten States with the highest rate of impaired driving fatalities will be eligible for a separate grant.

Conference Substitute

The Conference combines elements from both the House and Senate provisions, establishing a program whereby States are eligible for grants by either achieving an alcohol-related fatality rate of 0.5 or less per 100 million vehicle miles traveled, or by carrying out 3 programs in 2006; 4 programs in 2007, and 5 programs in 2008 and 2009. The list of programs includes: check point, saturation patrol; prosecution and adjudication outreach; BAC testing; high-risk drivers; alcohol rehabilitation and DWI courts; underage drinking; administrative license revocation; self-sustaining impaired driving program. Additionally, the ten States with the highest rate of impaired driving fatalities will be eligible for a separate grant by implementing a plan approved by the Secretary to reduce impaired driving. The grant for these 10 states each year is intended to be working capital to reinvigorate their impaired driving enforcement programs, and for those states not already receiving the basic grant to work towards eventually qualifying for the basic grant in future years by reaching the fatality rate goal or implementing the programs in (c).

SEC. 2008. NHTSA ACCOUNTABILITY

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7222.

This section would create a framework for advancing NHTSA's management of its grant programs and its program recommendations to the States. It would require a review of each State highway safety program at least once every three years along with recommendations on how each State may improve the management and oversight of its grant activities. It would also develop management and program review guidelines for the NHTSA Regional Offices. The General Accounting Office will conduct a study on the effectiveness of the advice and recommendations given to the States by NHTSA. In addition, this section would increase NHTSA's accountability to the public by requiring the agency to post for public review on its website documents such as the NHTSA management review and program review guidelines.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 2009. HIGH VISIBILITY ENFORCEMENT PROGRAM

House Bill

Sec. 2005.

The Secretary is required to establish a program to support national impaired driving mobilization and enforcement efforts and national safety belt mobilization and enforcement efforts, including the purchase of national paid advertisements to support such efforts.

Senate Bill

Sec. 7214(b).

This subsection of Section 403 would provide funding for NHTSA to launch national advertising campaigns to increase seat belt use and reduce drunk driving during holiday periods. Launching these advertising campaigns at the national level is much more cost effective than individual States buying advertising at the local level.

Conference Substitute

The Conference adopts the Senate provision as a stand-alone program, including a subsection that requires that funds only be used for specified national law enforcement campaigns, advertising, and annual evaluations. Nothing in this section prohibits additional money later appropriated by Congress, or additional funds from NHTSA, from being used for additional support for the national campaigns.

SEC. 2010. MOTORCYCLIST SAFETY

House Bill

Sec. 2008.

This section establishes a motorcycle safety incentive grant program for states that adopt and implement effective programs to reduce the number of single- and multi-vehicle crashes involving motorcycles.

Senate Bill

Sec. 7224.

This section would create a new section 414 of title 23 U.S.C. to provide grants to States to implement motorcycle safety training programs based on specific criteria, including improvements to motorcyclist safety training, program delivery, public awareness.

Conference Substitute

The Conference adopts the House provision modified to include Senate language on minimum grant amounts to eligible states and a requirement for the Secretary to develop model language for educating drivers on how to safely share roads with motorcyclists.

SEC. 2011. CHILD SAFETY AND BOOSTER SEAT INCENTIVE GRANTS

House Bill

Sec. 2007.

This section authorizes a child safety and child booster seat incentive grant program for the benefit of states that enact or enforce a law requiring children riding in passenger vehicles to be secured in child safety seats or child booster seats. States may use grants under this section only to carry out child safety seat and child booster seat programs, including education, training, enforcement, and the purchase and distribution of child restraints to families that cannot otherwise afford them. Each state to which a grant is made under this section must transmit a report to the Secretary indicating how the grant funds were expended and identifying the specific programs supported by the grant.

Senate Bill

Sec. 7223.

This section would authorize grants to States to implement Anton's Law, which is aimed at increasing the use of booster seats for small children.

Conference Substitute

The Conference adopts the House provision with a change to allow no more than 50 percent of funding to be used for purchasing safety restraints. The purchase of child safety restraints is directed at helping low-income families.

SEC. 2012. SAFETY DATA

House Bill

Sec. 2011.

This section requires the Secretary to collect data and compile statistics on accidents involving motor vehicles being backed up that result in fatalities and injuries. The Secretary is required to transmit a report to Congress not later than January 1, 2009, on these accidents and any recommendations regarding measures to be taken.

Senate Bill

Sec. 7254.

This section requires NHTSA to study technologies for automobiles that would reduce injuries and deaths caused by cars and trucks backing up.

Conference Substitute

The Conference adopts the House provision.

SEC. 2013. DRUG-IMPAIRED DRIVING ENFORCEMENT

House Bill

Sec. 2013.

This section directs the Secretary to conduct a study on drug impaired driving and to develop a model statute for States. The section also requires the Secretary to submit a report to Congress regarding the research and findings not later than 18 months after enactment.

Senate Bill

Sec. 7214(b)(1).

This section requires NHTSA to conduct a study on the effects of controlled substances on driving.

Conference Substitute

The Conference adopts the House provision with modifications including the definition of ''illicit substances'' and requiring the Secretary and the National Institutes of Health to jointly provide a report to Congress on the problem of drug-impaired driving.

SEC. 2014. FIRST RESPONDER VEHICLE SAFETY PROGRAM

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7605.

This section requires the Secretary to develop a program and list of best practices to promote compliance with State and local laws to increase the safe and efficient operation of first responder vehicles.

Conference Substitute

The Conference adopts the Senate provision with a change from the Secretary ''shall'' to ''should.''

SEC. 2015. DRIVER PERFORMANCE STUDY

House Bill

Sec. 2012.

This section directs the Secretary to conduct a study on the risks associated with glare to oncoming drivers and to submit a report of findings and recommendations to Congress not later than 18 months after enactment.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 2016. RURAL STATE EMERGENCY MEDICAL SERVICES OPTIMIZATION PILOT PROGRAM

House Bill

Sec. 2015.

This section directs the Secretary to conduct a study on the use of geo-coded data for highway accidents and injuries in order to improve EMS resource allocation and distribution in rural areas.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 2017. OLDER DRIVER SAFETY; LAW ENFORCEMENT TRAINING

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7217.

This section would amend section 406 by adding an older driver research and demonstration program and a law enforcement training program to train law enforcement personnel in police chase techniques that are consistent with guidelines issued by the International Association of Chiefs of Police.

Conference Substitute

The Conference adopts the Senate provision but makes language a stand-alone provision rather than a codified 406 program. Language for police chase training is modified to reflect that NHTSA shall provide ''guidance and support'' for the training.

SEC. 2018. SAFE INTERSECTIONS

House Bill

Sec. 2017.

This section outlines penalties for the unauthorized sale or use of traffic signal preemption transmitters.

Senate Bill

Sec. 1410.

This section outlines penalties for the unauthorized sale or use of traffic signal preemption transmitters.

Conference Substitute

The Conference adopts the House provision with technical modifications to make language consistent with Title 18, United States Code.

SEC. 2019. NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE TECHNICAL CORRECTION

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7215.

This section would make a minor technical correction to section 404(d) of title 23 U.S.C.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 2020. PRESIDENTIAL COMMISSION ON ALCOHOL-IMPAIRED DRIVING

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 1411.

Sense of the Senate in support of establishing a Presidential Commission on Alcohol-Impaired Driving to further change the culture of alcohol-impaired driving on our Nation's highways.

Conference Substitute

The Conference adopts the Senate provision modified to make the provision a sense of the Congress, to include the motorcycle industry on the proposed Commission, and to change appropriate references from ''drunk'' to ''alcohol-impaired'' driving.

SEC. 2021. SENSE OF THE CONGRESS IN SUPPORT OF INCREASED PUBLIC AWARENESS OF BLOOD ALCOHOL CONCENTRATION LEVELS AND DANGERS OF ALCOHOL-IMPAIRED DRIVING

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 1412.

Sense of the Senate in Support of Increased Public Awareness of Blood Alcohol Concentration Levels and Dangers of Alcohol-Impaired Driving.

Conference Substitute

The Conference adopts the Senate provision modified to make the provision a sense of the Congress and to change appropriate references of ''drinking and driving'' to ''alcohol-impaired driving.''

TITLE III—FEDERAL TRANSIT ADMINISTRATION PROGRAMS

SEC. 3001. SHORT TITLE

House Bill

Sec. 3001.

Subsection (a) provides that this title be cited as the Federal Public Transportation Act of 2005. Subsection (b) provides that amendments in this title, unless otherwise specified, are made to title 49 of the United States Code.

Senate Bill

Sec. 6001.

The title to be cited as the Federal Public Transportation Act of 2005.

Conference Substitute

Adopts Senate proposal.

SEC. 3002. AMENDMENTS TO TITLE 49, UNITED STATES CODE; UPDATED TERMINOLOGY

House Bill

Sec. 3001.

Subsection (b) amends chapter 53 of title 49, United States Code by striking ''mass transportation'' and replacing it with ''public transportation'', reflecting the broader applicability of transit services beyond urban areas.

Senate Bill

Sec. 6002.

Subsection (a) provides that amendments in this title, unless otherwise specified, are made to title 49 of the United States Code. Subsection (b) amends chapter 53 of title 49, United States Code by striking ''mass transportation'' and replacing it with ''public transportation.''

Conference Substitute

Adopts Senate proposal.

SEC. 3003. POLICIES, FINDINGS, AND PURPOSES

House Bill

Sec. 3002.

This section and subsequent sections of the bill change the terminology used to describe the federal transit programs, which have grown far beyond the original mission and orientation of ''urban renewal'' in the Federal Transit Administration's organic statute, the Urban Mass Transportation Act of 1964. Today, the federal transit programs also provide vital transportation services to rural and other non-urban constituencies. The title change and subsequent legislative changes to chapter 53, title 49 United States Code in which the terms ''mass transit'' or ''mass transportation'' are replaced by ''public transportation'' reflect this evolution.

Senate Bill

Sec. 6003.

Section 5301(a) states that it is in the economic interest of the United States to encourage and promote the development of transportation systems because they maximize mobility and minimize transportation-related fuel consumption and air pollution. The findings in section 5301(b) are updated to reflect Census 2000 data. Subsection 5301(e) is amended to apply current requirements to preserve the environment and important historical and cultural assets throughout chapter 53, rather than only to capital programs

carried out under sections 5309 and 5310. Terms throughout the section are updated for clarity.

Conference Substitute

Adopts the House language in subsection 5301(a) with the inclusion of economic interest. The Census updates from the Senate language are adopted. The remaining provisions of the section are the same in both bills.

SEC. 3004. DEFINITIONS

House Bill

Sec. 3003.

This section includes amendments to definitions that apply generally to chapter 53 of title 49, United States Code. These changes include adding new eligibilities for federal capital transit funding. Newly eligible uses for these capital funds include: (1) acquiring, constructing, relocating, and renovating intercity bus stations and terminals; (2) crime prevention and security projects (including security training for personnel and conducting emergency response drills); (3) establishing a debt service reserve fund for bond payments when such bonds are used for the purpose of financing an eligible transit project; and (4) mobility management activities and projects. Mobility management activities and projects improve the coordination among public transportation and other transportation service providers through short-range planning and management activities, such as buying computer software that matches public transportation riders and non-emergency medical and other human services clients to transportation services. Directly providing public transportation services is not an eligible capital expense under this definition. The definition of ''urbanized area'' is revised to reflect the Department of Commerce's role in designating urbanized areas via the decennial Census. Under current law, the terms ''mass transportation,'' ''public transportation,'' and ''transit'' are interchangeable. Under the changes made in this section, these three terms are still synonymous. However, ''public transportation'' becomes the principal defined term.

Senate Bill

Sec. 6004.

This section includes amendments to definitions that apply generally to chapter 53 of title 49, United States Code. These changes include adding new eligibilities for federal capital transit funding. Newly eligible uses for these capital funds include: (1) acquiring, constructing, relocating, and renovating intercity bus stations and terminals; (2) crime prevention and security projects (including security training for personnel and conducting emergency response drills); and (3) establishing a debt service reserve fund for bond payments when such bonds are used for the purpose of financing an eligible transit project. The Senate Banking Committee believes that improved integrated, interoperable, emergency communications infrastructure is one way for transit operators to improve the response to emergency situations, and that such expenditures are eligible capital expenditures under chapter 53. The Senate bill includes mobility management activities under the section 5307 urbanized area formula grant program. As defined in this section, mobility management activities and projects tailor public transportation services to specific markets and manage demand for public transportation to help enhance ridership in a cost-effective and efficient manner. The definition of public transportation is amended to codify current practice of providing transportation service that serves a specific urbanized or rural area and its environs. Except for specific exceptions, such as the expanded eligibility of intercity bus facilities for capital funding and the ongoing intercity bus service under section 5311(f), intercity bus or rail services are not public transportation. The definition of ''urbanized area'' is revised to reflect the Department of Commerce's role in designating urbanized areas via the decennial Census. Under current law, the terms ''mass transportation,'' ''public transportation,'' and ''transit'' are interchangeable. Under the changes made in this section, these three terms are still synonymous. However, ''public transportation'' becomes the principal defined term.

Conference Substitute

Adopts the House language regarding new eligibilities for federal capital transit funding, including the more limited definition of mobility management activities and projects as being directly related to improved coordination among public transportation and other transportation service providers. These new capital eligibilities apply to all programs under chapter 53. The conferees believe that improved integrated, interoperable, emergency communications infrastructure are one way for transit operators to improve the response to emergency situations, and that such expenditures are eligible capital expenditures under this chapter. The definition of public transportation has been amended to mean transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or intercity bus transportation (except under programs where intercity bus projects are made specifically eligible), or intercity passenger rail transportation provided by Amtrak or its successor entities. The definition of ''urbanized area'' is revised to reflect the Department of Commerce's role in designating urbanized areas via the decennial Census. ''Public transportation,'' ''mass transportation,'' and ''transit'' remain interchangeable and synonymous. However, ''public transportation'' becomes the principal defined term, in recognition that the federal public transportation program has evolved over time, and now covers rural and other non-urban constituencies, as well as urbanized areas.

SEC. 3005. METROPOLITAN TRANSPORTATION PLANNING

House Bill

Sec. 3004.

The House bill consolidates current law metropolitan planning provisions under sections 5303 and 5304 of title 49, U.S.C. and under section 134 of title 23, U.S.C. into a unified planning title for both transit and highways under chapter 52 of title 49, U.S.C. For ease of reference, subsection 5303(a) of title 49, U.S.C. is amended to reflect that grants made under sections 5307–5311, 5316 and 5317 are to be carried out in accordance with chapter 52. Subsection 5303(b) requires the Secretary to certify that metropolitan planning organizations (MPOs) in transportation management areas comply with all planning and other applicable requirements in law in their transportation planning activities. However, the Secretary may not withhold certification of a transportation plan based on private enterprise participation. This is a standing limitation in existing law under section 5305(e)(3).

Senate Bill

Sec. 6005.

The Senate bill consolidates all provisions for metropolitan planning under section 5303 of title 49. The bill maintains the requirement for separate transportation plans and transportation improvement programs and requires certification of the planning process every four years. The Senate repeals the current law provision that allows a plan to be certified by the Secretary regardless of the policies and criteria an MPO or transit recipient establishes for deciding the feasibility of private enterprise participation. However, language is added under section 5306(a) of title 49 to clarify that local criteria will be the basis for such decisionmaking. The current law provisions regarding the scope of the planning process are amended to provide more detail on how protection of the environment is to be considered and adds a reference to planned growth patterns. A new participation plan is established to afford parties who participate in the metropolitan planning process a specific opportunity to comment on the plan before its approval. MPOs must certify that they have complied with their participation plan before the transportation plan can be approved. A new provision is added that requires the secretary to issue rules regarding the publication of the projects in the transportation improvement program for which funds have actually been obligated. Section 5305 of title 49, U.S.C. is repealed because provisions regarding Transportation Management Areas are incorporated into metropolitan transportation planning.

Conference Substitute

Adopts the Senate proposal, without the requirement that MPOs must certify that they have complied with their participation plan before the transportation plan can be approved.

SEC. 3006. STATEWIDE TRANSPORTATION PLANNING

House Bill

Sec. 3005.

The House bill consolidates the metropolitan and statewide planning provisions currently under title 23, U.S.C. and chapter 53, title 49, U.S.C. into a unified planning title for both transit and highways under chapter 52 of title 49, U.S.C. For ease of reference, section 5304 of title 49, U.S.C. is amended to reflect that grants made under sections 5307–5311, 5316 and 5317 are to be carried out in accordance with chapter 52. Under current law (section 5323(l)), statewide transit planning was subject to statewide highway planning processes outlined in section 135 of title 23, U.S.C.

Senate Bill

Sec. 6006.

The Senate bill includes statewide planning requirements explicitly under 49 U.S.C. 5304, rather than by reference to section 135 of title 23 U.S.C. A new subsection (c) is added to allow States to enter into compacts or agreements for the purpose of formal planning cooperation and coordination for projects with multi-State implications. A requirement is added for States to consider the economic vitality for rural areas as well as urbanized areas in statewide transportation planning. The joint consideration of safety and security factors in planning is broken out as separate factors, to highlight heightened concerns with security at all levels of Government. The current law provisions regarding the scope of the planning process are amended to provide more detail on how protection of the environment is to be considered. An expanded publication of the statewide plan is required. The update cycles for development and approval of statewide transportation plans are set at 4 years.

Conference Substitute

Adopts the Senate proposal.

SEC. 3007. PLANNING PROGRAMS

House Bill

Sec. 3006.

Metropolitan planning and statewide planning funding provisions contained in current

law sections 5303(g) and 5313(b) are moved into a unified section on planning programs as the amended section 5305 of 49 U.S.C. The current law section 5305 pertains to metropolitan planning requirements for transportation management areas. These provisions are included under the unified metropolitan planning sections of chapter 52.

Subsections 5305(a), (b) and (c) establish the general planning grant authority and purposes. The current law definition of a State is retained (a State of the United States, the District of Columbia, and Puerto Rico). Subsection (d) describes the metropolitan planning grant apportionment process. Subsection (e) describes the state planning and research grant apportionment process. Subsection (f) sets the Government's share of planning grant activity costs at 80 percent. Subsection (g) describes the allocation of planning funds made available under funding authorization section 5338(c) between metropolitan planning and statewide planning, using the same percentages set in current law section 5338(c)(2)(C) (82.72 percent for metropolitan planning and 17.28 percent for state planning and research). In subsection (h), funds remain available for three years after the fiscal year in which the funds are authorized, the same period of availability as under current law.

Senate Bill

Sec. 6010.

The Senate bill merges the existing Clean Fuels Formula Program into the Bus and Bus Facilities Program and sets the consolidated metropolitan and statewide planning grant programs under 49 U.S.C. 5308. The current law limitation on the definition of State is deleted, providing transportation planning funds and responsibilities for the first time to the U.S. Territories. A new planning capacity building program of $5 million a year is established for metropolitan planning organizations and transportation operators to plan, develop and implement innovations and enhancements that support and strengthen the planning process. This program is also authorized and funded under the highway title and will be carried out jointly by FTA and FHWA. The bill provides $20 million a year for alternatives analysis activities that are now funded from the 49 U.S.C. 5309 New Starts program. The Senate believes that it is inappropriate to fund alternatives analysis under New Starts because that presumes that the result of the locally preferred alternative will, in fact, be a New Start. After these two new set-asides, the remaining planning funds are distributed as by current law, with 82.72 percent for metropolitan planning and 17.28 percent for state planning and research. The Government's share for planning grant activities is set at 80 percent, and funds remain available for three years after the fiscal year in which the funds are authorized, the same period of availability as under current law.

Conference Substitute

Adopts the House language restricting planning funds and responsibilities to U.S. States, the District of Columbia, and Puerto Rico. Adopts House language defining the prompt allocation of planning funds by States to metropolitan planning organizations to be made available within 30 days after allocation to the State. Does not include an alternatives analysis set-aside under the Planning Programs, although a new stand-alone alternatives analysis program is established under section 5339 of title 49, United States Code. Planning funds will continue to be distributed as under current law, with 82.72 percent for metropolitan planning and 17.28 percent for state planning.

SEC. 3008. PRIVATE ENTERPRISE PARTICIPATION

House Bill

Sec. 3007.

This section title has been shortened to more clearly reflect the provisions within. The text of section 5306 of title 49, United States Code is not amended.

Senate Bill

Sec. 6008.

Current language that prohibits decertification for failure to meet the private sector participation requirements in 49 U.S.C. 5306 is not reenacted. The Senate bill adds clarifying language to make clear that local criteria are to be the basis for deciding on how to involve the private sector. A rulemaking is required to implement all of the changes to the statute made throughout the Senate bill on private sector participation, including enhancements to the role of private transportation providers in the planning process, changes in funding eligibility, and funding allocations.

Conference Substitute

Adopts the Senate proposal clarifying that local criteria are to be the basis for deciding how to involve the private sector.

SEC. 3009. URBANIZED AREA FORMULA GRANTS

House Bill

Sec. 3008.

This section amends section 5307 of title 49, United States Code, which contains provisions governing the eligibility and procedures for urbanized area formula grants to transit providers in areas of 50,000 and more in population. Two existing law subsections are deleted. Subsection 5307(h) is deleted as a technical cleanup, because streamlined administrative procedures for track and signal equipment certification have already been promulgated as directed in the subsection. Subsection 5307(k) regarding transit enhancement activities is also deleted, but the requirement that one percent of urbanized area formula grant funds for recipients in areas of over 200,000 be invested on enhancement activities is retained, and added to the list of grant recipient requirements in subsection 5307(d)(1).

In paragraph (2), the existing extension of operating flexibility in urbanized areas that were less than 200,000 under the 1990 Census, but increased to more than 200,000 in the 2000 Census, is further extended through the end of fiscal year 2004.

Currently under subsection 5307(d), recipients are required to certify that they have the legal, financial, and technical capacity to carry out the program of projects for which they are applying as an urbanized area formula grant. This is amended in subparagraph (d)(1)(A) to additionally require that recipients certify such legal, financial, and technical capacity for the safety and security aspects of their program of projects.

Subsection 5307(e) regarding the Government's share of costs is amended by deleting the 1985 baseline limitation on local match revenues resulting from the sale of advertising or concessions. Additionally, recipients are authorized to use amounts received under service agreements with a State, local social service agency, or private social service organizations as local match. This creates an incentive to transit agencies to better coordinate transportation services with human service agencies that provide transportation services.

Section 5307(i) is redesignated as section 5307(h) and amended to give the Secretary discretion to require annual audits rather than mandate them.

Subsection 5307(l) as redesignated, Relationship to Other Laws, strikes subparagraph (1) and moves the provision contained therein to the General Provisions on Assistance under section 5323, to make the prohibition on making false or fraudulent statements to the Government (18 U.S.C. section 1001) applicable to any Federal public transportation grant program. A new paragraph (2) is added that exempts non- supervisory transit employees from the Hatch Act limitations relating to public election procedures for government employees, if the Hatch Act applies only because the employees' salaries are funded through Federal grants under this section. This exemption will apply only to employees in urbanized areas under 200,000 in population, where up to 50 percent of the net project cost may be derived from Federal grant funds. This codifies existing Federal transit law.

Subsection 3008(h) adds a new subsection 5307(m) regarding the treatment of the United States Virgin Islands, which shall be treated as an urbanized area for the purposes of apportionments under section 5307.

Senate Bill

Sec. 6009.

Private companies engaged in public transportation are eligible subrecipients of Federal grants. Subsection 5307(a) is revised to include definitions for 'subrecipient,' as well as 'designated recipient.' A subrecipient includes any entity receiving funding from the designated recipient. This will facilitate private sector participation in public transportation.

Mobility management is made an eligible expense. Subsection (b) is amended to state more explicitly the general authority for grants under Section 5307. Eligibility is expanded to include 'mobility management' as defined in Subsection 5302(a)(7a). Paragraph (4) is struck since separate eligibility for reconstructing or rehabilitating rolling stock is no longer needed, since these terms have been included in the definition of capital project in Subsection 5303(a).

Currently, urbanized areas over 200,000 may not use funds from the urbanized area formula program for operating assistance. A number of urbanized areas' status changed unexpectedly as a result of the 2000 census, due to changes in the Census Bureau's definitions and procedures for defining urbanized areas. These areas were allowed to continue to use funds for operating assistance for 2003 by P.L. 107–232, for 2004 by the Surface Transportation Extension Act of 2003, and for the first eight months of 2005 by the Surface Transportation Extension Act of 2004, Part V. These provisions are extended for the remainder of 2005 as currently enacted. For 2006 and 2007, these provisions are phased out. Urbanized areas covered by these provisions would be allowed to use 50 percent of their current limits on operating assistance in 2006 and 25 percent in 2007. This should provide these areas with more than ample time to develop and implement transition plans. The Senate strongly opposes continuing these provisions beyond 2007 and believes the more appropriate role for the Federal Government is in capital investment.

Section 5307(g)(4) is deleted to remove an obsolete standard for setting interest rates on advance construction projects. TEA–21 included a provision which required that the interest rate be set based on the most favorable terms available to the recipient and thus this is unnecessary.

The eligibility requirements for local match within this section are streamlined to include all advertising revenue as well as contracts with social service organizations.

Certain urbanized areas which grew to a population of over 200,000 can use funds for operating assistance in 2006 through 2007, with the amounts progressively phased down.

Currently, Subsection 5307(h) requires streamlined administrative procedures for track and signal improvements. This subsection is deleted because separate treatment for track and signal projects is no longer needed.

Currently, Subsection 5307(j) requires that grantees submit annual reports on sales of advertising and concessions. This subsection is deleted because it is redundant with a similar requirement of the National Transit Database.

Transit enhancements program is administered as a certification rather than as a setaside. Subsection 5307(k) dealing with 'transit enhancement activities' is mainstreamed into a new subparagraph (K) in Section 5307(d)(1). Currently, that subsection allows for a one percent set-aside for transit enhancements and requires a report listing the projects. Under new subparagraph (K), a recipient with at least a population of 200,000 in its urbanized area could instead certify that one percent of its Section 5307 funds has been expended on transit enhancements.

Under current law, Section 5307(n)(1) states that 18 U.S.C. 1001, regarding false or fraudulent statements, applies only to certificates or submissions provided pursuant to Section 5307, 'Urbanized Area Formula Grants.' This paragraph is moved to Section 5323, General Provisions on Assistance. Under Section 5223, 18 U.S.C. 1001 applies to any Federal public transportation grant program.

A technical amendment is made to Subsection 5307(k)(2) to provide a complete list of requirements with which grant recipients must comply. In addition, a provision is added to Subsection 5307(k) to clarify that the Hatch Act does not apply to non-supervisory employees of grant recipients. This provision was included in the former Section 5 of the Urban Mass Transportation Act of 1964, as amended. However, it was inadvertently not included in Chapter 53 when the Urban Mass Transportation Act of 1964, as amended, was codified.

Conference Substitute

The conferees adopted the Senate language providing for a phase-out of operating eligibility for urbanized areas which crossed over 200,000 in population for the first time in the 2000 census.

The conference agreement provides that transit enhancement program will be administered as a certification, rather than a setaside, and that grant recipients must submit an annual report of transit enhancement projects.

The conferees agreed to delete the 1985 baseline limitation on local match revenues resulting from the sale of advertising or concessions. Additionally, the conferees agreed to allow recipients to use amounts received under service agreements with a State, local social service agency, or private social service organizations as local match in order to foster coordination with other agencies that provide transportation services.

The conferees made a number of technical changes to Section 5307. Subsection (b) is amended to state more explicitly the general authority for grants under Section 5307. In addition, the conferees agreed that recipients must certify legal, financial, and technical capacity for the safety and security aspects of their program of projects. The conferees agreed to delete subsections (b)(4), (g)(4), (h), (j), and (k) as redundant or obsolete. The definition of associated capital maintenance was reorganized. A technical amendment is made to Subsection 5307(k)(2) to provide a complete list of requirements with which grant recipients must comply. In addition, a provision is added to Subsection 5307(k) to codify existing transit law which states that the Hatch Act does not apply to non-supervisory employees of grant recipients. The conferees deleted the reference to 18 U.S.C. 1001, regarding false or fraudulent statements, from Section 5307, because Section 5323 is amended to apply 18 U.S.C. 1001 to the entire federal transit program.

The conference agreement adopts the House provision regarding the treatment of the United States Virgin Islands as an urbanized area for the purposes of apportionments under section 5307.

SEC. 3010. CLEAN FUELS GRANT PROGRAM

House Bill

Sec. 3009.

Section 3009 amends section 5308 of title 49, United States Code, regarding the clean fuels formula grant bus procurement program. Funds are apportioned to recipients in urbanized areas that are designated as nonattainment areas for ozone or carbon monoxide under section 107(d) of the Clean Air Act or are maintenance areas for ozone or carbon monoxide. These grant funds can be used to purchase or lease clean fuel buses, construct or lease vehicle-related equipment supporting such clean fuel buses, and construct new or improve existing facilities to accommodate clean fuel buses. Clean fuel buses include those powered by clean diesel, compressed natural gas, liquefied natural gas, biodiesel fuels, batteries, alcohol-based fuels, hybrid electric power systems, fuel cells, or other low or zero emission technologies. Not more than 25 percent of the funds made available under the clean fuels formula grant program may be used for clean diesel bus technology. The apportionment formula is weighted such that two-thirds of the funds go to recipients serving urbanized areas with a population of 1,000,000 or more and one-third of the funds go to recipients serving urbanized areas of less than 1,000,000. The formula is also weighted by the severity of nonattainment in the urbanized area being served.

The Committee intends that the Secretary shall encourage recipients of clean fuels formula grants to adequately invest in infrastructure facilities to accommodate the needs of these alternatively fueled vehicles.

Senate Bill

No comparable provision.

Conference Substitute

The conference report retains the House clean fuels grant program, but makes the program discretionary in nature rather than a formula grant program.

SEC. 3011. CAPITAL INVESTMENT GRANTS

House Bill

Sec. 3010.

This section amends section 5309 of title 49, United States Code, which authorizes capital investment grants for new fixed guideway capital projects (''new starts''), fixed guideway modernization (''rail modernization''), and bus and bus-related facilities. All references in the current law section heading and text to ''capital investment loans'' are deleted from section 5309. Historically, only capital investment grants have been awarded under this section.

Subsection 5309(c), concerning major capital investment grants of $75 million or more includes the new starts program requirements and FTA evaluation and rating criteria found in current law subsection 5309(e). The term describing all new starts and small starts projects is changed from the current law ''capital project for a new fixed guideway system or extension of an existing fixed guideway system'' to ''new fixed guideway capital project'' for the sake of brevity. The new term is defined in subsection (n) as a minimum operable segment of a capital project for a new fixed guideway system or extension to an existing fixed guideway system, which is the same definition for new starts projects as under current law subsection 5309(p). Subsection 5309(c) pertains only to those new fixed guideway capital projects that will require $75 million or more of Federal assistance provided under the authority of Section 5309. Such projects are defined as ''major'' new starts as opposed to small starts, which involve less than $75 million in such funds and are authorized under subsection (d).

Major new starts projects must be carried out through a full funding grant agreement with the Secretary. The full funding grant agreement is based upon the evaluations and ratings required under subsection 5309(c). The baseline requirements for a project to secure a grant under this subsection is that the project proposal must be based on the results of alternatives analysis and preliminary engineering; justified based on a comprehensive review of the project's benefits; and supported by an acceptable degree of local financial commitment. The project justification and local financial commitment evaluation criteria are outlined in detail, consistent with the current law criteria. In assessing the local financial commitment for a new starts project, the FTA is authorized to consider the extent to which the project sponsor has overmatched the statutory local match requirement of 20 percent. However, the authority to consider a higher local match as part of the assessment of a project's local financial commitment does not allow the Secretary to require a higher local match than 20 percent.

Proposed new starts projects under subsection (c) are authorized to advance from alternatives analysis to preliminary engineering, and from preliminary engineering to final design and construction, if the Secretary finds that the project meets the requirements of this section. In making these findings, the Secretary is directed to evaluate and rate the project as ''highly recommended'', ''recommended'', or ''not recommended'' based on the results of alternatives analysis, the project justification criteria, and local financial commitment.

Subsection 5309(d) regarding capital investment grants of less than $75 million authorizes a new program under Capital Investment Grants. These ''small starts'' fall into two subcategories—those involving between $25 million and $75 million in funds under section 5309, and those that are less than $25 million. New fixed guideway capital projects with a section 5309 Federal share of less than $25 million are not subject to the requirements of this subsection regarding project evaluation and rating and do not enter into a long-term financial contract with the Secretary (called a ''project construction grant agreement'' in the small starts program). Under the small starts program, lower-cost fixed guideway projects such as streetcars, bus rapid transit, and commuter rail projects will be advanced through an expedited and streamlined evaluation and rating process. As the Federal Transit Administration develops administrative and regulatory guidance for the implementation of the small starts program, the process and procedures adopted should be representative of the relative size and scope of the projects.

Project justifications for the small starts program are based on five criteria: consistency with local land use policies and likelihood to achieve local developmental goals; cost effectiveness of the project at the time revenue service is initiated; degree of positive impact on local economic development; reliability of cost and ridership forecasts; and other factors the Secretary considers appropriate to carry out this subsection. The Secretary is also required to analyze and

consider the results of planning and the alternatives analysis for the project. The small starts evaluation process should consider the economic benefits of the project, including the level of private sector investment associated with the advancement of the project. The small starts local financial commitment evaluation is a streamlined version of the new starts financial evaluation process. The Secretary is directed to require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable, and that there be an acceptable degree of local financial commitment. This provision gives the Secretary the authority to consider a higher local match as part of the assessment of a project's local financial commitment, but does not allow the Secretary to require a higher local match than 20 percent.

The project development process is also simplified. The new starts project development process involves four discrete steps: (1) planning and alternatives analysis, (2) preliminary engineering, (3) final design, and (4) entering into a full funding grant agreement and construction. The small starts program involves three steps: (1) planning and alternatives analysis, (2) project development, and (3) entering into a project construction grant agreement and construction. Small starts projects may advance from planning and alternatives analysis to project development and construction only after the Secretary finds that the project meets the requirements of this subsection and the local metropolitan planning organization adopts the locally preferred alternative into its long-range transportation plan. Small starts projects are evaluated based on project justification criteria and local financial commitment and are rated as ''recommended'' or ''not recommended'' based on the results of the FTA's analysis. Only small starts projects that are authorized for construction and rated ''recommended'' may enter into a project construction grant agreement.

Another important difference between the new starts program and the small starts program is that, under the small starts program, fixed guideway capital projects have a broader definition that includes corridor-based public transportation bus projects if the majority of the project's right-of-way is dedicated alignment. However, the program is written to be ''mode neutral''—any fixed guideway capital project fitting the broader definition under small starts is eligible to be funded under this category if it is less than $75 million in section 5309 Federal funds, whether it is a bus rapid transit project, a streetcar or trolley project, commuter rail, or light rail. However, all small starts projects must be included under the new starts authorization list in section 3037 of this bill to receive funds in subsequent appropriations bills within this authorization period.

Subsection 5309(g) outlines the Government's share of the net project cost for all projects authorized under section 5309. The Administration had proposed to decrease the Government's share for new start projects to 50 percent. The Committee has rejected this proposal, and retains the provision under subsection 5309(h) in current law that the Federal share for a project shall be 80 percent, unless the grant recipient requests a lower grant percentage. New language is included clarifying that nothing in section 5309, including the language that specifically directs the FTA to consider in its evaluation of a project the extent to which a project has a higher local match than required by law, shall be construed as authorizing the Secretary to require a local match higher than 20 percent of the net capital project cost.

Subsection 5309(i) directs the Secretary to submit an annual new starts report to the House and Senate authorizing committees on the first Monday in February, which includes the Administration's funding proposals for new starts projects in the coming fiscal year, and evaluations and ratings for all new starts projects authorized in section 3037 of this Act. The current law requirement under subsection 5309(o)(2) regarding an August supplemental report is deleted. The Committee directs that the FTA shall forward letter updates to the House and Senate authorizing committees when a project advances to preliminary engineering or to final design after the publication of the annual new starts report. In subsection 5309(i)(2), the U.S. General Accounting Office is directed to conduct an annual review of FTA's processes and procedures for evaluating, rating, and recommending new starts projects and how the agency implements such processes and procedures. This review shall be submitted to the Congress by May 31 of each year.

Subsection 5309(k), regarding bus and bus facility grants, amends the existing law language under subsection 5309(m)(3). The current language regarding consideration of the age of buses, bus fleets, related equipment, and bus-related facilities when making grants is retained. Current law provisions that set aside funds for the bus testing facility in Altoona, Pennsylvania and for the section 5308 Clean Fuels formula program are deleted, as both these programs are now funded as set-asides from formula grants.

Subsection 5309(l) is a new provision making bus and bus facilities and new starts grant funds available for three fiscal years (including the year in which the amount is made available or appropriated). Funds that remain unobligated after three years shall be deobligated and may be used by the Secretary for any purpose under this section.

Subsection 5309(m) directs the allocation of amounts made available for programs authorized under section 5309. The existing formula of 40 percent for new starts, 40 percent for rail modernization, and 20 percent for bus and bus facilities is retained, after the funding levels authorized for small starts are set aside from the total amount made available for section 5309 programs. The current law set-aside of $10.4 million a year for ferryboats and ferry terminal facilities in Alaska or Hawaii is retained. A provision is added establishing a new set-aside for the national fuel cell bus technology development program, and a new ferryboat and ferry terminal set-aside of $10 million per year is established.

Senate Bill

Sec. 6011.

The General Authority section is amended to limit the program to focus on three activities: New Starts, fixed guideway modernization, and buses and bus facilities. Non-fixed guideway corridor improvements are eligible for New Starts funds for projects under $75 million. Current procedures and criteria apply to New Starts projects over $75 million in New Starts share while simplified procedures and criteria apply to New Starts projects under $75 million in New Starts share. The current exemption for projects under $25 million is eliminated.

The Bus, New Starts and Fixed Guideway Modernization programs continue in the Capital Investment Programs; funds are split approximately 23% bus, 40% New Starts and 37% Fixed Guideway Modernization.

Bus funds going to private non-profit organizations or rural transit systems as subrecipients are administered under the requirements of the Elderly and Disabled and Rural programs, respectively. The requirements for statewide transit providers depend on where the project is located. Funding for Alternatives Analysis is made available from the Planning Program rather than the Capital Investment Program.

The current three level rating system (Highly Recommended, Recommended, Not Recommended) is replaced by a five level system (High, Medium-High, Medium, Medium-Low, Low).

The maximum New Starts share is retained at 80 percent. A higher than requested share can be provided for projects which keep cost and ridership estimates within 10 percent of the forecasts used as the basis for establishing the Locally Preferred Alternative.

Grantees will be allowed to keep a portion of the cost savings in the case where projects are completed under budget.

The New Starts Report and Supplemental Report are replaced by reports issued three times a year focusing on changes to ratings and an annual report on budget recommendations.

References to 'capital investment loans' are deleted from Section 5309 since, historically, only capital investment grants have been awarded pursuant to this section.

A new Subsection 5309(e)(8) is added to require periodic publication of the policies and procedures used in rating projects. This will help improve the transparency and predictability of the rating process.

The Committee is seeking to identify cost drivers for critical, complex, and capital intensive transit New Starts projects. Public Private Partnerships (PPP) may provide an important way to achieve significant savings. These partnerships with qualification-based selection and performance-based contracting integrate risk sharing, streamline project development, engineering, and construction, and preserve the integrity of the NEPA process, which results in the potential for significant schedule and cost advantages over traditional infrastructure development. The Committee expects the Secretary to initiate the pilot program as soon as practicable after enactment, in order that the benefits of PPP's may be understood and potentially applied to other transit New Starts projects.

A new statutory requirement for 'Before and After Studies' as part of Full Funding Grant Agreements is added in Section 5309(g). Such studies are already required by the regulation implementing Section 5309(e) and are an essential part of improving the New Starts program. By better understanding the actual costs and benefits of New Starts projects, especially the early planning stages when the Locally Preferred Alternative (LPA) is chosen, the planning process can be improved, and future projects can be based on estimates of costs and benefits which are more accurate. In addition, FTA would be required to produce an annual report each year that would summarize the results of these studies.

Section 5309(i)(3) would continue to set aside $10,400,000 each year for Alaska and Hawaii ferryboats, the same amount as is in TEA–21. The factors in Section 5309(i)(6) to be considered by the Secretary in selecting bus and bus facilities grants is expanded to include both the age and condition of the buses, fleets, and facilities.

In lieu of establishing a new program for intermodal facilities as proposed by the Administration, $75 million is set aside each year from the bus discretionary program for these facilities. Eligibility for the intercity portion of intermodal terminals is established by the amendment to Section 5302.

The Federal Transit Administration is required to issue a 'Contractor Performance Assessment Report' (CPAR). This report will analyze the consistency and accuracy of cost and ridership estimates made by contractors

to public transportation agencies developing major capital investments. This would provide public transportation agencies with a tool to assist in choosing contractors with the highest success rates in predicting cost and ridership.

Conference Substitute

This section amends section 5309 of title 49, United States Code, which authorizes capital investment grants for new fixed guideway capital projects (''new starts''), fixed guideway modernization (''rail modernization''), and bus and bus-related facilities. All references in the current law section heading and text to ''capital investment loans'' are deleted from section 5309. Historically, only capital investment grants have been awarded under this section.

Subsection 5309(d) regarding capital investment grants of less than $75 million authorizes a new program under Capital Investment Grants. Under the small starts program, lower-cost fixed guideway and non-fixed guideway projects such as bus rapid transit, streetcars, and commuter rail projects will be advanced through an expedited and streamlined evaluation and rating process. Non-fixed guideway corridor improvements are eligible for New Starts funds for projects under $75 million. This can be demonstrated by a substantial fixed guideway or by a substantial investment in a defined corridor. Project justifications for the small starts program are based on five criteria: consistency with local land use policies and likelihood to achieve local developmental goals; cost effectiveness of the project at the time revenue service is initiated; degree of impact on local economic development; reliability of cost and ridership forecasts; and other factors the Secretary considers appropriate to carry out this subsection. The Secretary is also required to analyze and consider the results of planning and the alternatives analysis for the project to ensure that sufficient effort has been made to perform a true exploration of alternatives analysis. The small starts local financial commitment evaluation is a streamlined version of the new starts financial evaluation process. The Secretary is directed to require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable, and that there be an acceptable degree of local financial commitment.

Current procedures and criteria apply to New Starts projects over $75 million in New Starts share while simplified procedures and criteria apply to New Starts projects under $75 million in New Starts share. The current exemption for projects under $25 million is eliminated, once the FTA has promulgated regulations required under the small starts program.

The current three level rating system for New Starts (Highly Recommended, Recommended, Not Recommended) is replaced by a five level system (High, Medium-High, Medium, Medium-Low, Low). The maximum New Starts share is retained at 80 percent.

Grantees will be allowed to keep a portion of the cost savings in the case where projects are completed under budget.

A higher than requested share can be provided for projects which keep cost and ridership estimates within 10 percent of the forecasts used as the basis for establishing the Locally Preferred Alternative. Transit projects that make a concerted effort to produce valid and reliable estimates have the potential to be rewarded.

Subsection 5309(g) outlines the Government's share of the net project cost for all projects authorized under section 5309. The Administration had proposed to decrease the Government's share for new start projects to 50 percent. The Conference has rejected this proposal, and retains the provision under subsection 5309(h) in current law that the Federal share for a project shall be 80 percent, unless the grant recipient requests a lower grant percentage. In assessing the local financial commitment for a new starts project, the FTA is authorized to consider the extent to which the project sponsor has overmatched the statutory local match requirement of 20 percent. However, the authority to consider a higher local match as part of the assessment of a project's local financial commitment does not allow the Secretary to require a higher local match than 20 percent.

The Conference is seeking to identify cost drivers for critical, complex, and capital intensive transit New Starts projects. Public Private Partnerships (PPP) may provide an important way to achieve significant savings. These partnerships with qualification-based selection and performance-based contracting integrate risk sharing, streamline project development, engineering, and construction, and preserve the integrity of the NEPA process, which results in the potential for significant schedule and cost advantages over traditional infrastructure development. The Committee expects the Secretary to initiate the pilot program as soon as practicable after enactment, in order that the benefits of PPP's may be understood and potentially applied to other transit New Starts projects.

In lieu of establishing a new program for intermodal facilities as proposed by the Administration, $35 million is set aside each year from the bus discretionary program for these facilities. Eligibility for the intercity portion of intermodal terminals is established by the amendment to Section 5302.

A new statutory requirement for 'Before and After Studies' as part of Full Funding Grant Agreements is added in Section 5309(g). Such studies are already required by the regulation implementing Section 5309(e) and are an essential part of improving the New Starts program. By better understanding the actual costs and benefits of New Starts projects, especially the early planning stages when the Locally Preferred Alternative (LPA) is chosen, the planning process can be improved, and future projects can be based on estimates of costs and benefits which are more accurate. In addition, FTA would be required to produce an annual report each year that would summarize the results of these studies.

The Federal Transit Administration is required to issue a 'Contractor Performance Assessment Report' (CPAR). This report will analyze the consistency and accuracy of cost and ridership estimates made by contractors to public transportation agencies developing major capital investments. The CPAR will provide public transportation agencies with an informational tool, allowing them to better identify contractors able to perform accurate estimates of cost and ridership figures. Additionally, consulting the CPAR as a condition of Federal assistance will help ensure the reliability of estimates used in awarding FFGAs. In considering the performance of individual contractors, the Secretary may take into consideration extenuating factors outside the control of a contractor that may have had an adverse impact on the accuracy of estimates.

SEC. 3012. FORMULA GRANTS FOR SPECIAL NEEDS OF ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES.

House Bill

Sec. 3011.

This section amends section 5310 of title 49, United States Code, which authorizes formula grants to States for public transportation projects and services that meet the special needs of elderly and disabled individuals. The definition of grant recipient is amended in paragraph 5310(a)(2) by adding a definition for subrecipients, which is consistent with current practice. A 10 percent limitation is included on the amount of a State's grant funds that may be used for recipient or for subrecipient administrative expenses and technical assistance. This codifies current FTA administrative practice.

Subsection 5310(b) describes the apportionment and transfer processes, which follows current law, except that an adjustment is made to the apportionment formula for particularly low density States. In low density States, providing essential public transportation is particularly challenging, especially to special needs populations, because of the distances involved. When providing services over these long distances, operating costs are higher and farebox recovery is lower. This formula adjustment may enable low density States to continue providing essential public transportation services to a sector of the population that is particularly dependent on transit—the elderly and disabled.

Subsection (c) amends current law regarding the Government's share of costs. The current Federal match of 80 percent for capital projects is retained, except in cases where a State has a very high percentage of Federally-owned public lands. In such cases, the ''sliding scale'' Federal match under section 120(b) of title 23, United States Code, is used. Operating expenses are also made eligible for section 5310 elderly and disabled grant funding, limited to 50 percent of net operating costs. Two new sources of local match funding are authorized: proceeds from a service agreement with a State, local social service agency, or private social service organization; and other Federal funds from non-Department of Transportation agencies that can be expended for transportation (e.g., Temporary Assistance for Needy Families, Medicaid, job training program funds, or Welfare to Work grants). Using these related human service grants funds as a local match for transit projects leverages the Federal investment and increases coordination among Federal agencies that provide transportation services.

Subsection (d) regarding grant requirements changes the general applicability of requirements for the elderly and disabled grant program from current law, which ties the program to section 5309, to the requirements under section 5307, to the extent the Secretary considers appropriate. A new requirement is added that, beginning in fiscal year 2007, the State must certify that projects funded under this section are derived from coordinated public transit-human services transportation plans with public input. The current law requirement that the State certify allocations of funds were made on a fair and equitable basis is retained.

Senate Bill

Sec. 6012.

Currently, under Section 5310, the Secretary may provide grants for the special needs of elderly individuals and individuals with disabilities directly (1) to a State or local Government authority; or (2) to the chief executive office of the State for allocation to private non-profit corporations or associations when such service is unavailable or insufficient, or (3) to Governmental authorities approved by the State to coordinate services for these two population groups, if there are no non-profit corporations readily available to provide the service. Section 5310 is amended to authorize grants through the States, which would then allocate the funds to private non-profit organizations or Governmental authorities under the same conditions required in current law.

Persons with disabilities are particularly in need of service beyond that provided in response to the Americans with Disabilities Act. The program is expanded and renamed to include activities which provide access to persons with disabilities, in addition to that which is necessary to meet the requirements of the Americans with Disabilities Act. Funding for Section 5310 is expanded and explicit eligibility is provided for Governmental authorities providing services in excess of that provided by the Americans with Disabilities Act. This will help fulfill the goals of the President's New Freedom Initiative, without creating a new program. In addition, language is added to clarify that a priority of Section 5310 program funds is the provision of access to medical care.

Section 5310(a)(3) allows a State to use up to 15 percent of the amounts it receives under this section to administer, plan, and provide technical assistance. This additional authority makes this program consistent with the Section 5311 program, so that both state-administered programs essentially have similar structures.

Consistent with existing Section 5310, grants would be made for capital public transportation projects planned, designed, and carried out to meet the special needs of this population and could include the acquisition of public transportation services as a capital expense. The Federal share cannot exceed 80 percent of the net capital costs of the projects, as determined by the Secretary. The remainder of the funds could be provided from a variety of other sources, including undistributed cash surpluses, or from amounts appropriated or made available for transportation from any other Federal department or agency other than the Department of Transportation, except for Federal Lands Highway funds, as well as contract revenue received from human service agencies. This section is also amended to allow for a sliding scale approach to the match requirements for capital expenses for those states that have a large percentage of public lands, and as a result, have a lower tax base from which to draw resources to fund the matching requirement mandated by these programs. It is similar in nature to a provision already in current law in the highway program.

As is current practice, funds under Subsection (b)(1) are apportioned to States based on a formula administered by the Secretary. In administering this formula, the Secretary will consider the number of elderly individuals and individuals with disabilities in a State. Under current law, unobligated Section 5310 funds available during the fourth quarter of each fiscal year may be transferred to Urbanized Area or Other Than Urbanized Area Formula Grant programs in order to supplement funds apportioned under those sections. Subsection (b)(2) allows recipients of grants under this section to transfer Section 5310 funds to those programs at any time provided that the funds are used for the purposes originally authorized. This would eliminate the artificial fourth quarter requirement since States typically budget for such transfers in the beginning of each fiscal year. In addition, States could make funds available to a subrecipient in a single transaction that included several FTA program-funding sources.

Under Subsection (d), a recipient of a grant is subject to all Section 5307 grant requirements to the extent the Secretary deems appropriate. Recipients would be required to certify that the projects for which funds are requested are drawn from a plan for human service transportation coordination. The effect of this provision and those included in the non-urbanized formula program and the Jobs Access and Reverse Commute Program will be to enhance coordination between these programs and with programs of other Departments, such as Health and Human Services, Labor, and Education. The Committee expects that FTA will give grantees an appropriate opportunity to develop these plans by phasing in this requirement during FY 2006. Finally, recipients are required to certify that allocations made to subrecipients were distributed in a fair and equitable manner.

Subsections (e) through (i) are the same as in current law.

Conference Substitute

The conference agreement maintains the current law program for special needs of elderly individuals and individuals with disabilities and does not incorporate New Freedom activities, as the Senate bill did. Because of strong interest from States in extending the authority to use section 5310 grant funds for operating assistance, a new seven-state pilot program is established for fiscal years 2006 through 2009 to determine whether this expanded authority improves services to elderly individuals and individuals with disabilities.

SEC. 3013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS

House Bill

Sec. 3012.

This section amends section 5311 of title 49, United States Code, regarding the apportionment of formula grant funds for non-urbanized areas. Subsection (a) amends the definition provisions under section 5311(a) to define an eligible recipient and sub-recipient of other than urbanized area funds.

Subsection (b) amends the general authority provisions that allow other than urbanized areas to use formula grant funds for capital transportation projects, or operating assistance projects (including the acquisition of transportation services) provided the projects are contained in a state program of public transportation service projects. Under subsection 5311(b)(3), the rural transportation assistance program (RTAP), a national technical assistance, training and support program for rural public transportation providers, is funded with a 2 percent setaside of the section 5311 grant funds. From the amounts made available for the RTAP activities, up to 15 percent may be used by the Secretary to carry out projects of a national scope to sustain ongoing national activities. Under current law, the RTAP is funded out of the Research program.

Subsection 5311(c) describes the apportionment process, which follows current law, except that an adjustment is made to the apportionment formula for particularly low density States. In low density States, providing essential public transportation is particularly challenging because of the distances involved. When providing services over these long distances, operating costs are higher and farebox recovery is lower. This formula adjustment may enable low density States to provide essential public transportation services by establishing a level of funding that will support a baseline program.

In subsection (e), an amendment is made to 5311(f) that requires States to consult with affected intercity bus service providers before certifying to the Secretary that intercity bus service needs of the State are being adequately met without making the 15 percent allocation of funds to such services. Such consultation would help ensure the State's awareness of any intercity bus service needs.

Subsection (f) amends section 5311(g) to retain the existing Federal share for any capital project at 80 percent or less of the net project cost, as determined by the Secretary; except in cases where a State has a very high percentage of Federally owned lands. In such cases, the ''sliding scale'' Federal match under section 120(b) of title 23, United States Code, is used. Also retained is the Federal share for operating assistance at 50 percent or less of the net costs of an operating project, as determined by the Secretary. The remainder of the net project costs may be provided from a number of different sources, including amounts appropriated to or made available to a department or agency of the Federal government, other than the Department of Transportation (e.g., Temporary Assistance for Needy Families, Medicaid, job training program funds, or Welfare to Work grants). Using these related human service grants funds as a local match for transit projects leverages the Federal investment and increases coordination among Federal agencies that provide transportation servvices.

Senate Bill

Sec. 6013.

A new formula tier is established based on land area to address the needs of low-density states. The remaining 80 percent of funds are to be allocated using the current formula. Matching funds may come from contracts with human service agencies (as in current law) or from other Federal programs.

Section 5311(a) defines an eligible recipient and subrecipient of other than urbanized area program funds. Indian tribes are established as direct recipients. Private operators engaged in public transportation are made eligible as subrecipients of 5311 funds, providing for opportunities for involvement of the private sector, as was the original intent when the Urban Mass Transportation Act of 1964 was first enacted.

Recipients must submit data on service levels, costs, and revenues to the National Transit Database. Currently, urbanized area program grant recipients must submit data on service levels, costs, and revenues, in accordance with requirements of the National Transit Database. Current law is amended to require a simplified version of these data collection requirements for the other than urbanized area program. Given the large growth in funding for this program, it is crucial that recipients report basic information on the effectiveness of this program. The Committee expects that the data collection requirements will be tailored to the smaller size of the typical public transportation system in rural areas, while still providing enough information to judge the condition and performance of our Nation's network of rural public transportation services.

The Rural Transit Assistance Program becomes a 2 percent takedown from the program. Under current law, recipients of grants and contracts for transportation research, technical assistance, training, or related support services, such as those given under the Rural Transportation Assistance Program (RTAP), must compete annually for National Planning and Research funds. Section 5311(b)(3), as redesignated, provides up to two percent of Section 5311 funds to carry out RTAP activities. This amendment better correlates funding for RTAP with the amount of funding for rural service overall, thereby stabilizing the program.

Indian tribes become eligible direct recipients of program funds, with a portion of funding set aside for tribes beginning in FY 2006. An increasing amount of funding is set aside for Indian Tribes each fiscal year beginning in fiscal year 2006. Of the remainder, eighty percent of the Section 5311 program amount is apportioned to States pursuant to the same formula currently being used and

now set forth in Section 5311(c)(3), which uses population in non-urbanized areas to allocate funds. The remaining twenty percent is apportioned on land area in non-urbanized areas. Section 5311(f)(2) requires the State to consult with affected intercity bus service providers before certifying that the State's intercity bus service needs are being adequately met.

Subsection 5311(g) is amended to allow for a sliding scale approach to the match requirements for capital expenses under this section for those states that have a large percentage of public lands, and as a result, have a lower tax base from which to draw resources. It is similar in nature to a provision already in current law in the highway program. The match for operating assistance is set at ⅝ of the match for capital projects.

Conference Substitute

The conferees agreed to define eligible recipients and subrecipients of Section 5311 funds. Indian tribes are added as eligible recipients.

The general authority to make grants under the 5311 program is rewritten to explicitly include both capital and operating grants; thus, subsection (h) is deleted as unnecessary.

The conferees agreed to fund the rural transportation assistance program (RTAP), a national technical assistance, training and support program for rural public transportation providers, with a 2 percent set-aside of the section 5311 grant funds, rather than from the Research program, as in current law. The conferees adopted the House provision specifying that from the amounts made available for RTAP, up to 15 percent may be used by the Secretary to carry out projects of a national scope to sustain ongoing national activities.

The conference report includes the Senate provision requiring recipients of Section 5311 funds to submit data on service levels, costs, and revenues to the National Transit Database. The conferees expect that the data collection requirements will be tailored to the smaller size of the typical public transportation system in rural areas, while still providing enough information to judge the condition and performance of our Nation's network of rural public transportation services.

The conference report adopts the Senate provision setting aside a portion of funding each year for Indian tribes. The funds set aside for Indian tribes are not meant to replace or reduce funds that Indian tribes receive from states through the Section 5311 program.

A new formula tier based on land area is established to address the needs of low-density states; twenty percent of Section 5311 funds are distributed through this tier. The remaining 80 percent of funds are to be allocated using the existing formula.

The conferees agreed that States must consult with affected intercity bus service providers before certifying to the Secretary that intercity bus service needs of the State are being adequately met without making the 15 percent allocation of funds to such services.

The conferees agreed to apply the sliding scale federal match under section 120(b) of title 23 United States Code, for cases in which a state has a very high percentage of federal lands. The federal match for operating assistance is set at ⅝ of the match for capital projects. The remainder of the net project costs may be provided from a number of different sources, including amounts appropriated to or made available to a department or agency of the Federal government, other than the Department of Transportation (except for Federal Lands Highway funds). The conferees believe that using these related human service grants funds as a local match for transit projects will increase coordination among Federal agencies that provide transportation services.

The conference report adopts the Senate provision codifying current practice by requiring the Secretary of Labor to use a Special Warranty to comply with the requirements of Section 5333(b).

SEC. 3014. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS

House Bill

Sec. 3013.

Currently, section 5312 of title 49, United States Code does not address deployment of emerging technologies, and inappropriately includes training provisions. As amended, section 5312 would authorize research, development, demonstration, and deployment projects, and would move the training provisions in subsections (b) and (c) to section 5322 (Human Resource Program). Under this subsection, the terms ''other transactions'' is included and is used to replace the terms ''other agreements'' to provide the Federal government with discretion to enter into project agreements under terms that would encourage private parties to participate in Federally assisted projects.

Senate Bill

Sec. 6014.

Currently, Section 5312 does not address deployment of emerging technologies, and inappropriately includes training. As amended, Section 5312 authorizes public transportation service planning, and research, development, demonstration, and deployment projects.

The former University Research and Fellowships programs authorized by Subsections (b) and (c) are repealed, as these programs have not been funded for many years.

Throughout the Federal Government, the term 'other transactions' is used to provide executive branch agencies with broad discretion to enter into project agreements under terms that would encourage private parties to participate in Federally-assisted projects. Since the term 'other agreements' in Section 5312(b)(2), as redesignated, provides the same authority, this section is amended to replace that term with 'other transactions,' for consistency.

Conference Substitute

Adopts the Senate language, except the term ''other transactions'' is not adopted. Instead, the broader current law authority for ''other agreements'' (as utilized under the joint partnership program) is extended to all transit research programs. The current law authority to make grants for fellowships is moved to section 5322, as proposed by the House.

SEC. 3015. TRANSIT COOPERATIVE RESEARCH PROGRAM

House Bill

Sec. 3014.

Amendments made to section 5313 of title 49, United States Code provide the correct authorization citation for the research programs and moves subsection (b) to the state planning section under Chapter 52 of title 49.

Senate Bill

Sec. 6015.

The Transit Cooperative Research Program remains unchanged.

Amendments to Section 5313 provide the correct funding authorization citation. Subsection (b) is stricken and the title of Section 5313 is changed to reflect the fact that only the Transit Cooperative Research Program is authorized by this section.

Conference Substitute

The Conference adopts the Senate proposal.

SEC. 3016. NATIONAL RESEARCH AND TECHNOLOGY PROGRAMS

House Bill

Sec. 3015.

Section 5314 of title 49, United States Code is amended to delete the word ''Planning'' in the heading because the focus of the section is on research and to include ''Technology'' in the heading to reflect the activities carried out under this subsection. Other amendments under this subsection correct the funding authorization citations and eliminate references to the planning sections of the title. The Secretary is required to continue to make funds available to help public transportation providers comply with the Americans With Disabilities Act of 1990. Under this section, the term ''other transactions'' is included to provide the Federal government with discretion to enter into project agreements under terms that encourage private parties to participate in federally assisted projects. The Industry Technical Panel composed of transportation suppliers and others involved in technology development is eliminated because the panel is no longer needed.

Senate Bill

Sec. 6016.

Project Action is continued at current funding levels.

Operational demonstration contracts are allowed under conditions set by the Secretary.

Section 5314(a)(3) is amended to relieve the compliance requirement with Section 5333(b).

Current Section 5314(a)(4)(B) requires FTA to establish an Industry Technical Panel composed of transportation suppliers and others involved in technology development. This provision is deleted.

A new Subsection (a)(6) is added to establish a program of medical transportation demonstration grants. These grants will be focused on improving methods of transportation for persons in need of kidney dialysis.

A new National Technical Assistance Center for Senior Transportation would be established in a new Section 5314(c). Similar to Project Action, the Center would undertake research, provide technical assistance, and make demonstration grants on methods to improve transportation for elderly individuals.

A study is required by Section 5314(d) on how to increase the use of alternative fuels in public transportation.

Conference Substitute

Adopts the House proposal, and changes the term ''other transactions'' to ''other agreements''. The Senate's medical transportation demonstration grants program, the National Technical Assistance Center for Senior Transportation, and the alternatives fuel study are adopted.

SEC. 3017. NATIONAL TRANSIT INSTITUTE

House Bill

Sec. 3016.

Section 5315 of title 49, United States Code is amended by striking references to mass transportation because public transportation is defined to mean mass transportation under the transit program.

Senate Bill

Sec. 6017.

The National Transit Institute will be continued at Rutgers University.

Currently, Section 5315(a) requires establishment of the National Transit Institute (NTI) at Rutgers University. This subsection would continue the Institute at this location for the new authorization period. The Committee is concerned about the effectiveness

of programs at the NTI and directs the Federal Transit Administration to exercise careful oversight over its operation to assure that the Institute is producing benefits commensurate with the investment being made. The requirement in Section 5315(b) for the Secretary to delegate all authority to NTI to develop and conduct education and training programs is deleted.

Conference Substitute

Adopts the Senate proposal.

SEC. 3018. JOB ACCESS AND REVERSE COMMUTE FORMULA GRANTS

House Bill

Sec. 3017.

This section codifies under 49 U.S.C. 5316 the Job Access And Reverse Commute (JARC) program authorized under section 3037 of the Transportation Equity Act for the 21st Century. The program was established to assist welfare recipients and low-income individuals in getting to and from jobs.

The program establishes a formula for JARC funds that apportions 60 percent of the funds to designated recipients in urbanized areas with a population of 200,000 or more in a ratio reflecting the number of eligible low-income and welfare recipients in each urbanized area with a population of 200,000 or more; 20 percent of the funds are apportioned among the states in a ratio reflecting the number of eligible low-income and welfare recipients in urbanized areas with populations of less than 200,000 in each state; and 20 percent of the funds are apportioned among states in a ratio reflecting the number of low-income individuals and welfare recipients in other than urbanized areas in each state.

The funds must be used for eligible projects in the designated areas, except funds made available in urbanized areas with populations less than 200,000 and nonurbanized areas may be transferred for projects anywhere in the state if the state has established a statewide program for meeting the objectives of this section and the Governor of the state certifies that all of the objectives of this section are being met in the specific area. The recipient of JARC funds in an urbanized area with a population of 200,000 or more must conduct a competitive process for an areawide solicitation for applications for grants to the recipients and subrecipients. Statewide solicitations must be conducted in urbanized areas of less than 200,000 and in nonurbanized areas for applications for grants to the recipients and subrecipients. All grants shall be awarded on a competitive basis.

A JARC grant is subject to section 5307 formula grant requirements and a recipient of a grant must certify to the Secretary that allocations of the grant to subrecipients are distributed on a fair and equitable basis. The Federal share for capital projects may not exceed 80 percent of the net capital cost and for operating assistance the Federal share may not exceed 50 percent of the net operating costs. The non-Federal share may be provided from a variety of sources, including other Federal funds (other than from the Department of Transportation). Funds made available through the Social Security Act may also be used for the remainder of the cost of the project.

The Comptroller General is required to conduct a study to evaluate the JARC grant program and transmit the results to the Congress. The study must begin within one year after the enactment of the Federal Transportation Act of 2005, and every two years thereafter. Not later than three years after the date of enactment of this section, the Secretary must conduct a study to evaluate the effectiveness of recipients making grants to subrecipients and transmit the report to Congress.

Senate Bill

Sec. 6038.

The JARC program continues as a competitive discretionary program. The coordination requirements are amended to conform to the changes made in Sections 5307, 5310, and 5311. Section 3037(b)(2) is amended to clarify that funds can be used for the provision of service as well as the development of service.

Section 3037(b) is amended to expand the definition of 'eligible low-income individual' to allow States the flexibility to use JARC funds to assist the same individuals as assisted under the State-administered Temporary Assistance to Needy Families program (TANF).

The Senate requires projects to be drawn from a human service transportation coordination plan. Section 3037(j) is amended to change the terms and conditions of JARC grants to match the type of recipient. Under current law, all JARC grants are subject to the terms and conditions of Section 5307, including those to recipients in other than urbanized areas, or recipients who are private non-profit organizations. This represents a significant burden to these recipients, since the requirements are tailored to public agencies in urbanized areas.

Conference Substitute

Adopts the House proposal, establishing the job access and reverse commute grants program as a formula program, rather than a competitive discretionary grants program. Current law labor protections are retained. The conferees are aware that the Federal Transit Administration has recognized the challenges of providing public transportation services to individuals transitioning from welfare to work, particularly in rural areas. The conferees expect the FTA to continue its practice of providing maximum flexibility to job access projects that are designed to meet the needs of individuals who are not effectively served by public transportation, consistent with the use of funds described in the Federal Register, Volume 67 (April 8, 2002).

SEC. 3019. NEW FREEDOM PROGRAM

House Bill

Sec. 3018.

This section authorizes a new program requested by the Administration to address the transportation needs of persons with disabilities at all income levels. The New Freedom Program is codified as section 5317 of title 49, United States Code, a section that is repealed under current law. Under the New Freedom Program, the Secretary would make grants to a recipient for new transportation services and public transportation alternatives beyond the Americans With Disabilities Act of 1990 (ADA) to assist individuals with disabilities with transportation needs.

With the passage of the ADA, it has become a civil rights violation to deny access to persons with disabilities to public transportation. The New Freedom formula grant program was proposed by the administration and has been included in this legislation to provide additional tools to overcome existing barriers facing Americans with disabilities seeking integration into the work force and full participation in society. Lack of adequate transportation is a primary barrier to work for people with disabilities. The 2000 Census showed that only 60 percent of people between the ages of 16 and 64 with disabilities are employed. The New Freedom formula grant program will expand the transportation mobility options available to persons with disabilities beyond the requirements of the ADA. Examples of projects and activities that might be funded under the program include, but are not limited to:

- Purchasing vehicles and supporting accessible taxi, ride-sharing, and vanpooling programs.
- Providing paratransit services beyond minimum requirements (3/4 mile to either side of a fixed route), including for routes that run seasonally.
- Making accessibility improvements to transit and intermodal stations not designated as key stations.
- Supporting voucher programs for transportation services offered by human service providers.
- Supporting volunteer driver and aide programs.
- Supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation.

A state may use up to 10 percent of the amount it receives under this section to administer, plan, and provide technical assistance. Funds would be apportioned based on a formula that apportions 60 percent of the funds to designated recipients in urbanized areas with a population of 200,000 or more in a ratio reflecting the number of individuals with disabilities in each such urbanized area; 20 percent of the funds are apportioned among the states in a ratio reflecting the number of individuals with disabilities in urbanized areas with a population of less than 200,000; and 20 percent of the funds are apportioned among the states in a ratio reflecting the number of individuals with disabilities in non-urbanized areas in each state.

The Secretary requires a recipient of a grant to coordinate the New Freedom program activities with other related program activities of other Federal agencies. Also a recipient that transfers funds to the urbanized area formula grant program must certify that the project for which funds are requested had been coordinated with nonprofit providers of services. Beginning in fiscal year 2007, a recipient will also be required to certify that projects selected were derived from a locally developed, coordinated public transit-human services transportation plan and that the plan was developed through a process that involved individuals of the public, private, and nonprofit transportation and human services providers.

The Federal share for the net project capital cost of a project may be up to 80 percent, and not more than 50 percent of the net operating cost of a project.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

Adopts the House proposal, establishing a new formula grants program that will provide funds for new transportation services and public transportation alternatives beyond the Americans With Disabilities Act of 1990 (ADA) to assist individuals with disabilities with transportation needs. Section 5333 labor protections are not extended in this new program.

SEC. 3020. BUS TESTING FACILITY

House Bill

Sec. 3019.

This section amends section 5318 of title 49, United States Code, to delete the requirement for the Secretary to establish one bus testing facility because the facility has already been established in Altoona, Pennsylvania. The Secretary is required to maintain the facility. The provisions under section 5318 that establishes a revolving loan fund for expenses related to operating and maintaining the facility are deleted because the bus testing facility relies on state resources

to pay for those costs, and has never requested a loan. The provision concerning the acquisition of new bus models is moved to this section from section 5323(c) for clarity.

Senate Bill

Sec. 6018.

Special testing requirements for 'New Model' buses are continued.

Technical changes are made in the requirements for the testing of new model buses.

Conference Substitute

Adopts the Senate provision, maintaining the current law funding and requirements of the bus testing facility.

SEC. 3021. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS

House Bill

Sec. 3021.

This section establishes a new program to provide for public transportation in units of the National Park System, to be administered by the Secretary of Transportation in consultation with the Secretary of the Interior. The definition of public transportation for the pilot program means general or special transportation to the public by a conveyance that is publicly or privately owned. The definition does not include school bus or charter transportation, but does include sightseeing transportation. Within 90 days after the enactment of this section, the Secretary of Transportation and the Secretary of the Interior must enter into a memorandum of understanding (MOU) to establish a transit in the parks pilot program to encourage and to promote the development of transportation systems to improve visitor mobility and enjoyment, reduce pollution and congestion, and enhance resource protection through the use of public transportation.

The Secretary of Transportation will administer the pilot program in consultation with the Secretary of the Interior. The MOU entered into between the Secretaries must be consistent with the planning processes required under Chapter 52 of title 49 and include descriptions of programs and activities eligible for assistance under the pilot program. The Secretary of the Interior may carry out eligible transportation projects as permitted under the interagency agreements. The Government's share for any capital project or activity carried out under the pilot program is 100 percent of the net project costs. Operating assistance grants may not exceed 50 percent of the net operating costs of the project.

Senate Bill

Sec. 6040.

This section funds, for the first time, a program to provide funding for public transportation in National Parks and public lands at a level of $25 million per year. The Departments of Transportation and Interior will work cooperatively to develop and select capital projects.

Under this program, the Departments of Transportation and Interior will work cooperatively to select capital projects for funding within and in the vicinity of sites in the National Park System, the National Wildlife Refuges, Federal recreational areas, and other public lands, including National Forest System lands. This program will help the parks make investments in traditional public transportation, such as shuttle buses or trolleys, or other types of public transportation appropriate to a park setting, such as waterborne transportation or bicycle and pedestrian facilities.

Conference Substitute

The Conference adopts the Senate proposal, with modifications to make National Forest System lands explicitly eligible and to add bicycle and pedestrian projects to the definition of alternative transportation. In addition, language was added to ensure that projects carried out under this program are consistent with other transportation policies of the Department of the Interior and other federal land management agencies. Section 5333 labor protections are not extended in this new program.

SEC. 3022. HUMAN RESOURCES PROGRAMS

House Bill

Sec. 3022.

Sections 5312(b) and (c) regarding grants to higher learning institutions and fellowships would be moved to sections 5322(b) and (c) to better fit the organization of the revised section 5312 of title 49, United States Code.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts House language that allows the Secretary to award fellowship grants.

SEC. 3023. GENERAL PROVISIONS ON ASSISTANCE

House Bill

Sec. 3023.

Amendments are made to section 5323 of title 49, United States Code in this section.

Subsection 3023(c) regarding conditions on charter bus transportation service amends section 5323(d) by striking the existing law subsection (d)(2) regarding violations of agreements and inserting new language which directs the Secretary to investigate all complaints about violations of the charter service agreement and decide whether a violation has occurred; if a violation has occurred, to correct the violation; and, if a pattern of violations is found, to bar the recipient from receiving funds in an amount the Secretary considers appropriate. Under existing law, the Secretary did not have the flexibility to adjust the amount withheld—the recipient would be barred from receiving further Federal assistance. This overly-broad authority was never used, whereas a more flexible authority to penalize charter violators will encourage a more realistic and responsive approach to charter enforcement by the FTA. The Committee is aware that both public transportation providers and private charter bus providers have expressed strong concerns about the 1987 FTA rule enforcing section 5323(d) regarding charter bus service. The Committee directs the FTA to initiate a rulemaking seeking public comment on the regulations implementing section 5323(d), and to consider certain issues. Consideration of any changes to the current regulation shall not disturb the current law provisions under section 5323(f) regarding school bus transportation.

A new subsection is included that makes revenue bond proceeds eligible for use as local match for federal transit grants and that authorizes recipients to establish debt service reserves using up to 10 percent of their federal grant funds. The authority to use bond proceeds as local match was established in section 3011 of the Transportation Equity Act for the 21st Century (TEA 21), and FTA has reported that this authority has been beneficial to transit operators. This subsection also permits the Secretary to reimburse recipients for deposits in a debt service reserve established for the purpose of financing transit capital projects, pursuant to section 5302(a)(1)(K). Such reimbursements are capped at 10 percent of the recipient's annual apportionment from section 5307 urbanized area formula grants.

Subsection 5323(f) regarding school bus transportation is amended to allow the Federal Transit Administration to assess fines and withhold grant funds if public transportation agencies violate the narrowly defined conditions under which public transportation providers can provide school bus transportation.

Section 5323(j) regarding Buy America is amended by adding a new requirement that FTA provide a detailed written justification when the agency issues a public interest waiver. Additionally, a new provision is added stating that parties adversely affected by FTA action on Buy America decisions may seek judicial review under the Administrative Procedures Act. The general regulatory waivers for Chrysler 15-passenger vans and wagons from the requirement that public transportation vehicles be assembled in the United States are repealed. Section 3023(g)(5) adds a freestanding legislative provision requiring the Secretary to issue a final rule within 180 days of enactment on FTA's implementation of the Buy America requirements. Specifically, the agency is directed to clarify that any waiver issued for microcomputer equipment under the general waiver in subsection (d) of Appendix A of section 661.7 of title 49, Code of Federal Regulations, be applied solely to devices that are used to process or store data, and not extend to products containing a microprocessor, computer, or microcomputer. In directing the Secretary to issue new regulations regarding microprocessors, computers, or microcomputers, there is no intent to change the existing regulatory treatment of software or of microcomputer equipment.

Under current law, section 5323(l) requires state-managed transit grant programs be subject to State transportation planning requirements in section 135 of title 23, United States Code. Since all transportation planning programs are now addressed under chapter 52 of title 49, U.S.C., section 3042 contains a new provision amending section 5323(l) that broadens the applicability of section 1001 of title 18, prohibiting fraudulent statements to the Government, to all certificates, submissions, or statements provided to DOT under Chapter 53 of Title 49. This language is intended to provide a direct tie between 18 U.S.C. 1001 and the punitive recourse of ending financial assistance provided for in the second sentence of new subsection 5323(l). This language is not intended to, and should not be construed to, exclude by implication from the application of 18 U.S.C. 1001 any other matter to which such section would otherwise apply.

Senate Bill

Sec. 6022.

Environmental and public hearing requirements are revised to conform with the applicable cross-cutting statutes.

The provisions of Section 5323(b) are edited to mesh the statutory requirements of Federal transit law more closely with current practice under the National Environmental Policy Act (NEPA).

Section 5323(b) is amended to provide the same consideration to comments submitted by mail or electronic means, as the consideration given to comments transcribed at a hearing. In addition, non-English speaking persons or hearing-impaired persons are provided the opportunity to comment through special arrangements.

This section eliminates the two-step process for announcing a hearing. Under the current process, the applicant announces the opportunity for a hearing and then waits for a response. The Senate requires that a hearing be held whenever the project affects significant social, economic, or environmental interests in the community, regardless of whether one has been requested.

Special terms and conditions for technology deployment projects will be allowed.

A new Section 5323(e) allows grants for new technology, including the integration of innovative techniques, subject to the requirements of Section 5309, but only to the extent the Secretary deems appropriate. Revised Subsection (c) strengthens and leverages private sector participation by permitting the Secretary to establish appropriate terms and conditions for projects involving the integration of new innovative or improved products, techniques, or methods.

Section 3011(a) of TEA–21 allows a recipient of an urbanized area formula grant under Section 5307 or a major capital investment grant under Section 5309 to use proceeds from the issuance of revenue bonds as a local match. This provision is codified in Section 5323(f)(1).

Debt Service Reserve Funds are made an eligible project activity. Under Section 5323(f)(2), the Secretary could allow a recipient to use Section 5307 or 5309 dollars to reimburse it for deposits made to the debt service reserve. Because Federal transit funds are typically viewed as higher creditworthy revenues, transit bond ratings would be strengthened and interest costs reduced.

Public transportation agencies can receive land which becomes available as a result of base closures. Subsection (h) is revised to provide for the transfer of lands or interests in lands owned by the United States. The Department of Defense regulations (32 CFR Parts 90 and 91) provide for the disposition of surplus land resulting from the Defense Base Closure and Realignment Act to be transferred free to 'grantees' that have Federal sponsors with Federal land transfer statutes.

Section 5323(m) would be amended to eliminate pre-award and post-delivery audit requirements for private non-profit organizations and grantees serving urbanized areas with fewer than one million people. All manufacturers and suppliers would have to continue to certify compliance with Buy America during the bidding process, and they would remain bound by their original certification. The vast majority of vehicles purchased will still undergo the audits.

Conference Substitute

Adopts the Senate proposal regarding interests in property and notice and public hearings. The current law provision under section 5310 states that public transportation operators are not required to charge elderly individuals and individuals with disabilities a fare is expanded to apply to all programs under this chapter.

Adopts the House proposal regarding conditions on charter bus transportation service. The conferees are aware that both public transportation providers and private charter bus providers have expressed strong concerns about the 1987 FTA rule enforcing section 5323(d) regarding charter bus service. The conferees direct the FTA to initiate a negotiated rulemaking seeking public comment on the regulations implementing section 5323(d), and to consider the issues listed below:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private nonprofit agencies that would not otherwise be served in a cost-effective manner by private operators?

2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including use of internet technology?

3. How can the enforcement of violations of the charter bus regulations be improved?

4. How can the charter complaint and administrative appeals process be improved?

Adopts the House proposal regarding the new eligibility to use bond proceeds as local matching funds, including a maintenance of effort clause. New authority for section 5307 funds to be deposited in a debt service reserve is established under a pilot program for 10 eligible recipients, and is established generally for section 5309 funds and a report is directed to be submitted outlining the status and effectiveness of the debt service reserve pilot program.

The House and Senate both carried identical provisions regarding more effective enforcement of schoolbus transportation violations. This language is adopted. The general provisions regarding a 90 percent government share of costs for Americans with Disabilities Act and Clean Air Act related equipment is expanded to incorporate facilities.

Adopts the House language regarding updated Buy America regulations. In the final rule, the FTA is directed to define the term ''end product'' for purposes of part 661 of title 49, CFR, and to provide that such definition include a list of representative items that are subject to the Buy America requirements, similar to the list of such items under the rolling stock procurements regulations. The purpose of developing such a list and more clearly defining the term end product is to ensure that major system procurements are not used to circumvent the Buy America requirements.

Adopts the Senate language regarding relationship to other laws, which broadens the applicability of section 1001 of title 18, prohibiting fraudulent statements to the Government, to all certificates, submissions, or statements provided to DOT under Chapter 53 of Title 49.

Amends the Senate proposal to waive preaward and postdelivery audits for rolling stock to allow procurements of 20 or fewer vehicles being purchased in rural and small urbanized areas under 200,000 in population to be subject to an expedited postdelivery process that does away with the requirement to have an on-site inspector at manufacturers' facilities.

Adopts the House proposal to allow incidental use of alternative fueling facilities by nontransit users as long as the incidental use does not interfere with the recipient's public transportation operations, and all costs are fully recaptured by the recipient. Revenues under this authority can be used for planning, capital or operating expenses.

SEC. 3024. SPECIAL PROVISIONS FOR CAPITAL PROJECTS

House Bill

Sec. 3024.

This section makes very minor amendments to section 5324 of title 49, United States Code and changes the title of the section from ''Limitations on discretionary and special needs grants and loans'' to ''Special provisions for capital projects,'' which is more descriptive of the provisions contained therein regarding relocation program requirements and consideration of economic, social, and environmental interests.

Senate Bill

Sec. 6023.

Environmental and relocation assistance requirements are revised to conform to applicable cross-cutting statutes (NEPA and Uniform Relocation Assistance Act).

Section 5324(a) is amended to reference the relevant sections of the Uniform Relocation Assistance and Real Property Acquisition Policies Act ('the Act'), 42 U.S.C. 4601 et seq., directly, rather than referencing only two of the numerous conditions contained in the Act.

Section 5324(b) continues to allow protective and hardship acquisitions as defined in 23 CFR 771.117, but it also allows advance acquisition where the strict requirements associated with a protective acquisition are not met. This provision allows for the acquisition when market forces dictate, and thereby avoids multiple transactions on the same property and the associated escalation in cost. A strictly limited number of such advance acquisitions is allowed without prejudice to the consideration of alternative locations or alternative projects.

Section 5324(c) addresses FTA's current practice of allowing the acquisition of preexisting railroad right of way (ROW) in advance of any specific project decisions on how the ROW will be used. Any changes in the use of the railroad ROW are subject to appropriate environmental review prior to the change.

Section 5324(d) (formerly Section 5324(b)) meshes the statutory requirements of Federal transit law more closely with current FTA practice under NEPA, and 49 U.S.C. 303 (commonly called 'Section 4(f)'), and other environmental laws. Reference to the Secretaries of Agriculture, Health and Human Services, and Housing and Urban Development are removed since these agencies rarely have any interest in transit projects.

The amendment deletes Council on Environmental Quality (CEQ) and substitutes the Administrator of EPA. The Council on Environmental Quality has delegated its routine project review responsibilities to the Environmental Protection Agency (EPA). Section 5324(d) would no longer single out the hearing transcript for greater attention than other valid forms of public comment on a project.

Conference Substitute

The conference report includes a rewritten provision that applies the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to all financial assistance for capital projects under this chapter. Adopts House language regarding consideration of economic, social, and environmental interests. Adopts the Senate proposal to allow acquisition of railroad right-of-way before the completion of environmental reviews, if the acquisition is otherwise permitted under Federal law. A railroad corridor purchased in advance under this authority may not be developed before the project has completed all required environmental reviews.

SEC. 3025. CONTRACT REQUIREMENTS

House Bill

Sec. 3025.

This section consolidates sections 5325 ''Contract Requirements'' and 5326 ''Special Procurements'' of title 49, United States Code, since the provisions of section 5326 fall within the scope of conditions set on contracts that utilize federal funds provided under chapter 53 of title 49, United States Code. Under the revised subsection 5325(a) and (b), recipients of such funds are expressly required to conduct procurements using full and open competition and to use standard architectural, engineering, and design contract award procedures. A new subsection 5325(d) is added that is identical to existing law section 5326(a), except that the term ''turnkey'' is replaced with the more commonly used term ''design-build'', and references to design-build ''demonstration projects'' are deleted, since design-build contracting has matured beyond the demonstration phase. In addition, design-build contracting does not necessarily result in lower project costs or new technologies and, as a result, this concept as expressed under section 5326(a)(2) in current law is removed.

Senate Bill

Sec. 6024.

Current provisions regarding procurement and contracts are consolidated in a single section.

Grantees must refer to the Contractor Performance Assessment Report when selecting contractors to do work on projects seeking FFGAs.

Competition in all procurements is explicitly established as the presumptive standard. Existing Section 5307 requires the use of competitive procurement as defined or approved by the Secretary in carrying out procurement under that section. Section 5325(a) is amended to expressly require the use of competitive procurement procedures for any procurement carried out under Chapter 53. The revised language in redesignated Section 5325(b)—referred to as 'The Brooks Act'—clarifies that program management is limited to architectural, engineering, and design contracts. Also, the reference to 23 U.S.C. 112(b)(2)(C) through (F), which deals with performance and audit standards and indirect cost rates, is removed. Instead, Subsection (b) is revised specifically to include these provisions.

TEA–21 allowed for turnkey system projects, also known as design-build contracting, in Federally funded public transportation projects, including demonstration projects. Section 5325(d) (existing Section 5326(a)), replaces the term 'turnkey' with the more commonly used term 'design-build.'

Currently, FTA and the Comptroller General can inspect contract records for capital projects receiving Federal transit assistance, but only in cases of 'noncompetitive bidding.' New Subsection 5325(g), 'Examination of the Records,' strengthens oversight by allowing FTA or the Comptroller General to inspect all contract documents. The 'grant prohibition' provision, dealing with contract requirements, was erroneously included under Section 5323, 'General Provisions On Assistance,' and is relocated under Section 5325(h).

A new provision is added to Section 5325(i) to strengthen the requirements that contractors to public transportation agencies must have adequate technical and financial capacity to carry out a proposed contract. This elevates already existing FTA and OMB requirements on third-party contracting to a statutory requirement.

Conference Substitute

Adopts the House language regarding architectural, engineering, and design contracts, including the provision that allows State qualifications-based requirements for contracting architectural, engineering, and design services to be employed in lieu of Federal contracting procedures if an equivalent State qualifications-based requirement is established before the date of enactment of the Federal Public Transportation Act of 2005.

Adopts the House proposal regarding design-build projects and the House language regarding multiyear rolling stock. Both the House and Senate bills included a provision stating that no State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter. This provision is adopted. The Senate's language strengthening the requirements that contractors to public transportation agencies have adequate technical and financial capacity to carry out a proposed contract is also adopted.

SEC. 3026. PROJECT MANAGEMENT OVERSIGHT AND REVIEW

House Bill

Sec. 3026.

This section amends section 5327 of title 49, United States Code regarding project management oversight activities. The Secretary is authorized to use .5 percent of section 5311 funds, .75 percent of section 5307 funds, and 1 percent of section 5309 funds to make contracts for oversight of major transit construction projects, and to review and audit recipients' compliance with federal requirements and provide technical assistance to correct deficiencies identified in such reviews and audits. This is an increase in the amount set aside for such activities above levels set under current law, which provides for .5 percent of section 5307 and section 5311 funds and up to .75 percent for section 5309 funds. Comprehensive agency oversight, compliance review, and technical assistance are necessary for all major grant programs, and particularly important for major capital grants such as new starts and rail modernization.

Senate Bill

Sec. 6025.

The takedown for oversight is increased to 1 percent in all programs.

Given the new security concerns—and in keeping with actual practice in the field—Section 5327(a) is revised to require that a project management oversight (PMO) plan include 'safety and security management.'

The section also provides new authority for the use of oversight funds to conduct analyses which cut across multiple projects. At present, oversight funds may be used only to review each project in isolation. Cross-cutting analyses could help identify major problems which need attention and could help develop best-practice methods which could be gleaned from a review of a set of similar projects.

Conference Substitute

Adds safety and security to PMO plans. Authorizes the Secretary to use 0.5% of Section 5305 funds, 0.75% of 5307 funds, 1% of 5309 funds, 0.5% of Section 5310 funds, 0.5% of Section 5311 funds, and 0.5% of Section 5320 funds to make contracts for oversight of major transit construction projects, and to review and audit recipients' compliance with federal requirements and provide technical assistance to correct deficiencies identified in such reviews and audits. This is an increase in the amount set aside for such activities above levels set under current law, which provides for .5 percent of section 5307 and section 5311 funds and up to .75 percent for section 5309 funds. Comprehensive agency oversight, compliance review, and technical assistance are necessary for all major grant programs, and particularly important for major capital grants such as new starts and rail modernization.

SEC. 3027. PROJECT REVIEW

House Bill

No Comparable Provision in House Bill

Senate Bill

Sec. 6026.

The schedules for FTA review of projects in the New Starts process are updated to clarify the relationship to the New Starts process and criteria; the advancement of projects is not automatic, but rather depends on meeting the requirements of that section.

The concept of Programs of Interrelated Projects is not continued.

Conference Substitute

Adopts the Senate proposal, but retains current law provision regarding programs of interrelated projects.

SEC. 3028. INVESTIGATIONS OF SAFETY HAZARDS AND SECURITY RISKS

House Bill

Sec. 3027.

This section amends section 5329 of title 49, United States Code regarding the Secretary's authority to investigate safety and security risks associated with public transportation equipment, facilities, or operations financed under chapter 53 of title 49, United States Code. The Secretary may withhold any amount of a recipient's Federal assistance until a plan to eliminate, mitigate, or correct the hazard has been approved and carried out.

Senate Bill

Sec. 6027.

FTA investigation authority is expanded expressly to include security issues. Section 5329 authorizes FTA to investigate 'safety hazards,' but does not authorize FTA expressly to investigate 'security' matters. This section is amended to promote active cooperation between FTA and its grantees on security matters, by clarifying that FTA may assist grantees on security matters and investigate security concerns without notice of a specific breach of security at a transit system.

The penalty for failure to address issues is modified. The existing section also contains an 'all or nothing' provision that authorizes the Secretary to withhold 'further financial assistance' upon a transit system's failure to correct a safety hazard. Section 5329 allows the Secretary to determine the amount of funding to be withheld.

A new requirement is added for a Memorandum of Understanding between the Departments of Transportation and Homeland Security specifying the details of how the agencies would cooperate on setting national security standards for public transportation, would establish funding priorities for DHS grants to public transportation agencies, and would coordinate with each other and public transportation agencies on security matters.

Conference Substitute

The conference report adopts a modified version of the Senate provision. In addition to the original Senate security provisions authorizing security and safety investigations and penalties, the conference report requires an annex to the memorandum of understanding signed by the Departments of Transportation and Homeland Security on September 28, 2004 to define and clarify the respective transit security roles and responsibilities of each Department. The conference report also mandates a joint rulemaking outlining the requirements and characteristics of any public transportation security grants, including funding priorities and eligible expenditures.

SEC. 3029. STATE SAFETY OVERSIGHT

House Bill

Sec. 3028.

This section amends section 5330 of title 49, United States Code by changing the heading from ''Withholding amounts for noncompliance with safety requirements'' to reflect the more commonly used title of ''State safety oversight.'' Under this section, a State is required to establish and carry out a safety program plan for rail-based new starts projects. Commuter rail systems that operate on the general railway system are subject to the safety rules and oversight of the Federal Railroad Administration. Amendments to subsection 5330(a) ensure that safety is considered well before a rail-based new start project begins revenue service. In subsection 5330(d), rail-based new start projects that operate in two or more States are required to have a unified safety program plan.

Senate Bill

Sec. 6028.

Safety oversight is required during the design phase of New Starts.

States can designate a single agency to handle oversight of systems serving more than one State.

Section 5330 is amended to change the heading to 'Withholding Amounts for Non-Compliance with State Safety Oversight Requirements' the better to reflect the requirements in this section.

Amendments to Section 5330 ensure that safety is considered well before a rail fixed-guideway system begins revenue service, i.e., during the design phase of the project.

Conference Substitute

Adopts the House proposal.

SEC. 3030. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING

House Bill

Sec. 3029.

This section amends section 5331 of title 49, United States Code regarding drug and alcohol testing of public transportation employees, allowing the Secretary to apply a single agency's drug and alcohol testing regime if a particular transportation provider is subject to more than one agency's rules. Currently, section 5331 authorizes the Secretary to exclude from FTA drug and alcohol testing those public transportation providers that are adequately covered by the Federal Motor Carrier Safety Administration or the Federal Railroad Administration testing statutes. The amendment to subsection 5331(a) expands the Secretary's authority to exclude from FTA testing those public transportation providers that are adequately covered under other Federal or Departmental testing, such as the U.S. Coast Guard's testing provisions applicable to ferryboat employees.

Senate Bill

Sec. 6030.

Section 5331 is amended to expand the Secretary's authority to exclude from FTA testing requirements, those public transportation providers that are adequately covered under other Federal or Departmental testing statutes or regulations, such as the U.S. Coast Guard's testing provisions applicable to ferryboat employees.

Conference Substitute

The Conference adopts the House version.

SEC. 3031. EMPLOYEE PROTECTIVE ARRANGEMENTS

House Bill

Sec. 3030.

This section amends Section 5333 of title 49, United States Code making conforming changes to ensure that all federal public transportation grant programs are subject to fair labor standards and employee protective arrangements.

Senate Bill

Sec. 6031.

The time for severance pay and benefits for transit workers is reduced to four years to comport with existing rail worker protections for Class III railroads. The Senate notes that this change does not alter requirements for severance pay for workers covered under other laws, such as those governing the rights of railroad workers or the collective bargaining process.

The Senate language harmonizes competitive bidding requirements under Federal law with Federal labor law governing transportation workers. This bill provides that 13(c) requirements do not automatically attach to newly solicited contracts, or require that an identical workforce or identical workplace management rules be maintained under new contracts. Carrying over benefits from contractor to contractor was not envisioned when Section 13(c) was enacted and as such, this restores the original intent of Section 13(c). The bill codifies the Department of Labor's decision (commonly referred to as the 'Las Vegas' decision), which found that a change in contractors would not extinguish obligations under prior Section 5333(b) arrangements. Thus, this provision is not intended to extend, expand, or contract labor protection collective bargaining terms and conditions applicable to subsequent contracts.

Grants for purchase of like-kind equipment or facilities do not have to be referred by the Department of Labor prior to certification. In addition, the Senate language establishes in law a Special Warranty now applied by administrative practice in the Section 5311 program for other-than-urbanized-areas and applies it in the Job Access and Reverse Commute Program.

Sec. 6031.

Conference Substitute

The conference report adopts the Senate proposal to establish in law a special warranty for Section 5311 programs.

In addition, the conference report adopts the Senate proposal regarding like kind grants with a modification to limit the provision to certify without referral to situations that do not materially revise or amend an existing assistance agreement.

The Senate bill included changes to 49 USC 5333(b) regarding rights afforded to employees under this section when one private contractor replaces its predecessor as a result of competitive bidding. The Conferees agree that the so-called contractor-to-contractor issues were addressed in the Department of Labor's Las Vegas decision dated September 21, 1994, as clarified by the supplemental ruling dated November 7, 1994. The Conferees expect that when the Department of Labor (DOL) is called upon to resolve such issues in similar bus transit situations, the agency shall apply the principles, as applied to the facts, set forth in the Department's Las Vegas rulings, without otherwise affecting existing protective arrangements. This affirmation of existing DOL policy shall not serve as a basis for objections under 29 CFR 215.3(d).

Finally, Section 5333(b) is not applied to the new programs created in conference report, Section 5317 (New Freedom) and Section 5320 (Alternative Transportation in Parks and Public Lands) programs.

SEC. 3032. ADMINISTRATIVE PROCEDURES

House Bill

Sec. 3031.

This section amends section 5334 of title 49, United States Code regarding the Secretary of Transportation and Federal Transit Administration's authority to administer programs carried out under chapter 53 of title 49, United States Code. The Secretary is prohibited from regulating public transportation provider's routes, schedules, and rates, except in the case of a national or regional emergency. A new subsection 5334(c)(5) has been added that requires the FTA to subject non-regulatory substantive policy statements to a 60-day public review notice and comment period. Currently, FTA circulars, letters, or other policy statements can be issued without the benefit of the same public review and comment process that is required under the regulatory process. However, such documents often carry the same weight and penalties as regulations. An example of this ''unwritten rule'' is the $500 million per project limitation FTA has placed on the Federal commitment on a full funding grant agreement issued under the authority of section 5309. Although such a project cost limitation might be a valid policy, it has not been published in a form that allows for comment from the affected transit community. The provision added in subsection (c)(5) will add transparency to FTA's administrative procedures and provide opportunity for public review and feedback.

Senate Bill

Sec. 6032.

Amends Section 5334(a) to clarify that FTA has explicit authority to issue regulations.

Current Section 5324(c), 'Prohibitions Against Regulating Operations and Charges,' is moved to Section 5334, 'Administrative Provisions,' as a new Subsection (b). It is appropriate to house this prohibition in the 'Administrative Provisions' section and make it expressly applicable chapter-wide, rather than on capital projects only. While it has been the practice of FTA to forego any regulation of operations or charges with respect to any grant based on legislative history, current law is ambiguous. Moving this provision will clarify that FTA may not regulate operations or charges, except in emergencies. The appropriate Federal role in public transportation is to provide financial assistance only, and not to regulate operations. Also, this provision is amended to specify that the Secretary is prohibited from regulating a recipient's routes, schedules, rates, fares, tolls, and rentals, just as this provision had specified prior to the recodification of the Federal Transit Act into 49 U.S.C. Chapter 53 in 1994. In light of the September 11 terrorist attacks, this provision is further amended to allow the Secretary of Transportation, under direction by the President, to regulate the operation of and charges for public transportation systems for purposes of national defense or in the event of a national or regional emergency.

Conference Substitute

Adopts the House proposal. The provision regarding nonregulatory substantive policy statements is amended to apply more narrowly to agency statements that impose a binding obligation on recipients of Federal assistance under this chapter. Such statements shall be subject to rulemaking procedures under the Administrative Procedure Act.

SEC. 3033. NATIONAL TRANSIT DATABASE

House Bill

Sec. 3032.

This section amends Section 5335 of title 49, United States Code by striking subsection (b) regarding a transferability report that was completed in 1993. The section header is amended from the current law title ''Reports and audits'' to ''National transit database'' to reflect the revised contents of the section.

Senate Bill

Sec. 6033.

Section 5335(b), requiring that the Comptroller General submit 'transferability reports' to Congress, is removed, as the report is no longer needed on a recurring basis. Information on the use of flexible funding under Title 23 is readily available.

Conference Substitute

Adopts the Senate provision. Beginning in 2006, the national transit database will be funded as a takedown from the formula grants programs at $3,500,000 a year.

SEC. 3034. APPORTIONMENTS OF FORMULA GRANTS

House Bill

Sec. 3040.

This section establishes a new set-aside program from the section 5307 urbanized area formula grants that provides a small bonus grant payment to urbanized areas under 200,000 in population that operate at a level of service above the industry average level of service in similarly-sized urbanized areas in one or more of six performance categories: passenger miles traveled per vehicle revenue

mile, passenger miles traveled per vehicle revenue hour, vehicle revenue miles per capita, vehicle revenue hours per capita, passenger miles traveled per capita, and passengers per capita. These performance categories and a methodology established for providing bonus grants were established in the September 2000 FTA report to Congress called ''The Urbanized Area Formula Program and the Needs of Small Transit Intensive Cities.''

Senate Bill

Sec. 6034

For basic apportionments, the existing urbanized area formula continues as in current law.

The 'Transit Intensive Cities' tier would allocate funds to small urbanized areas with transit service levels (represented by revenue vehicle hours) per capita greater than the per capita service levels in areas with population of 200,000 to 1,000,000 on the basis of transit service levels. Funds from this tier are available for capital purposes only.

A provision is added to require a study of incentives which might be added to the urbanized area and other-than-urbanized area formula programs. In light of numerous questions about how such a program as proposed by the Administration would work, the factors to be considered, and the manner in which grants could be used, the Senate instead calls for a study of the issues involved in establishing such a program. The report should address the possibility of rewarding improvements in ridership (as was proposed by the Administration) as well as improvements in efficiency (cost per unit of service provided), effectiveness (service utilization per unit of service provided), and cost-effectiveness (cost per unit of service utilization).

Conference Substitute

Adopts the House version of the ''Small Transit Intensive Cities'' formula program, with annual funding at one percent of the total amount made available for formula programs. Adopts the Senate's incentives in formula programs study and provides that 60 percent of the directional route mileage of the Alaska Railroad system be attributable to that system.

SEC. 3035. APPORTIONMENTS BASED ON FIXED GUIDEWAY FACTORS

House Bill

Sec. 3033.

This section amends Section 5337 of title 49, United States Code regarding apportionment formulas for the fixed guideway modernization program. The provision regarding route segments to be included in the apportionment formula is amended to delete the ''1997 Standard'' that held eligible rail system mileage to the number of miles a system reported in fiscal year 1997.

Senate Bill

No similar provision.

Conference Substitute

Does not adopt the House elimination of the 1997 Standard. Makes an adjustment to a small urbanized area with a fixed guideway system to treat the system as a large urbanized area for purposes of apportionments based on fixed guideway factors.

SEC. 3036. AUTHORIZATIONS

House Bill

Sec. 3034.

This section amends Section 5338 of title 49, United States Code, making FTA program funds available on an annual basis for the fiscal year 2004–2009 authorization period. The major FTA programs are Formula Grants, Capital Investment Grants, Planning, Research, and Administrative Expenses. A new organizational structure is adopted to separate the fiscal year 2004 funding, which splits every account's funding between the Mass Transit Account and the general fund at an 80:20 ratio (current law structure), from funding for fiscal years 2005–2009, which is either 100 percent trust funded or 100 percent general funded. The programs that will be 100 percent trust funded in fiscal years 2005–2009 are Formula Grants and Planning, as well as the bus and bus related facilities grants and the fixed guideway modernization grants under Capital Investment Grants. The programs that will be 100 percent general funded in fiscal years 2005–2009 are Research, Administration, and the new starts and small starts programs under Capital Investment Grants. This restructuring of the program financing will prevent an accounting problem with the spending rate of the Mass Transit Account. By not split-funding any programs, each program will outlay at its actual spending rate.

The Formula Grants programs comprise 54 percent of the total transit programs. There are a number of allocations made from the total formula grants funding for: new bus model testing, grants to the Alaska Railroad, over-the-road bus accessibility equipment costs, the new Transit in the Parks pilot program, the transit portion of funding for the non-motorized transportation pilot program authorized in section 1121(b) of the bill, the New Freedom program, the Job Access and Reverse Commute grant program, and the Clean Fuels grant program. After these allocations of funds have been made, the remainder of the aggregate amount is allocated in the following percentages: 2.5 percent to the elderly and disabled formula grant program, 8 percent to the nonurbanized formula grant program, and 89.5 percent to the urbanized area formula grant program. The percentage shares for the elderly and disabled program grants and for the nonurbanized formula grants have been increased over such shares under current law.

The Capital Investment Grants programs comprise 43 percent of the total transit programs. The four Capital Investment Grant programs (fixed guideway modernization, new starts, small starts, and bus and bus-related facilities) receive funding allocations under section 5309(m).

Planning grant fund apportionments to metropolitan areas and states are provided under subsection 5338(c). For fiscal year 2004, the funding is split-funded and for fiscal years 2005–2009, the funding is derived from the Mass Transit Account. The percentage of planning funds allocated to metropolitan areas is 82.72 percent and 17.28 percent is apportioned to states for state planning activities, the same percentages as provided under current law.

The Research program is funded under subsection 5338(d). For fiscal year 2004, the funding is split-funded, and for fiscal years 2005–2009, the funding is authorized to be appropriated from the general fund. There are a number of allocations made from the total formula grants funding for: the transit cooperative research program, management of the national transit database, the National Transit Institute transit training facility at Rutgers University, and Project Action, a national technical assistance program for providers of transportation services to the disabled. The remainder of funds under this subsection are available for the national research and technology programs. In subsection 5338(e), funding is authorized for university transportation research. This complements funding made available for these programs under the Federal-aid Highway program in Title V of the bill.

Funding for administration of the Federal transit programs is provided under subsection 5338(f). For fiscal year 2004, the funding is split-funded, and for fiscal years 2005–2009, the funding is authorized to be appropriated from the general fund.

Senate Bill

Sec. 6036.

Section 5338 authorizes amounts from the General Fund, and makes available amounts from the Mass Transit Account of the Highway Trust Fund, to carry out Federal public transportation programs in Fiscal Years 2005 through 2009. Funds from the Mass Transit Account are provided as 'contract authority.'

Section 5338(a), provides funds for all programs for Fiscal Year 2005 in accordance with the Consolidated Appropriations Act.

Section 5338(b) Formula Grants and Research, provides funds for Fiscal Years 2006 through 2009 from the Mass Transit Account to carry out Sections 5305, 5307, 5308, 5309 (bus and fixed-guideway modernization), 5310–5318, 5322, 5335 and 5505 of Title 49, and Sections 3037 and 3038 of Pub. L. 105–178. It also provides for a takedown for grants to the Alaska Railroad for improvements to its passenger operations under Section 5307.

Section 5338(c), Major Capital Investment Program Grants, authorizes appropriations from the General Fund in Fiscal Years 2006 through 2009 to carry out Section 5309 (New Starts). Section 5338(c) authorizes funds from the Trust Fund for administrative expenses. Amounts available under Subsections (a) and (b) remain available until expended and grants financed from amounts derived from the Mass Transit Account or through advance appropriations under those subsections would be contract authority.

Grants for both planning programs are mainstreamed into 49 U.S.C. 5308. Funding for the planning programs are authorized as a takedown from the Urbanized Area Public Transportation Formula Grants account.

The bill provides that 1.75 percent of the funds are available for planning in Fiscal Years 2006 through 2009. This percentage represents a minimal increase over previous Fiscal Years. The amount proposed in fiscal year 2005 takes into account that this fiscal year will be the first year of reauthorization and is based on the Consolidated Appropriations Act.

The bill provides funding for the National Transit Database (NTD) authorized under Section 5335 in fiscal years 2006 through 2009. The NTD workload has increased substantially with the advent of monthly reporting on safety and security and with the new requirements for the phased in rural and asset condition reporting.

Conference Substitute

Section 5338 authorizes amounts from the General Fund, and makes available amounts from the Mass Transit Account of the Highway Trust Fund, to carry out Federal public transportation programs in Fiscal Years 2005 through 2009. Funds from the Mass Transit Account are provided as 'contract authority.'

Section 5338(a) provides funds for all programs for Fiscal Year 2005 in accordance with the Consolidated Appropriations Act.

Section 5338(b), Formula and Bus Grants, provides funds for Fiscal Years 2006 through 2009 from the Mass Transit Account to carry out all programs except New Starts, Research (including University Transportation Centers), and FTA Administration. Amounts are specified for each program for each fiscal year.

The bill provides funding from the Trust Fund in Section 5338(b) for the National Transit Database (NTD) authorized under Section 5335 in fiscal years 2006 through 2009. The NTD workload has increased substantially with the advent of monthly reporting

on safety and security and with the new requirements for the phased in rural and asset condition reporting.

Grants for both planning programs are mainstreamed into 49 U.S.C. 5305. Funding for the planning programs are authorized as specified amounts from the Formula Grants account.

Section 5338(c), Major Capital Investment Grants, authorizes appropriations from the General Fund in Fiscal Years 2006 through 2009 to carry out New Starts, including Small Starts, under Section 5309.

Section 5338(d), Research and University Research Centers, authorizes appropriations for the Research Programs, including University Transportation Centers. Specific amounts are provided for the Transit Cooperative Research Program, as well as Project Action and the new Center for Senior Transportation.

Section 5338(e), Administration, authorizes appropriations for administrative expenses.

Amounts available under Subsections (a), (b), (c), and (d) remain available until expended. Grants financed from amounts derived from the Mass Transit Account under subsections (a) or (b) or through advance appropriations under those subsections as well as subsections (c), (d), or (e) would be contract authority.

SEC. 3037. ALTERNATIVES ANALYSIS GRANTS

House Bill

No provision.

Senate Bill

No provision.

Conference Substitute

Establishes a new program explicitly for grants to States, metropolitan planning organizations, and local governmental authorities to develop alternatives analyses. This eligibility for new fixed guideway capital project planning and alternatives analysis resides under section 5309 in current law. Because the conferees have eliminated this eligibility under the New Starts program, a stand-alone program is established for such activities.

SEC. 3038. APPORTIONMENTS BASED ON GROWING STATES FORMULA FACTORS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 6037.

A new Section 5340 is added to allocate funds to Growing and High Density States. For this section, the term 'State' is defined only to mean the 50 States.

The new Section 5340 allocates funds based on the population forecasts for fifteen years after the date of that census. Forecasts are based on the trend between the most recent decennial census and Census Bureau population estimates for the most current year. Funds allocated to the States are then suballocated to urbanized and non-urbanized areas based on forecast population, where available. If forecasted population data at the urbanized level is not available, funds are allocated to current urbanized and non-urbanized areas on the basis of current population. Funds allocated to urbanized areas are included in their Section 5307 apportionment. Funds allocated for non-urbanized areas are included in the States' Section 5311 apportionments.

For States with population densities in excess of 370 persons per square mile, funds are allocated based on the amount by which their population exceeds the product of their land area and the percentage of total State population in urbanized areas as determined by the most recent Decennial Census.

Conference Substitute

The Conference adopts Senate Proposal with a modification to flow high density funds through urbanized areas. These funds will be distributed to urbanized areas in their Section 5307 apportionments on the basis of their share of urbanized population. The Conferees expect that FTA will publish single urbanized and rural apportionments that show the total amount for 5307 and 5311 programs that includes both apportionments under 5336 and 5311 formulas together with 5340.

SEC. 3039. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM

House Bill

Sec. 3035.

This section amends Section 3038 of TEA–21 regarding the over-the-road bus accessibility program, which provides grants to intercity and charter bus providers for incremental costs of equipment to reach compliance with the Americans with Disabilities Act. The TEA–21 provision regarding Federal share is amended by increasing the Federal share for such project costs from 50 percent to 80 percent.

Senate Bill

Sec. 6039.

Continues Over-the-Road Bus Accessibility Program.

Conference Substitute

Adopts the House proposal but specifies that the Federal share for grants under this program is 90 percent.

SEC. 3040. OBLIGATION CEILING

House Bill

Sec. 3045

This section sets the annual obligation ceiling for Federal Transit Administration programs authorized by this Act for fiscal years 2004–2009, including both amounts made available from the Mass Transit Account of the Highway Trust Fund and general funds from the U.S. Treasury. The total obligation authority for each fiscal year is guaranteed to be provided in the fiscal year for which it is set under the budgetary firewalls established in section VIII of the bill.

Senate Bill

Sec. 6041.

This section establishes the obligation ceiling for each fiscal year, equal to the total amounts authorized.

Conference Substitute

Establishes the obligation ceiling for fiscal years 2006 through 2009, and sets a ceiling on the amount that can be made available from the Mass Transit Account.

SEC. 3041. ADJUSTMENTS FOR FISCAL YEAR 2005

House Bill

Sec. 3046

This section provides for the funding reconciliation of apportionments and allocations made to transit grant recipients under this Act with the levels of funding already made available under the Surface Transportation Extension Act.

Senate Bill

Sec. 6042.

This section provides that the amounts for Fiscal Year 2005 are in lieu of, and not in addition to, the amounts authorized for the first eight months of Fiscal Year 2005 by the Surface Transportation Extension Act of 2004. In addition, the section provides for an adjustment to the calculations of apportionments for the fixed-guideway modernization program, since that formula assumes a full year of funding.

Conference Substitute

The conference report reconciles apportionments and allocations made under this Act with the funding already made available under the Surface Transportation Extension Act. This section also contains an adjustment to the calculation of apportionments for the fixed guideway modernization program.

SEC. 3042. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION SYSTEMS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 6029.

The term 'mass transportation' is changed to 'public transportation' throughout Chapter 53 of Title 49, U.S.C. Section 1993 of Title 18 is amended to replace the term 'mass transportation' with 'public transportation.'

Section 1993(a)(5) makes it a Federal crime to interfere with anyone 'dispatching, operating, or maintaining a mass transportation vehicle or ferry.' The statute does not address those who 'control' such vehicles, and arguably excludes rail system 'controllers' (central command employees who control the movement of rail cars). Although such controllers 'operate' vehicles in some cases, and thus may fall within the statute, the statute does not expressly cover them. The amendment to Section 1993(a)(5) explicitly provides that interference with a rail controller constitutes a Federal crime.

Conference Substitute

The Conference adopts the Senate proposal.

SEC. 3043. PROJECT AUTHORIZATIONS FOR NEW FIXED GUIDEWAY CAPITAL PROJECTS

House Bill

Sec. 3037.

This section lists the projects that are authorized under the section 5309 new starts and small starts programs for fiscal years 2004–2009. Existing full funding grant agreements are listed separately from projects authorized for final design and construction and those authorized for alternatives analysis and preliminary engineering.

In subsection 3037(a), 26 new start projects originally authorized in the Intermodal Surface Transportation Efficiency Act (ISTEA) or in TEA–21 have continued authorizations with the amount specified by fiscal year that remains outstanding under the schedule of Federal funds for the project (or ''schedule 6'') attached to each project's full funding grant agreement contract with the FTA. The first responsibility of the Appropriations Committees in providing funds for new fixed guideway capital projects must be to ensure that each project under a full funding grant agreement receives the full amount specified for the fiscal year in which it is programmed. Under-funding full funding grant agreements is very damaging to the financial management of the project and to the overall capital and operating budget of the sponsoring agency, and may jeopardize private financing for the local share of such project costs.

In subsection 3037(b), new fixed guideway capital projects that are ongoing projects in the new starts pipeline and are currently in preliminary engineering or final design are authorized for final design and construction.

In subsection 3037(c), new fixed guideway capital projects that have not yet been approved for preliminary engineering by the FTA or that were not previously authorized under TEA–21 are authorized for alternatives analysis and preliminary engineering.

Subsection 3038(d) sets out rules relating to new starts and small starts funding for the life of the authorization. In general, all projects that are authorized under subsection (a) may expend Federal funds only for final design and construction activities.

Projects that are authorized under subsection (b) may expend Federal funds for final design and construction, and for alternatives analysis and preliminary engineering activities. Projects that are authorized under subsection (c) may expend Federal funds only on alternatives analysis and preliminary engineering activities. However, on October 1, 2007, projects authorized under subsection (c) shall also be authorized for final design and construction. Minimum funding levels are established for appropriations for each fiscal year in the full funding grant agreement category (subsection a) and the final design and construction category (subsection b), and maximum funding levels are established for each fiscal year in the alternatives analysis and preliminary engineering category (subsection c). Subsection 3037(b) projects authorized for final design and construction that execute a full funding grant agreement with FTA after the date of enactment of this Act are to be given the full amount indicated in the schedule of Federal funds for the project for each fiscal year under the agreement.

Subsection 3037(e) amends the project description for the New Jersey Urban Core project originally authorized in section 3031(d) of ISTEA. This authorization was expanded in TEA–21 and is further amended in this legislation.

Subsection 3037(f) directs that project elements of the New Jersey Trans-Hudson Midtown Corridor that have been advanced with 100 percent non-Federal funds shall be given consideration by the FTA when evaluating the local share of the project in the new starts rating process, including the purchase of bi-level rail equipment.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The House proposal is adopted. In subsection (d), the Senate includes authorizations for new fixed guideway projects with funding amounts, subject to the requirements of section 5309(d) and (e) of title 49, U.S.C.

Bi-County Transitway.—It is the intent of the managers that any alignment of the Bi-County Transitway along the Georgetown Branch right of way should be designed and constructed in a manner to ensure a safe and accessible pedestrian-bicycle trail. The Maryland Transit Administration should consider a range of options to include placing the rail line underground through cut and cover.

SEC. 3044. PROJECTS FOR BUS AND BUS-RELATED FACILITIES AND CLEAN FUELS GRANT PROGRAM

House Bill

Sec. 3038.

This section lists bus and bus facilities projects and associated funding levels for fiscal years 2006, 2007, and 2008. Each year's designated funding represents one half of the authorized amount for section 5309 bus and bus facility projects for that fiscal year.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

This section lists bus and bus facilities projects and associated funding levels for fiscal years 2006, 2007, 2008, and 2009. Both the House and Senate combined amount of funding for each fiscal year represents one half of the authorized amount for section 5309 bus and bus facility projects for that fiscal year.

SEC. 3045. NATIONAL FUEL CELL BUS TECHNOLOGY DEVELOPMENT PROGRAM

House Bill

Sec. 3039.

This section authorizes a new fuel cell bus technology development program for hydrogen fuel cell and liquid methanol fuel cell bus technologies, in order to facilitate the development of commercially viable fuel cell bus technology and related infrastructure. The program is limited to three recipients, at a Federal share of 50 percent.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

Adopts the House proposal.

SEC. 3046. ALLOCATIONS FOR NATIONAL RESEARCH AND TECHNOLOGY PROGRAMS

House Bill

Sec. 3041.

This section establishes seven specific research areas within the Federal Transit Administration's national research and technology program, and allocates funding levels in each fiscal year of the authorization period for these research areas. These research focus areas were developed through conferring with the FTA and reflecting priorities established in the agency's Research and Technology Strategic Plan. The programmatic structure and funding floors for each research area will help ensure that adequate funding is provided throughout the authorization period to establish and carry out meaningful programs with depth and continuity.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The conference report does not break out specific research areas within the national research and technology program. Program designations are made for several national research projects and University Transportation Centers.

SEC. 3047. FORGIVENESS OF GRANT AGREEMENT

House Bill

Sec. 3043.

Forgives certain debts of the Lane County Transit District.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

Forgives certain debts of the Lane County Transit District and the Pee Dee Regional Transit Authority.

SEC. 3048. COOPERATIVE PROCUREMENT

House Bill

Sec. 3044.

This section directs the Secretary to review the practice of cooperative procurement of transit rolling stock, such as buses and rail cars. A pilot program is currently underway at the Federal Transit Administration to determine the benefits of encouraging cooperative procurement of major capital equipment. The program consists of three competitively selected grantees, consortiums of grantees, or members of the private sector acting as agents of grantees, who will develop cooperative specifications and conduct joint procurements. For this program, the Federal share was increased from 80 percent to 90 percent. The Secretary is also directed to consider information gathered from grantees about cooperative procurement, whether or not related to the pilot program. The Secretary is directed to notify the Committee on Transportation and Infrastructure and the Senate Committee on Banking, Housing, and Urban Affairs of the results of the cooperative procurement review, and make a finding of whether this program has sufficient merit to be formally incorporated in the Federal public transportation program.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

Adopts the House proposal.

SEC. 3049. TRANSIT PASS TRANSPORTATION FRINGE BENEFITS.

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 6044.

The Senate bill includes two provisions related to transportation fringe benefits. Section 6004(a) requires the Secretary of Transportation to conduct a study of tax-free transit benefits and ways to promote improved access to and increased usage of such benefits at Federal agencies in the National Capital Region (NCR). Executive Order #13150 requires such benefits to be offered at executive agencies in the NCR, and the study is designed to determine how agencies are implementing that requirement and what the impact has been on congestion and pollution in the NCR.

Section 6004(b) would remove the restriction that prohibits a Federal agency from operating a shuttle service to a transit facility. By improving access to commuting alternatives, Federal agencies will be able to provide a benefit to their employees that will also help to reduce congestion and improve air quality across the nation.

Conference Substitute

The conferees replaced the transit benefit study from the Senate bill with language codifying Executive Order #13150 and extending it to include the legislative and judicial branches and independent agencies. As a result, all qualified Federal employees in the National Capital Region will receive tax-free transit benefit to cover their commuting costs up to the maximum allowed by law.

The conferees adopted the Senate provision regarding shuttle service with modifications. The language was clarified to make clear that the decision to provide shuttle service rests with the agency head. In addition, language was added to specify that an employee riding in a shuttle would not be considered to be within the scope of his or her office simply by virtue of the fact that the employee was using the shuttle service. Finally, language was added to make clear that time during which an individual uses the shuttle service should not be considered when calculating the hours of work or employment for that individual for purposes of Title 5 of the U.S. Code, including chapter 55 of that title. However, the conferees do not intend for this language or an employee's use of the shuttle service to be the basis for any disciplinary action.

SEC. 3050. COMMUTER RAIL

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 6046.

The Senate provision is intended to ensure timely completion of Rhode Island's commuter rail projects, which were authorized in TEA–21. Owing to the fact that commuter rail in Rhode Island is carried on Amtrak owned track, progress on completion of 2 new commuter stations requires Amtrak consent. The Senate bill ensures that the Secretary of Transportation has the authority to ensure that the projects authorized under Section 3030(c) (1)(A)(xliv) of the Federal Transit Act of 1998 and section 1214(g) of the Transportation Equity Act for the 21st Century (16 U.S.C. 668dd note) are successfully completed.

Conference Substitute

The Conference adopts the Senate proposal.

SEC. 3051. PARATRANSIT SERVICE IN ILLINOIS

House Bill

No comparable provision in House bill.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

This provision clarifies the authority of a regional or State agency in the State of Illinois to provide coordinated paratransit services and for the Federal Transit Administration to hold such provider accountable under the requirements of the Americans with Disabilities Act. In May 2005, the Illinois General Assembly passed legislation that will consolidate in one agency the paratransit services in the six-county Chicagoland region. Because FTA regulations do not contemplate that regional agencies would directly provide coordinated services in the manner set forth in this new State law, this provision sets forth explicit authority for FTA to audit the services provided by a regional or State agency, make recommendations, and take enforcement action if necessary against that agency.

TITLE IV—MOTOR CARRIER SAFETY

Subtitle A—Commercial Motor Vehicle Safety

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (P.L. 106–159) established the Federal Motor Carrier Safety Administration (FMCSA) within the Department of Transportation (DOT) on January 1, 2000. Prior to the enactment of MCSIA, commercial motor vehicle-related crashes resulting in fatalities and injuries had been steadily climbing and it was determined that the creation of a separate modal administration within the DOT would improve truck and bus safety. According to data compiled by the DOT, large trucks[1] represent about three percent of registered vehicles; however, they account for 7 percent of the vehicle-miles traveled on our Nation's highways, and are involved in about 11 percent of all fatal crashes.

FMCSA's primary responsibility is to enforce the Federal motor carrier safety and hazardous materials regulations, including the requirements governing Mexico-domiciled commercial motor vehicles operating in the United States. FMCSA also administers the Commercial Driver's License (CDL) program, oversees the interstate transportation of household goods, and all aspects of hazardous materials transportation via highway. FMCSA has been directed to accomplish these responsibilities through increased enforcement of the safety regulations, expedited completion of rulemaking proceedings, scientific research, and improved commercial driver's licensing programs.

FMCSA has set a goal of reducing the rate of fatalities in large truck crashes by 39 percent between 1999, the year prior to the agency's creation, and 2008, from a rate of 2.7 fatalities per 100 million vehicle miles traveled (VMT) to a rate of 1.65. The commercial motor vehicle fatality rate, factoring in increases in VMT, was reduced to 2.28 in 2002, a reduction of 7 percent from 2001 when the rate was 2.45. The commercial motor vehicle fatality rate reduction in 2002 marked the fifth consecutive year the rate had been reduced. While the fatality rate has improved, in 2003, 4,986 people were killed in truck crashes, an increase of 47 deaths over 2002, and 122,000 people were injured. In addition, 723 truck drivers were killed in 2003, an increase of nearly 5 percent over the number of 2002 fatalities.

[1] Large truck is defined as a commercial motor vehicle with a gross vehicle weight of 10,001 pounds or more.

SEC. 4101. AUTHORIZATION OF APPROPRIATIONS

House Bill

Sec. 4101.

From the day of burro-drawn wagons moving our goods to the current day intermodal, just-in-time delivery system, commercial vehicles have always played an important role in our Nation's economy. This section provides funding from the Highway Trust Fund, other than the Mass Transit Account, for FMCSA to implement safety programs for fiscal years 2005 through 2009. Funding for the Motor Carrier Safety Assistance Program is authorized in section 4102 of this title. This bill authorizes FMCSA and its programs to be funded through contract authority. Under the Transportation Equity Act for the 21st Century (TEA–21), the agency's administrative expenses were funded through a deduction of the Federal Highway Administration's (FHWA) administrative expenses. This set-aside of Federal-aid funds is called a ''takedown''. The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (P.L. 106–159) amended TEA–21 by increasing the takedown to one-third of 1 percent from the FHWA's administrative expenses to administer FMCSA activities. Other than the first year of enactment, the takedown has proven to be ineffective for funding the motor carrier safety program adequately. In addition, the takedown has not been able to respond to additional safety and program needs created with the implementation of the North American Free Trade Agreement, and the security improvements needed in response to the terrorist attacks of September 11, 2001. Therefore, it is appropriate to create new contract authority for FMCSA expenses. In addition to authorizing administrative expenses, this section also authorizes three grant programs for commercial driver's license improvement, border enforcement, and performance and registration system management, as well as an authorization to carry out the commercial vehicle information systems and networks development program.

Senate Bill

Sec. 7103.

This section would authorize the following appropriations from the Highway Trust Fund for FMCSA safety programs (excluding MCSAP) for FYs 2006 through 2009.

For administrative expenses of the Federal Motor Carrier Safety Administration: FY 2006 $211,400,000; FY 2007 $217,500,000; FY 2008 $222,600,000; and FY 2009 $228,500,000.

Border Enforcement Grants: FY 2006 $33,000,000; FY 2007 $34,000,000; FY 2008 $35,000,000; and FY 2009 $36,000,000.

Performance and registration information system management grants program: $4,000,000 for each FYs 2006 through 2009.

Commercial driver's license and driver improvement program grants: FY 2006 $23,000,000; FY 2007 $23,000,000; FY 2008 $24,000,000; and FY 2009 $25,000,000.

Commercial vehicle information systems and networks deployment program: $25,000,000 for each FYs 2006 through 2009.

Conference Substitute

The conference adopts authorizing funds for FMCSA and its grant programs for FYs 2005 through 2009. For Motor Carrier Safety Grants: FY 2005 $188,480,000; FY 2006 $188,000,000; FY 2007 $197,000,000; FY 2008 $202,000,000; and FY 2009 209,000,000.

For administrative expenses of the Federal Motor Carrier Safety Administration: FY 2005 $254,849,000; FY 2006 $213,000,000; FY 2007 $223,000,000; FY 2008 $228,000,000; and FY 2009 $234,000,000.

Commercial Driver's License Program Improvement Grants: $25,000,000 for each FYs 2006 through 2009.

Border Enforcement Grants: $32,000,000 for each FYs 2006 through 2009.

Performance and Registration Information System Management Grants Program: $5,000,000 for each FYs 2006 through 2009.

Commercial Vehicle Information Systems and Networks Deployment program: $25,000,000 for each FYs 2006 through 2009.

SEC. 4102. INCREASED PENALTIES FOR OUT-OF-SERVICE VIOLATIONS AND FALSE RECORDS

House Bill

Sec. 4108.

Subsection (a) doubles the penalties for recordkeeping violations under 49 U.S.C. 521(b)(2)(B) up to $1,000 for each day the offense continues, or up to $10,000 for an offense that misrepresents a non-recordkeeping violation. Subsection (b) increases to a maximum of $25,000 the civil penalty for a motor carrier that knowingly orders a driver to proceed despite an OOS order. Subsection (b) also increases a driver's penalty for a first offense to a 180-day disqualification and a civil penalty of at least $2,500, and, for a second offense, to a two- to five-year disqualification and a civil penalty of up to $5,000.

Senate Bill

Sec. 7113.

The civil penalties for recordkeeping violations are $500 for each day the offense continues, up to a maximum of $5,000, or $5,000 for each recordkeeping violation that can be shown to have misrepresented a fact constituting a non-recordkeeping violation. Subsection (a) would double these penalties to up to $1,000 for each day the offense continues, or up to $10,000 for an offense that misrepresents a non-recordkeeping violation. Recordkeeping violations frequently have no other purpose than to conceal a safety violation, and they often succeed. Higher penalties should reduce both the number of recordkeeping violations and, indirectly, the number of safety violations as well. The current penalties for a driver who violates an out-of-service (OOS) order are, for a first offense, a 90-day disqualification from operating a CMV and a civil penalty of at least $1,000 and for a second offense, disqualification for one to five years and a civil penalty of at least $1,000. An employer who knowingly allows or requires a driver to violate an OOS order is subject to a civil penalty of up to $10,000. OOS orders can be issued for a variety of reasons: for failure to pay civil penalties on schedule; for having an unsatisfactory safety rating; for violating the agency's hours-of-service or equipment regulations; or because the motor carrier constitutes an imminent hazard. Enforcement officers cannot afford to spend hours monitoring a single OOS vehicle, and tracking possible movements of an entire OOS fleet is even more difficult. As a result, many OOS orders are violated. One effective deterrent to violating an OOS order is to raise the cost to violators. Subsection (b) would increase to a maximum of $25,000 the civil penalty for a motor carrier that knowingly orders a driver to proceed despite an OOS order. An employer who knowingly and willfully ignores OOS orders is liable to imprisonment for up to a year or a fine of up to $100,000 if the violation did not result in death, or up to $250,000 if it did result in death, or both. The section also would increase penalties for drivers who decide on their own to ignore an OOS order. Subsection (b) would increase a driver's penalty for a first offense to a 180-day disqualification and a civil penalty of at least $2,500, and, for a second offense, to a two to five year disqualification and a civil penalty of up to $5,000.

Conference Substitute

The conference adopts the House approach. The conference also adopts the House approach found in Sec. 4213 of the House bill, which permits imprisonment, under Title 18, if an employer knowingly and willfully allows an employee to operate a CMV out-of-service.

SEC. 4103. PENALTY FOR DENIAL OF ACCESS TO RECORDS

House Bill

Sec. 4106.

This provision creates the new section, 521(b)(2)(E), which creates a financial penalty to dissuade any uncooperative carriers or shippers from denying or impeding FMCSA's legitimate access to records.

Senate Bill

Sec. 7109.

FMCSA investigators have broad authority to inspect and copy motor carrier and shipper records and most carriers and shippers readily grant access to requested records. Some, however, deliberately impede the investigative process by refusing to set an audit date, or, after setting a date, by ordering investigators off the premises, occasionally with a show of force. Others take a more subtle approach, feigning illness or declaring an emergency during the audit, pleading inability to produce records because of the absence of key personnel, or delivering documents at a pace designed to prolong the audit beyond the time available to the investigator. While investigators can issue an administrative subpoena for documents, refusal to comply requires the agency to file an action in Federal court to enforce the subpoena. This process, though effective, is relatively slow and labor-intensive, and the cost to a carrier or shipper who does not seriously contest the action is minimal. This section would create a financial penalty to dissuade uncooperative carriers and shippers from denying or impeding FMCSA's legitimate access to records.

Conference Substitute

The conference adopts the Senate approach, with the inclusion of the House penalty amounts.

SEC. 4104. REVOCATION OF OPERATING AUTHORITY

House Bill

No comparable provision in House bill.

Senate Bill

SEC. 7116.

This section would authorize the Secretary to suspend the registration of a motor carrier, a freight forwarder, or a broker for failing to comply with safety regulations established by the Secretary. In addition, the Secretary would be required to revoke the registration of a motor carrier that has failed to comply with Federal safety fitness requirements. The Secretary also would be required to revoke the registration of a motor carrier whose operations are an imminent hazard to public health or property. In order to suspend or revoke a registration, the Secretary must give prior notice to the registrant.

Conference Substitute

The conference adopts the Senate approach.

SEC. 4105. STATE LAWS RELATING TO VEHICLE TOWING

House Bill

Sec. 4136.

This section permits states to create laws requiring towing companies to have prior written consent by the property or the property owner or lessee be present at the time the vehicle is towed.

Senate Bill

Sec. 7129.

This section permits states to create laws requiring towing companies to have prior written consent by the property or the property owner or lessee be present at the time the vehicle is towed. Also, the Secretary of Transportation must conduct a review of Federal, State, and local regulations relating to tow truck operations and conduct a study to identify issues related to the protection of consumer rights and identify potential remedies.

Conference Substitute

The conference adopts the House and Senate provisions to allow states to make laws requiring towing companies to have prior written consent or require the property owner or lessee to be present during a tow. The conference also agreed to require the Secretary of Transportation to study the issues relating to consumer protection of those who are towed and potential remedies.

SEC. 4106. MOTOR CARRIER SAFETY GRANTS

House Bill

Sec. 4102.

Subsection (a) of this section reauthorizes MCSAP, with a number of changes. In addition to increases in authorized funding levels, the program would be amended to require the States to include five new requirements in their annual commercial vehicle safety plans: the implementation of performance-based activities, the establishment of a program ensuring accurate, complete, and timely motor carrier safety data is collected, reports, and corrected if incorrect, States including in their training manuals, for all drivers' licensing examinations, information about best practices for safely sharing the road with trucks and cars, enforcing the registration requirements of section 13902, of title 49, United States Code, by removing from service vehicles that are unregistered or operating beyond the scope of their registration, and States conducting highly visible traffic enforcement programs in locations or corridors that have been identified as having a high incidence of truck crashes.

Subsection (b) of this section details the new activities, such as enforcement of non-commercial motor vehicles when behavior of the drivers increases the risk of crashes, which States can use funds provided under the MCSAP. The Committee intends this new MCSAP authority to be used in direct relation to conducting highly visible roadside enforcement activities in high crash corridors. Subsection (c) of this section authorizes funding for the MCSAP. This funding is for the basic grant program, high priority grants, and the new entrant program. This bill does not continue the incentive program for MCSAP.

Subsection (d) of this section provides FMCSA the authority to provide grants without a matching requirement to the States to conduct safety audits of new entrant motor carriers. This subsection also increases the current amount of MCSAP funding available for high priority activities to 10 percent of the total funds authorized. In addition, this subsection also allows the Secretary to use up to $15,000,000 each fiscal year to conduct safety audits of new entrant motor carriers described in subsection (c).

Senate Bill

Sec. 7107.

This section provides language that ensures that inspections on motor carriers of passengers are conducted at stations, terminals, border crossings, or maintenance facilities, except in the case of an imminent or obvious hazard. It will provide that the training manual for the licensing examination to drive a motor vehicle of the State will include information on best practices for driving safely in the vicinity of motor vehicles. It also provides that the State will suspend the operation of any vehicle found to be operating without registration or beyond the scope of its registration. Under this section there are grants for activities carried out in conjunction with an appropriate inspection of a CMV to enforce Government or State regulations, including regulating commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at ports, or at other specific locations and for the detection of unlawful presence of controlled substance in a commercial motor vehicle or on any occupant of the vehicle. These grants are also for enforcement of State traffic laws and regulations designed for the safe operation of commercial motor vehicles. The Secretary may allocate new entrant motor carrier audit funds to States and local governments without requiring a matching contribution from such States or local governments. This section authorizes the following amounts from the Highway Trust Fund to carry out section 31102:

- 2006 $193,620,000
- 2007 $197,490,000
- 2008 $201,440,000
- 2009 $205,470,000

Conference Substitute

The conference adopts the House section (a) State Plan Contents and adds a modified version of the Senate's paragraph (U) regarding the location of bus inspections. The conference adopts the House section (b) Use of Grants to Enforce Other Laws with a modification of paragraph (c)(2). The conference agrees the states may not use more than 5% of the base amount the state receives for non-commercial motor vehicle enforcement. The state must maintain its level of inspection effort equal to the average amount from FY 2003, 2004, and 2005.

The Conference supports the use of new technologies, such as the Hazmat Trucking Enforcer, that enable inspectors to conduct inspections in a more effective manner. The Committee notes that States must be in substantial compliance with a number of requirements under 49 U.S.C. 31102 as a condition of receiving MCSAP funding, including requirements to deploy technology to enhance the efficiency and effectiveness of commercial motor vehicle safety programs under 49 U.S.C 31102(b)(1)(A), as amended.

SEC. 4107. HIGH PRIORITY ACTIVITIES AND NEW ENTRANTS AUDITS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7107.

As under current law, up to $15,000,000 for each FY 2006 through 2009 of MCSAP grant funds could be set aside for high priority activities that improve commercial motor vehicle safety and are national in scope. The section would require that at least 80 percent of funds set aside for high priority projects be awarded to State and local agencies. Although DOT has broad discretion to determine the details of the program, the Secretary would be required, at a minimum, to focus on reductions in the number and rate of fatal accidents involving CMVs. The Secretary is also required to designate up to $29,000,000 for audits of new entrant motor carriers and can withhold these funds from a State or local government that is unable to use government employees to conduct these audits. Should they be unable to do so, the Secretary would be authorized, but not be required, to expend the funds directly to carry out new entrant audits in those jurisdictions. The Secretary may also designate

$2,000,000 in FY 2006 and up to $6,000,000 for FY 2007 through 2009 for the modernization of the commercial driver's license information system. This section also would clarify that funds provided for border enforcement grants are to go to States that share a border with another country. Grant recipients could not use Federal funds to replace State funds. As a condition of receiving a border enforcement grant, States would be required to maintain their own expenditures at a level at least equal to the average level of expenditure by the State for the two years before October 1, 2005.

Conference Substitute

The Conference adopts the Senate approach.

SEC. 4108. DATA QUALITY IMPROVEMENT

House Bill

Sec. 4115.

This section adds language to the current information systems requirements to ensure that the data FMCSA receives from the States is complete, timely, and accurate.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

This section aims to ensure the safety data FMCSA receives from States is complete, timely, and accurate. This section was initiated because the Conferees' concern regarding the quality of the safety data in the motor carrier safety status measurement system (SafeStat) and the unresolved material weaknesses in the SafeStat data, as confirmed in a 2004 report of the Department's Inspector General. In addition, the Conferees are concerned that data quality issues affecting the MCMIS database may constrain its usefulness for certain purposes beyond general internal review and screening. The Conferees urge the Secretary to revisit this issue to determine if there are more accurate factors that could be utilized when determining whether to issue safety permits.

SEC. 4109. PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT

House Bill

Sec. 4114.

Subsection (a) updates the current statute to more closely follow how the performance and registration information systems management (PRISM) program is currently administered. Subsection (b) establishes a new separate grant program for PRISM. These grants do not require a State match.

Senate Bill

Sec. 7120.

The Performance and Registration Information System Management Program (PRISM) is a voluntary program in which States can participate to identify motor carriers and hold them responsible for the safety of their operations. The program includes two major processes: a commercial vehicle registration process, through which States ensure that no vehicle is plated without identifying the carrier responsible for the vehicle's safety during the registration year, and a motor carrier safety improvement process, designed to improve the safety performance of motor carriers with demonstrated poor safety performance. As of March 2004, 27 States participated in the PRISM program, also the States of Alaska and New York have also provided the FMCSA with a Letter of Intent to implement the PRISM program. PRISM is an effective enforcement tool that enables the States to deny, suspend, or revoke a motor carrier's commercial motor vehicle registrations when FMCSA determines that the carrier has become unfit to operate CMVs safely. By itself, an out-of-service (OOS) order from FMCSA sometimes has little effect. However, when the State simultaneously confiscates the motor carrier's CMV license plates, the carrier's ability to continue operating without detection is greatly reduced. Grants to implement PRISM are authorized by section 103 of the bill. This section would establish in statute certain requirements for participation in the program. In order to participate, States would have to comply with uniform standards set by the Secretary and have the legal authority to impose CMV registration sanctions on the basis of a Federal safety fitness determination. Another condition for participation in the program would be that States cancel the motor vehicle registration, and seize the plates, of an employer who knowingly allows an employee to operate a CMV in violation of an OOS order.

Conference Substitute

The conference adopts both the House and Senate approach. The conference combined and clarified both the House and Senate language in the Conditions for Participation section.

SEC. 4110. BORDER ENFORCEMENT GRANTS

House Bill

Sec. 4103.

Subsection (a) deletes contract authority funding for information systems by striking the section 31107 of title 49, U.S.C., where it currently is located. Funding for information systems is now included in the administrative expenses. Subsection (a) also creates a new grant program for border enforcement activities under the same section.

This grant program is for State enforcement activities at the Canadian and Mexican borders. No Federal activity would be conducted using this money. States would be authorized to use the grants for virtually anything related to Commercial Motor Vehicles (CMV) safety enforcement and compliance with State and Federal CMV requirements involving foreign motor carriers, including the purchase of land and buildings. Grant recipients could not use Federal funds to replace State funds and they would be required to maintain the average level of border-related expenditures during fiscal years 2003–2004. It is intended, and quite possible, that this money will not be distributed to every State that shares a border with another Country, but will only be distributed to States with an identified need. These grants do not require a State match.

Senate Bill

Sec. 7107(b).

This section also would clarify that funds provided for border enforcement grants are to go to States that share a border with another country. Grant recipients could not use Federal funds to replace State funds. As a condition of receiving a border enforcement grant, States would be required to maintain their own expenditures at a level at least equal to the average level of expenditure by the State for the two years before October 1, 2005.

Conference Substitute

The conference adopts the House approach, and the Senate approach regarding Noncompliance with CDL Requirements.

SEC. 4111. MOTOR CARRIER RESEARCH AND TECHNOLOGY PROGRAM

House Bill

Sec. 4112.

This section authorizes a comprehensive FMCSA research and technology program under section 31108 of title 49, U.S.C. The Federal share of the cost of activities carried out under a cooperative research and development agreement could not exceed 50 percent, except if there is substantial public interest or benefit, the Secretary could approve a greater Federal share.

Senate Bill

Sec. 7118.

This section would establish a motor carrier research and technology program. The goal is to support, through contracts, cooperative agreements, and grants, research designed to produce innovative advances in motor carrier, driver, and passenger safety. Equally critical, however, would be the transfer of promising results, whether technical or operational, to potential users and rapid deployment of the fruits of research and development. The Federal share of the cost of activities carried out under a cooperative research and development agreement will not exceed 50 percent, except when there is substantial public interest or benefit, as determined by the Secretary. Research, development, or use of a technology under a cooperative research and development agreement, including the terms under which the technology may be licensed and the resulting royalties may be distributed, would be subject to the Stevenson-Wydler Technology Innovation Act of 1980.

Conference Substitute

The conference adopts the House approach with clarification of language in the Research, Development, and Technology Transfer Activities section.

SEC. 4112. NEBRASKA CUSTOM HARVESTERS LENGTH EXEMPTION

House Bill

Sec. 4138.

This section allows the State of Nebraska to permit the length of commercial motor vehicles used exclusively for hauling custom harvesters to 81 feet, 6 inches.

Senate Bill

No comparable provision in Senate bill.

Conference

The conference adopts the House approach.

SEC. 4113. PATTERN OF SAFETY VIOLATIONS BY MOTOR CARRIER MANAGEMENT

House Bill

Sec. 4111.

Some motor carrier managers and brokers order, encourage, or tolerate widespread regulatory violations and, when caught, declare bankruptcy, rename the company and reshuffle the managers' titles, sell its assets to a pre-existing shell corporation owned and managed by the same people, or otherwise attempt to evade the payment of civil penalties, obscure the identity of the company and thus its violation record, and perpetuate a casual indifference to regulatory compliance and public safety. Although the total number of such managers and brokers are small, their actions create risks disproportionate to their numbers.

This section addresses these problems. It amends 49 U.S.C. 31135 to authorize the Secretary to suspend, amend, or revoke the registration of a for-hire motor carrier if any of its officers has engaged in a pattern or practice of avoiding compliance, or concealing non-compliance, with Federal standards. The Secretary could also deny an application to register as a for-hire motor carrier if any of the proposed officers of the company has engaged in a pattern of non-compliance. In this context, ''officer'' means owner, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, driver supervisor, and any person exercising controlling influence over operations of a motor carrier.

This provision does not apply to all officers whose companies are found to be in violation

of the Federal safety rules. Rather, it is intended to authorize the Secretary to force out of the industry those few who have shown unusual and repeated disregard for compliance.

Senate Bill

Sec. 7117.

Some motor carrier managers order, encourage, or tolerate widespread regulatory violations and, when caught, declare bankruptcy, rename the motor carrier, and reshuffle the managers' titles, sell its assets to a pre-existing shell corporation owned and managed by the same people, or otherwise attempt to evade the payment of civil penalties, obscure the identity of the motor carrier and thus its safety record. Although the total number of such managers is small, their actions create a risk disproportionate to their numbers. The section would address these problems by authorizing the Secretary to suspend, amend, or revoke the registration of a for hire motor carrier if any of its officers has engaged in a pattern or practice of avoiding compliance, or concealing noncompliance, with Federal motor carrier safety standards. In this context, ''officer'' means owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier. This provision would not apply to all motor carrier officers whose companies are found to be in violation of the Federal safety rules. Rather, it is intended to authorize the Secretary to force out of the industry those few motor carrier officers who have shown unusual and repeated disregard for safety compliance. It is expected that the Secretary would use this authority only in the most serious cases.

Conference Substitute

The conference adopts the House provisions without the Regulations and Cross Reference paragraphs.

SEC. 4114. INTRASTATE OPERATIONS OF INTERSTATE MOTOR CARRIERS

House Bill

Sec. 4110.

In order to simplify and rationalize the analysis of accident data and provide a complete picture of the safety of motor carrier operations, subsection (a) requires the Secretary, in the course of determining the safety fitness of commercial motor vehicle (i.e., interstate) owners and operators, to consider the accident and inspection record of such owners and operators both on interstate and intrastate trips. In addition, owners and operators of commercial motor vehicles who are determined to be unfit and prohibited from operating in interstate commerce, are also prohibited by subsection (b) from operating commercial motor vehicles in intrastate commerce until they are able to demonstrate their fitness. Subsection (c) directs the Secretary to place all interstate operations of a motor carrier out of service if a State has placed out of service the intrastate operations of a carrier that has its principal place of business in that State.

This subsection also provides the Secretary the authority to make grants to the States to conduct new entrant safety audits. This funding requires no State match; however, if the Secretary determines that a State is unable to use government employees to conduct these activities, the Secretary may utilize the funding to conduct new entrant audits with Federal resources.

Sec. 4133.

This provision permits DOT to determine whether a motor carrier or operator is fit to operate a commercial motor vehicle by considering their safety record while operating in interstate, intrastate, and Canadian and Mexican commerce.

Senate Bill

Sec. 7114.

As defined in 49 U.S.C. 31132(1), a vehicle is not a CMV unless it operates in interstate commerce. One of the implications of the definition is that the Secretary's authority to determine the safety fitness of CMV owners and operators encompasses the accident and safety inspection record of such companies or individuals on interstate trips, but not on intrastate trips. Most interstate motor carriers also have substantial intrastate operations. For safety purposes, it is artificial and counterproductive to create two classes of accidents and safety inspection data (one subject to Federal jurisdiction, the other not) when both classes typically involve the same vehicles, drivers, dispatchers, mechanics, and safety management controls, and may be involved in the same kind of accidents or violations. In examining a motor carrier's accident and inspection data, it is often difficult, and sometimes impossible, to determine whether the vehicle involved was making an interstate or intrastate trip. This has produced significant variation and potential for inaccuracy in the accident rates and Motor Carrier Safety Status Measurement System scores calculated for motor carriers, and thus in DOT's ability to hold all carriers to the same standard. In order to simplify and rationalize the analysis of accident data and provide a more complete picture of the safety of motor carrier operations, subsection (a) would require the Secretary, in the course of determining the safety fitness of CMV owners and operators, to consider the accident and inspection record of such owners and operators both on interstate and intrastate trips. In addition, owners and operators of CMVs who are determined to be unfit and prohibited from operating in interstate commerce, also would be prohibited from operating CMVs in intrastate commerce until they are able to demonstrate their fitness. There is no good reason to allow an unfit interstate carrier to narrow its operations to a single State, and thus visit its safety deficiencies upon the residents of that State alone. Finally, the Secretary would be directed to place all interstate operations of a motor carrier out of service if a State has placed out of service the intrastate operations of a carrier that has its principal place of business in that State. A Federal safety determination that an interstate motor carrier is unfit would thus halt both its interstate and intrastate operations, while a State safety determination that an intrastate carrier is unfit will halt both its intrastate and any interstate operations.

Conference Substitute

The conference adopts the Senate General section and the House Prohibited Transportation and Determination of Unfitness by a State section.

SEC. 4115. TRANSFER PROVISION

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7108.

This section codified certain motor carrier regulation provisions in Title 49, United States Code.

Conference Substitute

The Conference adopts the Senate position with modification. The Conference agreed to transfer this provision to a section of the Motor Carrier Safety Improvement Act of 1999.

SEC. 4116. MEDICAL PROGRAM

House Bill

Sec. 4107.

This section requires FMCSA to establish a Medical Review Board to serve as a source of up-to-date medical advice for FMCSA on matters related to driver qualification rules, guidelines for medical examiners, and standards for medical exemptions under 49 U.S.C. 31315(b). This section also includes a provision to establish a five-member Medical Review Board to make recommendations on medical standards for commercial drivers, medical examiner education, and medical research.

Senate Bill

Sec. 7110.

Section 110 would create a five-member Medical Review Board to provide FMCSA medical advice and recommendations on driver qualification medical standards and guidelines, medical examiner education, and medical research. The Secretary, with the advice of the Medical Review Board, would be required to develop medical standards for CMV drivers, requirements for periodic physical examinations, requirements for current valid medical certificates, courses for medical examiners, requirements for electronic transmittal of applicant and numerical identifier for any completed medical examination report, and to periodically review a representative sample of the medical examinations reports. Every CMV driver would be required to have a current valid medical certificate. A national registry of medical examiners would be established and only physicians listed on the registry could perform CMV driver physical exams and issue medical certificates.

Conference Substitute

The Conference adopts the Senate provisions with modifications. The Conference adopts the Senate provision establishing the Medical Review Board and the Chief Medical Officer with technical modifications. The Conference adopts the Senate provision on medical standards and requirements, but modifies the provision to require, at a minimum, self-certification by medical examiners to ensure they have completed required training in the physical and medical examination standards set by the Secretary of Transportation. The Conference does not adopt the Senate provision requiring the Secretary to issue medical certificates until such authority has been delegated to qualified medical examiners. The Conference adopts the Senate provisions creating the National Registry of Medical Examiners with a modification allowing the Secretary to make participation in the Registry voluntary if such a change will enhance the safety of operators of commercial motor vehicles. The Conference adopts the definition of ''medical examiner''.

SEC. 4117. SAFETY PERFORMANCE HISTORY SCREENING

House Bill

Sec. 4127.

In order to improve motor carrier safety, this provision requires the Secretary to provide companies conducting pre-employment screening services for motor carrier employers, electronic access to commercial motor vehicle accident reports involving a driver-applicant that are collected and maintained by FMCSA in its Motor Carrier Management Information System (MCMIS). The accidents reported to FMCSA must meet the accident definition found in 49 CFR 390.5.

This provision also requires the Secretary to provide electronic access to roadside safety inspection reports involving a driver-applicant that resulted in a serious driver-related safety violation. This electronic access

may be accomplished only after the prospective employer obtains written consent of the driver applicant. This safety compliance and performance information is unique to MCMIS and, therefore, is not found on any other national database. Prohibiting the release of this driver safety information unless expressly authorized or required by law protects driver privacy. The Secretary may require a fee from companies conducting pre-employment screening services to cover necessary administrative costs to implement this screening service.

Senate Bill

Sec. 7124.

This section requires the Secretary of Transportation to provide electronic access of commercial motor vehicle accident report information and all driver safety violations contained in the Motor Carrier Management Information System to companies conducting pre-employment screening services for the motor carrier industry. The information released to these companies will require the written consent of the driver applicant, be in accordance with all Federal laws, and will ensure the information is only made available to an authorized company or individual. The use of this pre-screening process is not mandatory and may be used only during the pre-employment assessment of a driver-applicant.

Conference Substitute

The conference adopts the House approach.

SEC. 4118. ROADABILITY

House Bill

Sec. 4128.

This section directs the Secretary to initiate a rule-making to ensure that equipment used to transport intermodal chassis are safe. The rulemaking must be completed no later than 1 year after enactment of this bill and must address a way to identify the equipment owner, a civil penalty structure, a petition process, and an inspection system.

Senate Bill

Sec. 7127.

This Senate provision would require the Secretary, not later than 1 year after enactment, to issue regulations establishing a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained. The provision places the maintenance responsibility on the companies that provide the equipment and control the daily disposition of it. The provision would require the Secretary to promulgate certain regulations as a subpart of the regulations of the Federal Motor Carrier Safety Administration, including identifying intermodal equipment providers responsible for the inspection and maintenance of intermodal equipment and a requirement to match intermodal equipment to the equipment provider through a unique identifying number. A rulemaking proceeding for regulations under this section shall be established within 120 days after enactment of the Act. Under this section, any intermodal equipment determined under this section that fails to comply with applicable safety regulations may be placed out of service and the Secretary, or an employee of the DOT designated by the Secretary may inspect intermodal equipment and copy related maintenance and repair records. The provision preempts any law, regulation, order or other requirement of a State, political subdivision of the State, or tribal organization and defines several terms.

Conference Substitute

The conference adopts the Senate provision with technical modifications.

The conference supports an inspection system that shall maximize the use of available technologies, including electronically verified visual inspections, whenever appropriate.

SEC. 4119. INTERNATIONAL COOPERATION

House Bill

Sec. 4113.

This section authorizes the Secretary, and thus FMCSA, to engage in international activities. This kind of authority is necessary to aid in implementing the North American Free Trade Agreement and to carry on discussions with U.S. trading partners concerning a variety of safety issues.

Senate Bill

Sec. 7119.

This section would authorize the Secretary to participate in international activities to enhance motor carrier safety. FMCSA needs this authority to aid in implementing the North American Free Trade Agreement (NAFTA) and to carry on discussions with U.S. trading partners concerning a variety of safety issues.

Conference Substitute

The conference adopts the House approach, which has the same intent as the Senate language.

SEC. 4120. FINANCIAL RESPONSIBILITY FOR PRIVATE MOTOR CARRIERS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7112.

The section would extend to private motor carriers the existing requirement for for-hire motor carriers to maintain minimum levels of financial responsibility to cover public liability and property damage for the transportation of passengers or goods. The Secretary may require private carriers to file the same evidence of financial responsibility that is required of for-hire carriers.

Conference Substitute

The conference agrees to include not-for-hire motor carriers and passenger carriers in the requirement for minimum financial responsibility.

SEC. 4121. DEPOSIT OF CERTAIN CIVIL PENALTIES INTO HIGHWAY TRUST FUND

House Bill

Sec. 4119.

This section amends current law to deposit all civil penalties collected from motor carriers for violations of the Federal insurance requirements into the Highway Trust Fund, other than the Mass Transit Account.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The conference adopts the House approach.

SEC. 4122. CDL LEARNER'S PERMIT PROGRAM

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7152.

Pursuant to recommendations made by the DOT Inspector General, this section would require that individuals pass a written test to obtain a CMV license learner's permit. Learner's permits would be incorporated into the CDLIS database.

Conference Substitute

The conference adopts the Senate approach.

SEC. 4123. COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM MODERNIZATION

House Bill

Sec. 4125.

This section creates a grant program to be used to modernize the commercial driver's license information system (CDLIS). Since the creation of CDLIS, improvements to the database and operability of the system have not kept up with improvements in technology. This program helps to modernize the system and improve the State licensing and Federal enforcement personnel's ability to access necessary information.

This section also allows the Secretary to conduct a pilot project in 3 States to evaluate a program for sharing information about all drivers' licenses, both commercial and non-commercial, between States.

Senate Bill

Sec. 7154.

This section would require the Secretary of Transportation to establish an account to be known as the ''Information System Modernization Account'' (ISMA). Fees in excess of the costs of operating the information system collected for any fiscal year beginning after FY 2006 by the Secretary of Transportation, or an organization that represents the interests of the States would be credited to the ISMA. These funds would be available only for the purpose of modernizing the information system. This section would also require the Secretary to establish a comprehensive plan for modernization of the information system and set a date by which each State must convert to the new information system. Also, within one year of enactment of this Act, the Inspector General of the Department of Transportation shall perform a baseline audit of the information system that includes an assessment of the validity of the data in the information system, an assessment of the extent to which convictions are validly posted on a driver's record, recommendations to the Secretary of Transportation on how to update the baseline audit annually to ensure that any shortcomings in the information system are addressed, and a methodology for conducting the update, and any recommendations the Inspector General feels necessary to improve the integrity of the data collected.

Conference Substitute

The conference adopts the House approach and includes additional Senate criteria for the modernization plan. The plan requires states to fund future efforts to modernize the commercial driver's information system. The pilot program is not included in the conference agreement. The Senate's Baseline Audit provision is adopted.

SEC. 4124. COMMERCIAL DRIVER'S LICENSE IMPROVEMENTS

House Bill

Sec. 4104.

Subsection (a) creates a new program for commercial driver's license improvement grants. These grants enable States to improve the implementation of their commercial driver's license programs. Unlike the border grants, these funds may not be used to purchase land or buildings. In order to apply for a grant, a State must first conduct a self-assessment and identify deficiencies in their commercial driver's license program. Based on these assessments, the State will then apply for the appropriate amount of funding to correct these issues. The State must also maintain an average level of commercial driver's license expenditures during the fiscal years 2003–2004. The government share for these grants is 80 percent. Five percent of these funds will be set aside for high priority commercial driver's license activities.

Subsection (c) authorizes the Secretary to redirect up to 5 or 10 percent of the funds a State receives under this program, if the State is found to be in serious non-compliance with the commercial driver's license

program. The penalty provisions found in the CDL statutes have been amended to encourage the Secretary, through more flexibility, to assess penalties for non-compliance.

Senate Bill

Sec. 7153.

This section would allow the Secretary to make a grant to a State to improve the implementation of the commercial driver's license program, providing that the State is making a good faith effort toward substantial compliance with the requirements made in this bill. The State may use this grant for expenses related to its commercial driver's license program, but the grant may not be used to rent, lease, or buy land or buildings.

The Secretary would reimburse a State for no more than 80 percent of the cost of the improvements and each State would be required to maintain its previous level of CDL expenditures. The Secretary could designate up to 10 percent of the funds available under this subsection for high-priority grants. The Secretary could also designate up to 10 percent of the CDL grant funds for discretionary allocations to State agencies, local governments, or other persons to deal with emerging problems. Up to 0.75 percent of the funds available for CDL grants could be deducted for administrative expenses.

Conference Substitute

The Conference adopts the House approach.

SEC. 4125. HOBBS ACT

House Bill

Sec. 4105.

Subsection (a) amends the Hobbs Act to make explicit the interpretation given to that act by a series of decisions of the U.S. Circuit Courts of Appeals. The Courts reviewed whether an action by FMCSA pursuant to the safety authority transferred in 1966 could still be reviewed by the Courts of Appeal, since section 2342(3)(A) applied to the commercial statutes, while section 2342(5) applied to actions of the STB. Subsection (a) ensures that both of these issues would be covered by inserting in section 2342(3)(A) a reference to ''subchapter III of chapter 311, chapter 313, and chapter 315 of Part B of subtitle VI of title 49.'' FMCSA's safety statutes are codified there, including statutes enacted after 1966. All safety statutes would thus be subject to exclusive review by the Courts of Appeal.

Subsections (b) and (c) simply replace the term ''Federal Highway Administration'' with ''Federal Motor Carrier Safety Administration'' in 49 U.S.C. 351(a) and 352.

Senate Bill

Sec. 7108.

Subsection (a) would amend the Hobbs Act to make clear that all safety statutes are subject to exclusive review by the U.S. Courts of Appeal.

Conference Substitute

The conference adopts both the House and Senate provision which clarify safety statutes and Court of Appeals jurisdiction.

SEC. 4126. COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS DEPLOYMENT

House Bill

Sec. 4109.

This section transfers the commercial vehicle information system and networks deployment program from FHWA to FMCSA in order to streamline the grant process. This streamlined process is intended to ensure the completion of the core deployment of commercial vehicle information systems and networks. Subsection (a) provides general direction to carry out the commercial vehicle information systems and networks deployment program. Subsection (b) describes the overall purpose of the commercial vehicle information systems and networks deployment program.

Subsection (c) requires the Secretary to make grants of up to $2.5 million for the core deployment of commercial vehicle information systems and networks. A State that has previously received funding for the core deployment of commercial vehicle information systems and networks would receive a grant that has been reduced by the amount of funds previously received for core deployment. States that have not previously received funding for core deployment would receive a grant of $2.5 million.

Subsection (d) authorizes the Secretary to make grants to States for the expanded deployment of commercial vehicle information systems and networks. The amount of the grants is determined by the amount of funds that remain after the core deployment grants have been made and by the number of States that request an expanded deployment grant. The maximum expanded deployment grant that may be given to a State in a fiscal year would be $1 million. Only States that have completed core deployment would be eligible for an expanded deployment grant. Subsection (e) describes the eligibility requirements to receive these grants.

Subsection (f) provides that the Federal share of grant funds under this section is 50 percent. The Federal share for funds used for commercial vehicle information systems and networks from all eligible sources would be 80 percent.

Senate Bill

Sec. 7121.

This section would provide State grants to complete core deployment of the CVISN. The purpose of this program is to provide technological advances in commercial vehicle operations. ''Core deployment means the deployment of systems necessary to provide safety information exchange to electronically collect and transmit commercial vehicle and driver inspection data at a majority of inspection sites; to connect to the Safety and Fitness Electronic Records (SAFER) system for access to interstate carrier and commercial vehicle data, summaries of past safety performance, and commercial vehicle credentials information; and to exchange carrier data and commercial vehicle safety and credentials information within the State and connect to SAFER for access to interstate carrier and commercial vehicle data.

Conference Substitute

The conference adopts the House approach, with the inclusion of the Senate Purpose and Federal Share provision.

SEC. 4127. OUTREACH AND EDUCATION

House Bill

Sec. 4120.

This section authorizes the Secretary to conduct an outreach and education program through the FMCSA and NHTSA to promote highway safety. Elements of the program shall include a comprehensive national effort to educate commercial motor vehicle and passenger vehicle drivers about how to share the road safely with each other, as well as an emphasis on traffic enforcement aimed at reducing the most common driving behaviors that cause or contribute to crashes, similar to such programs as ''Click It or Ticket'' and drunk driving awareness campaigns. The Secretary is required to provide an annual report each year demonstrating the programs and activities carried out under this section.

The Committee has significantly increased the funding for the outreach and education program currently conducted by FMCSA, but with this legislation, the outreach program will be jointly managed by FMCSA and NHTSA. Although the Committee believes a strong enforcement program is important for improving commercial motor vehicle and highway safety, combining enforcement activities with a robust outreach and education program is necessary to maximize the results. Also, consistent with the recommendations in the U.S. General Accounting Office report GAO–03–680, the Committee recommends that the outreach and education activities conducted by FMCSA are directly linked to the program's goal and establish a systematic process for evaluating the effectiveness of the program.

Senate Bill

Sec. 7122.

The section would authorize FMCSA and NHTSA to undertake outreach and education initiatives. The ''Share the Road Safely'' program would be jointly managed by the agencies and a total of $1 million would be authorized for the program for FY 2004.

Conference Substitute

The conference adopts the House approach.

SEC. 4128. SAFETY DATA IMPROVEMENT PROGRAM

House Bill

Sec. 4124.

This section establishes a grant program to the States dedicated to improving the accuracy, timeliness, and completeness of the data provided to the Secretary. Prior to receiving a grant under this section, the State must complete an audit of its safety data system and develop a plan recognizing the needs and goals for improving its safety data system. The Secretary must provide a report every two years on the results of the program carried out under this section.

The Safety Data Improvement program is intended to address safety data problems identified in the DOT Inspector General's audit of FMSCA's database. FMSCA's limited resources require focusing on the motor carriers who are considered most ''at risk''. In order to do this, the data FMCSA uses for selecting carriers must be accurate, and timely. The Committee is concerned that without additional funding, the States may have trouble improving their data reporting.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House approach.

SEC. 4129. OPERATION OF COMMERCIAL MOTOR VEHICLES BY INDIVIDUALS WHO USE INSULIN TO TREAT DIABETES MELLITUS

House Bill

Sec. 4121.

This section requires the Secretary to allow individuals who use insulin to treat their diabetes to operate commercial motor vehicles in interstate commerce without requiring the individual to have experience operating a commercial motor vehicle while using insulin.

The Committee directs FMCSA to issue a final rule to amend the current exemption program to allow individuals who use insulin to treat their diabetes to operate commercial motor vehicles in interstate commerce that is consistent with the findings of the expert medical panel report issued in July 2000. That report concluded that individuals could be qualified to operate a commercial motor vehicle following a one- to two-month period of adjustment to insulin use. This provision is intended to preempt FMSCA's notice of final disposition issued September 3, 2003, which requires an individual to have three years of experience operating a commercial motor vehicle in intrastate commerce while using insulin for treatment of diabetes before the individual could qualify to drive in

interstate commerce. According to the American Diabetes Association, approximately 20 States do not have an intrastate exemption program for insulin-dependant commercial drivers, therefore, these drivers would never be able to meet the Federal requirement to drive in interstate commerce. The Committee is concerned that by issuing a notice of final disposition that is inconsistent with the finding of FMCSA's own expert medical panel, qualified drivers may not be able to get employed or stay employed.

Senate Bill

Sec. 7111.

This section would require the Secretary to issue a final rule that will allow individuals who use insulin to treat their diabetes to operate CMV in interstate commerce. The final rule may not require that an individual have experience operating a CMV while using insulin. However, the Secretary may require a minimum period of insulin use, consistent with the findings of FMCSA's expert medical panel made in July, 2000.

Conference Substitute

The Conference adopts the Senate's Revision of Final Rule and No Period of Commercial Driving While Using Insulin Required for Qualification and the House's Minimum Period of Insulin Use and Limitations.

SEC. 4130. OPERATORS OF VEHICLES TRANSPORTING AGRICULTURAL COMMODITIES AND FARM SUPPLIES

House Bill

Sec. 4134.

This section continues to allow for operators of vehicles transporting agricultural commodities and farm supplies to not be subject to federal, State, and local laws, rules, regulations, or standards that limit the number of hours motor vehicle operators may remain on duty. This applies to operators transporting agricultural commodities during planting and harvest periods within a 100 air mile radius from the location of the distribution point for the farm supply.

Senate Bill

Sec. 7128.

This section would cause the regulations regarding maximum driving and on-duty time for drivers used by motor carriers to not apply during planting and harvesting periods, as determined by the States, to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State, if the transportation is limited to an area within a 100 mile radius from the source of commodities or the distribution site for the farm supplies. This section also provides a definition for the terms ''agricultural commodity'' and ''farm supplies''.

Conference Substitute

The conference adopts the House language as the base for this section, but uses the Senate definition of ''Agricultural Commodity.''

SEC. 4131. MAXIMUM HOURS OF SERVICE FOR OPERATORS OF GROUND WATER WELL DRILLING RIGS

House Bill

Sec. 4126.

For operators of commercial motor vehicles transporting ground water well drilling rigs, this section preserves the 24–hour restart provision enacted in the NHS Designation Act and provides that no additional off-duty time (greater than 10 hours) shall be required to operate the vehicle.

Senate Bill

Sec. 7140.

The Senate bill contains a similar provision to the House bill.

Conference Substitute

The Conference adopts the House position modified to be consistent with section 4115 of the Conference Report.

SEC. 4132. HOURS OF SERVICE FOR OPERATORS OF UTILITY SERVICE VEHICLES

House Bill

Sec. 4131.

This section provides an exemption for drivers of utility service vehicles from federal, State, and local laws, rules, regulations, or standards that limit the number of hours operators of utility service vehicles may remain on duty.

Senate Bill

Sec. 7128.

The section also clarifies the regulations regarding commercial motor vehicles providing transportation of property or passengers to or from a theatrical or television motion picture production and also for utility service vehicles.

Conference Substitute

The conference adopts the House approach.

SEC. 4133. HOURS OF SERVICE RULES FOR OPERATORS PROVIDING TRANSPORTATION TO MOVIE PRODUCTION SITES

House Bill

Sec. 4135.

This section permits operators of commercial motor vehicles transporting property or passengers to or from a movie or television production site to be regulated by the Hours of Service regulations in effect on April 27, 2003.

Senate Bill

Sec. 7128.

The section also clarifies the regulations regarding commercial motor vehicles providing transportation of property or passengers to or from a theatrical or television motion picture production.

Conference Substitute

The conference adopts the identical language found in the House and Senate bills.

SEC. 4134. GRANT PROGRAM FOR COMMERCIAL MOTOR VEHICLE OPERATORS

House Bill

Sec. 4122.

This section establishes a grant program to train drivers and future drivers of commercial motor vehicles to operate such vehicles in a safe manner.

Senate Bill

Sec. 1413.

This section establishes a grant program to commercial driver training schools for the purpose of providing financial assistance to entry level drivers.

Conference Substitute

The conference adopts the House approach.

SEC. 4135. CDL TASK FORCE

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7151.

This section would require the Secretary to convene a task force to study and report on the need for improvements to the CDL program in order to improve safety. The task force would be required to address such issues as State enforcement practices, operational procedures to detect and deter fraud, needed improvements for seamless information-sharing between States, updated technology, and timely notification from judicial bodies of traffic and criminal convictions involving CDL holders. The task force would be required to submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within two years following enactment.

Conference Substitute

The conference adopts the Senate approach.

SEC. 4136. INTERSTATE VAN OPERATIONS

House Bill

Sec. 4130.

This section directs the Secretary to extend the Federal motor carrier safety regulations found in 49 Code of Federal Regulations, Parts 387, 390 through 399 to all operations of commercial motor vehicles designed to transport between nine and fifteen passengers (including the driver), regardless of their operational distance. This section amends the final rule issued by the DOT on August 12, 2003.

The Committee intends the Secretary to address this situation through the rulemaking process. As part of the rulemaking, the Secretary shall amend the final rule addressing commercial motor vehicles transporting nine to fifteen passengers to specifically exempt vanpool operations as defined by section 132(f) of the Internal Revenue Code. The rulemaking also exempts stretch sedan limousines that are designed to seat nine to fifteen passengers. The rule-making does not exempt SUV stretch limousines, or super stretch sedan limousines that are designed to seat sixteen or more passengers (including the driver).

Senate Bill

Sec. 7106.

This section requires the Secretary to require that a safety audit be immediately changed to a compliance review and appropriate actions be taken if there are any safety violations by a new motor carrier entrant. It also ensures that the Secretary enforces Federal motor carrier safety regulations that apply to interstate CMVs designed to transport between 9–15 passengers, regardless of distance traveled.

Conference Substitute

The conference adopts the identical House and Senate language applying the Federal Motor Carrier Safety Regulations to interstate van operations. Further, the conference agrees to exempt vanpool operations from this regulation.

SEC. 4137. DECALS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7126.

This section requires that FMCSA abide by the agreement it has with the Commercial Vehicle Safety Alliance (CVSA) to the extent possible in accordance with the law, that CVSA shall not restrict the sale of commercial motor vehicle safety inspection decals to FMCSA. CVSA and FMCSA have a long-standing and successful partnership in ensuring the safety of commercial motor vehicles. A recent dispute regarding safety inspection decals between the two entities suggests that processes for resolving disputes should be improved. While the Committee expects FMCSA to live up to its commitments with CVSA, the Committee also believes that inspection decals should not be unilaterally withheld from the Federal agency responsible for ensuring motor carrier safety.

Conference Substitute

The conference adopts the Senate approach.

SEC. 4138. HIGH RISK CARRIER COMPLIANCE REVIEWS

House Bill

No provision in House bill.

Senate Bill

Sec. 7104.

The Senate bill requires the Secretary to ensure that safety compliance reviews of motor carriers are completed for carriers that have demonstrated that they pose the highest safety risk. A single compliance review is required for any motor carrier that is rated as category A or B for two consecutive months.

Conference Substitute

The Conference adopts the Senate provision with a modification to clarify that multiple compliance reviews are not required for carriers that are rated as category A or B for more than two consecutive months.

SEC. 4139. FOREIGN COMMERCIAL MOTOR VEHICLES

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7123.

The Senate bill requires the Administrator of the Federal Motor Carrier Safety Administration to conduct outreach and training to state safety enforcement personnel on the enforcement of operating authority requirement for motor carriers. The Senate bill requires a study and a report by the Administrator on the degree to which Canadian and Mexican commercial motor vehicles currently expected to operate in the United States comply with U.S. federal motor vehicle safety standards.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 4140. SCHOOL BUS DRIVER QUALIFICATIONS AND ENDORSEMENT KNOWLEDGE TEST

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7155 and Sec. 7606

The Senate bill requires the Secretary to recognize school bus drivers who pass an approved test as having met a certain requirement. The Senate bill also delays the effective date of a requirement for school bus drivers until September 30, 2006.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 4141. DRIVEWAY SADDLEMOUNT VEHICLES

House Bill

Sec. 4116.

This section creates a new national standard for the maximum length of drive-away saddlemount with fullmount vehicle transporter combinations operated on the Interstate Highway System.

Senate Bill

No provision.

Conference Substitute

The conference adopts the House provision.

SEC. 4142. REGISTRATION OF MOTOR CARRIERS AND FREIGHT FORWARDERS

House Bill

Sec. 4118.

This section harmonizes the jurisdictional reach of the commercial and the safety statutes by eliminating the requirement for motor carriers to register if they are not subject to the Federal motor carrier safety regulations.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The conference adopts the House version.

SEC. 4143. AUTHORITY TO STOP COMMERCIAL MOTOR VEHICLES

House Bill

No comparable provision in House bill.

Senate Bill

Section 7115.

The section would authorize FMCSA officials to order trucks on the road to stop for inspection. Today, State MCSAP officers, but not FMCSA officials, have such authority. With the opening of the Mexican border, however, Federal inspectors will play an expanded role in roadside enforcement. In addition, there is no guarantee that State or local police officers will always be available at border facilities or at other vehicle inspection facilities throughout the nation to order trucks to stop for an FMCSA inspection.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 4144. MOTOR CARRIER SAFETY ADVISORY COMMITTEE

House Bill

Sec. 4123.

This section requires the establishment of a commercial motor vehicle safety advisory committee to provide advice and recommendations on a range of commercial motor vehicle safety issues. Members are appointed by the Secretary and include representatives of industry, drivers, safety advocates, manufacturers, safety enforcement officials, representatives of law enforcement agencies from border States, and other individuals affected by rulemakings. No one interest may constitute a majority. The advisory committee should provide advice to the Secretary on commercial motor vehicle safety regulations and other matters relating to activities and functions of FMCSA.

Senate Bill

No provision.

Conference Substitute

The conference adopts the House version with modifications.

SEC. 4145. TECHNICAL CORRECTIONS

House Bill

Sec. 4132.

Subsection (a) adds the Administrator as a member of the Intermodal Transportation Advisory Board.

Subsection (b) changes the reference from ''Regional Director'' to ''Field Administrator'', that position's correct title since the creation of the FMCSA in the Motor Carrier Safety Improvement Act of 1999.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The conference adopts this clarification of the code.

SEC. 4146. EXEMPTION DURING HARVEST PERIODS

House Bill

No provision.

Senate Bill

No provision.

Conference Substitute

The conference agrees the maximum driving and on-duty time for a driver will not apply in the area west of Interstate 81 in New York during the harvest period and within 150–air mile radius from where grapes are picked or distributed.

SEC. 4147. EMERGENCY CONDITION REQUIRING IMMEDIATE RESPONSE

House Bill

No provision.

Senate Bill

No provision.

Conference Substitute

The conference agrees regulations prescribed under 31136 or 31502 of 49 U.S.C. will not apply to a driver of a CMV which is used to transport propane winter heating fuel or a motor vehicle used to respond to a pipeline emergency if such regulations would prevent the driver from responding to an emergency condition requiring immediate response. ''Emergency condition requiring immediate response'' is also defined.

SEC. 4148. SUBSTANCE ABUSE PROFESSIONALS

House Bill

Sec. 4129.

This section requires the Secretary to update the current regulatory definition of a substance abuse professional to include State licensed or certified mental health counselors, as well as individuals certified as addiction specialists by the American Academy of Health Care Providers in the Addictive Disorders.

Senate Bill

No provision.

Conference Substitute

The conference adopts the House provision with modification.

SEC. 4149. OFFICE OF INTERMODALISM

House Bill

No provision.

Senate Bill

Sec. 7601.

The Senate provision allows the Director of the Office of Intermodalism to use funds made available for grants to the States under section 5504 of Title 49, United States Code to provide technical assistance for intermodal data collection. The provision also instructs the Director to develop a plan to improve the national intermodal transportation system and to do a progress report on such improvements. Additionally, the Director, in conjunction with the Director of the Bureau of Transportation Statistics, shall develop common measures to compare transportation investments across modes and to formulate new methodology for measuring the impacts of intermodal transportation.

Conference Substitute

The Conference adopts the Senate position with modifications.

Subtitle B—Household Goods Transportation

Oversight of the interstate household goods moving industry had been the responsibility of the Interstate Commerce Commission (ICC) prior to the ''sun-setting'' of the ICC by the ICC Termination Act of 1995. Most Federal oversight responsibilities for the transportation of household goods were transferred to the FHWA and later transferred to FMCSA upon enactment of MCSIA in 1999. FHWA, and then FMCSA, focused their limited resources on its primary mission of highway safety, rather than on consumer protection. The lack of Federal oversight has permitted unscrupulous ''rogue'' household goods movers to exploit this regulatory gap. Subtitle B of title IV of this bill provides greater protection to consumers shipping their household goods via motor carrier. However, these provisions only relate to the movement of household goods motor carriers and brokers.

SEC. 4201. SHORT TITLE

House Bill

No comparable provision in House bill.

Senate Bill

This section provides a Short Title.

Conference Substitute

The Conference adopts the Senate approach.

SEC. 4202. DEFINITIONS; APPLICATION OF PROVISIONS

House Bill

Sec. 4212.

This section defines household goods motor carrier as in the business of providing transportation of household goods, and offering some or all of the following services: binding and nonbinding estimates, inventorying, protective packing and unpacking of individual items, and loading and unloading at personal residences.

Senate Bill

Sec. 7402.

This section provides that the terms ''carrier'', ''household goods'', ''motor carrier'', ''Secretary'', and ''transportation'' have the meaning specified in section 13102 of title 49, United States Code. This section defines household goods motor carrier as in the business of providing transportation of household goods, and offering some or all of the following services: binding and nonbinding estimates, inventorying, protective packing and unpacking of individual items at personal residences, and loading and unloading at personal residences. The provision applies a limited service exclusion indicating a motor carrier solely providing transportation of household goods entirely packed in, or unpacked from, one or more containers of trailers by the individual shipper of an agent thereof is excluded from this definition.

Conference Substitute

The Conference adopts the Senate approach along with a modification to the Limited Service Exclusion. This section differentiates between household goods carriers and freight motor carriers.

SEC. 4203. PAYMENT OF RATES

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7403.

Under current law, a carrier must give up possession of the property being transported upon receipt of payment (49 U.S.C. 13707(a)). This section codifies existing regulations that require a carrier to give up possession of the household goods so long as the shipper pays the mover 100 percent of a binding estimate of the charges or 110 percent of a nonbinding estimate of the charges. Shippers are not required, as a condition of delivery, to pay unforeseen additional charges not included in a binding or non-binding estimate that are necessary to complete the move. This section also provides that a mover may only charge a prorated share of charges (based on either a binding or non-binding estimate) for the partial delivery of a shipment. Under current law, movers may require a shipper to pay 100 percent of the charges in a binding estimate or 110 percent of the charges of a non-binding estimate at the time of delivery even if part of the shipment is lost or destroyed. The section also states that the charges collected at delivery for impracticable operations can not exceed 15 percent of all other charges due at delivery. Post-contract services requested by a shipper after the contract is executed are not covered by this provision.

Conference Substitute

The Conference adopts the Senate approach.

SEC. 4204. ADDITIONAL REGISTRATION REQUIREMENTS FOR MOTOR CARRIERS OF HOUSEHOLD GOODS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7415.

This section requires that the Secretary may only register a person to provide transportation of household goods only after that person has provided evidence of participation in an arbitration program; identified its tariff and provided a copy of the notice of the availability of that tariff for inspection; provided evidence that it has access to, has read, is familiar with, and will observe all laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage; disclose any relationship involving common stock, common ownership, common management, or common familial relationships between that person and any other motor carrier within the last 3 years.

Conference Substitute

The Conference adopts the Senate approach.

SEC 4205. HOUSEHOLD GOODS CARRIER OPERATIONS

House Bill

Sec. 4210.

This section requires household goods motor carriers to provide written estimates for shipments of household goods. When providing these estimates, the motor carrier must conduct a physical survey of the household goods to be transported. A shipper may waive the on-site survey, but a copy of the waiver must accompany the estimate and remain as an addendum to the bill of lading.

This section also provides definitions of binding, and non-binding, estimates. The binding estimate guarantees the total cost of the move based upon the quantities and services shown on the estimate.

Senate Bill

Sec. 7404.

This section requires that, at the time a written estimate is provided, the carrier must provide the shipper a copy of DOT's pamphlet ''Ready to Move?''. Further, before a contract for service is executed, the carrier must provide the shipper a copy of DOT's booklet ''Your Rights and Responsibilities When You Move''. The written estimate may be either binding or nonbinding, and must be based on a visual inspection of the household goods if they are located within a 50 mile radius of the location of the carrier's household goods agent preparing the estimate.

Conference Substitute

The Conference combines the House and Senate approach for the writing requirement and estimates. The Conference also adopts the Senate approach of providing education material to shippers and potential shippers.

SEC. 4206. ENFORCEMENT OF REGULATIONS RELATED TO TRANSPORTATION OF HOUSEHOLD GOODS

House Bill

Sec. 4201.

This section confers authority to a State attorney General of any state to bring a civil action on behalf of its residents in an appropriate district court of the United States to compel a motor carrier to relinquish possession of a household goods shipment or to pay a civil penalty assessed under section 14915.

For purposes of bringing any civil action under this section, nothing in this section shall prevent a State Attorney General from exercising the powers conferred on the Attorney General by the laws of such State to conduct investigations or to administer oaths or to compel the attendance of witnesses or the production of documentary and other evidence.

Whenever a civil action has been instituted on a defendant by, or on behalf of, the Secretary for violation of any provision specified in this section, a State may not institute a civil action under this section. A civil action under this section may be brought in the district in which the defendant is found, resides, or transacts business or whenever venue is proper under section 1391 of title 28.

This section allows State attorneys general to pursue civil penalties in any appropriate district court of the United States in cases where a ''rogue mover'' committed repeated violations of holding household goods hostage. This ability to enforce Federal law by State officials will be a huge step towards improving the consumer protection that has been lacking since the termination of the ICC, and will help augment the limited Federal resources currently available. Although, this additional power may be seen by some as an infringement on the long-standing ''Carmack'' amendment, the Committee was careful not to touch upon any more than was necessary to ensure proper enforcement at the State level.

Senate Bill

Sec. 7407.

This section allows a State authority that regulates the intrastate movement of household goods to enforce Federal laws and regulations with respect to the transportation of household goods in interstate commerce. Fines or penalties imposed as a result of State enforcement of Federal law would accrue to the State. A State attorney general would be authorized to bring a civil action in Federal court when the attorney general believes the interests of the residents of the State are being threatened by a carrier or broker. The State would be required to give the DOT or the STB written notice when an action is about to be filed. The DOT or the STB would be authorized to intervene in the action and file petitions for appeal. The venue for a civil action would be the judicial district where the carrier or broker operates, or where the carrier or broker is authorized to provide transportation, or where the defendant is found. Consistent with current law, nothing prohibits States from prosecuting for violations of a State criminal statute. Application of these provisions are limited to individual shippers, as defined in this section.

Conference Substitute

The Conference adopts the Senate approach, except the concept of substituting the Secretary of the Department of Transportation for the State in Federal Court.

SEC. 4207. LIABILITY OF CARRIERS UNDER RECEIPTS AND BILLS OF LADING

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7405.

This section would change the standard liability for loss and damage to full value protection, defined as the replacement cost in the event of loss or damage up to the pre-declared total value of the shipment. Movers would be allowed to offer ''released rates'' only if the shipper opts out, in writing, of full value protection.

Conference Substitute

The Conference adopts the Senate approach.

SEC. 4208. ARBITRATION REQUIREMENTS

House Bill

Sec. 4202.

This section requires household goods carriers to offer shippers arbitration on all matters related to loss and damage, including

disputes about charges. This section also increases the threshold for binding arbitration from $5,000 to $10,000. These two changes will provide the consumer with more options for settling disputes when they arise.

Senate Bill

Sec. 7406.

This section requires movers to offer shippers arbitration and raises the threshold for bidding arbitration from the current $5,000 to $10,000. Within 18 months following enactment, the Secretary is required to complete a review of the results and effectiveness of arbitration programs and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. In preparing the review, the Secretary is required to provide an opportunity for public comment. The purpose is to investigate whether arbitrators are truly independent of both parties involved in a dispute.

Conference Substitute

The Conference adopts the House approach.

SEC. 4209. CIVIL PENALTIES RELATING TO HOUSEHOLD GOODS BROKERS AND UNAUTHORIZED TRANSPORTATION

House Bill

Sec. 4203.

This section creates civil penalties for household goods brokers who provide estimates prior to entering into a contract with a household goods mover. This section also creates a civil penalty for anyone who transports household goods in interstate commerce without having the authority to conduct that activity.

Senate Bill

Sec. 7412.

This section makes a broker liable for a civil penalty of at least $10,000 if the broker is found to have made a cost estimate for a carrier to transport household goods without first entering into an agreement with the carrier to provide the service. Any person found to have provided the transportation of household goods or broker services without being registered to provide these services would be liable for a civil penalty of at least $25,000.

Conference Substitute

The Conference adopts the House approach.

SEC. 4210. PENALTIES FOR HOLDING HOUSEHOLD GOODS HOSTAGE

House Bill

Sec. 4204.

This section creates civil penalties for anyone who holds a person's household goods hostage once full payment (up to 110 percent of the estimate) has been made. The civil penalty for holding household goods hostage shall not be less than $10,000, and if the person holding the goods hostage is a motor carrier, the carrier's operating authority will be suspended for 6 months.

This legislation codifies existing regulations that require a carrier to give up possession of a household goods shipment provided the shipper pays the mover 100 percent of a binding estimate of the charges, or 110 percent of a non-binding estimate of the charges.

One of the most important parts of Subtitle B of Title IV, is the new definition and penalties for the practice of holding household goods hostage. This situation arises when a household goods motor carrier informs the shipper that the charges for shipping or unloading the shipper's possessions have doubled, tripled, or even quadrupled, and the only way the carrier will unload the goods is upon payment of these higher charges. These actions, conducted primarily by ''rogue movers,'' have gone largely unchecked in recent years. With the addition of civil penalties, Federal and State enforcement personnel have tremendous powers to prosecute these individuals.

Sec. 4214.

This section creates a criminal penalty for a household goods motor carrier who knowingly and willfully holds household goods hostage by falsifying documents or demanding payment of charges for services that were not performed or were not necessary.

Senate Bill

Sec. 7413.

The section defines the term ''failed to give up possession of household goods'' as willfully refusing to relinquish possession of a shipment of household goods for which the shipper has tendered payment described in 49 U.S.C. 13707. A carrier violating this provision is subject to a civil penalty of at least $10,000, for every day the shipment is held hostage constituting a separate violation, as well as a twelve to thirty-six month suspension of the carrier's DOT registration. A carrier convicted of holding household goods hostage by falsifying documents or demanding payment for charges not performed is subject to a fine under Title 18, imprisonment up to five years, or both.

Conference Substitute

The Conference adopts portions of both bills' penalty structure. The Conference agrees to a civil penalty of $10,000 per violation, with a separate violation for each day the violation occurs. The Conference also adopts the Senate position on registration requirements. The Conference adopts the Senate definition of ''failure to give up possession of household goods'' and the criminal penalty language, with the House criminal penalty of not more than two years.

SEC. 4211. CONSUMER HANDBOOK ON DOT WEB SITE

House Bill

Sec. 4206.

This section requires the Secretary to publish a handbook about consumer's rights in readily understandable language and display it prominently on the DOT website.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House approach.

SEC. 4212. RELEASE OF HOUSEHOLD GOODS BROKER INFORMATION

House Bill

Sec. 4207.

This section requires the Secretary to modify the regulations to require household goods brokers to provide shippers, or potential shippers, with information about the motor carriers the broker uses, the broker's DOT identification number, the general information handbook, and a statement that the broker is not a motor carrier.

The Committee intends to deter the current practice of some brokers who advertise over the Internet, providing a low estimate without seeing the items to be shipped, then trying to find a carrier to transport the household goods without regard to the rate the broker quoted the shipper.

Senate Bill

Sec. 7409.

Within one year after the date of enactment, the Secretary is required to modify regulations to require household goods motor carriers and brokers to maintain a website that displays their DOT assigned number and the DOT publication entitled ''Your Rights and Responsibilities When You Move''. Brokers also have to provide a list of all motor carriers used by the broker and a statement that the broker is not a motor carrier.

Conference Substitute

The Conference adopts the House approach.

SEC. 4213. WORKING GROUP FOR DEVELOPMENT OF PRACTICES AND PROCEDURES TO ENHANCE FEDERAL-STATE RELATIONS

House Bill

Sec. 4205.

This section requires the Secretary to create a working group of State attorney generals, State consumer protection administrators and Federal and local law enforcement officials for the purpose of developing uniform enforcement procedures with respect to interstate transportation of household goods. Also, this working group is exempted from the Federal Advisory Committee Act.

Senate Bill

Sec. 7408.

This section requires the Secretary to establish a working group of State Attorneys General, State authorities that regulate the movement of household goods, and Federal and local law enforcement officials to develop practices and procedures to enhance the Federal-State partnership in enforcement efforts, exchange of information, and coordination of enforcement efforts, as well as to make recommendations for legislative and regulatory changes. The working group is required to consult with industries involved in the transportation of household goods, the public, and other interested parties.

Conference Substitute

The Conference adopts the House approach as modified with Senate language to include the public and other interested parties in the consultation.

SEC. 4214. CONSUMER COMPLAINT INFORMATION

House Bill

Sec. 4208.

This section requires the Secretary to establish a system for logging consumer complaints about household goods movers in a database accessible to the public. This section also requires the Secretary to establish a way for carriers to correct any incorrect information on the database. The Secretary is encouraged to use this information when determining which carriers should be the subject of a commercial investigation.

Senate Bill

Sec. 7410.

This section directs the Secretary to establish a publicly accessible database of complaints related to motor carrier transportation of household goods. Complaints must be forwarded to the carrier involved, and the carrier is afforded an opportunity to challenge the information in the database. The Secretary is required to submit an annual report detailing the complaints that were filed and logged over that year.

Conference Substitute

The Conference adopts the House approach along with the Senate concept of providing public access to the complaint database.

SEC. 4215. REVIEW OF LIABILITY OF CARRIERS

House Bill

Sec. 4209.

This section directs the Secretary to review current regulatory requirements regarding insurance coverage provided by household goods motor carriers to shippers. The review should determine whether the

current regulations provide adequate protection, whether the shipper should purchase insurance as opposed to the carrier, and whether there are abuses of the current regulations that leave shippers unprotected.

Senate Bill

Sec. 7411.

Within one year after the date of enactment, the STB is required to complete a review of the Federal regulations regarding the level of liability protection provided by carriers to determine if current regulations provide adequate protection; whether shippers benefit from purchasing supplemental insurance coverage; and whether shippers are sometimes left unprotected. The STB also is required to make recommendations as to whether the current limitations on liability, known as the ''Carmack Amendment'', should be modified with respect to household goods movers.

Conference Substitute

The Conference adopts the Senate approach as modified to strike the review of the ''Carmack Amendment''.

SEC. 4216. APPLICATION OF STATE CONSUMER PROTECTION LAWS TO CERTAIN HOUSEHOLD GOODS CARRIERS

House Bill

Sec. 4211.

This section requires the GAO to conduct a study of the impact on motor carriers and shippers of household goods if State Attorneys General and consumer protection agencies were allowed to enforce their State consumer protection laws and regulations with respect to interstate transportation of household goods. The GAO shall provide a report to Congress on the results of this study within 18 months after the date of enactment.

Senate Bill

Sec. 7414.

Not later than one year after the date of enactment, the Secretary is required to report to Congress on the progress made in implementing the provisions of this title.

Conference Substitute

The Conference adopts the House approach.

Subtitle C—Unified Carrier Registration Act of 2005

SEC. 4301. SHORT TITLE

House Bill

No provision.

Senate Bill

Sec. 7131.

The subtitle may be cited as the ''Unified Carrier Registration Act of 2005''.

Conference Substitute

The conference adopts the Senate provision.

SEC. 4302. RELATIONSHIP TO OTHER LAWS

House Bill

No provision.

Senate Bill

Sec. 7132.

The section would clarify that the subtitle is not intended to prohibit a State from enacting or enforcing any law or regulation with respect to motor carriers that is not otherwise prohibited by law.

Conference Substitute

The conference adopts the Senate provision.

SEC. 4303. INCLUSION OF MOTOR PRIVATE AND EXEMPT CARRIERS

House Bill

No provision.

Senate Bill

Sec. 7133.

This section would amend 49 U.S.C. 13905 to define ''registration'' for purposes of the UCRS and the UCRS Plan and Agreement as the filing by a carrier of a MCS Form 150 to obtain a DOT identification number. Registration includes those carriers who have obtained operating authority from the FMCSA, as well as those carriers exempt from the provisions of that chapter, such as intermodal carriers, transporters of agricultural products, private carriers, freight forwarders, brokers, and leasing companies. Although not affecting the levels or types of insurance required by private or for-hire carriers, the section extends the requirement to file evidence of financial responsibility in the amounts currently required by 49 U.S.C. 31138 and 31139 to all ''registered'' carriers. It does not affect the levels or types of insurance required by registered carriers. The section also would require the Secretary to prescribe the form of evidence that will be required of motor private carriers.

Conference Substitute

The conference adopts the Senate provision.

SEC. 4304. UNIFIED CARRIER REGISTRATION SYSTEM

House Bill

Sec. 4117.

This section repeals the single state registration system and requires FMCSA to complete a rule-making for an on-line registration system to replace the old registration system originally administered by the Interstate Commerce Commission. This rulemaking must be completed within one year.

Senate Bill

Sec. 7134.

This section would direct the Secretary, in cooperation with States and industry representatives, to develop a single, on-line system, within one year following enactment, containing all records of motor carriers registered with DOT, including their safety data, DOT identification number (which will be replacing the MC number for all motor carriers), evidence of financial responsibility, and the service of process agents. Federal and State agencies, carriers, shippers and the public would have access to the system. The UCRS would replace the SSRS. The section also would require the Secretary to adopt procedures enabling a carrier to correct any erroneous data contained anywhere in the UCRS and sets the parameters for a fee system with respect to the filing and retrieval of information from the UCRS. The fee for a new registrant would be required as nearly as possible to cover the costs of processing the registration and conducting the safety audit or examination, if required, but could not exceed $300. The fee for filing evidence of financial responsibility could not exceed $10 per filing.

Conference Substitute

The conference adopts the Senate provision.

SEC. 4305. REGISTRATION OF MOTOR CARRIERS BY STATES

House Bill

No provision.

Senate Bill

Sec. 7135.

The section would make it an unreasonable burden on interstate commerce for any State or political subdivision to impose, enact, or enforce any requirement or levy any fee on for-hire and private interstate motor carriers for: (1) registering the carrier's interstate operations with a State, (2) filing evidence of financial responsibility with a State, (3) filing the name of the local agent for service of process with a State, or (4) renewing intrastate authority, insurance filings, or other filing requirements if the carrier is registered with FMCSA and in compliance with other applicable State laws. Item (4) would not apply to certain carrier operations that are specifically exempted from preemption provisions, such as purely intrastate bus operations, intrastate transportation of household goods, non-consensual towing, and the transportation of waste and recyclables. The section would preserve the exemption for interstate carriers from State sales taxes and other fees if a State provides such an exemption to intrastate carriers. The section would not limit State fuel taxes or vehicle registration fees. The section also would establish a 15-member Board of Directors comprised of the Secretary of Transportation, representatives of participating States, and representatives of the trucking industry to govern the new program. The Board would be required to develop the rules and regulations that will govern UCRS and submit the rules and regulations to the Secretary for approval. States wishing to participate in UCRS would be required to submit a plan to the Secretary, within three years following enactment, identifying the State agency that will administer UCRS and containing assurances that an amount at least equal to the revenue derived from UCRS will be devoted to motor carrier safety. States declining to participate would lose the right to share in UCRS revenues. UCRS fees would be determined by the UCRS Board of Directors with the approval of the Secretary and be based on the size of a carrier's commercial vehicle fleet. At least four, but no more than six, ranges of fleet size could be established by the Board for purposes of the fee structure. Brokers, non-vehicle operating freight forwarders, and leasing companies would pay the fee established for smallest carrier fleet. The level of fees could be adjusted if the revenues are deficient or exceed those needed to cover the systems cost and the revenues to which the States are entitled. Fees would be paid to the carrier's base-State, generally the State in which the carrier maintains its principal place of business. States that currently participate in the SSRS and choose to participate in UCRS would be guaranteed the revenues they derived from SSRS during the last fiscal year ending prior to enactment of this Act. States that did not participate in SSRS but opt to join UCRS would be entitled to annual revenues of not more than $500,000. The UCRS Board of Directors would determine the amount of UCRS revenues to which a State is entitled, with the approval of the Secretary. Each participating State would be entitled to retain funds equivalent to the revenues to which it is entitled. Excess funds would be deposited in a designated repository for distribution on a pro rata basis to those States which do not collect the full amount of the revenues to which they are entitled. Remaining funds would be used to offset the cost of the operation of UCRS. Any remaining funds after distribution to the States and payment of costs would be held in the repository and the next year's fees would be reduced accordingly. The section would allow the Secretary to request the Attorney General to bring a civil action to enforce the terms of the Plan and Agreement, including injunctive relief. States could impose fines and other penalties against any party that does not submit the required information or pay the required fees. States would be prohibited from requiring a carrier from having any indicia or other document as evidence of compliance. Finally, the section would allow a State to elect to apply the provision of UCRS to carriers that operate solely in intrastate commerce.

Conference Substitute

The conference adopts the Senate provision with modifications.

SEC. 4306. IDENTIFICATION OF VEHICLES

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7136.

Section 7136 would prohibit a State or political subdivision from requiring a motor carrier, motor private carrier, or freight forwarder to display any additional form of identification on or in a commercial vehicle. The prohibition would not apply to credentials required under the International Registration Plan or the International Fuel Tax Agreement, or in connection with Federal hazardous materials regulations or Federal vehicle inspection standards.

Conference Substitute

The conference adopts the Senate provision with modifications.

SEC. 4307. USE OF UCR AGREEMENT REVENUES AS MATCHING FUNDS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7137.

UCRS revenues may be used to meet a State's match for MCSAP funds.

Conference Substitute

The conference adopts the Senate provision.

SEC. 4308. REGULATIONS

House Bill

No comparable provision in the House bill.

Senate Bill

This section allows the Secretary to establish regulations to carry out this subtitle.

Conference Substitute

The conference adopts the Senate approach.

TITLE V—RESEARCH

Subtitle A—Funding

SEC. 5101. AUTHORIZATION OF APPROPRIATIONS

House Bill

Sec. 5101.

This section provides authorizations for the programs in the Research Title. The Surface Transportation Research Program and the Technology Deployment program, which were separate programs in the Transportation Equity Act for the 21st Century (TEA 21), are now merged into one program—the Surface Transportation Research, Development, and Deployment Program.

Senate Bill

Sec. 2001.

This section authorizes sums out of the Highway Trust Fund (other than the Mass Transit Account) for Surface Transportation Research, the Surface Transportation-Environmental Cooperative Research Program, Training and Education, the Bureau of Transportation Statistics, ITS Standards, Research, Operational Tests and Development, and University Transportation Centers. It provides for the period of availability of funds for obligation and the Federal share of project cost.

Conference Substitute

This section reauthorizes programs in the Research title including the Surface Transportation Research, Development, and Deployment Program; Training and Education; Bureau of Transportation Statistics; University Transportation Research; and ITS Research.

SEC. 5102. OBLIGATION CEILING

House Bill

Sec. 5102.

This section establishes the obligation ceiling for fiscal years 2004 through 2009.

Senate Bill

Sec. 2002.

This section sets limits on obligations for spending under Title II for Transportation Research.

Conference Substitute

This section sets the obligation ceiling for spending under this Title.

SEC. 5103. FINDINGS

House Bill

Sec. 5103.

This section includes congressional findings related to the importance of transportation research and development.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

Subtitle B—Research, Technology, and Education

SEC. 5201. RESEARCH, TECHNOLOGY AND EDUCATION

House Bill

Sec. 5201.

This section establishes basic principles for transportation research, including the federal responsibility and role, stakeholder input, competition, and performance review. This section provides the Secretary with authority to enter into cooperative agreements and establishes a mechanism to facilitate ''pooled funding'' of projects when several states wish to fund a research project of common interest to those states.

One of the principles governing research and technology investments directs that the Federal highway research program would become more oriented toward exploratory advanced research. The 20-year Long-Term Pavement Performance Program, initiated in the late 1980's will be continued to its conclusion in 2009. The role and function of the Turner-Fairbank Highway Research Center is codified in law.

Senate Bill

Sec. 2101. Subsection 502.

This subsection authorizes the Secretary to carry out research, development, testing, and technology transfer activities. The Secretary may, independently or in cooperation with others, carry out activities in research, development, and technology transfer activities. In addition, the Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process. Research activities must be consistent with the strategic plan required under section 508. All parties entering into contracts, cooperative agreements, or other transactions with the Secretary to perform research or provide technical assistance shall be selected on a competitive basis and on the basis of a peer review. The Federal share of the cost of activities carried out under a cooperative research and development agreement shall not exceed 50 percent, unless otherwise approved by the Secretary.

The subsection establishes a new Advanced Long-Term Research program. Also established are a high-performance concrete bridge research program, a high-performing steel bridge program, and a biobased transportation research program. The high-performance concrete bridge research program includes funding to carry out demonstration projects involving the use of ultra-high performance concrete with ductility. The Seismic Research Program, Long-Term Pavement Performance Program (LTPP), and the Infrastructure Investment Needs Report are continued. The subsection concludes the LTPP on September 30, 2009. The due dates for the infrastructure needs report is changed from January 31 to July 31. This subsection also requires the Secretary, in consultation with the Secretary of Homeland Security, to develop a 5-year strategic plan for research and technology transfer and deployment activities pertaining to the security aspects of highway infrastructure and operations aspects.

Conference Substitute

The Conference adopts the House provision with modifications and additions from the Senate provision.

Congress encourages the Department to use the Volpe Center as a source for transportation research and development and related activities. The Volpe Center is uniquely positioned to assist Executive Branch agencies in fulfilling transportation research and development initiatives, solving challenges related to integrating transportation and homeland security issues and achieving the letter and intent of legislative mandates associated with the continued authorization of Departmental activities.

SEC. 5202. LONG-TERM BRIDGE PERFORMANCE PROGRAM; INNOVATIVE BRIDGE RESEARCH AND DEPLOYMENT PROGRAM

House Bill

Sec. 5202.

This section establishes a 20-year Long-Term Bridge Performance Program, modeled on the Long-Term Pavement Performance Program. An Innovative Bridge Research and Deployment program to demonstrate innovative designs and construction methods for the construction, repair and rehabilitation of bridges is established.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision with some modifications and additions, including steel bridge testing. Programs under Senate section 2101, including high-performance steel bridge research and technology transfer program are added to the provision.

SEC. 5203. TECHNOLOGY DEPLOYMENT

House Bill

Sec. 5204.

This section establishes an Innovative Pavement Research and Deployment program to demonstrate innovative pavement technologies, practices, and performance. The goals of this program include new, cost-effective designs to extend pavement life and performance, and the reduction of both initial cost and life-cycle cost of pavements. A Safety Innovation Deployment Program is established to foster the deployment and evaluation of safety technologies and innovations at State and local levels.

Senate Bill

Sec. 2101. Subsection 503.

This subsection amends the Technology Deployment Initiatives and Partnerships Program and the Innovative Bridge Research and Construction Program under section 503, Title 23, USC. The Technology Application Initiatives and Partnerships Program is established to accelerate the transportation community's adoption of innovative technologies. As amended, the focus on bridge structures under the Innovative Surface Transportation Infrastructure Research and Construction Program is expanded to include all highway structures.

Conference Substitute

The Conference adopts the House provision with some modifications. Alternative materials, asphalt, and alkali silica reactivity (ASR) authorized under Senate section 2001 are added to this section. Project and programs related to ASR should further development and deployment of techniques to prevent and mitigate alkali silica reactivity, including lithium based techniques, and assist states in inventorying existing structures for ASR.

The Conference also provides for research on wood composite materials in multi-modal transportation facilities.

SEC. 5204. TRAINING AND EDUCATION

House Bill

Sec. 5205.

The National Highway Institute—the training office of the Federal Highway Administration—is continued and the general topics for courses that it develops and administers are specified. The Local Technical Assistance Program (LTAP) is reauthorized. The federal share for State LTAP grant recipients is up to 50 percent and the share for tribal technical assistance centers is 100 percent. Federal law is revised to allow states to spend NHS, IM, STP, CMAQ, and Bridge funds for transportation workforce development, training, and education. The federal share is 100 percent for the workforce development activities. This section also authorizes the Garrett A. Morgan Technology and Transportation Education program.

Sec. 5206.

This section establishes a Freight Planning Capacity Building Program to improve the capabilities of Metropolitan Planning Organizations (MPOs) and other planning agencies in transportation planning for freight.

Senate Bill

Sec. 2101. Subsection 504.

Section 504(a)(3) of title 23 is modified to emphasize asset management and the application of emerging technologies as two areas in which the Institute shall develop courses. The section identifies additional courses to be developed by the Institute, in consultation with state departments of transportation and the American Association of State Highway and Transportation Officials. Also included is the requirement for the Institute to periodically review courses and to make revisions or cease to offer courses as necessary. The cost for course development is now explicitly stated as part of the cost of training and education to be paid by a private entity or person, unless otherwise determined by the Secretary.

Section 504(a)(7) of title 23 is modified by removing the limitation on the amount of fees that the Institute can collect in any fiscal year. Funds made available to carry out this section may now be combined with or held separately from fees collected under memoranda of understanding, regional compacts, and other similar agreements, in addition to being combined with or held separately from fees collected under this section as previously allowed.

Changes to the Local Technical Assistance Program add incident response and operations as areas in which the Secretary can assist transportation agencies and governments under grants, cooperative agreements, and contracts. Where urbanized areas are cited, the qualifying definition of population sizes between 50,000 and 100,000 is no longer included. Finally, ''regional cooperation'' is promoted under Section 504(2)(C) as an area for assisting urban transportation agencies.

The Dwight David Eisenhower Transportation Fellowship Program is continued to allow the Secretary to make grants for research fellowships for the purpose of attracting qualified students to the field of transportation.

Conference Substitute

The Conference adopts the House provision with some modifications to include Senate language on LTAP, ''Courses,'' and definitions.

SEC. 5205. STATE PLANNING AND RESEARCH

House Bill

No comparable provision in House bill

Senate Bill

Sec. 2101. Subsection 505.

This subsection amends the program of funding to States for research, development, and technology transfer activities. The section now provides for the sliding scale to be applicable to the Federal share of the cost of a project (i.e., 80% unless determined otherwise by the Secretary). This subsection adds that State Planning and Research (SPR) funds may be used for the purposes authorized under the International Highway Transportation Outreach Program of section 506.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 5206. INTERNATIONAL HIGHWAY TRANSPORTATION OUTREACH PROGRAM

House Bill

No comparable provision in House bill

Senate Bill

Sec. 2101. Subsection 506.

The International Highway Transportation Outreach Program under section 506, title 23 USC is continued. A new provision requires that for each fiscal year, the Secretary submits a report to Congress that describes the destinations and costs of international travel conducted in carrying out activities under this program.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 5207. SURFACE TRANSPORTATION ENVIRONMENT AND PLANNING COOPERATIVE RESEARCH PROGRAM

House Bill

Sec. 5203.

This section establishes a new research program to study the interaction between transportation and the environment. The program will be managed and administered by the National Academy of Sciences. An Advisory Committee, appointed by the Secretary, and with a balanced membership representing transportation and environmental perspectives, will recommend the national research agenda for this program.

Senate Bill

Sec. 2101. Subsection 507.

The Surface Transportation-Environment Cooperative Research Program under title 23 is modified to include a provision for the Secretary to administer the program and sharpen the focus of the research through stakeholder input via workshops, symposia, and expert panel.

Conference Substitute

The Conference adopts the Senate provision. The Conference notes the need to understand the complex relationship between surface transportation and the environment.

SEC. 5208. TRANSPORTATION RESEARCH AND DEVELOPMENT STRATEGIC PLANNING

House Bill

Sec. 5213.

This section directs the Secretary to develop a five-year strategic plan for transportation research and development. The plan will describe the primary purposes of the transportation research and development program and describe the topic areas the Department intends to pursue to accomplish each purpose.

Senate Bill

Sec. 2101. Subsection 508.

The subsection continues the requirement of the Secretary to establish a strategic planning process for research and adds a provision for establishing a Surface Transportation Research Technology Advisory Committee to provide program advice to the Secretary.

Conference Substitute

The Conference adopts the House provision.

SEC. 5209. NATIONAL COOPERATIVE FREIGHT TRANSPORTATION RESEARCH PROGRAM

House Bill

Sec. 5208.

The National Academy of Sciences will manage and administer a freight transportation research program. The program's purpose is to discover improved ways to provide surface transportation mobility for freight movement. An Advisory Committee will be appointed by the Academy and will include a representative cross-section of freight stakeholders. The Advisory Committee is directed to recommend a national research agenda for this program.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 5210. FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM

House Bill

Sec. 5209.

This section establishes the Future Strategic Highway Research Program (F–SHRP), which is to be carried out by the National Academy of Sciences. F–SHRP is modeled on the Strategic Highway Research Program that was established by Congress in 1987. TEA 21 directed a study be conducted to determine the research agenda for a new strategic highway research program. F–SHRP will carry out the recommendations made by the study and will focus on four specific research areas—renewal of aging highway infrastructure, human factors related to highway safety, reducing highway congestion, and planning and designing new highway capacity. Projects and researchers will be selected to conduct research for the program on the basis of merit and open solicitation of proposals.

Sec. 5214.

This section makes claims against the National Academy of Sciences, for activities conducted under 510 U.S.C. 23, subject to the same limitations and exceptions applicable to claims against the United States.

Senate Bill

Sec. 2101. Subsection 509.

This subsection establishes a new strategic highway program based on the Future Strategic Highway Research Program (F–SHRP) recommended in TRB Special Report 260: Strategic Highway Research: Saving Lives, Reducing Congestion, Improving Quality of Lives. Under this program, the National Research Council shall establish and carry out the strategic highway program. The program shall consider, at a minimum, the results of studies relating to the implementation of the Strategic Highway Safety Plan prepared by the American Association of State Highway and Transportation Officials (AASHTO).

In administering the program, the National Research Council shall acquire a qualified, permanent core staff, and ensure that identified stakeholders are involved in the program.

Before October 1, 2007, the Secretary is required to enter into a contract with the TRB for completing a report on implementing results of the new strategic highway program. The Secretary shall submit the report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

Conference Substitute

The Conference adopts the House provision.

SEC. 5211. MULTISTATE CORRIDOR OPERATIONS AND MANAGEMENT

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 2101. Subsection 511.

This subsection provides for grants to the Interstate Route I–95 corridor coalition for intelligent transportation system management and operations.

Conference Substitute

The Conference adopts the Senate provision.

Subtitle C—Intelligent Transportation System Research

SEC. 5301. NATIONAL ITS PROGRAM PLAN

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 2201. Subsection 525.

This subsection continues the requirement for the Secretary to develop a National Program Plan for ITS. The National ITS program addresses program goals, objectives, and milestones, and must be maintained and updated as necessary and submitted to Congress as part of the Surface Transportation Research Strategic Plan.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 5302. USE OF FUNDS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 2201. Subsection 529.

This subsection authorizes funding for ITS outreach materials and items.

Conference Substitute

The Conference adopts the Senate provision with a reduction in the authorized amount.

SEC. 5303. GOALS AND PURPOSES

House Bill

Sec. 5602.

The goals and purposes of the Intelligent Transportation Systems Program are articulated. While the wording is different from TEA 21, the substance is similar.

Senate Bill

Sec. 2102. Subsection 522.

This subsection modifies the goals and purposes of the ITS program. New goals are added to reflect the expanded interests for the program. Other modifications reflect changes in emphasis for a number of program activities.

Conference Substitute

The Conference adopts the House provision.

SEC. 5304. INFRASTRUCTURE DEVELOPMENT

House Bill

Sec. 5606.

This section states that funds made available in this subtitle shall be used for ITS infrastructure and not for conventional highway and transit infrastructure.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 5305. GENERAL AUTHORITIES AND REQUIREMENTS

House Bill

Sec. 5603.

This section grants the Secretary authority to use an advisory committee to carry out this subtitle.

Senate Bill

Sec. 2201. Subsection 524.

This subsection makes changes to general authorities and requirements under TEA–21 that provide ITS program scope, policy, and the requirements of the Secretary. The Secretary is required to consult with the Secretary of Homeland Security along with other Federal officials. This subsection adds requirements for the program advisory committee authorized by section 5204(h) of TEA–21, and also includes the amount of funding available for the committee. Also, the Secretary is required to issue revised guidelines and requirements for evaluating operational test and other projects.

Conference Substitute

The Conference adopts the House provision.

SEC. 5306. RESEARCH AND DEVELOPMENT

House Bill

Sec. 5605.

The Secretary is directed to carry out a comprehensive Intelligent Transportation Systems research, development, and operational test program with priority given to enhancing mobility and productivity, enhancing safety, and integrating vehicle and infrastructure technologies.

Senate Bill

Sec. 2102. Subsection 528.

This subsection continues ITS research and development program authorized under TEA–21. Under this subsection, the types of projects and activities that receive funding priority are greatly broadened. Changes reflect new focus areas, including activities to support goals for a national 5–1–1 traveler information system and reducing metropolitan congestion by 5 percent by 2010.

Conference Substitute

The Conference adopts the House provision, with the inclusion of two items from the Senate priority list.

SEC. 5307. NATIONAL ARCHITECTURE AND STANDARDS

House Bill

Sec. 5604.

The Secretary is directed to develop, implement and maintain a national architecture for Intelligent Transportation Systems, as well as the supporting standards and protocols, to promote the widespread use of Intelligent Transportation Systems. The Secretary shall designate a panel of experts to advise the Secretary on ways to expedite development of standards. Any Intelligent Transportation Systems projects that use Highway Trust Fund monies shall conform to the national architecture and applicable standards.

Senate Bill

Sec. 2102. Subsection 526.

This subsection continues the general requirements and activities related to the national architecture and standards. Changes under this subsection reflect the completion of several requirements specified in TEA–21. These include the report to Congress on critical standards and the provision for a communication spectrum for ITS. Deployment is no longer emphasized as a direct activity of the Secretary. Exceptions to conformity with the national ITS architecture no longer include upgrades or expansions of existing systems, as allowed under TEA–21.

Conference Substitute

The Conference adopts the House provision.

SEC. 5308. ROAD WEATHER RESEARCH AND DEVELOPMENT PROGRAM

House Bill

Sec. 5607.

This section establishes a program to enhance the development and use of road weather information and technologies.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 5309. CENTERS FOR SURFACE TRANSPORTATION EXCELLENCE

House Bill

Sec. 5610.

This section directs the Secretary to establish three centers for surface transportation excellence—including centers for environmental excellence, rural safety, and project finance—and outlines the goals, roles, and administration of the centers.

Senate Bill

Sec. 2103.

This section establishes five centers for surface transportation excellence in areas of Environmental Excellence, Operations Excellence, Excellence in Surface Transportation Safety, Excellence in Project Finance, and Excellence in Asset Management.

Conference Substitute

The Conference adopts the House provision with modifications.

SEC. 5310. DEFINITIONS

House Bill

Sec. 5608.

This section defines key terms, including ITS, Intelligent Transportation Infrastructure, National Architecture, Standard, and Transportation Systems Management and Operations.

Senate Bill

Sec. 2102.

Subsection 523.

This subsection deletes the word 'corridor' from terms used in the new subtitle to reflect the deletion of the corridor development program under TEA–21. Terms relating to commercial vehicle operations are moved to the subsection on commercial vehicle systems.

Conference Substitute

The Conference adopts the House provision with the addition of ''photonics'' to the ITS definitions.

Subtitle D—University Transportation Research; Scholarship Opportunities

SEC. 5401. NATIONAL UNIVERSITY TRANSPORTATION CENTERS

House Bill

Sec. 5301.

This section provides for national university transportation centers and states that

the role of such centers shall be to advance significantly transportation research on critical national transportation issues and to expand the workforce of transportation professionals.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision with some modifications. The number of National University Transportation Centers is increased from five to ten.

SEC. 5402. UNIVERSITY TRANSPORTATION RESEARCH

House Bill

Sec. 5302.

This section provides for grants to be made to University Transportation Centers (UTCs). Funding is available to ten Regional University Transportation Centers, ten Tier I Centers, and ten Tier II Centers. The purpose of UTCs is to significantly advance the state-of-the-art in transportation research and expand the workforce of transportation professionals through research, education and technology transfer. Regional UTCs, Tier I Centers, and Tier II Centers will be subject to competitive selection every four years and all institutions must meet eligibility criteria to qualify for competition. The research and education activities of each Center must support a national strategy for surface transportation research. Each Center must match each dollar of federal grant funds with one dollar of local funds.

Senate Bill

Sec. 2101. Subsection 510.

This subsection modifies the existing university transportation research program. Awards are increased from thirty three (33) to forty (40) eligible institutions. The subsection continues the establishment of one (1) regional center at institutions in each of the ten (10) Federal regions. A new provision allows locating no more than one center (or one lead university in a consortia) in any State. Regional centers are selected based on proposals requested by the Secretary; the section provides for naming the remaining institutions. All grantees must otherwise meet specified requirements that include a 6–year program plan and annual report to the Secretary on projects and activities. A peer review is required for reports on research under this program. The Secretary must coordinate activities of the centers and operate a clearinghouse for the dissemination of results from activities. Restrictions have been placed on the amount of funds available to centers that can be used for faculty positions, laboratory facilities, student internships, and administration.

Conference Substitute

The Conference adopts the House provision with some modifications. There will be twenty-two strategically designated Tier II Centers as well as updated competition dates for Regional and Tier I Centers.

Subtitle E—Other Programs

SEC. 5501. TRANSPORTATION SAFETY INFORMATION MANAGEMENT SYSTEM PROJECT

House Bill

Sec. 5210.

Funding is provided over two years to develop a software system that will link driver licensing, vehicle registration, roadway inventory, and motor carrier databases. The purpose of this system is to more easily identify the cause of accidents, injuries, and fatalities, so that appropriate countermeasures can be developed.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 5502. SURFACE TRANSPORTATION CONGESTION RELIEF SOLUTIONS RESEARCH INITIATIVE

House Bill

Sec. 5211.

Two independent research programs are established to assist State DOTs and MPOs in measuring and addressing surface transportation congestion problems. These research programs will focus on the effectiveness of Congestion Management Systems and identify the best methods for acquiring and reporting congestion information. Funding is included for technical assistance and training.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 5503. MOTOR CARRIER EFFICIENCY STUDY

House Bill

Sec. 5212.

This section provides funding to study the use of wireless technology to improve the safety and productivity of motor carrier freight transportation. The study will assess use of wireless technologies in fuel monitoring and management, Radio Frequency Identification technology, electronic manifest systems, and cargo theft prevention.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 5504. CENTER FOR TRANSPORTATION ADVANCEMENT AND REGIONAL DEVELOPMENT

House Bill

Sec. 5215.

This section establishes a Center for Transportation Advancement and Regional Development to assist, through training and research, the development of rural and small metropolitan transportation systems.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 5505. TRANSPORTATION SCHOLARSHIP OPPORTUNITIES PROGRAM

House Bill

Sec. 5303.

This section authorizes the Secretary to establish a scholarship program to attract qualified students for transportation-related critical jobs.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The conference adopts the House provision.

SEC. 5506. COMMERCIAL REMOTE SENSING PRODUCTS AND SPATIAL INFORMATION TECHNOLOGIES

House Bill

Sec. 5402.

This section directs the Secretary, in cooperation with NASA and a consortium of university research centers, to carry out a program to validate commercial remote sensing products and spatial information technologies for application to transportation infrastructure.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision with modifications.

SEC. 5507. RURAL INTERSTATE CORRIDOR COMMUNICATIONS STUDY

House Bill

Sec. 5609.

This section provides funding for a study on the feasibility of installing fiber optic cabling and wireless communication infrastructure along Interstate route corridors for improved communications services to rural communities.

Senate Bill

No comparable section in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 5508. TRANSPORTATION TECHNOLOGY INNOVATION AND DEMONSTRATION PROGRAM

House Bill

Sec. 5403.

This section continues the Intelligent Transportation Infrastructure demonstration initiative enacted under section 5117 of TEA–21.

Senate Bill

Sec. 2105.

This section continues the Intelligent Transportation Infrastructure demonstration initiative by authorizing $4,465,409 in funds from the Highway Trust Fund for fiscal years 2005 through 2009. The section also exempts ITS project involved under the program that include privately-owned components from State laws that regulate or prohibit commercial activities on highways funded with Federal-aid highways funds.

Conference Substitute

The Conference adopts the Senate provision with modifications.

SEC. 5509. REPEAL

House Bill

Sec. 5611.

The Intelligent Transportation Systems subtitle in TEA 21 is repealed and replaced by the sections 5601–5608 described above.

Senate Bill

Sec. 2201. Subsection 529(b).

The Intelligent Transportation Systems subtitle in TEA 21 is repealed and replaced by the sections 5601–5608 described above.

Conference Substitute

The Conference adopts the House provision.

SEC. 5510. NOTICE

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 2003.

This section outlines requirements for the Department of Transportation to notify the appropriate committees of Congress should any reprogramming of authorized funds or reorganization take place.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 5511. MOTORCYCLE CRASH CAUSATION STUDY GRANTS

House Bill

Sec. 2006.

The Secretary is required to conduct a study of the causes of motorcycle crashes and to submit a report to Congress on the results of the study not later than 3 years after the date of enactment of this legislation.

Senate Bill

Sec. 2104.

This section provides the Secretary with the authority to issue grants to conduct motorcycle crash causation studies.

Conference Substitute

The Conference adopts the Senate provision with modifications.

SEC. 5512. ADVANCED TRAVEL FORECASTING PROCEDURES PROGRAM

House Bill

Sec. 5207.

TRANSIMS is a state-of-the-art travel forecasting model that will have special utility for large MPOs in areas with air quality problems. Funding grants to states and MPOs will support deployment of this forecasting model.

Senate Bill

Sec. 2101. Subsection 512.

This subsection continues the deployment of the advanced transportation model known as the ''Transportation Analysis Simulation System.''

This subsection allocates $893,082 from funds authorized for surface transportation research for fiscal years 2005 through 2009 for the Transportation Analysis Simulation System (TRANSIMS). This subsection ensures that TRANSIMS is further developed for additional applications, that training and technical assistance for the implementation and application of the program is available for States, local governments and transportation planning organizations, that a method is developed to simulate the national transportation infrastructure as a single integrated system, and that funding is provided for the implementation of the TRANSIMS.

Conference Substitute

The Conference adopts the House provision with modifications.

SEC. 5513. RESEARCH GRANTS

House Bill

No comparable provision in House bill.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference creates a provision for transportation research grants.

SEC. 5514. COMPETITION FOR SPECIFICATION OF ALTERNATIVE TYPES OF CULVERT PIPES.

House Bill

No comparable provision in House bill.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference creates a provision ensuring States provide for relevant competition.

Subtitle F—Bureau of Transportation Statistics

SEC. 5601. BUREAU OF TRANSPORTATION STATISTICS

House Bill

Sec. 5501.

This section provides for the appointment of the Director of the Bureau of Transportation Statistics (BTS) and defines the Director's responsibilities. The National Transportation Library is retained as part of BTS's activities. Several provisions are included on the collection of freight data, including a requirement for mandatory response by corporations to BTS requests for data. Safeguards are provided to prevent disclosure of freight data that can be identified with any corporation or individual. An Advisory Council on Transportation Statistics is established.

Sec. 5502.

This section describes uses and limits of reports produced by the Bureau of Transportation Statistics.

Senate Bill

Sec. 2102.

This section provides for activities of the Bureau of Transportation Statistics relating to transportation data collection and statistical analysis. The section requires that not later than 90 days after the date of enactment of this Act, the Secretary shall provide a grant to, or enter into a cooperative agreement or contract with the Transportation Research Board to conduct a study of data collection and statistical analysis efforts. The Board shall submit to the Secretary, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a final report on the results of the study. The Bureau shall, to the maximum extent practicable, implement recommendations included in the study. The Comptroller General of the United States shall also conduct a review of the study. Each year, beginning in 2004, the Bureau shall prepare and submit to the Secretary an annual report on progress made in response to the study recommendations.

Conference Substitute

The Conference adopts the House provision.

TITLE VI—TRANSPORTATION PLANNING AND PROJECT DELIVERY

SECTION 6001. TRANSPORTATION PLANNING

House Bill

Sec. 6001.

This section creates a new chapter 52 in title 49 to address transportation planning and environmental review for transportation projects. Existing planning provisions for the highway (sections 134 and 135 in title 23) and transit programs (sections 5303–5305 in title 49) are combined to form a unified planning title. Minor adjustments are made to eliminate inconsistencies and to reflect updated terminologies and practices.

The section also extends the update cycle of metropolitan long-range transportation plans from 3 years under current regulation to 4 years. It extends the update cycle of metropolitan transportation improvement programs (TIPs) from 2 years under current law to 4 years. It requires MPOs to include in their TIPs projects that are designed to meet the set-aside requirements (for a portion of a state's annual apportionments for NHS, CMAQ, STP, Interstate Maintenance, and Bridge programs) for congestion relief activities as mandated under section 139 of title 23.

The section similarly extends the update cycle of state transportation improvement programs from 2 years to 4 years. It requires the state transportation improvement program to reflect the priorities for congestion relief activities that are included in the metropolitan TIPs.

Subchapter A—General Provisions

Section 5201. Definitions.

All transportation planning definitions used throughout chapter 52, title 49 U.S.C. are included in this section.

Subchapter B—Transportation Planning

Section 5211. Policy.

This section is consistent with section 134 of title 23, United States Code and metropolitan planning provisions in sections 5303 and 5304 of title 49, United States Code.

Section 5212. Definitions.

Definitions from section 101(a) of title 23 and section 5302 are applicable to this subchapter. In subsection (b) six definitions used in this subchapter are listed. These include metropolitan planning area, metropolitan planning organization, non-metropolitan area, non-metropolitan local official, TIP, and urbanized area.

Section 5213. Metropolitan Transportation Planning.

Subsection (a) describes the general requirements for metropolitan transportation planning. More specifically, it directs MPOs, in cooperation with States and public transportation operators, to develop long-range transportation plans and transportation improvement programs. These plans and Transportation Improvement Programs (TIPs) will encompass all modes of transportation and will be intermodal in nature.

Subsection (b) specifies the method by which MPOs are designated. Every urbanized area with a population of more than 50,000 people will have an MPO either by agreement between the Governor and local officials representing at least 75 percent of the affected population or in accordance with State and local law. Each MPO will consist of local officials, officials of major local metropolitan transportation agencies and appropriate State officials. Once an MPO is designated, it will remain so designated until it is redesignated under the procedures outlined in Section 5213(b)(5) or (6).

Subsection (c) describes the methods for determining the boundaries of metropolitan planning areas that do not cross State lines. This subsection is consistent with section 134(c) of title 23, United States Code.

Subsection (d) outlines methods for coordinating the planning process between responsible parties in metropolitan areas spanning two or more states.

Subsection (e) involves coordination and consultation between MPOs in the event of jurisdictional conflicts. This must occur in cases in which more than one MPO has jurisdiction over an area or an area is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act. Coordination between MPOs will also occur if a transportation improvement funded by the Highway Trust Fund (HTF) runs through more than one MPO.

Section 5213(e)(3) provides that when planning transportation projects, the Secretary will encourage each MPO to consult with officials involved in planning activities that are affected by transportation in the area. These affected activities include such things as State and local planned growth, economic development, environmental protection, airport operations, and freight movements. The subsection also requires that transportation plans consider other transportation services within the metropolitan area that are provided by other governmental agencies and nonprofit organizations, so that metropolitan transportation services can be more coordinated.

Section (f) outlines the goals and objectives MPOs should strive to attain when planning area transportation projects. Projects should support economic vitality, increase the safety and security of the transportation system, increase accessibility and mobility for both people and freight, protect and enhance the environment, promote integration between the various modes of transportation, as well as maintaining efficiency of the current transportation system. This subsection also states that failure to consider any and all of the objectives described in Section 5213(f)(1) may not be reviewed by any court.

Subsection (g) details the contents of transportation plans and the process MPOs must follow when developing such plans.

Subsection (h) details the contents of metropolitan transportation improvement programs (TIPs) and the process MPOs must follow when developing TIPs. Included in each

TIP should be a funding estimate, a priority project list, a description of each project, and a financial plan. TIPs will be published for public comment. Unlike current law section 134(h)(1)(D) of title 23, U.S.C., this subsection specifically details that TIPs must be updated at least every 4 years, as opposed to every 2 years under current law. This section requires the project description in the TIP to include sufficient descriptive material, such as the ''type of work, termini, length, and other similar factors'', to identify the project or phase of the project. In addition, the TIP shall include a listing of congestion relief activities in 5213(h)(2)(D).

Subsection (i) involves transportation management areas, which are defined as urbanized areas with a population over 200,000. The transportation plans in these areas are based on a continuing and comprehensive planning process carried out by the MPO. Congestion management is achieved through the use of travel demand reduction and operational management strategies. Congestion relief activities under section 139 of title 23 are also to be used. The Secretary must certify that the planning process for each transportation management area is being carried out in accordance with Federal law no less often than every 4 years. This is a change from current law, which mandates certification every 3 years. The Secretary has the authority to withhold up to 20 percent of the funds attributable to the MPO if the metropolitan planning process of an MPO serving a transportation management area is not certified.

Subsection (j) gives the Secretary the authority to permit an abbreviated transportation plan and a TIP for a metropolitan planning area if deemed appropriate, except if the metropolitan planning area is in nonattainment for ozone or carbon monoxide under the Clean Air Act.

Subsection 134(k) of 23 U.S.C. under current law, concerning funds for highways and transit being transferred to the Secretary in accordance with title 23, has been deleted because the transferability provisions contained in section 104(k) of title 23 already apply to all transfers of highway funds to transit, and to the transfer of transit funds to highways.

Subsection (k) is consistent with subsection 134(l) of current law and states that a metropolitan planning area classified as nonattainment for ozone and carbon monoxide under the Clean Air Act may not receive funds for any highway project that will result in a significant increase in single-occupant vehicles. The only exception would be if the project were addressed through a congestion management process.

Subsection (l) is consistent with subsection 134(m) of current law. This section states that MPOs do not have the authority to impose legal requirements on any transportation facility, provider, or project not eligible under title 23, United States Code or chapter 53 of title 49, United States Code.

Subsection (m) is consistent with section 134(n) of title 23, United States Code and specifies that funding for the metropolitan transportation planning shall be provided under section 104(f) of title 23 and under section 5338(c) of title 49, United States Code.

Subsection 134(n) is consistent with existing law subsection 5213(n) and section 134(o) of title 23. It restates current methods of review for projects included in plans and programs under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Section 5214. Statewide Transportation Planning.

Subsection (a) requires states to develop statewide transportation plans, to cover a period of 4 years and to be updated every 4 years. The statewide transportation plan must provide for integrated transportation facilities, including accessible facilities, and be intermodal in nature.

Subsection (b) is consistent with subsection 135(b) of title 23, USC, but adds new language to recognize the importance of coordinating trade and economic development with transportation planning. This subsection also requires the State to develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.)

Subsection (d) regarding the scope of the planning process (under existing section 135(c)) is amended to reflect the concept that not only projects, but also transportation services, are developed through the planning process. In section 5214(d)(1)(A), the term ''non-metropolitan areas'' is inserted into this factor after ''States,'' to require States to consider economic vitality for rural areas.

Subsection (e) corresponds to 135(d) in title 23, and lays out additional requirements for states to consider in carrying out planning.

Subsection (f) is consistent with current law provisions regarding a state's development of 20–year, long-range transportation plans under section 135(e) of title 23, USC.

Subsection (g), regarding statewide transportation improvement programs, is consistent with subsection 135(f) of title 23, United States Code. This subsection has been reorganized and it deletes some current law provisions that have been superseded. Section 135(f)(1)(B)(ii)(II) required that States submit to the Secretary, within one year of TEA–21's passage, the details of their consultation process with non-metropolitan officials. This requirement has been accomplished, so the provision has been eliminated.

Subsection 5214(g)(4)(H) is a new provision to ensure that the transportation improvement program reflects the priorities for congestion relief required under section 139 of title 23, USC, as added in this Act. Subsection 5214(g)(5) combines 135(f)(3)(A) and (B) of current law. This subsection, concerning project selection in areas with populations of less than 50,000 people, adds projects from state-managed public transportation programs authorized under sections 5310, 5311, 5316, and 5317 of title 49, United States Code to the list of projects to be selected from the TIP by the State in consultation with affected local metropolitan transportation officials. Subsection 5214(g)(6) states that the Secretary must approve a transportation improvement program at least every 4 years, as opposed to a biennial review mandated in current law.

In subsection (h), funding for statewide transportation planning is provided under subsection 104(i) of title 23 and under section 5338(c) of title 49, United States Code.

Subsections (i) and (j) are identical to existing law subsections 135(h) and 135(i), respectively.

Sec. 6005.

This section amends section 5213(d) of title 49, U.S.C., to direct that Congress must consent to interstate compacts between two or more states for cooperative transportation planning efforts. The Secretary will encourage Governors and members of multi-state MPOs to partake in interstate compacts consenting to cooperate in efforts to mutually assist interstate activities as well as establishing joint transportation agencies. The current law provisions regarding the Lake Tahoe Regional Planning Compact are included in this section.

Sec. 6006.

This section amends section 5213(g) of title 49, U.S.C. to specify that MPOs must prepare and update their transportation plans no less frequently than every 4 years. (The current law update cycle is ''according to a schedule that the Secretary determines to be appropriate,'' which has been determined by regulation to be every 3 years in nonattainment or maintenance areas and every 5 years in attainment areas.)

Sec. 6007.

This section amends section 5214(c) of title 49, U.S.C. to authorize States to enter into compacts or agreements for the purpose of formal planning cooperation and coordination, since some projects are multi-state in nature.

Sec. 6008.

This section directs the Secretary to issue regulations that are consistent with the unified transportation planning provisions in this title relating to the Clean Air Act.

Senate Bill

Sec. 1501.

This section amends 23 U.S.C. 134(f) and 135(c) to add factors that may be considered during the transportation planning process. It also gives States and metropolitan planning organizations (MPOs) the flexibility to determine, after soliciting and considering comment from the public, which of the specific factors are most appropriate for the State or metropolitan area to consider. Current language in the statute that bars court review of failure to consider specified planning factors is retained.

Current law requires the planning process to provide for consideration of projects and strategies that will, among other things, protect and enhance the environment and improve quality of life. The items added by section 1501 provide planners with more direction as to what those concepts mean, but do not constitute a checklist with every item requiring consideration by every State and MPO. Instead, the legislation allows each State and MPO to decide which specific factors are appropriate for consideration. Early identification of potential environmental concerns may help reduce or avoid delays during environmental review. The Secretary is given no authority to review, for purposes of planning certification, the determination of appropriate factors made by a State or MPO.

Sec. 1502.

This section amends 23 U.S.C. 134(g) and 135(e) to require MPOs and States to consult with various other agencies when developing the long range transportation plan. Consultation shall include comparison of the transportation plan to conservation plans or maps and inventories of natural or historic resources (if such plans, maps or inventories are available) or consideration of areas where wildlife crossing structures may be needed. The section also requires that the long-range plan include a discussion of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands and other environmental functions, including areas that may have the greatest potential to restore and maintain the habitat types and hydrological and environmental function affected by the plan.

The requirement for transportation planners to consult with appropriate resource agencies to compare transportation plans with available State conservation plans or maps and available inventories of natural or historic resources, as well as to identify areas where wildlife crossing structures may be needed, will help planners to identify and potentially avoid or minimize impacts of transportation projects on these resources and thereby facilitate more efficient environmental reviews of individual projects.

However, for various reasons including financial constraints, State conservation plans or maps or inventories of natural or historic resources do not exist for many areas. This legislation does not require the creation of such plans, maps, or inventories. Consideration of areas where wildlife crossing structures may be needed is required only with respect to transportation programs and strategies for the future. A review of the current infrastructure is not required. The discussion of potential mitigation activities and areas in which to carry out those activities is intended to encourage States to think strategically, particularly for habitat and wetlands mitigation. The level of detail of this discussion should correspond to the level of detail contained in the rest of the plan. For example, a conceptual transportation plan may, but is not required to, include specific size or location details that would generally be determined during the environmental review stage.

Sec. 1504.

This section amends 23 U.S.C. 134(g) and 135(e) to provide that States and MPOs improve public involvement in the planning process. To the maximum extent practicable, States and MPOs shall hold any public meetings at convenient and accessible locations and times, employ visualization techniques, and provide for publication of publicly available planning materials in electronically accessible formats, such as the world wide web.

Use of advancing technology to publish plans and better articulate potential benefits and impacts of transportation plans will improve community awareness during the planning process. Early identification of community concerns may help reduce or avoid delays during the environmental review stage. MPOs, particularly small MPOs, and States have limited resources to apply toward meeting numerous planning requirements. Therefore, each MPO and State should use its own discretion in allocating resources for improved utilization of technology.

Sec. 1704.

This section amends title 23 to ensure metropolitan planning in certain areas. Section 1705 supplements funding for the transportation planning process with 1% of all funds apportioned through the Federal Lands Highway Program to the Lake Tahoe Region.

Conference Substitute

The Conference adopts the House provisions with several modifications. First, it does not create a new chapter 52 of title 49, United States Code, but rather amends title 23 and chapter 53 of title 49, United States Code, to contain identical planning provisions (23 U.S.C. 134 and 49 U.S.C. 5303 Metropolitan planning and 23 U.S.C. 135 and 49 U.S.C. 5304 Statewide planning).

The House provision is modified to require metropolitan plans to be updated every 5 years in areas designated attainment.

Sections 134(h)(1)(B) and (C), and 135(d)(1)(B) and (C) modify existing law to give added emphasis to security and safety by making each a separate planning factor.

The Conference adopts the Senate section 1502 modified to require a discussion of types of potential environmental mitigation activities and potential areas to carry out such activities in the plan and to require consultation, including, as appropriate, comparison of transportation plans with State conservation plans or maps, if available, or with inventories of natural or historic resources, if available

The Conference incorporates a modified participation plan found in Senate section 6005 into the House provision. Senate section 1504 on methods of public participation and publication of the plan is also incorporated into the House provision.

The modified House provision retains current law section 134 of title 23 regarding the listing in the TIP of projects funded under chapter 2 of title 23, United States Code.

The Conference adopts a modified rulemaking requirement found in Senate section 6005. The Secretary is required to issue, within 180 days of enactment, regulations specifying the types of data to be included in the required annual listing of projects.

The Conference also removed references to activities and requirements under section 139 of title 23, United States Code, as proposed in the House bill since the Conference did not adopt that provision.

The Conference adopts the Senate language on transportation planning funding for the Lake Tahoe region.

The Conference does not adopt the House language requiring the Secretary to issue regulations implementing the changes to transportation planning relating to the Clean Air Act.

SECTION 6002. EFFICIENT ENVIRONMENTAL REVIEWS FOR PROJECT DECISIONMAKING

House Bill

Sec. 6002.

Subsection (a) recognizes Enlibra principles as a sound basis for interaction among Federal, state, and local governments and Indian tribes. It encourages the adoption of these principles in the development of highway construction and transit projects. This section is intended as a statement of policy. It is not intended to establish enforceable rights or to modify any existing legal standards applicable to the environmental review process for such projects.

Subsection (b) creates a new Subchapter C of Chapter 52 of Title 49 to address efficient environmental reviews for project decisionmaking.

Subchapter C—Efficient Environmental Reviews for Project Decisionmaking

Section 5251. Definitions and Applicability.

This section sets forth definitions applicable to this subchapter.

Section 5252. Project Development Procedures.

This section establishes comprehensive project development procedures for projects that require the approval of the U.S. Department of Transportation. These procedures must be followed for all projects that require preparation of an environmental impact statement (EIS) under NEPA and may be followed for any project that involves preparation of an environmental assessment (EA) or categorical exclusion (CE). The decision about whether to use these procedures for EA or CE projects is committed to the discretion of the Secretary of Transportation, acting in consultation with the project sponsor.

Subsection (a) establishes the U.S. Department of Transportation as the lead agency in the environmental review process for any highway, transit, or multimodal project that requires the Department's approval. As the lead agency, the Department is responsible for the overall direction of the environmental review process. The specific responsibilities of the lead agency are defined in this section. This section also requires any project sponsor that is a state or local government entity receiving funds under Title 23 or Title 52 to serve as a ''joint lead agency'' in the environmental review process. The Federal lead agency and the State or local agency jointly constitute the ''lead agency'' for purposes of this section; accordingly, any decisions to be made by the lead agency under this section must be made jointly by the Federal lead agency and the State or local government that serves as project sponsor. A project sponsor that is not a State or local government (e.g., a project sponsor that is a private company) cannot serve as a joint lead agency.

Subsection (b) establishes a new concept of a ''participating agency.'' This concept is intended to be distinct from, and more inclusive than, the concept of a ''cooperating agency'' as established in the Council on Environmental Quality (CEQ) regulations for the NEPA process. The status of ''cooperating agency'' generally has been assigned only to those agencies that are expected to play an extensive role—in particular, an agency that has a permitting responsibility with respect to a project. The term ''participating agency'' is intended to be more inclusive, so that it encompasses all cooperating agencies as well as any other agencies that submit comments, participate in inter-agency review meetings, or otherwise are engaged in the environmental review process. The lead agency must identify agencies that may have an interest in the project and extend an invitation to participate. The legislation specifically states that designation as a participating agency does not signify support for a project; it is simply a means of identifying the universe of agency participants who must be consulted by the lead agency during the process.

Subsection (c) establishes a new requirement for a project initiation notice. The purpose of this requirement is to provide an opportunity for the project sponsor to identify the specific highway project, transit project, or multimodal project that is being proposed for evaluation in the environmental review process. At the discretion of the project sponsor, the project initiation notice may include a general description of policies, plans, studies, legislation, or other materials that relate to the proposed project. Such information shall be considered by the lead agency in determining the scope of review needed in the environmental review process, including decisions on issues such as the definition of the proposed action, the purpose and need, the range of alternatives, and the approach to evaluating secondary and cumulative impacts.

Subsection (d) makes the lead agency responsible for defining the purpose and need, following an opportunity for involvement by other agencies and the public, and identifies the types of objectives that may be included in a statement of purpose and need. The level of involvement required under this section shall be determined by the lead agency on a case by case basis, taking into account the overall size and complexity of the project. The opportunity for involvement in developing the purpose and need may be combined with other public involvement and agency coordination activities, including involvement in developing the range of alternatives to be considered. The lead agency's definition of purpose and need is not binding on other agencies that have independent responsibilities to comply with NEPA. However, other agencies shall show substantial deference to the purpose and need as defined by the lead agency as required under applicable Council on Environmental Quality (CEQ) guidance, dated May 12, 2003; nothing in this section shall be construed to limit or override the guidance provided in that memorandum, or to preempt or limit any obligations to comply with the National Environmental Policy Act (NEPA) and the regulations issued to implement NEPA including those issued by CEQ. The list of project objectives provided in this section is not intended to be exhaustive; these are examples

of the types of objectives that may be included in a purpose and need statement for a highway, transit, or multimodal project.

Subsection (e) makes the lead agency responsible for defining the range of alternatives to be considered, following an opportunity for involvement by other agencies and the public. The level of involvement required under this section shall be determined by the lead agency on a case by case basis, taking into account the overall size and complexity of the project. The opportunity for involvement in determining the range of alternatives may be combined with other public involvement and agency coordination activities, including involvement in developing the purpose and need. This section also establishes that the lead agency is responsible for determining the methodologies to be used in evaluating alternatives, and requires that determination to be made in collaboration with the participating agencies. In this context, collaboration means a cooperative and interactive process. It is not necessary for the lead agency to reach consensus with the participating agencies on these issues; the lead agency must work cooperatively with the participating agencies and consider their views, but the lead agency remains responsible for decisionmaking. However, the intent is to require meaningful deliberation about alternatives, as evidenced by the subsection specifying that, should the lead agency develop a preferred alternative, this must not hinder impartial decisionmaking on other alternatives.

Subsection (f) is intended to establish default comment deadlines that apply in the absence of a specific decision by the lead agency to allow a longer period for comments to be submitted. This section establishes 60 days as the norm for comments on a Draft EIS and 30 days for all other comment/review periods. Lead agencies should provide public notice about when a comment period starts and concludes. The legislation allows the lead agency the flexibility to establish a shorter or longer time frame if there is good cause to do so. In addition, this section allows the lead agency to extend the comment deadline at any time in the environmental review process; while it is preferable to establish a realistic schedule as early as possible, this section does not establish a specific point in the process by which time extensions must be granted.

Subsection (g) establishes a process for identifying and resolving issues that have the potential to delay the environmental review process or prevent an agency from granting a permit or other approval that is needed for a project. The participants in the environmental review process are encouraged to use similar procedures, to the extent practicable, to identify and resolve issues prior to initiation of the environmental review process. Nothing in this section is intended to preclude or limit any ongoing or future efforts by individual States to adopt procedures that call for agency coordination and dispute resolution efforts during the pre-NEPA planning stages of a project.

Subsection (i) is intended to allow federal highway and transit funds to be provided to other State and Federal agencies to support activities that directly and meaningfully contribute to expediting and improving transportation project delivery. These funds may be used to support activities related to the review of a specific project during the environmental review process, such as reviewing and commenting on environmental documents or attending meetings. These funds also may be used to support activities that contribute to more efficient environmental reviews through early coordination activities prior to initiation of the environmental review (NEPA) process, and also may be used to support activities that contribute to improvements at a programmatic level, such as training of agency personnel, information gathering and mapping, and development of programmatic agreements.

Sec. 6009.

This section amends section 5252 of title 49, United States Code, by adding new subsections (j) and (k)

Subsection 5252(j) provides that, except as set forth under subsection 5252(k), nothing in section 5252 shall affect the reviewability of any final Federal agency action in a court of the United States. A savings clause provides that nothing in section 5252 shall be construed as superseding, amending, or modifying NEPA or any other Federal environmental statute.

Subsection 5252(k) establishes a 90-day period for filing any lawsuit challenging a permit, license, or approval issued by a federal agency for a highway or transit project. This period starts when the lead agency gives public notice that a final decision has been issued and that a 90-day period for requesting judicial review has begun. This limitation is intended to apply to any permit, license, or approval issued by a state agency acting under authority delegated by a federal agency pursuant to federal law. The purpose of this limitation is to ensure that any claims challenging a highway project for failure to comply with federal law are filed within 90 days after the final agency action that is the subject of the legal challenge.

Senate Bill

Sec. 1511.

Section 1511, subsection (a), creates a new section 326 of title 23, U.S.C., which authorizes the use of and sets forth a process for agencies to prepare environmental review documents, studies, approvals, and permits required by Federal law for approval of a transportation project.

Section 326(a) defines, for purposes of the section, the terms agency, environmental impact statement, environmental review process, project, project sponsor, and State transportation department. Subsection (b) establishes the Department as the lead agency and allows the process laid out in this section to be used by the lead agency either at the request of the project sponsor or with the concurrence of the project sponsor; (c) lists the responsibilities of the lead agency; and (d) sets out the responsibilities of the cooperating agencies.

Section 326(e) directs the lead agency to develop a coordination plan, which shall include a workplan and a schedule. Default deadlines are included in the case of the collaborative process failing to establish comment deadlines. Subsections (f) and (g) describe the process for developing the project purpose and need and alternatives, respectively. Current standards are left unchanged, but opportunity for public comment is specifically provided.

Section 326(h) sets out a process for resolving inter agency disputes that arise during the environmental review process; (i) directs the Secretary to establish a program to measure and report progress toward improving and expediting the planning and National Environmental Policy Act (NEPA) review process; (j) continues authority for the Secretary to provide funds to other agencies to assist them in carrying out the environmental review process for a project; and (k) clarifies that nothing in this section affects judicial review or the applicability of any Federal environmental statutes. Section 1511, subsection (b) repeals section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 232). Section 1511(c) clarifies that the repeal of section 1309 of TEA–21 and the enactment of section 1511(a) does not affect any existing State environmental review process, program, agreement or funding arrangement approved by the Secretary under section 1309 of TEA–21.

Section 1309 of TEA–21 directed the Secretary of Transportation to 'develop and implement a coordinated environmental review process for highway construction and mass transit projects.' To date, regulations implementing section 1309 have not been issued. Section 1511 of this legislation replaces section 1309 of TEA–21 and is intended to facilitate faster and more efficient completion of transportation projects without diminishing environmental protections contained in law.

The process established is for complying with current environmental laws, it does not amend or override any current law. As in TEA–21, agencies are encouraged to conduct their reviews, analyses, and studies concurrently with the review required under the NEPA. Under this process, interested parties will be involved in the earlier stages of the review required under the NEPA.

The Department, as the lead agency, will be responsible for identifying and inviting cooperating agencies; developing an agency coordination plan, including a workplan and a schedule; and determining the purpose and need of a project and the alternatives to be considered. Whereas current practice involves cooperating agency designations for only those few agencies that will play a major role in reviewing the project, this process expands the meaning of the term to include all agencies that have an interest in or special expertise regarding the project or its potential impacts.

Public involvement is also enhanced under this process. In addition to leaving unchanged any current opportunities for public comment, this process includes new opportunity for public comment during the determination of project purpose and need and selection of alternatives to be considered.

Finally, the legislation leaves unchanged the authorization from TEA–21 for States to use their Federal transportation dollars as assistance to resource agencies in order to expedite resource agency activities in the environmental review process.

Conference Substitute

The Senate recedes to House section 6002 modified to amend title 23, United States Code, instead of title 49 and with the following further modifications:

Section 6002(a). The House recedes to the Senate.

Section 6002(b). The Senate recedes to the House.

Section 139(a). The Senate recedes to the House. Section 139(b). The Senate recedes to the House. In addition, the Conference substitute preserves current regulations under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with regard to agencies acting as Joint Lead Agencies under this section (section 139(c)(2)). The Conference substitute defines the roles and responsibilities of the Lead Agency (section 139(c)). The Conference Substitute requires federal agencies to the maximum extent practicable to carry out concurrent reviews (section 139(d)(7)). The Conference Substitute requires that for the purpose of informing the Secretary that the environmental review process should be initiated, the project sponsor shall notify the Secretary of certain details of the proposed project (section 139(e)). The Conference Substitute requires that a Lead Agency establish a plan for agency participation and comment on the environmental review process that may be incorporated into a memorandum of understanding (section 139(g)). The Conference Substitute permits the Lead Agency to establish a schedule for completion of the environmental review process and requires the

consideration of certain factors in establishing the schedule (section 139(g)(1)(B)). The Conference Substitute provides for notice to the United States Senate Committee on Environment and Public Works and the United States House Committee on Transportation and Infrastructure of failure of a Federal agency to make decisions in the environmental review process (section 139(g)(3)). No provisions in this section shall reduce time periods provided under existing Federal law for public comment (section 139(g)(4)). The Conference Substitute provides procedures for issue resolution at the request of a project sponsor or Governor of the state in which the project is located (section 139(h)). The Conference Substitute provides for a program to measure and report on progress toward improving and expediting the environmental review process (section 139(i)). The Conference Substitute adopts a modified version of section 1309(f) of the Transportation Equity Act for the 21st Century (112 Stat. 232) to provide that nothing in this section shall affect the reviewability of any final agency action in a court of the United States or the court of any State (section 139(k)). The Conference Substitute establishes a 180-day period for filing any law suit challenging a permit, license or approval issued by a federal agency for a highway or transit project. This period starts when the lead agency gives public notice in the Federal Register that a final decision has been issued (section 139(l)). The Conference Substitute includes the Senate provisions on repeal of section 1309 of TEA–21 and preservation of existing State environmental review processes, programs, agreements or funding arrangements approved by the Secretary under section 1309 of TEA–21.

SECTION 6003. STATE ASSUMPTION OF RESPONSIBILITIES FOR CERTAIN PROGRAMS AND PROJECTS

House Bill

Sec. 1207.

This section provides the Secretary the authority to conduct a pilot program for up to five states to assume the responsibilities of the Secretary for projects funded under Section 104(h), transportation enhancement activities under Section 133, as defined in Section 101(a)(35), and projects defined in Section 101(a)(38) of title 23, and Section 5607 of TEA LU.

Senate Bill

No Comparable Provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SECTION 6004. STATE ASSUMPTION OF RESPONSIBILITY FOR CATEGORICAL EXCLUSIONS

House Bill

No Comparable Provision in Senate bill.

Senate Bill

Sec. 1512.

Section 1512 gives the Secretary authority to assign and a State the ability to assume the Secretary's responsibility for processing the environmental review for projects classified as categorical exclusions under current Council on Environmental Quality regulations.

Categorical exclusions (CEs), according to current Council on Environmental Quality regulations, are projects that 'do not individually or cumulatively have a significant effect on the human environment'. Approximately 90% of all surface transportation projects are processed as CEs. So, while CEs take significantly less time to prepare than environmental impact statements, a slight improvement in processing time for each CE can result in a large improvement system wide.

Conference Substitute

The Conference adopts the Senate provision.

SECTION 6005. SURFACE TRANSPORTATION PROJECT DELIVERY PILOT PROGRAM

House Bill

No Comparable Provision in Senate bill.

Senate Bill

Sec. 1513.

This section establishes a pilot program for not more than five States to assume the Secretary's responsibility for environmental review for a project. This delegation does not extend to conformity determinations, planning requirements, or rulemaking authority. Delegation of the Secretary's responsibility to a State shall be governed by a written agreement between the Secretary and the State. To ensure compliance by a State, the Secretary shall conduct periodic audits for each State participating in the program. The public shall have opportunity to comment prior to the submission of a State's application to participate in the pilot program and following an audit of compliance with the agreement.

The legislation includes a 5-State pilot program (including a pilot for the State of Oklahoma) for delegation of certain of the Secretary's environmental review responsibilities for transportation projects within the pilot State. The pilot program is intended to provide information to the committee and to the public as to whether delegation of the Secretary's environmental review responsibilities will result in more efficient environmental reviews that are performed according to the same procedural and substantive requirements as would apply if the Secretary were conducting the reviews.

Conference Substitute

The Conference adopts the Senate provision with the addition of California, Texas, Ohio, and Alaska as states participating in the pilot program.

SECTION 6006. ENVIRONMENTAL RESTORATION AND POLLUTION ABATEMENT; CONTROL OF NOXIOUS WEEDS AND AQUATIC NOXIOUS WEEDS AND ESTABLISHMENT OF NATIVE SPECIES

House Bill

No Comparable Provision in House bill.

Senate Bill

Sec. 1601.

This section amends title 23 to establish eligibility for environmental restoration and pollution abatement, and invasive species. The section makes eligible the use of NHS and STP funds for activities under this section.

Section 165 establishes the eligibility for environmental restoration and pollution abatement and authorizes the use of funds for projects, including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 410 and 402 of the Federal Water Pollution Control Act, which will address water pollution or environmental degradation caused wholly or partially by a transportation facility. The expenditure of funds is limited to 20 percent of the total cost of an ongoing reconstruction, rehabilitation, resurfacing or restoration project.

Current law allows a State to use STP funds for environmental restoration and pollution abatement projects (including the retrofit or construction of stormwater treatment systems) to address water pollution or environmental degradation caused or contributed to by transportation facilities. As amended, the use of STP funds is now extended and the use of NHS funds is now authorized for these projects, as well as mitigation projects related to Federal highways but not limited to those currently undergoing reconstruction, rehabilitation, resurfacing or restoration.

Section 166 establishes provisions for the control of invasive plant species and the establishment of native plant species. Activities carried out under this section must be related to transportation projects funded under Title 23. Activities to control invasive plant species or to establish native species may be carried out in advance, concurrently with, or following project construction. Activities carried out in advance of projects are allowed if such measures are consistent with Federal law and State transportation planning processes.

Conference Substitute

The Conference adopts the Senate provision with the following modifications: Invasive species has been changed to noxious weeds and aquatic noxious weeds, as defined in the Plant Protection Act; General activities are the establishment of plants selected by state and local transportation authorities to perform abatement of stormwater runoff, stabilization of soil, or aesthetic enhancement, and management of plants which impair or impede the establishment, maintenance, or safe use of a transportation system. These activities include: (1) right of way surveys to determine management requirements to control noxious weeds, brush or trees considered to be a threat to safety or maintenance of transportation systems; (2) control or elimination of plants; (3) establishment of plants, whether native or nonnative with a preference for native when possible; (4) elimination of plants to create fuel breaks for the prevention and control of wildfires; and (5) training.

SECTION 6007. EXEMPTION OF INTERSTATE SYSTEM

House Bill

Sec. 6004.

This section provides that the Interstate System itself shall not be considered a historic site for purposes of 23 U.S.C. §138 or 49 U.S.C. §303(c)—the laws commonly known as ''Section 4(f).'' This section allows individual elements of the Interstate System to be considered historic sites for purposes of Section 4(f), if those elements possess an independent feature of historic significance.

Senate Bill

Sec. 1604.

This section establishes an exemption for the Interstate System from consideration under section 303 of title 49 and section 138 of title 23, regardless of whether the Interstate System or portions of the System may be listed on or eligible for the National Register of Historic Places. A portion of the Interstate System that possesses an independent feature of historic significance, such as a bridge or an architectural feature, shall be considered an historic site under section 303 of title 49 and section 138 of title 23, as applicable.

Conference Substitute

The Conference adopts the House provision with a technical modification. The language is amended to align the exemption from review under Section 4(f) with the administrative exemption from review under Section 106 of the National Historic Preservation Act, published in the Federal Register on March 10, 2005.

SECTION 6008. INTEGRATION OF NATURAL RESOURCE CONCERNS INTO TRANSPORTATION PROJECT PLANNING

House Bill

No Comparable Provision in House bill.

Senate Bill

Sec. 1503.

This section amends 23 U.S.C. 109(c) to direct the Secretary to consider two documents regarding context sensitive design when developing criteria for project design. The current provision for consideration of 'A Policy on Geometric Design of Highways and Streets' is retained.

Context sensitive design involves consideration of the environmental context of a project and encourages design that minimizes impacts on the project's surroundings. Adding context sensitive design principles to the current design criteria will give transportation officials the flexibility to adjust to the characteristics of each specific location while still ensuring sound engineering and safety measures.

Sec. 1605.

This section amends section 109(p) of title 23, Standards. The change is made to place greater emphasis on the need to consider preservation of human and natural resources as a part of the decisionmaking process in developing highway projects.

Consideration of the impacts of highway projects has been part of the design process for many years. However, the transportation community, the traveling public, and communities have demanded improvements in project delivery and in the make-up of the product that is delivered. Compatibility with the surrounding context, or environment, and improved safety for the motorist and the pedestrian are critical. The changes to this section address the need to see that highway projects meet all of these goals by having a project sponsor consider community preservation and community concerns.

Conference Substitute

The Conference adopts the Senate amendment to section 109(c) of title 23, United States Code, but not the amendment to section 109(p).

SECTION 6009. PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES

House Bill

Sec. 6003.

This section amends section 303 of title 49 and section 138 of title 23 to provide that requirements under such section(s) are deemed to be satisfied if an agreement under section 106 of the National Historic Preservation Act concludes that a transportation program or project will not have an adverse effect on an historic site, unless the Advisory Council on Historic Preservation determines that using the section 106 consultation procedure to satisfy the requirements of such sections is inconsistent with the objectives of such Act. This section applies only to historic sites. In any case in which an historic site subject to section 106 includes, or is a part of a park, recreation area, or wildlife and waterfowl refuge protected under the sections cited above, this provision shall not apply to such parks, recreation areas or refuges.

Senate Bill

Sec. 1514.

Section 1514, subsection (a) amends section 138 of title 23 and section 303 of title 49, United States Code, to allow transportation programs and projects to move forward as long as the impacts are no more than de minimis impacts on protected parks, recreation areas, wildlife or waterfowl refuges and historic sites.

Subsection (b) directs the Secretary to promulgate within one year of enactment regulations to clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under section 138 of title 23 and section 303 of title 49, United States Code.

Subsection (c) requires the Secretary and the Transportation Board of the National Academy of Sciences jointly to conduct a study on the implementation of the amended sections.

The Department of Transportation Act of 1966 prohibited the approval of any transportation program or project that requires the use of public parks, recreation areas, wildlife or waterfowl refuges or public or private historic sites unless there are no prudent and feasible alternatives and the program or project includes all possible planning to minimize harm to these protected resources (this provision is commonly referred to as 'section 4(f)').

Subsection 1514(a) provides that section 4(f) requirements are satisfied if the program or project will have only a de minimis impact on the area. For historic sites, a finding of de minimis impact may only occur if: (1) through the consultative process under section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)), the Secretary determines that the program or project will have no adverse impact on the historic site or that there will be no historic properties affected; (2) the applicable State or tribal historic preservation officer provides written concurrence with the Secretary's determination; and (3) the finding is developed in consultation with consulting parties under the section 106 process.

For parks, recreation areas, and wildlife and waterfowl refuges, a finding of de minimis impact may only occur if: (1) through review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Secretary determines that the program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under section 4(f); and (2) the official(s) with jurisdiction over the protected resource concurs with the Secretary's finding. The purpose of the language is to clarify that the portions of the resource important to protect, such as playground equipment at a public park, should be distinguished from areas such as parking facilities. While a minor but adverse effect on the use of playground equipment should not be considered a de minimis impact under section 4(f), encroachment on the parking lot may be deemed de minimis, as long as the public's ability to access and use the site is not reduced.

This subsection also provides that for all section 4(f)-protected resources, the Secretary shall consider any avoidance, minimization, mitigation or enhancement measures required to be implemented as a condition for approval of the program or project when determining if the project will have a de minimis impact. This language builds in an incentive for project sponsors to incorporate environmentally protective measures into a project from the beginning. The traditional section 4(f) requirements will apply to all projects with impacts that exceed the de minimis threshold even when mitigation measures are taken into account.

In its decision in Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971), the Supreme Court ruled that determinations on no feasible and prudent alternatives must find that there are unique problems or unusual factors involved in the use of alternatives or that the cost, environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes.

In order to address inconsistent guidance and regional interpretations of the Overton Park decision, subsection 1514(b) directs the Secretary to issue regulations to clarify the factors to be considered and the standards to be applied in determining whether alternatives are 'prudent and feasible' under section 138 of title 23 and section 303 of title 49, United States Code. The fundamental legal standard contained in the Overton Park decision for evaluating the prudence and feasibility of avoidance alternatives will remain as the legal authority for these regulations, however, the Secretary will be able to provide more detailed guidance on applying these standards on a case-by-case basis.

Subsection 1514(c) requires a study of the implementation of section 4(f) as amended. The study shall include evaluation of items such as any efficiencies resulting from the amendments of this section; the post-construction effectiveness of impact mitigation and avoidance commitments adopted; and the quantity of projects with de minimis impacts and information on the location, size and costs of the projects.

Conference Substitute

The Conference adopts the Senate provision with two modifications. First the language is modified so that a de minimus determination with respect to a park, recreation area or wildlife or waterfowl refuge satisfies the current law requirement that there is no prudent and feasible alternative, but the requirement to do all possible planning to minimize harm to the area is retained. Compliance with that requirement, however, shall not include an analysis of alternatives. The second modification requires an opportunity for public notice and comment prior to a de minimis determination for parks, recreation areas and wildlife and waterfowl refuges.

SECTION 6010. ENVIRONMENTAL REVIEW OF ACTIVITIES THAT SUPPORT DEPLOYMENT OF INTELLIGENT TRANSPORTATION SYSTEMS

House Bill

Sec. 1206.

This section requires the Secretary to conduct a rulemaking within one year to establish categorical exclusions, to the extent appropriate, for activities that support the deployment of ITS from the requirement that an environmental assessment or an environmental impact statement be prepared under NEPA, in compliance with the standards for categorical exclusions established by NEPA.

The Secretary shall also develop a nationwide programmatic agreement governing the review of activities that support ITS deployment in accordance with the National Historic Preservation Act. The agreement will be developed in consultation with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation.

Senate Bill

No Comparable Provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SECTION 6011. TRANSPORTATION CONFORMITY

House Bill

Sec. 1824.

Section 1824 of H.R. 3 contains changes to the conformity provisions in section 176(c) of the Clean Air Act. The changes, which are discussed more fully below, address the following subjects: (1) frequency of conformity determinations; (2) changes to time horizons; (3) substitution of transportation control measures; and (4) conformity lapses.

Frequency: Subsections (a) and (b) of Section 1824 change the frequency of conformity determinations for both the Transportation Improvement Plan (TIP) and the long range Regional Transportation Plan (RTP). Under these subsections, a conformity determination would now be required for both the TIP

and the RTP only once every four years (Sec. 1824(b)). In the event that a new motor vehicle emissions budget is found to be adequate (as submitted during a State Implementation Plan (SIP) revision process), or is finally approved as part of a revised or new SIP, a conformity determination would be required within two years of such a finding or approval (Section 1824(a)). In addition, subsection (b) allows an area to update its conformity determination more frequently, if it so desires.

Conformity Horizon: Subsection (c) of section 1824 addresses the conformity time horizon for RTPs. The time horizon is the period for which conformity must be demonstrated. Under current law this time horizon period is 20 years (or longer if the general RTP planning horizon is longer). Under this proposed subsection, an area may elect to reduce its time horizon for its RTP from 20 years to 10 years, but may do so only with the agreement of the MPO and the relevant Air Pollution Control Agency (APCA), as defined in section 302(b) of the Clean Air Act. In the event, however, that the attainment date in the SIP is more than 10 years away, or the date of completion of a regionally significant project is more than 10 years away, then the horizon date must be the later of those two dates. In cases where the SIP is revised to include adequate or approved motor vehicle emissions budget, and the SIP has an attainment date earlier than 10 years, the horizon may be revised to reflect that earlier date, but again, only with the agreement of the MPO and APCA.

In any event, under subsection (b) a regional emissions analysis is required for any years of the transportation plan that extend beyond the conformity time horizon. Thus if the RTP general horizon is 20 years (as is common) and the conformity horizon is reduced to 10 years, a regional emissions analysis is nevertheless required for the 10-to-20 year period. Generating this information will be helpful in ensuring that conformity is maintained.

TCMs: Subsection (d) of section 1824 allows substitution of ''Transportation Control Measures'' (TCMs) in a SIP, without going through a full SIP approval process or a new conformity determination, so long as the substituted TCM achieves an equivalent or greater emissions reduction than the TCM it replaces. EPA would determine whether a TCM meets that test. In addition, appropriate methodology would need to be used to determine emissions impact, reasonable public notice would be required, and adequate funding would be required. Finally, there is no requirement that a state change its SIP for TCM substitution, as indicated in the legislative language of the bill with the use of ''may'' rather than ''shall.''

Conformity Lapse Grace Period: Subsection (e) of section 1824 adds a new one-year grace period of 12 months before a conformity lapse shall be considered to exist and the consequences of a conformity lapse shall apply. A lapse is defined as in current regulations. Under this provision, when a nonattainment or maintenance area fails to make a conformity determination by an applicable deadline, it will have 12 months to make such determination. During the 12-month grace period, only transportation projects in the most recent conforming plan and TIP could be funded or approved until the required determinations are made pursuant to Section 176(c) of the Clean Air Act.

Senate Bill

Sec. 1615.

This section changes how often updates must be made to metropolitan transportation plans and metropolitan transportation improvement programs (TIPs) in nonattainment and maintenance areas, and statewide TIPs. Currently, these documents expire every 3 years, 2 years, and 3 years, respectively. With this bill, all three of these planning documents must be updated every 4 years unless a metropolitan planning organization elects to update its transportation improvement plan more frequently. This section also changes the minimum frequency with which transportation conformity must be demonstrated to every 4 years. Other changes to transportation conformity include a change in the horizon of the conformity determination, and a change in the projects to which conformity applies. In addition, this section adds a requirement for EPA's conformity regulations.

Frequency. Section 1615 amends 23 U.S.C. 134 to require that metropolitan transportation plans and metropolitan transportation improvement programs (TIPs) be updated every 4 years in nonattainment and maintenance areas, unless a metropolitan planning organization elects to update its transportation improvement plan more frequently. Currently, plans must be updated every 3 years, but TIPs must be updated every 2 years. Attainment areas will continue to update transportation plans every five years. Section 135 is also amended to require that statewide TIPs be updated at least every 4 years, to be consistent with metropolitan plans and TIPs. The section also amends section 176 of title 42, the conformity section of the Clean Air Act, to require that conformity for transportation plans and TIPs be determined every 4 years, unless an MPO elects to update their plan or TIP more frequently, or conformity is triggered by an EPA action on a SIP submission. In the case where conformity is triggered by an EPA SIP action, this section provides metropolitan areas with 2 years to determine conformity (currently, areas have 18 months).

The committee recognizes that there may be value to transportation planners in placing the frequency of metropolitan transportation plan and TIP updates and the frequency of conformity determinations on the same timetable, and also recognizes the benefit of giving metropolitan areas more time to devote to planning. The current transportation law requires TIPs to be updated at least every 2 years, and current planning regulations require plans to be updated every 3 years. Because conformity must be determined before new TIPs or new plans are adopted, many metropolitan areas were starting another TIP update as soon as transportation planning and conformity requirements were met for the previous one. Some witnesses testifying before the committee has indicated that transportation planning will improve if metropolitan areas have more time to devote to it, rather than continuously creating TIP updates and determining their conformity. Because conformity must still be determined before an updated plan or TIP is adopted, air quality should not be affected by this change; air quality impacts will still be checked before any major changes to the transportation network are made.

Horizon. The section also changes the horizon of the conformity determination, that is, how far into the future each conformity determination must examine. Currently, a conformity determination is made analyzing a 20 year period of time, which is the length of time covered by a transportation plan. This section changes the horizon of a conformity determination to be the longest of 10 years, the latest year a State air quality plan (State implementation plan, or SIP) establishes a budget, or the year after a regionally significant project is completed if the project requires approval before the next conformity determination.

Conformity must marry two separate planning activities: transportation planning, and air quality planning. While transportation plans cover a period of 20 years, SIPs, which are used as the measure of conformity, generally cover a period of 10 years or fewer. The committee is changing the horizon of the conformity determination so that it more closely matches the length of time covered by a SIP. In addition, the language also ensures that the emissions impacts of large projects on travel are considered before Federal approvals are made. The change made to the horizon does not preclude State or local agencies from examining longer time periods for informational or local air quality purposes, if they choose to do so.

Projects. The section defines transportation project to include only a project that is regionally significant, or a project that makes a significant revision to an existing project. The definition of regionally significant project closely tracks the existing EPA definition in regulation. Likewise, the definition of significant revision tracks the existing EPA criteria for significant change in design concept or scope. With the addition of this definition for transportation project, conformity determinations are required for regionally significant projects or projects that make a significant revision to an existing project, rather than for every Federal project. However, this change does not affect the requirement that the emissions impacts from all projects in the transportation plan and TIP must be considered when determining conformity of a plan or TIP. VMT from projects that are not regionally significant must still be considered in a plan or TIP conformity determination.

Requirement for Regulation. This section adds a new requirement that EPA's regulations must address the effects of the most recent population, economic, employment, travel, transit ridership, congestion, and induced travel demand information in the development and application of the latest travel models. That is, this section requires that EPA adjust regulations to ensure that travel models can account for the effects of these elements. Currently, travel models can account for the effects of most of the elements on this list, because the Clean Air Act has required that conformity be based on the most recent estimates of emissions since 1990, and EPA's conformity regulations specify how latest information regarding population, employment, travel, congestion, and transit service must be incorporated into a conformity determination.

The new elements on this list are induced travel demand and transit ridership information. The committee recognizes that induced demand is a concept that is relatively recent and has been the subject of some debate. Before changing regulations in response to this section, EPA should examine the recent literature regarding induced demand, including papers on the topic submitted to the Transportation Research Board within the last 6 years. Recent literature should inform EPA's proposal on where, when, and how induced demand should be included in travel models. If recent literature does not include recommendations for how to incorporate induced demand into travel modeling, then EPA should request input on this topic from the public and the expert community prior to proposing its regulations.

Sec. 1617.

Section 1617 reduces barriers to regions implementing transportation control measures (TCMs) to improve their regional air quality. The section allows an area to substitute an existing TCM or add a TCM if they can show that the new TCM will achieve equivalent or greater emissions reductions. Substitution

or addition of a TCM will not require express permission in the State air quality plan (SIP), a formal revision of the SIP, nor a new conformity determination.

Transportation control measures, or TCMs, are transportation-related measures that have the potential to reduce emissions of criteria pollutants. Many TCMs reduce emissions by reducing VMT, for example, high-occupancy vehicle lanes, transit projects, park and ride lots, ride-share programs, and pedestrian and bicycle facilities. States can include TCMs in their SIPs. However, unless the SIP includes a TCM substitution mechanism, i.e., a set of provisions for substituting TCMs, the SIP must be revised to change a TCM that is delayed or no longer viable. The purpose of this section is to allow all States to substitute TCMs without a full SIP revision, regardless of whether the State has its own substitution mechanism.

TCMs can be substituted if the substitute measure achieves the same or greater emission reductions as the measure being replaced, based on an analysis that uses the latest planning assumptions and the current models. The substitute TCMs must be implemented on the same schedule as the original measure, if that is possible. However, the committee recognizes that it may not be possible for the substitute measure to be on the original schedule; for example, a possible reason that a State would want to substitute a TCM is that it has proved difficult to implement in a timely way. In those cases, the substitute measure must be implemented as soon as practicable, but not later than the date on which the SIP is supposed to achieve its purpose. For example, if the TCM is included in the SIP as part of the attainment demonstration, and the attainment date is 2005, the substitute TCM must be implemented as soon as practicable to reduce emissions by 2005.

Subparagraph (B) of this provision states that after carrying out subparagraph (A), a State shall adopt the substitute or additional control measure in the applicable SIP. In this instance, the committee has used the word 'adopt' to mean that the State must record the measure as being part of the SIP. The sole intent of this subparagraph is to ensure that the State keeps an up-to-date list of the TCMs that must be implemented, so that a member of the public can review the list at any point and have the complete, correct list of TCMs that are in the SIP. This subparagraph is not intended to create any additional process requirements than those in subparagraph (A).

Sec. 1616.

Section 1616 provides methods for new nonattainment areas to use in determining transportation conformity to help achieve the national ambient air quality standards. Many areas will soon be designated nonattainment with the revised national ambient air quality standards for ozone (the 8-hour standard) and fine particulate matter (PM–2.5). In the case of areas that have not been in nonattainment before and have not been required to demonstrate transportation conformity or develop an emissions budget to use in that demonstration, or in the event that the agency revokes a prior standard before new nonattainment areas have approved emissions budgets for a revised standards, the committee has provided that those areas would be able to use an emissions budget in a SIP for the prior standard for the same pollutant, if one is available. Areas could also use the other tests that are currently available in cases where an area does not have a SIP.

This section is added because EPA designated areas for the new 8-hour ozone standard in April 2004, and made designations for the fine particulate matter standard (PM–2.5) in December 2004. Newly designated nonattainment areas that have not been previously designated nonattainment for the same pollutant will have a 1-year grace period before conformity applies, but they have 3 years to submit SIPs to EPA. SIPs include motor vehicle emissions budgets, which are the total amount of each pollutant or precursor that is allowable for the transportation sector. These budgets serve as the measure of comparison when determining conformity. Therefore, after areas are designated for an air quality standard, there will be a period of time when other means of determining conformity must be used.

This section will allow areas that have been designated for the new 8-hour ozone standard to use the motor vehicle emissions budget from their 1-hour ozone SIP, if it exists, even once EPA revokes the 1-hour standard. Rather than referring specifically to the 8-hour and 1-hour ozone standards, this section is written broadly to refer to any standards. The committee recognizes that EPA, from time to time, may revise air quality standards. Areas should be able to use the budgets from the SIP that addresses the most recent prior standard of the same pollutant, if one exists and EPA has found its budgets adequate or has approved the SIP.

The committee did not mandate the use of the budgets from a SIP for the most recent prior standard, but instead gave areas the choice to do so, or use the existing tests. There may be instances where the budget from a SIP addressing the prior standard would not provide a good test of conformity. For example, such a budget could be established for a year that is many years in the past, be based on a geographic boundary that is different than the boundary for the current standard, or be based on information that is significantly out-of-date. For these reasons, the committee believes it is important to provide a choice to areas. Areas will use the consultation process to determine whether budgets addressing a prior standard for the same pollutant or another test or tests, will be used for conformity.

Sec. 1619.

Section 1619 updates the language in section 176 of title 42 that directs EPA to write regulations. It removes references to the date of enactment of the Clean Air Act Amendments of 1990. It also removes the requirement for States to duplicate the entire text of Federal conformity regulations in their State implementation plans each time there is a revision in those regulations. Instead, States will be required to further amend their State implementation plans only when revising conformity consultation procedures.

Current law requires that States submit criteria and procedures for assessing conformity of transportation plans, TIPs, and projects. This requirement results in States having to adopt the entire Federal conformity rule into their State implementation plans (SIPs). States that have done so must update their SIP whenever EPA updates any portion of the conformity regulations, which EPA has done several times since promulgating the initial rule in 1993, most recently in 2000, 2002 and 2004. However, only the consultation procedures that exist in the regulations need to be tailored to individual States. This change ensures that States must submit consultation procedures, but no longer have to repeat the entire Federal conformity regulations. This change will reduce the paperwork burden on States with no adverse air quality impact.

Conference Substitute

Frequency: The Conference agrees to a modified version of the Senate provision. The Senate provision is modified to clarify that the two-year clock for re-determining conformity after the approval of new emissions budgets only starts if those emissions budgets had not previously been found adequate.

Horizon: The Conference adopts the Senate provision with modifications. First, the change in horizon will be at the election of the metropolitan planning organization, after consultation with the appropriate air pollution control agency and with a period for public comment. The decision to address a portion of the transportation plan rather than the entire 20-year plan when demonstrating conformity only needs to be made once, not each time a conformity determination is made. After such election, each conformity determination will address the longest of the three periods at that point in time. For example, the first conformity determination following such election may address 10 years of the transportation plan, but the second may need to address 15 years because the new plan includes a regionally significant project in later years of the plan. The Conference also requires a conformity determination to include an informational regional emissions analysis for the last year of the transportation plan and any year shown to exceed emissions budgets by a prior informational regional emissions analysis if such year extends beyond the conformity date.

Projects: The Conference does not adopt the Senate provision.

Conformity Lapse: The Conference adopts the House language.

TCM Substitution: The Conference agrees to a modified version of the Senate provision. The Conference clarifies the meaning of ''adoption.'' Specifically, adoption occurs when the MPO, state air agency and EPA concur that all four of the general requirements in subparagraph (A) of the provision have been fulfilled. At that point the substitute TCM becomes part of the SIP and federally enforceable. The state air agency is directed to send the substitute measure to EPA within 90 days of adoption so that EPA may proceed with incorporating the substitute measure into the codified SIP. This action does not require any additional state process. The conference also clarifies that evidence of adequate funding for the implementation of the substitute TCM must be provided.

Requirements for Regulations: The Conference does not adopt the Senate provision, but agrees to replace it with a requirement in the Research title requiring the Federal Highways Administration to address induced travel demand and transit ridership in the development of the TRANSIMS transportation model and to assist state and local governments in using TRANSIMS to estimate the impact of these factors when areas make conformity determinations, where applicable.

Transition to New Air Quality Standards: The Conference does not adopt the Senate provision.

Conforming Amendments: The Conference agrees to a modified version of the Senate provision. The Conference clarifies that states are required to incorporate three provisions from the federal conformity rule into their SIPs. The three provisions are related to consultation and enforcement and enforceability of commitments for emission reduction or mitigation measures. These are the only three provisions in the federal conformity rule that states are allowed to tailor when they incorporate conformity requirements into their SIPs.

Regulations: The Conference includes a provision requiring EPA to revise the conformity rule within two years of the enactment of the bill.

SECTION 6012. FEDERAL REFERENCE METHOD

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 1610.

This section directs EPA to conduct a study of the ability of monitors to differentiate particulate matter larger than 2.5 micrometers in diameter (coarse particulate matter). EPA is also directed to develop a method to measure directly the amount and composition of coarse particulate matter.

This section directs EPA to conduct a study of the ability of monitors to differentiate particulate matter larger than 2.5 micrometers in diameter (coarse particulate matter). This study will give policymakers and the agency a better understanding of the difficulties involved in distinguishing particles that are smaller than 2.5 micrometers in size from those that are larger. This knowledge will assist policymakers by minimizing the potential of measurements to either inflate or deflate the quantity of smaller particles, or to inflate or deflate the quantity of larger particles.

EPA is also directed to develop a method to measure directly the amount and composition of coarse particulate matter. This will ensure that EPA has the tools necessary so that it does not need to rely on a methodology for measuring coarse particles (2.5 to 10 microns in size) by measuring all particles (up to 10 microns in size) and subtracting fine particles (2.5 microns or less in size), as this subtraction method may increase the probability of measurement error. EPA is also directed to develop a method to measure different kinds of particles. By developing the ability to measure different types, or so-called ''species'' of particles, the agency will be able to better identify those particles that constitute the particles of greater concern and to identify the point of origin of the emissions for purposes of modeling.

Conference Substitute

The Conference adopts the Senate provision.

SECTION 6013. AIR QUALITY MONITORING DATA INFLUENCED BY EXCEPTIONAL EVENTS

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 1618.

Section 1618 requires EPA to promulgate regulations governing the handling of air quality monitoring data influenced by exceptional events. These regulations would allow governors to petition EPA to exclude air quality data directly due to exceptional events. Events such as forest fires or volcanic eruptions, should not influence whether a region is meeting its Federal air quality goals. The section includes requirements for demonstrating the occurrence of such a natural event by reliable and accurate data, a clear causal relationship between the exceptional event and a national air quality standard exceedance, and a public process for the determination.

This section includes a definition of exceptional events and excludes certain events from the definition. Natural climatological occurrences such as stagnant air masses, high temperatures, or lack of precipitation influence pollutant behavior but do not themselves create pollutants. Thus, they are not considered exceptional events. Likewise, air pollution related to source noncompliance may not be considered an exceptional event. In contrast, events which are part of natural ecological processes, which generate pollutants themselves that cannot be controlled, qualify as exceptional events.

The committee is concerned that the Environmental Protection Agency's (EPA's) current approach for modeling carbon monoxide (CO) emissions from motor vehicles may not be appropriate for cold weather States, such as Alaska, that must make CO attainment and maintenance demonstrations. The committee therefore requests that EPA evaluate the effectiveness of its MOBLIE6 model to determine if it adequately accounts for the effects of cold weather on CO emissions.

EPA is directed to follow principles in promulgating regulations under this section. These principles reflect the requirements of the current Clean Air Act and do not establish new requirements for States or EPA to meet. Instead, these are principles that EPA must follow when promulgating regulations under this section.

Conference Substitute

The Conference adopts the Senate provision.

SECTION 6014. FEDERAL PROCUREMENT OF RECYCLED COOLANT

House Bill

No comparable provision in the House bill.

Senate Bill

This section directs the President to conduct, within 90 days of enactment of this Act, a review of Federal procurement policy of off-site recycled coolant, taking into consideration processes that are energy efficient, generate no hazardous waste, produce no emissions of air pollutants, present lower health and safety risks to employees at the plant or facility and recover at least 97 percent of the glycols from used antifreeze feedstock.

Conference Substitute

The Conference adopts the Senate provision with a correction to delete ''off-site''.

SECTION 6015. CLEAN SCHOOL BUS PROGRAM

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 1622.

Section 1622 establishes a statutory program to authorize funds to assist localities seeking to reduce emissions from existing school buses. The legislation requires EPA to award grants to replace pre-1977 school buses and retrofit post-1990 school buses, and when appropriate, purchase alternative fuels.

Conference Substitute

The Conference adopts the Senate provision with a modification to clarify that the awarding of grants for the purchase of alternative fuel should be consistent with the historic funding levels of the program for such purchase.

SECTION 6016. SPECIAL DESIGNATION

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 1704

This section directs that the city of Norman, Oklahoma, shall be considered to be part of the Oklahoma City urbanized area for the purpose of any applicable program under title 23, United States Code.

Conference Substitute

The Conference adopts the Senate provision.

SECTION 6017. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 4001.

The section amends Subtitle F of the Solid Waste Disposal Act (42 U.S.C. et seq) to direct the EPA and each agency head to implement procurement requirements and incentives that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects. Priority is to be given to achieving greater use of recovered mineral components in cement or concrete projects for which recovered mineral components historically have not been used or have been used minimally.

Conference Substitute

The Conference adopts the Senate provision with a modification to exclude lead slag and lead slag aggregate from the definition of ''recovered mineral component''.

SECTION 6018. USE OF GRANULAR MINE TAILINGS

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 4002.

This section amends the Solid Waste Disposal to require the Administrator of the Environmental Protection Agency and each agency head to take necessary actions to implement fully all procurement requirements and incentives that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects. An agency head is required to give priority to achieving greater use of recovered mineral component for which it has not been historically used or used minimally. This section also requires the Administrator, in cooperation with the Secretaries of Transportation and Energy, to conduct a study to determine the extent to which current procurement requirements may realize energy savings and environmental benefits attainable with the substitution of recovered mineral component in cement used in cement or concrete projects. Additionally, this section requires the Administrator, in consultation with other agency heads, to establish criteria for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as 'chat', for cement or concrete projects, and transportation projects, including those that use asphalt, that are carried out using Federal funds. In establishing the criteria, the Administrator is required to consider current and previous uses of 'chat,' and any environmental and public health risks and benefits derived from removal, transportation and use of 'chat.'

Conference Substitute

The Conference adopts the Senate provision.

TITLE VII—HAZARDOUS MATERIALS TRANSPORTATION

SEC. 7001. SHORT TITLE

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7301.

This section provides the Short Title.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 7002. AMENDMENT OF TITLE 49, UNITED STATES CODE

House Bill

Sec. 7001.

This section establishes that any reference to a section or other provision shall be considered a section or provision of title 49, United States Code, unless otherwise specified.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

Subtitle A—General Authorities on Transportation of Hazardous Materials

SEC. 7101. FINDINGS AND PURPOSE

House Bill

Sec. 7002.

This section establishes the Congressional findings of the hazardous materials title, and updates and clarifies the purpose of chapter 51.

Senate Bill

Sec. 7301.

This section contains the short title and table of contents.

Sec. 7321.

This section provides the purpose of the Hazmat Title.

Conference Substitute

The Conference adopts the House provision with modifications.

SEC. 7102. DEFINITIONS

House Bill

Sec. 7003.

This section modifies the definition of ''commerce'' to include transportation on a U.S.-registered aircraft anywhere in the world. This section also defines the term ''Secretary'' as the Secretary of Transportation, except where otherwise indicated.

Senate Bill

Sec. 7322.

This section modifies definitions as indicated below.

The definition of ''commerce'' is amended to provide jurisdiction over hazardous materials activities being conducted on a U.S.-registered aircraft anywhere in the world. The purpose of this proposed provision is to clarify that DOT has the authority, under Federal hazardous materials transportation law (49 U.S.C. 5101–5127), to regulate hazardous materials transportation on all U.S.-registered aircraft.

The definitions of ''hazmat employee'' and ''hazmat employer'' is amended to clarify that the terms include the self-employed, including owner-operators of motor vehicles, vessels or aircraft, and temporary or part time employees.

The definition of ''motor carrier'' would be amended by clarifying that it includes a freight forwarder, as defined in 49 U.S.C. 13102, only if the freight forwarder is performing a function related to highway transportation. In addition, the definition of ''imminent hazard'' is further clarified.

Finally, the definition of ''person'' is amended so that the requirements of chapter 51 apply to additional activities of government agencies and Indian tribes, and includes those that design, manufacture, fabricate, inspect, mark, maintain, recondition, repair, or test a package, container, or packaging component for use in the transportation of hazardous materials in commerce.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 7103. GENERAL REGULATORY AUTHORITY

House Bill

Sec. 7004.

This section updates the terminology used to describe the materials the Secretary should designate as hazardous, as well as the terminology describing the transportation, and transportation-related, activities regulated by the DOT. This section amends current law to ensure that persons who design and inspect packages (or components of packages) are subject to the hazardous materials regulations. This section also clarifies that the hazardous materials regulations apply to persons who prepare or accept hazardous materials for transportation in commerce.

Senate Bill

Sec. 7323.

This section amends subsection 5103(a), title 49 U.S.C. to update the terminology used to describe materials the Secretary is required to designate as hazardous under that subsection. It would also amend subsection 5103(b)(1)(A) to conform with the definition changes made to section 5102.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 7104. LIMITATION ON ISSUANCE OF HAZMAT LICENSES

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7324.

This section requires the Secretary of Health and Human Services to recommend to the Secretary of Transportation any chemical or biological material or agent to be regulated as a hazardous material in transportation.

Conference Substitute

The Conference adopts the Senate provision with modifications.

SEC. 7105. BACKGROUND CHECKS FOR DRIVERS HAULING HAZARDOUS MATERIALS

House Bill

Sec. 4113.

This section authorizes the Secretary, and thus FMCSA, to engage in international activities. This kind of authority is necessary to aid in implementing the North American Free Trade Agreement and to carry on discussions with U.S. trading partners concerning a variety of safety issues.

Senate Bill

Sec. 7325.

This section requires motor carriers registered in Mexico and Canada and transporting hazardous material in the U.S. be subject to a background records check similar to that which will apply to U.S.-licensed motor carriers. In addition, this section directs the Transportation Security Administration to develop a process to notify an employer if an applicant fails to meet specified standards. The provision eliminates redundant background checks; requires Federal Regulations apply to State appeals process for certain background checks; and clarifies the term ''transportation security incident''.

Conference Substitute

The Conference adopts the House and Senate provisions with modifications.

SEC. 7106. REPRESENTATION AND TAMPERING

House Bill

Sec. 7005.

This section updates the language in current law without changing the scope of the law.

Senate Bill

Sec. 7326.

This section would make technical changes to section 5104 for purposes of clarity.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 7107. TECHNICAL AMENDMENTS

House Bill

Sec. 7006.

This section provides technical amendments to update the terminology in current law.

Senate Bill

Sec. 7327.

This section would amend section 5105 by deleting subsection (d) because the required study has been completed and submitted to Congress.

Sec. 7329.

This section makes technical changes to title 49, United States Code.

Conference Substitute

The Conference adopts the House provision.

SEC. 7108. TRAINING OF CERTAIN EMPLOYEES

House Bill

Sec. 7007.

This section amends section 5107(f) of current law (redesignated in the bill as section 5107(g)) by deleting the reference to section 5108(a)-(g)(1) and (h), and section 5109, but retains the provision in current law that states that an action of the Secretary under subsections (a)-(d) of this section and section 5106 of this title is not an exercise of statutory authority, under section 4(b)(1) of the Occupational Safety and Health Act of 1970, to prescribe or enforce standards or regulations affecting occupational safety or health.

This section also codifies the existing practice of providing hazardous materials training to maintenance-of-way employees and railroad signalmen.

Senate Bill

Sec. 7328.

This section allows training grants for the ''Train the Trainer'' program to also be made to instructors to train hazmat employees, to the extent determined appropriate by the Secretary.

Conference Substitute

The Conference adopts both the House and Senate provisions. The Conference retains the provision in current law that states that an action of the Secretary is not an exercise of statutory authority, under section 4(b)(1) of the Occupational Safety and Health Act of 1970, to prescribe or enforce standards or regulations affecting occupational safety or health.

The Conference codifies the existing practice of providing hazardous materials training to maintenance-of-way employees and railroad signalmen.

The Conference allows training grants for the ''Train the Trainer'' program to also be made to instructors to train hazmat employees, to the extent determined appropriate by the Secretary.

SEC. 7109. REGISTRATION

House Bill

Sec. 7008.

This section amends the current law to include those persons who design and inspect hazardous materials packages, or package components, as persons required to register with the Secretary. This change is consistent with the updated language in Section 7004 concerning persons who are subject to the hazardous materials regulations.

Section 5108(g) is amended to require the Secretary to establish and collect a registration fee sufficient to cover the costs of processing the registration and that the Secretary must collect a fee at least large enough to cover processing costs from all entities otherwise exempted from paying the registration fee. This section reduces the maximum fee the Secretary may assess from $5,000 to $3,000.

This section also requires the Administrator of RSPA to transmit the annual registration information required in section 5108 for motor carriers to FMCSA. The Committee intends to ensure that FMCSA has

the most up-to-date information on motor carriers that transport hazardous materials and expects the transmittal of information to be done as expeditiously as possible.

Senate Bill

Sec. 7329.

The Secretary is allowed to require a registration statement from persons who design and inspect a package or packaging component that is represented as qualified for use in transporting hazardous materials in commerce.

This section requires the Secretary to impose a registration fee sufficient to cover administrative processing costs. Indian tribes and States would be exempted from the requirements to register and pay registration fees.

This section also reduces the maximum fee that would be assessed under section 5108(g)(2)(A) from $5,000 to $3,000. The Secretary is directed to reinstate the fees that were suspended due to regulatory action.

Conference Substitute

The Conference adopts the Senate provision with modifications.

SEC. 7110. SHIPPING PAPERS AND DISCLOSURE

House Bill

Sec. 7009.

This section requires that each person who prepares a shipping paper must make the disclosures that the Secretary prescribes by regulation.

This section amends section 5110 to extend the time period shippers and carriers are required to retain shipping papers. Under current law, shippers and carriers are required to retain the shipping papers for one year after the hazardous material is no longer in transportation. This section requires shippers and carriers to retain shipping papers for two years after the shipping papers are prepared.

Senate Bill

Sec. 7330.

This section requires shippers to keep their shipping papers for three years in order to facilitate investigations of past violations and continues to require carriers to retain their shipping papers for the current one year period.

Conference Substitute

The Conference adopts the Senate provision with modifications. The bill requires shippers to keep their shipping papers for two years in order to facilitate investigations of past violations, and continues to require carriers to retain their shipping papers for the current one year period. For purposes of this section, shippers who are also carriers and carriers who are also shippers must retain their shipping papers for two years.

SEC. 7111. RAIL TANK CARS

House Bill

Sec. 7010.

This section repeals section 5111, which permits a rail car built before January 1, 1971, to be used for hazardous materials transportation only if the air brake equipment support attachments of the car comply with the standard for attachments contained in 49 CFR 179.100–16 and 179.200–19.

Senate Bill

Sec. 7331.

This section repeals section 5111, which permits a rail car built before January 1, 1971, to be used for hazardous materials transportation only if the air brake equipment support attachments of the car comply with the standard for attachments contained in 49 CFR 179.100–16 and 179.200–19.

Conference Substitute

The Conference adopts a combination of the House and Senate provisions.

SEC. 7112. UNSATISFACTORY SAFETY RATINGS

House Bill

Sec. 7011.

This section amends section 5113 to provide that a motor carrier owner or operator transporting hazardous materials in commerce who, upon review of an unfavorable fitness determination, is determined by the Secretary to be ''unfit'' is subject to the civil penalties in section 5123 and the criminal penalties set forth in section 5124.

Senate Bill

Sec. 7332.

This section provides that an unfit owner or operator transporting hazardous material in commerce, as determined by the Secretary, shall be subject to the civil penalties in section 5123 and the criminal penalties in section 5124.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 7113. TRAINING CURRICULUM FOR THE PUBLIC SECTOR

House Bill

Sec. 7012.

This section updates the training curriculum to include appropriate emergency response training and planning programs developed with all Federal assistance, not just those under Federal grant programs.

This section also makes the Secretary responsible for distribution and publication of the training curriculum.

Senate Bill

Sec. 7333.

Several technical amendments are made to reflect that the public-sector training curriculum has already been developed and to focus the statutory provisions on maintaining, not developing, the curriculum.

The training curriculum is required to include appropriate emergency response training and planning programs for public-sector employees developed with Federal financial assistance, not just those under other Federal grant programs.

Conference Substitute

The Conference adopts the Senate provision with modifications to include the House provision ensuring that the training necessary for public sector employees also complies with other voluntary consensus standard-setting organizations as the Secretary determines appropriate. The House Distribution and Publication language is also adopted.

SEC. 7114. PLANNING AND TRAINING GRANTS; HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS FUND

House Bill

Sec. 7013.

This section amends section 5116(b)(4) to require the Secretary to consider the report established in section 7022 of this bill when determining a State or Indian tribe's emergency response funding needs.

This section also establishes the Secretary of Transportation as the lead for monitoring public sector emergency response planning and training. It also establishes a new account within the Treasury specifically for hazardous materials emergency preparedness.

This section also allows the Secretary to use funds collected from the annual registration fees to publish and distribute the Emergency Response Guidebook.

Senate Bill

Sec. 7334.

This section eliminates the current requirement that the State share of planning and training grants must be above and beyond 'maintenance of effort' funds. In subsection (g), the phrase 'government grant programs' would be broadened to 'Federal financial assistance programs' in order to provide for more complete coordination of funding sources.

This section also amends section 5116 to provide a name for the account established under subsection 5116(i), calling it the 'Emergency Preparedness Fund.' Amounts collected by the Secretary under subsection 5108(g)(2)(C) would be deposited into the Emergency Preparedness Fund and could be used for emergency planning and training grants, under subsection 5116(a) and (b), monitoring and technical assistance under subsection 5116(f), and administrative costs of carrying out sections 5116, 5108(g)(2), and section 5115. It also clarifies that these amounts may be used to publish and distribute the Emergency Response Guidebook. Information on the allocation and uses of the grants would be made available to the public on an annual basis.

Conference Substitute

The Conference adopts the Senate and House provisions with modifications. A compromise on the Government Share of Costs is also adopted.

SEC. 7115. SPECIAL PERMITS AND EXCLUSIONS

House Bill

Sec. 7014.

This section clarifies that the Secretary may issue a special permit to any person who performs a function regulated under section 5103(b)(1).

This section increases the maximum renewal period of special permits from two years to four years, except that special permits issued related to highway routing of hazardous materials are only renewable for a two-year period.

Senate Bill

Sec. 7335.

This section clarifies that the Secretary may issue a special permit to any person who performs a function identified under section 5103(b)(1).

In addition, this section changes the maximum initial effective period of a special permit to two years, and provides for the renewal of special permits for four-year successive periods. This change eliminates a great deal of unnecessary industry application time and government processing time involved in the present two-year renewal process.

This section also repeals a requirement that the Secretary maintain 30 hazardous materials safety inspectors more than the number of inspectors authorized at the end of FY 1990. The Pipeline and Hazardous Materials Safety Administration maintains inspectors in excess of this requirement and, pursuant to recommendations resulting from a department-wide DOT review of the hazmat program, is requesting more flexibility about how inspectors should be utilized.

Conference Substitute

The Conference adopts the House provision with modifications. The Conference also adopts the Senate's repeal of section 5118.

SEC. 7116. UNIFORM FORMS AND PROCEDURES

House Bill

Sec. 7015.

This section requires the Secretary to establish a working group to develop uniform forms and procedures for States to register and issue permits to persons who transport, or cause to be transported hazardous materials in the State. The working group is required to develop a report of its recommendations for the Secretary to consider

when issuing regulations to carry out a uniform State registration system. The working group is prohibited from proposing to limit any fee that a State may impose or collect.

Senate Bill

Sec. 7336.

This section reflects the fact that the working group established to formulate uniform registration and permitting forms and procedures has completed its task and submitted a report to Congress. The section authorizes the Secretary to prescribe regulations to establish uniform forms and regulations for States to: (1) register and issue permits for the transportation of hazmat by motor vehicle; and (2) permit the transportation of hazmat in a State. In addition, States would be authorized to participate in the uniform forms and procedures program recommended by the Alliance for Uniform Hazmat Transportation Procedures.

Compromise

The Conference adopts the House provision with modifications.

SEC. 7117. INTERNATIONAL UNIFORMITY OF STANDARDS AND REQUIREMENTS

House Bill

Sec. 7016.

This section amends current law to reflect that the Secretary may have additional international requirements, in addition to current international standards, that need to be met.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 7118. ADMINISTRATIVE AUTHORITY

House Bill

Sec. 7017.

This section amends section 5121 to provide for enhanced authority to discover hidden shipments of hazardous materials and to clarify and enhance the inspection and enforcement authority of DOT officials and inspection personnel, thereby enabling them to more effectively identify hazardous materials shipments and to determine whether those shipments are made in accordance with the hazardous materials regulations. This proposal would expand DOT inspection authority to authorize a designated DOT officer or employee to: access, open, and examine a package (except for the packaging immediately adjacent to the hazardous materials contents) offered for or in transportation when the officer or employee has an objectively reasonable and articulable belief that the package may contain a hazardous material; remove from transportation a package or related packages in a shipment when the officer or employee has an objectively reasonable and articulable belief that the package or packages may pose an imminent hazard and contemporaneously documents that belief; gather information from the shipper, packaging manufacturer or retester, or others responsible for the package to determine the nature and hazards of the contents of the package; as necessary, order the shipper, packaging manufacturer or retester, or others responsible for the package to have the package transported to, opened, and the contents analyzed at an appropriate facility; and authorize properly qualified personnel to assist in the package opening and examination when safety might otherwise be compromised.

This section also amends current law to require the Secretary to develop procedures to assist in the safe resumption of transportation of the package and transport unit when an inspection or investigation does not result in discovery of an imminent hazard. This section directs the Secretary to develop expedited procedures for hazardous materials that are perishable.

The Committee believes strongly that DOT officials, law enforcement and inspection personnel must have the tools necessary to accurately determine whether hazardous materials are being transported safely and in accordance with the relevant law and regulations. To that end, the Committee supports the use of new technologies, such as the Hazmat Trucking Enforcer, that enable inspectors to conduct hazardous materials inspections in a more effective manner and to respond swiftly to any incident involving hazardous materials. The Committee notes that States must be in substantial compliance with a number of requirements under 49 U.S.C. 31102 as a condition of receiving MCSAP funding, including requirements to deploy technology to enhance the efficiency and effectiveness of commercial motor vehicle safety programs under 49 U.S.C 31102(b)(1)(A), as amended.

This section would also repeal a requirement that the Secretary maintain 30 hazardous materials safety inspectors more than the number authorized at the end of fiscal year 1990. PHMSA currently maintains inspectors in excess of this requirement.

Senate Bill

Sec. 7337.

This section improves safety by clarifying and enhancing the inspection and enforcement authority of DOT officials and inspection personnel. Section 5121(a) is amended to expressly state that the Secretary's enforcement authority includes the authority to conduct tests. This section also clarifies that persons subject to chapter 51 must make property, as well as records, reports, and information, available to the Secretary for inspection upon the Secretary's request.

This section provides for enhanced authority for DOT officials to discover hidden shipments of hazardous materials. Section 5121(c) is amended to clarify and enhance the inspection and enforcement authority of DOT officials and inspection personnel, thereby enabling them to more effectively identify hazardous materials shipments and to determine whether those shipments are made in accordance with the Hazardous Materials Regulations.

The Secretary is required to develop procedures for the safe resumption of transportation of a package or transport unit when an inspection or investigation does not result in the discovery of an imminent hazard. The Committee expects that the Secretary will take in to consideration the impact of these procedures on the resumption of transit for time sensitive medical material such as radiopharmaceuticals and radionucleides.

In addition, this section authorizes the Secretary to issue an emergency order when it is determined, by inspection, investigation, testing, or research, that a violation of hazardous material transportation laws, or an unsafe condition or practice, is causing an imminent hazard. In those situations, the Secretary is authorized to issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or the opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

The Secretary is required to issue regulations implementing the new provisions governing package inspection and emergency orders.

A new subsection (g) authorizes the Secretary to enter into grants, cooperative agreements, and other transactions to address security risk assessment and emergency preparedness. The objectives would include research, development, demonstration, risk assessment, emergency response planning, program support, and training activities.

This section requires the Secretary, through the Bureau of Transportation Statistics, to submit a report at least every three years on the transportation of hazardous materials during the preceding three years, including a summary of hazmat shipments, deliveries, and movements during the period. In addition, the section would require a report every two years with, among other items, an analysis of hazmat accidents and incidents over the preceding two years, a list and summary of special permits, regulations and orders, and an evaluation of the effectiveness of enforcement activities relating to the transportation of hazmat during the period.

The Secretary would be authorized to determine whether release of certain sensitive information contained in government records would be contrary to national security.

Conference Substitute

The Conference adopts the House provision with modifications. The Conference believes strongly that DOT officials, law enforcement and inspection personnel must have the tools necessary to accurately determine whether hazardous materials are being transported safely and in accordance with the relevant law and regulations.

SEC. 7119. ENFORCEMENT

House Bill

Sec. 7018.

This section amends section 5122 to clarify the types of judicial relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties, available to be granted in an action brought by the Attorney General. Subsection (b) is amended for clarity by changing the word ''ameliorate'' to ''mitigate.''

Senate Bill

Sec. 7338.

This section clarifies the types of judicial relief, including civil penalties, that may be granted in an action brought by the Attorney General.

Conference Substitute

The Conference adopts the Senate provision with modifications.

SEC. 7120. CIVIL PENALTY

House Bill

Sec. 7019.

This section amends section 5123 to increase the maximum civil penalty from $27,500 to $50,000 for each violation of a law or regulation under Chapter 51. In those cases resulting in death, serious illness, severe injury to any person, or substantial destruction of property, the Secretary would be able to increase the maximum penalty to $100,000.

Senate Bill

Sec. 7339.

This section amends the civil penalty provisions in section 5123 to cover violations of special permits or approvals issued by DOT to ensure that appropriate enforcement action can be taken against persons violating those special authorities. Civil penalties for death, serious illness, or severe injury would be increased to up to $100,000 to serve as a deterrent against violations that could lead to such outcomes. Maximum civil penalty amounts for other violations are set at the current level of $32,500 and violations related to employee training will be subject to a minimum penalty of $450. A violator would

be liable for interest that accrues on a civil penalty.

Conference Substitute

The Conference adopts the House provisions with a modification.

SEC. 7121. CRIMINAL PENALTY

House Bill

Sec. 7020.

Section 5124 would be revised to include a new ''reckless'' standard and to define the ''knowing,'' ''reckless,'' and ''willful'' mental-state standards necessary to establish a criminal violation. Section 5124(a) would be amended to provide that a person who knowingly, willfully, or recklessly violates chapter 51 or a regulation, order, special permit, or approval issued under that chapter, is subject to a fine imposed under title 18 and/or imprisonment of not more than 5 years. In cases where a violation involves the release of a hazardous material that results in death or bodily injury to any person, the maximum term of imprisonment is 10 years.

Section 5124(c) defines a ''willful'' violation as when the person has knowledge of the facts giving rise to the violation and the person has knowledge that the conduct was unlawful.

Section 5124(d) defines a ''reckless'' violation as when a person displays a deliberate indifference or conscious disregard for the consequences of his or her conduct.

Senate Bill

Sec. 7340.

An increased criminal penalty of not more than twenty years is applied to existing law for a person who knowingly violated 49 U.S.C. 5104(b) or willfully violates chapter 51 or a regulation issued under that chapter, and thereby causes a release of hazardous material. The section also provides that a separate violation occurs for each day a violation continues.

Conference Substitute

The Conference adopts the House provision.

SEC. 7122. PREEMPTION

House Bill

Sec. 7021.

This section adds language to ensure that when the preemption test required by this section is conducted, each requirement is independent in their application to the State or Indian tribe.

Senate Bill

Sec. 7341.

This section would include a new subsection outlining the purposes of the Secretary's current preemption authority and clarifies that a person may apply to the Secretary for a decision as to whether a fee imposed by a State, political subdivision of a State, or an Indian tribe is preempted. Further, this section deletes the requirement that the Secretary publish the reason for a delay in issuing a preemption determination in the Federal Register.

Subsection 5125(j) is added to indicate that the preemption standard is to be applied independently to each non-Federal requirement in order to determine whether it is preempted.

Finally, new subsection 5125(i) clarifies that the Secretary's preemption authority does not apply to a procedure, penalty, required mental state, or other standard used by a State, political subdivision of a State, or Indian tribe to enforce hazardous material transportation requirements.

Compromise

The Conference adopts the Senate provision with modifications.

SEC. 7123. JUDICIAL REVIEW

House Bill

Sec. 7023.

This section adds a new section 5127 providing for judicial review of final actions taken by the Secretary under chapter 51. This provision establishes the appropriate judicial forum for review of final agency actions in the areas of compliance, enforcement, civil penalties, rulemaking, and preemption.

Under this proposal, the U.S. Court of Appeals for the District of Columbia or the U.S. Court of Appeals for the U.S. circuit in which a person seeking review resides or has his or her principal place of business would review the final action. The petition for review must be filed within 60 days after issuance of the order. The section describes judicial procedures, the authority of the court, and a requirement for prior objection.

Senate Bill

Sec. 7343.

This section adds a new section 5127 providing for judicial review of final actions taken by the Secretary under chapter 51. This provision establishes the appropriate judicial forum for review of final agency actions in the areas of compliance, enforcement, civil penalties, rulemaking, and preemption.

Under the proposal, the United States Court of Appeals for the District of Columbia or for the circuit in which a person seeking review resides or has his or her principal place of business would review the final action. The petition for review must be filed within 60 days after issuance of the order.

Conference Substitute

The Conference adopts the House provision with modifications.

SEC. 7124. RELATIONSHIP TO OTHER LAWS

House Bill

Sec. 7022.

This section updates the language in the current law without changing the scope.

Senate Bill

Sec. 7342.

This section requires that a person under contract to the United States government to design or inspect a packaging or packaging component used for transporting hazardous materials must comply with chapter 51 and the hazardous materials regulations.

Further, this section enables hazardous materials law to supersede postal laws and regulations under titles 18 or 39 only 'in case of an imminent hazard.'

Conference Substitute

The Conference adopts the Senate provision with modifications.

SEC. 7125. AUTHORIZATION OF APPROPRIATIONS

House Bill

Sec. 7024.

This section provides funding for the DOT to implement the programs and grants established and required in chapter 51 for fiscal years 2005 through 2007.

Senate Bill

Sec. 7344.

This section authorizes appropriations of $24,940,000 for FY 2005, $29,000,000 for FY 2006, and $30,000,000 for each of FYs 2007 through 2009.

Conference Substitute

The Conference adopts the following structure:

- This section would authorize appropriations of $24,940,000 for FY 2005, $29,000,000 for FY 2006, and $30,000,000 for each of FYs 2007 and 2008.
- A new subsection (b) would authorize appropriations from the Hazardous Materials Emergency Preparedness Fund account to carry out certain activities:

$4,000,000 for each of FYs 2005 through 2008 to carry out section 5107(e) (training grants);

$200,000 for each of FYs 2005 through 2008 to carry out section 5115 (training curriculum for the public sector);

$21,800,000 for each FYs 2005 through 2008 for sections 5116(a) and (b) to be split as follows: $5,000,000 for section 5116(a); $7,800,000 for 5116(b); and 35 percent of the remainder for 5116(a) and 65 percent of the remainder for 5116(b). The Secretary may increase the amount for 5116(b) if the Secretary determines it appropriate based upon the relative training and planning needs of individual applicants.

$150,000 for each of FYs 2005 through 2008 to carry out section 5116(f) (monitoring and technical assistance to the public sector);

$1,000,000 for each of FYs 2005 through 2008 to carry out section 5116(j) (supplemental training grants);

$625,000 for each of FYs 2005 through 2008 to carry out section 5116(i)(3) (for publication and distribution of the Emergency Response Guidebook).

Funding for issuance of hazmat licenses is authorized to be appropriated for such amounts as may be necessary to carry out section 5103a.

Administrative costs for carrying out certain programs are capped at 2 percent.

SEC. 7126. REFERENCES TO THE SECRETARY OF TRANSPORTATION

House Bill

Sec. 7026.

This section designates that any reference to the ''Secretary of Transportation'' in chapter 51 be simplified to ''Secretary''.

Senate Bill

Sec. 7346.

This section clarifies that references to the ''Secretary of Transportation'' in certain sections of chapter 51 are simplified to ''Secretary''.

Conference Substitute

The Conference adopts the Senate provision with modifications.

SEC. 7127. CRIMINAL MATTERS

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7363.

This section provides for a correction to title 18 of the United States Code for the transportation of explosives. It makes explosives that are regulated by the DOT and the Department of Homeland Security (DHS) subject to their authority.

Conference Substitute

The Conference adopted the Senate provision with modifications.

SEC. 7128. ADDITIONAL CIVIL AND CRIMINAL PENALTIES

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7345.

This section amends criminal penalties for violations in transporting hazardous materials by air (49 U.S.C. 46312) to clarify that the regulations referred to in that section include the Hazardous Materials Regulations issued by the Secretary under chapter 51. Consequently, violations in transporting hazardous materials by air would clearly constitute violations of both Federal hazardous material transportation laws and the Federal Aviation Act.

This section also would allow the Department of Justice to seek restitution against persons convicted of a criminal offense under 49 U.S.C. 5124.

Conference Substitute

The Conference adopted the Senate provision.

SEC. 7129. HAZARDOUS MATERIAL TRANSPORTATION PLAN REQUIREMENT

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7368.

This section would exempt farmers as defined in the section from certain hazardous materials transportation plans for local farm-related shipments within 150 miles of their farm.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 7130. DETERMINING AMOUNT OF UNDECLARED SHIPMENTS OF HAZARDOUS MATERIALS ENTERING THE UNITED STATES

House Bill

Sec. 7025.

This section requires the GAO to conduct a study to propose methods to determine the amount of undeclared shipments of hazardous materials entering the United States.

Senate Bill

Sec. 7364.

This section authorizes the Secretary to initiate a program to randomly inspect cargo shipments at U.S. Customs ports of entry to determine the extent to which undeclared hazardous material is being offered for transportation in commerce. DOT inspection personnel, in coordination with DHS officials, are authorized to open and inspect containers at any U.S. Customs port of entry. The inspections are then carried out by DOT inspection personnel at U.S. Customs ports of entry where they are similar to border inspections, and they would be based upon random selections made by supervisory personnel not present at the site of the inspections.

Conference Substitute

The Conference adopts the House provision.

SEC. 7131. HAZARDOUS MATERIALS RESEARCH PROJECTS

House Bill

Sec. 5216.

This section authorizes PHMSA to enter into a contract with the National Academy of Science to carry out the 9 research projects called for in the 2005 Special Report 283 of the Transportation Research Board entitled ''Cooperative Research for Hazardous Materials Transportation: Defining the Need, Converging on Solutions''.

Senate Bill

Sec. 7370.

This section creates a HAZMAT research cooperative through the National Academy of Sciences' Transportation Research Board.

Conference Substitute

The Conference adopts the House provision.

SEC. 7132. NATIONAL FIRST RESPONDER TRANSPORTATION INCIDENT RESPONSE SYSTEM

House Bill

Sec. 7027.

This section authorizes $2,500,000 for each of fiscal years 2005 through 2007 for Operation Respond.

Senate Bill

Sec. 7367.

This section would authorize $5,000,000 annually for FYs 2005 through 2009 for Operation Respond to update the OREIS and permits the Secretary to require the Operation Respond system function across multiple transportation modes.

Conference Substitute

The conference adopts the House provision.

SEC. 7133. COMMON CARRIER PIPELINE SYSTEM

House Bill

This section requires a study to examine the economic, environmental, and homeland security advantages and disadvantages of operating a common carrier pipeline system in Texas, Louisiana, Mississippi, and Alabama for the transportation of aromatic chemicals.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

The Conference adopts the House provision.

Subtitle B—Sanitary Food Transportation

SEC. 7201. SHORT TITLE

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7381.

This section sets forth the short title for the Sanitary Food Transportation Act of 2003. This title would reallocate responsibilities for food transportation safety among the U.S. Department of Health and Human Services, the U.S. Department of Transportation, and the U.S. Department of Agriculture.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 7202. RESPONSIBILITIES OF SECRETARY OF HEALTH AND HUMAN SERVICES

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7382.

This section amends section 402 of the Federal Food, Drug, and Cosmetic Act (the Act; 21 U.S.C. 391) to provide that food is adulterated if transported in violation of safe transportation practices prescribed in the new section 416 of the Act.

Subsection (b) adds to the Act a new section 416 requiring the Secretary of HHS to establish by regulation sanitary transportation practices to be followed by shippers, carriers, and others engaged in food transport. The Secretary of HHS may prescribe practices relating to matters such as sanitation, packaging and protective measures; limitations on the use of vehicles; information sharing between shippers and carriers; and record keeping, reporting, and compliance with inspections.

It also authorizes the Secretary of HHS to publish in the Federal Register (and amend as needed) lists of non-food products that could render food products adulterated if shipped simultaneously or subsequently in the same vehicle.

The section authorizes the Secretary of HHS to waive all or part of the requirements of section 416, in appropriate circumstances, with respect to particular classes of persons, vehicles, food, or non-food products.

This provision also preempts State or local laws concerning transportation of food. Finally, it requires the heads of other Federal agencies, including the Secretaries of Transportation and the Department of Agriculture, and the Administrator of the Environmental Protection Agency, to assist the Secretary of HHS, upon request, in carrying out this section.

Paragraph (c) of this section would add to the Act a new section requiring persons subject to these provisions to cooperate with HHS inspections of records.

Subsection (d) amends section 301 of the Act to make violations of requirements added by this section prohibited acts subject to the sanctions provided in chapter III of the Act.

Conference Substitute

The Conference adopts the Senate version with modifications.

SEC. 7203. DEPARTMENT OF TRANSPORTATION REQUIREMENTS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7383.

This section requires the Secretary, in consultation with the Secretaries of HHS and the Department of Agriculture, to establish inspection procedures for identifying suspected incidents of contamination or adulteration of food that might violate regulations issued under section 416 of the Federal Food, Drug, and Cosmetic Act, and of meat and poultry products subject to detention under section 402 of the Federal Meat Inspection Act (21 U.S.C. 672) and section 19 of the Poultry Products Inspection Act (21 U.S.C. 467a). In addition, it requires the Secretary to train DOT personnel who perform motor vehicle and railroad related safety inspections to identify practices and conditions that could pose a threat to food safety and to notify the secretaries of HHS and the Department of Agriculture of any instances of potential food contamination identified during those inspections.

Conference Substitute

The Conference adopts the Senate provision with modifications.

SEC. 7204. EFFECTIVE DATE

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7384.

This section makes the changes in law under the subtitle align with the Federal fiscal year, which is particularly important for the transfer of duties among different agencies.

Conference Substitute

The Conference adopts the Senate version with modifications.

Subtitle C—Research and Innovative Technology Administration

SEC. 7301. ADMINISTRATIVE AUTHORITY

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7361.

This section provides RITA necessary administrative authority to conduct effective research on transportation service and infrastructure assurance and to prevent security-sensitive information developed in the course of that research from aiding persons who might want to disrupt the transportation system.

Conference Substitute

The conference adopts the Senate version with modifications.

TITLE VIII—TRANSPORTATION DISCRETIONARY SPENDING GUARANTEE

SEC. 8001. DISCRETIONARY SPENDING LIMITS FOR THE HIGHWAY AND MASS TRANSIT CATEGORIES

House Bill

Sec. 8001.

This section amends section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 to continue separate

spending limits for the highway and mass transit categories in Highway Trust Fund budget authority, new budget authority, and outlays for fiscal years 2004 through 2009. The section also amends section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reference this Act instead of the Transportation Equity Act for the 21st Century, and to allow for successor accounts to be established in the budget accounts used to track highway and transit spending.

Senate Bill

Sec. 3102(a) and (c).

This section amends section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 to continue separate spending limits for the highway and mass transit categories in Highway Trust Fund budget authority for fiscal years 2005 through 2009. This section amends section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reference this Act instead of the Transportation Equity Act for the 21st Century, and defines the budget accounts to be used to track highway and transit spending pursuant to this Act.

Conference Substitute

The Conference adopts the House version without fiscal year 2004.

SEC. 8002. ADJUSTMENTS TO ALIGN HIGHWAY SPENDING WITH REVENUES

House Bill

Sec. 8002.

This section amends section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 to adjust obligations from the Highway Account of the Highway Trust Fund to actual levels of highway receipts for fiscal years 2004 through 2009.

Senate Bill

Sec. 3102(b).

This section amends section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 to adjust obligations from the Highway Account of the Highway Trust Fund to actual levels of highway receipts for fiscal years 2005 through 2009.

Conference Substitute

The Conference adopts the House version without fiscal year 2004.

SEC. 8003. LEVEL OF OBLIGATION LIMITATIONS

House Bill

Sec. 8003.

This section sets the obligation limitation levels for the purposes of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 for the highway category and mass transit category, including both Highway Trust Funds and new budget authority, for fiscal years 2004 through 2009.

Senate Bill

Sec. 3103.

This section sets the obligation limitation levels for the purposes of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 for the highway category and mass transit category, for fiscal years 2005 through 2009.

Conference Substitute

The Conference adopts the House version without fiscal year 2004.

SEC. 8004. ENFORCEMENT OF GUARANTEE

House Bill

Sec. 8004.

This section amends clause 3 of Rule XXI of the Rules of the House of Representatives to update the cite to this Act and add language providing that obligation limitation relating to surface transportation projects under section 1602 of the Transportation Equity Act for the 21st Century and section 7102 of the House bill shall be assumed to be administered on the basis of sound program management practices allowing States to decide high priority project funding priorities within State allocations.

Senate Bill

No comparable provision.

Conference Substitute

The Conference adopts the House version without fiscal year 2004. Also, this section conforms the cites to the new act.

SEC. 8005. TRANSFER OF FEDERAL TRANSIT ADMINISTRATIVE EXPENSES

House Bill

Sec. 8005.

This section states that it shall be in order for purposes of clauses 2 and 3 of Rule XXI of the House of Representatives to transfer funds in appropriations bills from Federal Transit Administration administrative expenses to other mass transit budget accounts under section 250(c)(4)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Senate Bill

No comparable provision.

Conference Substitute

The Conference adopts the House version without fiscal year 2004.

TITLE IX—RAIL PROVISIONS

SEC. 9001. HIGH-SPEED RAIL CORRIDOR DEVELOPMENT

House Bill

Sec. 9001.

Section 9001 reauthorizes the Swift Rail Development Act (''Swift Act'') and makes some technical amendments.

Subsection (a) amends the Swift Act to address ''corridor development'' rather than ''corridor planning.'' It also authorizes the acquisition of track, signals, rail rolling stock and locomotives under the program.

Subsection (b) reauthorizes the Swift Act at $100 million per year from Fiscal Year 2006 through Fiscal Year 2013. Of this $100 million, $70 million is for corridor development activities and $30 million is for technology development activities.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

The Conference adopts the House provision.

SEC. 9002. CAPITAL GRANTS FOR RAIL LINE RELOCATION PROJECTS

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7602.

This section establishes a grant program to provide financial assistance for local rail line relocation and improvement projects. In order for a State to be eligible for a grant for an improvement construction project, the project must: mitigate the adverse effects of rail traffic on safety, motor vehicle flow, community quality of life, including noise mitigation, or economic development; or involve a lateral or vertical relocation of any portion of the rail line.

There is $350 million for each fiscal year 2006 through 2009 authorized for these grants. At least half of the funds awarded under this section shall not be more than $20 million each and not more than twenty-five percent of the total amount may be used for one project. A State, or other eligible entity, will be required to pay at least ten percent of the shared costs of the project, whether it be through real property, a contribution of services, or previous costs spent on the project before the application was filed. The State may also seek financial contributions from private entities benefiting from the rail line relocation or improvement project. This program will be implemented no later than October 1, 2006.

Conference Substitute

The Conference adopts the Senate provisions with modifications. New language added during conference ensures the Secretary considers the effects of a new rail line, or improvement to an existing rail line, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce, as well as freight and passenger rail operations.

SEC. 9003. REHABILITATION AND IMPROVEMENT FINANCING

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7603.

Section 7603 changes the current Railroad Rehabilitation and Improvement Financing (RRIF) program administered by the Federal Railroad Administration through the Secretary of Transportation. Historically, RRIF loans have taken too long to process and obstacles to participation have been too high. These statutory changes were made to correct past problems and encourage greater utilization of the RRIF program.

Subsection (c) adds to the list of priorities those projects that would enhance service and capacity in the national transportation system. The Secretary should give priority consideration to applications showing an ability to help achieve these goals.

This section also increases the authorization to $6 billion to ensure adequate resources are available. The Secretary may not require an applicant for a direct loan or loan guarantee to provide collateral. Congress seeks to encourage, not discourage, major rail investment in the U.S.

This section also provides a time limit of 90 days for the Secretary's approval or disapproval of direct loan or loan guarantee applications. No fees are to be charged by the Secretary in connection with a direct loan or loan guarantee, unless otherwise stated under section 502 of title 45. Criteria outlining the Secretary's approval standards will be published within thirty days of enactment.

Conference Substitute

The Conference adopts the Senate provisions with modifications. Among the Senate features retained is the legislative overruling of the a priori limits on loan size and cohort composition, as well as excessive collateralization requirements, contained in the existing Department of Transportation-Office of Management and Budget memorandum of understanding on the RRIF program. The bill also retains the Senate language overruling both the memorandum and DOT regulations requiring rejection by a private lender before an applicant may obtain a RRIF loan through DOT. To ensure that adequate resources are available, the authorization level increases from the proposed $6 billion in the Senate language to $35 billion. Also, the maximum portion that may be used for non-Class I railroad loans is increased from the proposed $3 billion in the Senate language to $7 billion.

Another modification allows the Secretary to provide direct loans and loan guarantees to interstate compacts formed pursuant to the 1997 Amtrak reform law, and solely for the purpose of constructing a rail connection between a plant or facility and a second rail carrier, limited option rail freight shippers

that own or operate a plant or other facility that is served by no more than a single railroad. Also, the Secretary is required to give priority to projects that materially alleviate rail capacity problems that degrade the provision of service to shippers and fulfill a need in the national transportation system. RRIF should be used to help improve service and capacity in the national rail system wherever feasible.

A change was made to allow the Secretary to charge a reasonable evaluation fee for the cost of appraisal, and for making necessary determinations and findings. The amounts collected under this section will be credited directly to the Safety and Operations account of the Federal Railroad Administration.

SEC. 9004. REPORT REGARDING IMPACT ON PUBLIC SAFETY OF TRAIN TRAVEL IN COMMUNITIES WITHOUT GRADE SEPARATION

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7604.

The bill would require the Secretary of Transportation to conduct a study of the impact of blocked highway-railroad grade crossings on the ability of emergency responders to perform public safety and security duties not later than one year after the date of enactment of this act.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 9005. WELDED RAIL AND TANK CAR SAFETY IMPROVEMENT

House Bill

No comparable provision in the House bill.

Senate Bill

Sec. 7326.

The bill would require the Federal Railroad Administration (FRA) to validate a predictive model for certain rail tank car standards; initiate a rulemaking on standards and complete an analysis of the impact resistance of steel used in pressurized tank cars built before 1989; and, require railroads to improve inspection procedures for continuous welded rail track and the identification of cracks in rail joint bars.

Conference Substitute

The Conference adopts the Senate provision with modifications to what the Administration is required to do with the results of the analysis.

SEC. 9006. ALASKA RAILROAD

House Bill

No comparable provision in the House bill.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

The Conference authorizes the Secretary of Transportation to make grants to the Alaska railroad for capital rehabilitation and improvements benefiting its passenger operation. Such sums as may be necessary are authorized to carry out this section.

SEC. 9007. STUDY OF RAIL TRANSPORTATION AND REGULATION

House Bill

No comparable provision in House bill.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference requires the Secretary of Transportation, within 180 days of enactment of this Act, to enter into a contract with the Transportation Research Board of the National Academy of Sciences to conduct a comprehensive study of the Nation's railroad transportation system since the enactment of the Staggers Rail Act of 1980. The study shall address and make recommendations on (1) the performance of the Nation's major railroads regarding service levels, service quality, and rates; (2) the projected demand for freight transportation over the next two decades and the constraints limiting the railroad's ability to meet that demand; (3) the effectiveness of public policy in balancing the need for railroads to earn adequate returns with those of shippers for reasonable rates and adequate service; and (4) the future role of the Surface Transportation Board in regulating railroad rates, service levels, and the railroads' common carrier obligations, particularly as railroads may become revenue adequate.

SEC. 9008. HAWAII PORT INFRASTRUCTURE EXPANSION PROGRAM

House Bill

No comparable provision in the House bill.

Senate Bill

No comparable provision in the Senate bill.

Conference Substitute

This provision designates MARAD as the lead federal agency to transfer and administer federal funds for intermodal and port improvements in the State of Hawaii.

TITLE X—MISCELLANEOUS PROVISIONS

Subtitle A—Sportfishing and Recreational Boating Safety

SEC. 10101. SHORT TITLE

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7501.

Conference Substitute

The Conference adopts the Senate version.

CHAPTER 1—DINGELL-JOHNSON SPORT FISH RESTORATION ACT AMENDMENTS

SEC. 10111. AMENDMENT OF DINGELL-JOHNSON SPORT FISH RESTORATION ACT

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7511.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10112. AUTHORIZATION OF APPROPRIATIONS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7512.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10113. DIVISION OF ANNUAL APPROPRIATIONS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7513.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10114. MAINTENANCE OF PROJECTS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7514.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10115. BOATING INFRASTRUCTURE

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7515.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10116. REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES FOR ADMINISTRATION

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7516.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10117. PAYMENTS OF FUNDS TO AND COOPERATION WITH PUERTO RICO, THE DISTRICT OF COLUMBIA, GUAM, AMERICAN SOMOA, THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7517.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10118. MULTISTATE CONSERVATION GRANT PROGRAM

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7518.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10119. EXPENDITURE OF REMAINING BALANCE IN BOAT SAFETY ACCOUNT

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7519.

Conference Substitute

The Conference adopts the Senate version.

CHAPTER 2—CLEAN VESSEL ACT OF 1992 AMENDMENTS

SEC. 10131. GRANT PROGRAM

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7531.

Conference Substitute

The Conference adopts the Senate version.

CHAPTER 3—RECREATIONAL BOATING SAFETY PROGRAM AMENDMENTS

SEC. 10141. TECHNICAL CORRECTION

House Bill

Sec. 1812.

This section extinguishes all federal claims relating to the donation and use of the Ex Competent (AFDM6), Unit Identification Code number 13862. Further, the provision gives Tanadgusix Corporation (TDX) title to the drydock free and clear.

Senate Bill

No comparable provision.

Conference Substitute

The Conference adopts modified language that requires TDX to transfer all rights, title and interest in and to the vessel to GSA, consistent with the ruling by the 9th Circuit Court of Appeals filed on April 21, 2005. GSA must then sell the vessel at fair market value for use outside the United States, and as a condition of that conveyance the vessel is prohibited from ever operating in the United States. The proposal also includes an authorization of appropriations for $4,000,000. It is the intent of the Conference that nothing in this section shall effect any lawsuits relating to the transfer or use of the vessel, and that this section shall not be applied retroactively.

SEC. 10142. AVAILABILITY OF ALLOCATIONS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7552.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10143. AUTHORIZATION OF APPROPRIATIONS FOR STATE RECREATIONAL BOATING SAFETY PROGRAMS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7553.

Conference Substitute

The Conference adopts the Senate version.

Subtitle B—Other Miscellaneous Provisions

SEC. 10201. NOTICE REGARDING PARTICIPATION OF SMALL BUSINESS CONCERNS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1830

This provision requires the Secretary to give notice to each State or political subdivisions of States to which he awards a grant or other Federal funds of the criteria for participation by a small business concern in any program or project that is fund in any way by the Federal Government under section 155 of the Small Business Reauthorization and Manufacturing Assistance Act of 2004.

Conference Substitute

The Conference adopts the Senate provision.

SEC. 10202. EMERGENCY MEDICAL SERVICES

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7218.

This section would create a new section 407(a) of title 23 U.S.C. directing the Secretary of Transportation and the Secretary of Homeland Security to establish jointly a Federal Interagency Committee on Emergency Medical Services (Interagency Committee). The purposes of the Interagency Committee would be to, among other things, ensure coordination among the Federal agencies involved with State, local, tribal, or regional emergency medical services and 9–1–1 systems. This section also would provide funding to aid the States in conducting coordinated emergency medical services and 9–1–1 programs as described in this section.

Conference Substitute

The Conference adopts the Senate version with these modifications: it does not create a new 407(a) section of title 23, U.S.C. and does not provide funding for State emergency medical services and 9–1–1 programs. It also adds the Secretary of Health and Human Services as one of the coordinators of the Interagency Committee, along with the Secretary of Transportation and the Secretary of Homeland Security.

SEC. 10203. HUBZONE PROGRAM

House Bill

Sec. 1821.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House version.

SEC. 10204. CATASTROPHIC HURRICANE EVACUATION PLANS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 1834.

This section requires the Secretary and the Secretary of Homeland Security to develop a comprehensive plan for the evacuation of the coastal areas for disasters that may occur.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10205. INTERMODAL TRANSPORTATION FACILITY EXPANSION

House Bill

Sec. 1827.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House version.

SEC. 10206. ELIGIBILITY TO PARTICIPATE IN WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM

House Bill

Sec. 1825.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference adopts the House version.

SEC. 10207. RAIL REHABILITATION AND BRIDGE REPAIR

House Bill

No comparable provision in House bill.

Senate Bill

No comparable provision in Senate bill.

Conference Substitute

The Conference authorizes such sums as may be necessary for work on six shortline rail rehabilitation and bridge repair projects in the State of Alabama for the period encompassing fiscal year 2006 through 2010.

SEC. 10208. RENTED OR LEASED MOTOR VEHICLES

House Bill

Sec. 1409

Senate Bill

No comparable language in Senate bill.

Conference Substitute

The Conference adopts the House version.

Subtitle C—Specific Vehicle Safety-Related Rulings

SEC. 10301. VEHICLE ROLLOVER PREVENTION AND CRASH MITIGATION

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7251.

This section requires the Secretary to issue a set of standards to reduce death and injuries caused by passenger vehicle rollovers. To reduce rollovers, the rules will establish performance criteria consistent with stability-enhancing technologies. To reduce complete or partial ejection of occupants, the Secretary will establish performance criteria that takes into account various ejection mitigation systems, including consideration of advanced side glazing, side air curtains, and side impact air bags. The Secretary shall complete a rulemaking to upgrade door locks and door retention. Finally, to better protect occupants during a rollover, the Secretary shall upgrade existing roof strength standards for the driver and passenger sides. The bill includes deadlines for issuing these rules. If, however, the statutory deadlines cannot be met, upon a notification to Congress, the Secretary may establish a new deadline.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10302. SIDE-IMPACT CRASH PROTECTION RULEMAKING

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7252.

This section requires NHTSA to issue a rulemaking by July 2008 that would require automobiles to better protect passengers in a side-impact crash, and to conduct a study of front-impact crashes within one year. The bill includes a deadline for issuing this rule.

Conference Substitute

The Conference adopts the Senate version with the modification that if the statutory deadlines cannot be met, upon a notification to Congress, the Secretary may establish a new deadline.

SEC. 10303. TIRE RESEARCH

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7253.

This section requires the Secretary to submit a report to Congress regarding research on tire aging.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10304. VEHICLE BACKOVER AVOIDANCE TECHNOLOGY STUDY

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7254.

This section requires NHTSA to study technologies that would reduce injuries and deaths caused by cars and trucks backing up.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10305. NON-TRAFFIC INCIDENT DATA COLLECTION

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7255.

This section requires NHTSA to conduct a study of non-traffic crashes, with the focus on persons injured or killed due to a car backing up. NHTSA currently does not collect this data on a regular basis because these injuries and deaths occur in private driveways and parking lots, not on public streets where data is currently collected.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10306. STUDY OF SAFETY BELT USE TECHNOLOGIES

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7256.

This section would repeal existing law that limits audible seat belt reminders to no more than eight seconds and requires the Secretary to conduct a study of advanced safety belt reminder systems to help achieve further gains in safety belt use.

Conference Substitute

The Conference adopts the Senate study, but does not adopt the repeal of existing seat belt law.

SEC. 10307. AMENDMENT OF AUTOMOBILE INFORMATION DISCLOSURE ACT

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7257.

This section requires automobile safety ''star'' ratings compiled by NHTSA's New Car Assessment Program (NCAP) for front, side, and rollover resistance tests to be placed on the window sticker of new automobiles.

Conference Substitute

The Conference adopts the Senate version with a modification to make the provision effective on September 1, 2007.

SEC. 10308. POWER WINDOW SWITCHES

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7258.

This section requires NHTSA to issue a rulemaking by April 2007 mandating power window switches in passenger automobiles that raise the window only when the switch is pulled up or out.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10309. 15-PASSENGER VAN SAFETY

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7259.

This section requires the Secretary to test 15-passenger vans as part of the rollover resistance program of the NCAP program and prohibits school systems from purchasing or leasing new 15-passenger vans to transport children, unless the van complies with motor vehicle standards prescribed for school buses.

Conference Substitute

The Conference adopts the Senate version.

SEC. 10310. AUTHORIZATION OF APPROPRIATIONS

House Bill

No comparable provision in House bill.

Senate Bill

Sec. 7262.

This section authorizes funds for NHTSA to carry out this subtitle, chapter 301 of title 49, and part C of title 49, U.S.C.

Conference Substitute

The Conference adopts the Senate version.

TITLE XI—HIGHWAY REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION

I. TRUST FUND REAUTHORIZATION

A. Extension of Highway Trust Fund and Aquatic Resources Trust Fund Expenditure Authority and Related Taxes (sec. 10002 of the House bill, secs. 5101 and 5102 of the Senate amendment, and secs. 4041, 4051, 4071, 4081, 4221, 4481, 4482, 4483, 6412, 9503, and 9504 of the Code)

PRESENT-LAW HIGHWAY TRUST FUND EXCISE TAXES

In general

Six separate excise taxes are imposed to finance the Federal Highway Trust Fund program. Three of these taxes are imposed on highway motor fuels. Historically, fuel taxes have accounted for 90 percent of Highway Trust Fund receipts. The remaining three are a retail sales tax on heavy highway vehicles, a manufacturers' excise tax on heavy vehicle tires, and an annual use tax on heavy vehicles. The six taxes are summarized below. Except for 4.3 cents per gallon of the Highway Trust Fund fuels tax rates, and a portion of the tax on certain special motor fuels, all of these taxes, with the exception of the heavy vehicle use tax, are scheduled to expire after September 30, 2005.[1] The 4.3-cents-per- gallon portion of the fuels tax rates is permanent.[2] The six taxes are summarized below.

Highway motor fuels taxes

The Highway Trust Fund motor fuels tax rates are as follows:[3]

Gasoline, 18.3 cents per gallon;

Diesel fuel (including transmix) and kerosene, 24.3 cents per gallon;

Special motor fuels, 18.3 cents per gallon, generally.[4]

EXEMPTIONS

Present law includes numerous exemptions (including partial exemptions) for specified uses of taxable fuels or for specified fuels. Because the gasoline and diesel fuel taxes generally are imposed before the end use of the fuel is known, many exemptions are realized through refunds to end users of tax paid by a taxpayer earlier in the distribution chain. Exempt uses and fuels include:

- use in State and local government and nonprofit educational organization highway vehicles;
- use in buses engaged in transporting students and employees of schools;
- use in local mass transit buses having a seating capacity of at least 20 adults (not including the driver) when the buses operate under contract with (or are subsidized by) a State or local governmental unit to furnish the transportation; and
- use in intercity buses serving the general public along scheduled routes. (Such use is totally exempt from the gasoline excise tax and is exempt from 17 cents per gallon of the diesel fuel tax.)

In addition, fuels used in off-highway business use or on a farm for farming purposes generally are exempt from these motor fuels taxes.[5] The Highway Trust Fund does not receive excise taxes imposed on fuel used in off-highway activities. Rather, when tax is imposed on off-highway use fuel consumption, it is used to finance other Trust Funds (e.g., motorboat gasoline and special motor fuel taxes from non-business off-highway use dedicated to the Aquatic Resources Trust Fund) or is retained in the General Fund (e.g., tax on diesel fuel used in trains).

Non-fuel Highway Trust Fund excise taxes

In addition to the highway motor fuels excise tax revenues, the Highway Trust Fund receives revenues produced by three excise taxes imposed exclusively on heavy highway vehicles or tires. These taxes are:

- a 12-percent excise tax imposed on the first retail sale of heavy highway vehicles, tractors, and trailers (generally, trucks having a gross vehicle weight in excess of 33,000 pounds and trailers having such a weight in excess of 26,000 pounds) (sec. 4051);
- an excise tax imposed on highway tires with a rated load capacity exceeding 3,500 pounds, generally at a rate of 9.45 cents per 10 pounds of excess (sec. 4071(a)); and
- an annual use tax imposed on highway vehicles having a taxable gross weight of 55,000 pounds or more (sec. 4481). (The maximum rate for this tax is $550 per year, imposed on vehicles having a taxable gross weight over 75,000 pounds.)

PRESENT-LAW HIGHWAY TRUST FUND EXPENDITURE PROVISIONS

In general

Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by provisions of the Code.[6] The Code authorizes expenditures (subject to appropriations) from the Fund through July 30, 2005, for the purposes provided in authorizing legislation, as in effect on the date of enactment of the Surface Transportation Extension Act of 2005, Part V.

Under present law, revenues from the highway excise taxes generally are dedicated to the Highway Trust Fund. However, under section 9503(c)(2), certain transfers are made from the Highway Trust Fund into the General Fund, relating to amounts paid in respect of gasoline used on farms, amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems, amounts relating to fuels not used for taxable purposes, and income tax credits for certain uses of fuels.

Highway Trust Fund expenditure purposes

The Highway Trust Fund has a subaccount for Mass Transit. Both the Trust Fund and its sub-account are funding sources for specific programs. Neither the Highway Trust Fund nor its Mass Transit sub-account receive interest on unexpended balances. The Highway Fund's Mass Transit sub-account receives 2.86 cents per gallon of highway motor fuels excise taxes.

Highway Trust Fund expenditure purposes have been revised with each authorization Act enacted since establishment of the Highway Trust Fund in 1956. In general, expenditures authorized under those Acts (as the Acts were in effect on the date of enactment of the most recent such authorizing Act) are approved by the Code as Highway Trust Fund expenditure purposes.[7] Thus, no Highway Trust Fund monies may be spent for a purpose not approved by the tax-writing committees of Congress. The Code provides that authority to make expenditures from the Highway Trust Fund expires after July 30, 2005. Thus, no Highway Trust Fund expenditures may occur after July 30, 2005.

Anti-deficit provisions (the ''Harry Byrd rule'')

Highway projects can take multiple years to complete. As a result, the Highway Trust Fund carries positive unexpended balances, a large portion of which are reserved to cover existing obligations.[8] Highway Trust Fund spending is limited by anti-deficit provisions internal to the Highway Trust Fund, the so-called ''Harry Byrd rule.'' Generally, the

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[1] The heavy vehicle use tax expires after September 30, 2006. Sec. 4481(f).

[2] This portion of the tax rates was enacted as a deficit reduction measure in 1993. Receipts from it were retained in the General Fund until 1997 legislation provided for their transfer to the Highway Trust Fund.

[3] These fuels also are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank (''LUST'') Trust Fund (secs. 4041(d) and 4081(a)(2)(B)).

[4] The statutory rate for certain special motor fuels is determined on an energy equivalent basis, as follows:

Liquefied petroleum gas (propane), 13.6 cents per gallon (3.2 cents after September 30, 2005).

Liquefied natural gas, 11.9 cents per gallon (2.8 cents after September 30, 2005).

Methanol derived from natural gas, 9.15 cents per gallon (2.15 cents after September 30, 2005).

Compressed natural gas, 48.54 cents per MCF.

See secs. 4041(a)(2), 4041(a)(3) and 4041(m).

The compressed natural gas tax rate is equivalent only to 4.3 cents per gallon of the rate imposed on gasoline and other special motor fuels rather than the full 18.3-cents-per-gallon rate. The tax rate for the other special motor fuels is equivalent to the full 18.3-cents-per-gallon gasoline and special motor fuels tax rate.

[5] Diesel fuel is the same fuel (#2 fuel oil) as that commonly used as home heating oil. Fuel oil used as heating oil is not subject to the Federal excise tax.

[6] Sec. 9503. The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

[7] The authorizing Acts which currently are referenced in the Highway Trust Fund provisions of the Code are: the Highway Revenue Act of 1956; Titles I and II of the Surface Transportation Assistance Act of 1982; the Surface Transportation and Uniform Relocation Act of 1987; the Intermodal Surface Transportation Efficiency Act of 1991; and the Transportation Equity Act for the 21st Century; the Surface Transportation Extension Act of 2003; the Surface Transportation Extension Act of 2004; the Surface Transportation Extension Act of 2004 Part II; the Surface Transportation Extension Act of 2004, Part III; the Surface Transportation Extension Act of 2004, Part IV; the Surface Transportation Extension Act of 2004, Part V; the Surface Transportation Extension Act of 2005; the Surface Transportation Extension Act of 2005, Part II; the Surface Transportation Extension Act of 2005, Part III; the Surface Transportation Extension Act of 2005, Part IV; and the Surface Transportation Extension Act of 2005, Part V.

[8] Congressional Research Service, RL 32226, Highway and Transit Program Reauthorization Legislation in the 2nd Session, 108th Congress (December 15, 2004) at CRS–12.

Harry Byrd rule prevents the further obligation of Federal highway funds if the current and expected balances of the Highway Trust Fund fall below a certain level. The rule requires the Treasury Department to determine, on a quarterly basis, the amount (if any) by which unfunded highway authorizations exceed projected net Highway Trust Fund tax receipts for the 24-month period beginning at the close of each fiscal year.[9] Similar rules apply to unfunded Mass Transit Account authorizations. If unfunded authorizations exceed projected 24-month receipts, apportionments to the States for specified programs funded by the relevant Trust Fund Account are to be reduced proportionately. Because of the Harry Byrd rule, taxes dedicated to the Highway Trust Fund typically are scheduled to expire at least 24 months after current authorizing Acts.

The Surface Transportation Extension Act of 2003, created a temporary rule (through February 29, 2004) for purposes of the anti-deficit provisions of the Highway Trust Fund. For purposes of determining 24 months of projected revenues for the anti-deficit provisions, the Secretary of the Treasury is instructed to treat each expiring provision relating to appropriations and transfers to the Highway Trust Fund to have been extended through the end of the 24-month period and to assume that the rate of tax during such 24-month period remains at the same rate in effect on the date of enactment of the provision. The temporary rule has been continuously extended since February 29, 2004. The last extension, enacted as part of the Surface Transportation Extension Act of 2005, Part V, extended the rule through July 30, 2005.

Limitations on transfers to the Highway Trust Fund

The Code also contains a special enforcement provision to prevent expenditure of Highway Trust Fund monies for purposes not authorized in section 9503.[10] Should such unapproved expenditures occur, no further excise tax receipts will be transferred to the Highway Trust Fund. Rather, the taxes will continue to be imposed with receipts being retained in the General Fund. This enforcement provision provides specifically that it applies not only to unauthorized expenditures under the current Code provisions, but also to expenditures pursuant to future legislation that does not amend section 9503's expenditure authorization provisions or otherwise authorize the expenditure as part of a revenue Act.

Interrelationship of the Highway Trust Fund and the Aquatic Resources Trust Fund

The Aquatic Resources Trust Fund is funded by a portion of the receipts from the excise taxes imposed on motorboat gasoline and special motor fuels and on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment. A portion of these taxes are transferred into the Highway Trust Fund and then retransferred into the Aquatic Resources Trust Fund. As a result, transfers to the Aquatic Resources Trust Fund are governed in part by Highway Trust Fund provisions.[11]

A total tax rate of 18.4 cents per gallon is imposed on gasoline and special motor fuels used in motorboats and on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment. Of this rate, 0.1 cent per gallon is dedicated to the Leaking Underground Storage Tank Trust Fund. Of the remaining 18.3 cents per gallon, 4.8 cents per gallon are retained in the General Fund. The balance of 13.5 cents per gallon is transferred to the Highway Trust Fund and then retransferred to the Aquatic Resources Trust Fund and the Land and Water Conservation Fund, as follows.

The Aquatic Resources Trust Fund is comprised of two accounts, the Boat Safety Account and the Sport Fish Restoration Account. Motorboat fuel taxes, not exceeding $70 million per year, are transferred to the Boat Safety Account. In addition, these transfers are subject to an overall annual limit equal to an amount that will not cause the Boat Safety Account to have an unobligated balance in excess of $70 million. To the extent there are excess motorboat fuel taxes, the next $1 million per year of motorboat fuel taxes is transferred from the Highway Trust Fund to the Land and Water Conservation Fund provided for in Title I of the Land and Water Conservation Fund Act of 1965. The balance of the motorboat fuel taxes in the Highway Trust Fund is transferred to the Sport Fish Restoration Account.

The Sport Fish Restoration Account also receives 13.5 cents per gallon of the small-engine fuel taxes from the Highway Trust Fund. This Account is also funded with receipts from an ad valorem manufacturers' excise tax on sport fishing equipment.

The retention in the General Fund of 4.8 cents per gallon of taxes on fuel used in motorboats and in the nonbusiness use of small-engine outdoor power equipment expires with respect to taxes imposed after September 30, 2005.

The expenditure authority for the Aquatic Resources Trust Fund expires after July 30, 2005.

HOUSE BILL

The expenditure authority for the Highway Trust Fund and Aquatic Resources Trust Fund is extended through September 30, 2009. The Code provisions governing the purposes for which monies in the Highway Trust Fund may be spent are modified to include the reauthorization bill.

The provision also extends the motor fuel taxes and all three non-fuel excise taxes at their current rates through September 30, 2011.

The provision does not extend the retention in the General Fund of 4.8 cents per gallon of taxes on fuel used in motorboats and in the nonbusiness use of small-engine outdoor power equipment.

Effective date.—The House bill is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment generally follows the House bill, but extends the retention in the General Fund of 4.8 cents per gallon of taxes on fuel used in motorboats and in the nonbusiness use of small-engine outdoor power equipment through September 30, 2011.

The Senate amendment also authorizes expenditures from the Highway Trust Fund for highway use tax evasion projects. Specifically, for fiscal years 2006 through 2009, the Internal Revenue Service is to receive $120 million for the enforcement of fuel tax compliance, including the precertification of tax-exempt users, and $80 million for the excise fuel information reporting system, of which $40 million is to be allocated to the excise summary terminal activity reporting system. In addition, for each of the fiscal years 2006 through 2009, $50 million is authorized for the Federal Highway Administration to allocate $1 million to each State to combat fuel tax evasion on the State level.

The Senate amendment also changes the Harry Byrd rule from a 24-month to a 48-month receipt rule. Under the Senate amendment, the Harry Byrd rule is not triggered unless unfunded highway authorizations exceed projected net Highway Trust Fund tax receipts for the 48-month period beginning at the close of each fiscal year. For purposes of the 48-month rule, taxes are assumed extended beyond their expiration date.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following modifications. The expenditure authority for the Highway Trust Fund expires after September 29, 2009 (after September 30, 2009, in the case of expenditures for administrative purposes, and expenditures from the Mass Transit Account).

The conference agreement changes the Harry Byrd rule from a 24-month to a 48-month receipt rule. Under the conference agreement, the Harry Byrd rule is not triggered unless unfunded highway authorizations exceed projected net Highway Trust Fund tax receipts for the 48-month period beginning at the close of each fiscal year. For purposes of the 48-month rule, taxes are assumed extended beyond their expiration date.

The conference agreement does not extend the General Fund retention of taxes on fuel used in motorboats and in the nonbusiness use of small-engine outdoor power equipment. The conference agreement addresses authorization of expenditures for fuel tax compliance elsewhere in the conference agreement and does not amend the Code for this purpose.

II. Excise Tax Reform and Simplification

A. Highway Excise Taxes

1. Modify gas guzzler tax (sec. 5201 of the Senate amendment and sec. 4064 of the Code)

PRESENT LAW

Under present law, the Code imposes a tax (''the gas guzzler tax'') on automobiles that are manufactured primarily for use on public streets, roads, and highways and that are rated at 6,000 pounds unloaded gross vehicle weight or less.[12] The tax applies to limousines without regard to the weight requirement. The tax is imposed on the sale by the manufacturer of each automobile of a model type with a fuel economy of 22.5 miles per gallon or less. The tax range begins at $1,000 and increases to $7,700 for models with a fuel economy less than 12.5 miles per gallon.

Emergency vehicles and non-passenger automobiles are exempt from the tax. The tax also does not apply to non-passenger automobiles. The Secretary of Transportation determines which vehicles are ''non-passenger'' automobiles, thereby exempting these vehicles from the gas guzzler tax based on regulations in effect on the date of enactment of the gas guzzler tax.[13] Hence, vehicles defined in Title 49 C.F.R. sec. 523.5 (relating to light trucks) are exempt. These vehicles include those designed to transport property on an open bed (e.g., pick-up trucks) or provide greater cargo-carrying than passenger carrying volume including the expanded cargo-carrying space created through the removal of readily detachable seats (e.g., pick-up trucks, vans, and most minivans, sports utility vehicles and station wagons). Additional vehicles that meet the ''non-passenger'' requirements are those with at least four of the following characteristics: (1) an angle of approach of not less than 28 degrees; (2) a breakover angle of not less than 14 degrees; (3) a departure angle of not less than 20 degrees; (4) a running clearance of not less than 20 centimeters; and (5) front and rear axle clearances of not less than 18 centimeters each. These vehicles would include many sports utility vehicles.

HOUSE BILL

No provision.

[9] Sec. 9503(d).
[10] Sec. 9503(b)(6).
[11] Secs. 9503(c)(4) and 9503(c)(5).
[12] Sec. 4064.
[13] Sec. 4064(b)(1)(B).

SENATE AMENDMENT

The Senate amendment repeals the tax as it applies to limousines rated at greater than 6,000 pounds unloaded gross vehicle weight.

Effective date.—The Senate amendment is effective on October 1, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment provision.

2. Exclusion for tractors weighing 19,500 pounds or less from excise tax on heavy trucks and trailers (sec. 5202 of the Senate amendment and sec. 4051 of the Code)

PRESENT LAW

A 12-percent excise tax is imposed on the first retail sale of automobile truck chassis and bodies, truck trailer and semitrailer chassis and bodies, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.[14] The tax does not apply to automobile truck chassis and bodies suitable for use with a vehicle which has a gross vehicle weight of 33,000 pounds or less.[15] The tax also does not apply to truck trailer and semitrailer chassis and bodies suitable for use with a trailer or semitrailer which has a gross vehicle weight of 26,000 pounds or less.[16] In general, tractors are subject to tax regardless of their gross vehicle weight.

Temporary Treasury regulations provide that ''tractor'' means a highway vehicle which is primarily designed to tow a vehicle, such as a trailer or semitrailer, but which does not carry cargo on the same chassis as the engine. The regulations presume that a vehicle equipped with air brakes and/or towing package is primarily designed as a tractor.[17] The regulations further require an incomplete chassis cab to be treated as a tractor if it is equipped with any of the safety devices listed in the regulations, and require that it be treated as a truck if it is not equipped with any of the listed safety devices and the purchaser certifies in writing that the vehicle will not be equipped for use as a tractor.[18]

In Freightliner of Grand Rapids, Inc. v. U.S., the district court held that certain vehicles primarily designed to tow large RV trailers but which had some cargo carrying capacity on their chassis are properly characterized as tractors.[19] The court also held that incomplete chassis cabs that do not include any of the listed safety devices are to be treated as tractors unless the purchaser certifies in writing that it will not equip the vehicles for use as tractors. Under the holding of this case, these types of vehicles are subject to tax regardless of their gross vehicle weight.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment excludes from tax tractors with a gross vehicle weight of 19,500 pounds or less.

Effective date.—The Senate amendment is effective for sales after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except that it also requires that in order to be exempt the gross combined weight (as determined by the Secretary) of the tractor if combined with a towed vehicle (such as trailer or semi-trailer) would not exceed 33,000 pounds. No inference is intended from this provision regarding the proper classification of vehicles as tractors or trucks.

3. Exemption for bulk beds from excise tax on retail sale of heavy trucks and trailers (sec. 5203 of the Senate amendment)

PRESENT LAW

The Code imposes a 12-percent excise tax on the first retail sale of heavy trucks and trailers (chassis and bodies).[20] Under present law, the tax on the first retail sale of automobile truck bodies does not apply to any body primarily designed: (1) to process or prepare seed, feed, or fertilizer for use on farms; (2) to haul feed, seed, or fertilizer to and on farms; (3) to spread feed, seed, or fertilizer on farms; (4) to load or unload feed, seed, or fertilizer on farms; or (5) for any combination of the foregoing.[21]

The IRS has issued various rulings in this area. In Revenue Ruling 69–579, the IRS found that a truck body used primarily for hauling animal and poultry feed to and unloading it on farms qualified for exemption because the built-in equipment was elaborate and expensive. Thus, the IRS concluded that the nature of the unloading systems made it impractical to purchase the bodies for use other than in hauling feed, seed, or fertilizer to and unloading it on farms.

In 1975, the IRS ruled as not exempt a dump truck designed for and used primarily in hauling grain and sugar beets from the field to points on or off the farm but which may also be used to haul feed or fertilizer from a distribution point over the highway to the farm. The ruling concluded that bodies that are used for the general hauling of feed, seed, or fertilizer over the highway are subject to the tax unless they have specific features that indicate they are primarily designed to haul feed, seed, or fertilizer to and on farms. In this case, although feed and fertilizer were among the commodities that the dump truck could be used for, it did not have specific features to indicate that it was primarily designed to haul feed, seed, or fertilizer to and on farms.[22]

In 1990, the IRS issued a technical advice memorandum (''the 1990 TAM'') that concluded that a type of truck bought by farmers to haul seed potatoes, sugar beets, grain, and other farm products qualified for exemption.[23] Each model had a full-length, powered conveyor belt that was designed to support and unload the cargo; a powered rear discharge door to control the discharge rate of the cargo; and a standard universal motor mount to which an electric drive could be mounted. In that ruling, the IRS noted the special unloading equipment was elaborate and expensive, added substantially to the cost and weight of each body, and limited its load-carrying capabilities.

In 1999, the IRS revoked the 1990 TAM prospectively, noting that the exemption was not intended to cover truck bodies designed for general use, even if capable of hauling feed, seed, or fertilizer to and on farms.[24] The IRS noted that the sales literature indicated that the body was designed to be versatile for hauling potatoes, beets, and small grains. The IRS also observed that unlike the bodies described in Rev. Rul. 69–579, which would not be purchased for use other than in hauling feed, seed, or fertilizer, the bodies at issue are designed for general hauling of farm cargo. Further, the IRS found that the presence of a conveyor belt was equally useful for unloading a crop at market as it is for unloading feed, etc. on a farm. Thus, the IRS concluded that the truck body was not primarily designed for an exempt purpose.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment exempts bulk beds used for transporting farm crops to and on farms from the excise tax on the retail sale of heavy trucks and trailers if sold to a person who certifies to the seller that such person is actively engaged in the trade or business of farming and the primary use of the bulk bed is to haul to and on farms farm crops grown in connection with such trade or business. The Senate amendment provides for the recapture of the tax from the purchaser upon resale of within two years of the first retail sale, or if such purchaser makes substantial nonexempt use of the article.

Effective date.—The Senate amendment is effective for sales after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Volumetric excise tax credit for alternative fuels (sec. 5204 of the Senate amendment and secs. 4041, 4101, 6426, and 6427 of the Code)

PRESENT LAW

Under section 4081 of the Code, an excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal, (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not registered with the IRS to receive untaxed fuel, unless there was a prior taxable removal or entry.[25] The tax does not apply to any removal or entry of taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered with the Secretary.[26] Section 4081 also imposes an excise tax on taxable fuel removed or sold by the blender of the fuels.[27] However, the blender is entitled to a credit on any tax previous paid if that person establishes the amount of such tax.[28] A ''taxable fuel'' is gasoline, diesel fuel (including any liquid, other than gasoline, which is suitable for use as a fuel in a diesel-powered highway vehicle or train), and kerosene.[29]

Diesel fuel and kerosene generally are taxed at 24.3 cents per gallon excise (aviation-grade kerosene at 21.8 cents per gallon). Gasoline is taxed at 18.3 cents per gallon and aviation gasoline is taxed at 19.3 cents per gallon.

The Code imposes a backup retail tax for diesel fuel and kerosene not taxed under section 4081, and for special motor fuels.[30] Under section 4041, tax is imposed on special motor fuels (any liquid other than gas oil, fuel oil or any product taxable under section 4081) when there is a taxable sale by any person to an owner, lessee or other operator of a motor vehicle or motorboat, for use as fuel in the motor vehicle or motorboat or used by any person as a fuel in a motor vehicle or motorboat unless there was a prior taxable sale.[31]

Most special motor fuels are subject to tax at 18.3 cents per gallon, however, certain special motor fuels and compressed natural gas

[14] Sec. 4051(a)(1).
[15] Sec. 4051(a)(2).
[16] Sec. 4051(a)(3).
[17] Temp. Treas. Reg. sec. 145.4051–1(e)(1)(i).
[18] Temp. Treas. Reg. sec. 145.4051–1(e)(1)(ii).
[19] 351 F.Supp.2d 718 (W.D. Mich. 2004).
[20] Sec. 4051(a).
[21] Sec. 4053(2).
[22] Rev. Rul. 75–462.
[23] Tech. Adv. Mem. 9126001, 1991 WL 778984 (1991).
[24] Tech. Adv. Mem. 199904038, 1999 WL 36828 (1999).
[25] Sec. 4081(a)(1).
[26] Sec. 4081(a)(1)(B).
[27] Sec. 4081(b)(1). Blended taxable fuel is a taxable fuel that is produced outside the bulk transfer/terminal system by mixing taxpayer fuel with respect to which tax has been imposed under section 4041(a)(1) or 4081(a) (other than taxable fuel for which a credit or payment has been allowed); and any other liquid on which tax has not been imposed under section 4081. Treas. Reg. sec. 48.4081–1(c)(i).
[28] Sec. 4081(b)(2).
[29] Sec. 4083(a).
[30] Sec. 4041.
[31] Sec. 4041(a)(2).

are determined on an energy equivalent basis, as follows:

Liquefied petroleum gas (propane), 13.6 cents per gallon.

Liquefied natural gas, 11.9 cents per gallon.

Methanol derived from petroleum or natural gas, 9.15 cents per gallon.

Compressed natural gas, 48.54 cents per MCF.

Liquid hydrogen is a special motor fuel for purposes of the tax on special motor fuels and is subject to a tax of 18.3 cents per gallon.[32] Compressed hydrogen gas used or sold as a fuel is not subject to tax.

Prior to the American Jobs Creation Act of 2004, gasohol and gasoline to be blended into gasohol was taxed at a reduced rate based on the amount of ethanol contained in the mixture (e.g., 10 percent, 7.7 percent or 5.5 percent alcohol in the mixture). The Act eliminated reduced rates of excise tax for most alcohol-blended fuels. In place of the reduced rates, the Act amended the Code to create two new excise tax credits: the alcohol fuel mixture credit and the biodiesel mixture credit.[33] The sum of these credits may be taken against the tax imposed on taxable fuels (by section 4081). A person may also file a claim for payment equal to the amount of these credits for biodiesel or alcohol used to produce an eligible mixture.[34] The credits and payments are paid out of the General Fund. If the alcohol is ethanol with a proof of 190 or greater, the credit or payment amount is 51 cents per gallon. For agri-biodiesel, the credit or payment amount is $1.00 per gallon; for biodiesel other than agri-biodiesel, the credit or payment amount is 50 cents per gallon. Under the Code's coordination rules, a claim may be taken only once with respect to any particular gallon of alcohol or biodiesel.

No excise tax credit is available for the blending or sale of special motor fuels.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, P Series fuels (as defined by the Secretary of Energy under 42 U.S.C. sec. 13211(2)) are taxed at 18.3 cents per gallon under section 4081. Compressed natural gas and hydrogen are taxed at 18.3 cents per energy equivalent of a gallon of gasoline, and liquefied natural gas, any liquid fuel (other than methanol or ethanol) derived from coal and liquid hydrocarbons derived from biomass are taxed at 24.3 cents per gallon under section 4081. Collectively, these fuels are referred to as ''alternative fuels.''

In addition, the Senate amendment creates two new excise tax credits, the alternative fuel credit, and the alternative fuel mixture credit. The credits are allowed against section 4081 liability. The alternative fuel credit is 50 cents per gallon of alternative fuel or gasoline gallon equivalents of nonliquid alternative fuel sold by the taxpayer for use as a motor fuel in a highway vehicle. The alternative fuel mixture credit is 50 cents per gallon of alternative fuel used in producing an alternative fuel mixture for sale or use in a trade or business of the taxpayer. The mixture must be sold by the taxpayer for use as a fuel in a highway vehicle or used by the taxpayer as a fuel in a highway vehicle. Liquid fuel derived from coal would only qualify for the credits if derived from the Fischer-Tropsch process. The credits generally expire after September 30, 2009. The proposal also allows persons to file a claim for payment equal to the amount of the alternative fuel credit and alternative fuel mixture credits. These payment provisions generally also expire after September 30, 2009. Both credits and payments are made out of the General Fund. Under coordination rules, a claim for payment or credit may only be taken once with respect to any particular gallon or gasoline-gallon equivalent of alternative fuel.

Effective date.—The Senate amendment is effective for any sale, use or removal for any period after September 30, 2006.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modifications.

Under the conference agreement, liquefied petroleum gas and P Series fuels (as defined by the Secretary of Energy under 42 U.S.C. sec. 13211(2)) are taxed at 18.3 cents per gallon under section 4041. Compressed natural gas is taxed at 18.3 cents per energy equivalent of a gallon of gasoline. Liquefied natural gas, any liquid fuel derived from coal (other than ethanol or methanol) and liquid hydrocarbons derived from biomass are taxed at 24.3 cents per gallon under section 4041. The conference agreement does not change the tax treatment of hydrogen, liquefied hydrogen remains subject to the tax imposed by section 4041.

In addition, the conference agreement creates two new excise tax credits, the alternative fuel credit, and the alternative fuel mixture credit. For this purpose, the term ''alternative fuel'' means liquefied petroleum gas, P Series fuels (as defined by the Secretary of Energy under 42 U.S.C. sec. 13211(2)), compressed or liquefied natural gas, liquefied hydrogen, liquid fuel derived from coal through the Fisher-Tropsch process, and liquid hydrocarbons derived from biomass. Such term does not include ethanol, methanol, or biodiesel.

The alternative fuel credit is allowed against section 4041 liability and the alternative fuel mixture credit is allowed against section 4081 liability. Neither credit is allowed unless the taxpayer is registered with the Secretary. The alternative fuel credit is 50 cents per gallon of alternative fuel or gasoline gallon equivalents[35] of nonliquid alternative fuel sold by the taxpayer for use as a motor fuel in a motor vehicle or motorboat, or so used by the taxpayer.

The alternative fuel mixture credit is 50 cents per gallon of alternative fuel used in producing an alternative fuel mixture for sale or use in a trade or business of the taxpayer. The mixture must be sold by the taxpayer producing such mixture to any person for use as a fuel or used by the taxpayer for use as a fuel.[36] The credits generally expire after September 30, 2009. The provision also allows persons to file a claim for payment equal to the amount of the alternative fuel credit and alternative fuel mixture credits. These payment provisions generally also expire after September 30, 2009. With respect to liquefied hydrogen, the credit and payment provisions expire after September 30, 2014. Both credits and payments are made out of the General Fund. Under coordination rules, a claim for payment or credit may only be taken once with respect to any particular gallon or gasoline-gallon equivalent of alternative fuel.

Effective date.—The provision is effective for any sale or use for any period after September 30, 2006.

B. Aquatic Excise Taxes

1. Eliminate Aquatic Resources Trust Fund and transform Sport Fish Restoration Account (sec. 5211 of the Senate amendment and secs. 9503 and 9504 of the Code)

PRESENT LAW

A total tax rate of 18.4 cents per gallon is imposed on gasoline and special motor fuels used in motorboats, and on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment.[37] Of this rate, 0.1 cent per gallon is dedicated to the Leaking Underground Storage Tank Trust Fund. Of the remaining 18.3 cents per gallon, tax collected in excess of 13.5 cents per gallon (i.e., 4.8 cents per gallon) is retained in the General Fund of the Treasury.[38] The balance is transferred to the Highway Trust Fund, and retransferred (except with respect to amounts transferred to the fund for land and water conservation, as described below) to the Aquatic Resources Trust Fund.[39] The taxes on gasoline and special motor fuels used in motorboats and the taxes on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment are collected under the same rules as apply to the Highway Trust Fund collections generally.

The Aquatic Resources Trust Fund is comprised of two accounts.[40] First, the Boat Safety Account is funded by a portion of the receipts from the excise tax imposed on motorboat gasoline and special motor fuels. Transfers to the Boat Safety Account are limited to amounts not exceeding $70 million per year. In addition, these transfers are subject to an overall annual limit equal to an amount that will not cause the Boat Safety Account to have an unobligated balance in excess of $70 million.[41]

Second, the Sport Fish Restoration Account receives the balance of the motorboat gasoline and special motor fuels receipts that are transferred to the Aquatic Resources Trust Fund.[42] The Sport Fish Restoration Account is also funded with receipts from an excise tax on sport fishing equipment sold by the manufacturer, producer or importer. The excise tax rate on sport fishing equipment is 10 percent of the sales price; the rate is reduced to 3 percent for electric outboard motors and fishing tackle

[32] An additional 0.1 cent per gallon is imposed by section 4041(d) for the Leaking Underground Storage Tank Trust Fund.

[33] Sec. 6426. The Act also created an income tax credit for biodiesel and biodiesel mixtures. Sec. 40A.

[34] Sec. 6427(e).

[35] ''Gasoline gallon equivalent'' means, with respect to any nonliquid alternative fuel, the amount of such fuel having a Btu content of 124,800 (higher heating value).

[36] For example, the taxpayer produces fish oil in its trade or business. The taxpayer uses this fish oil to make a blend of 50 percent fish oil and 50 percent diesel fuel to run in a generator that is part of the taxpayer's trade or business. This use of the fish oil-diesel blend made by the taxpayer qualifies as use of an alternative fuel mixture for purposes of the requirement that the fuel be used in the blender's trade or business.

[37] Sec. 4081(a)(2).

[38] The retention in the General Fund of the 4.8 cents a gallon of motorboat fuel taxes and taxes on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment expires after September 30, 2005.

[39] Sec. 9503(c)(4). Between October 1, 2001 and September 30, 2003, the amount transferred to the Highway Trust Fund was 13 cents per gallon. Prior to October 1, 2001, the amount transferred was 11.5 cents per gallon. Sec. 9503(b)(4)(D). The transfers from the Highway Trust Fund to the Aquatic Resources Trust Fund of amounts of taxes received on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment expires after September 30, 2005. Sec. 9503(c)(5).

[40] Sec. 9504(a).

[41] Sec. 9503(c)(4)(A). Funding of the Boat Safety Account is scheduled to expire after September 30, 2005.

[42] After funding of the Boat Safety Account, remaining motorboat fuel taxes, not exceeding $1,000,000 during any fiscal year, are transferred from the Highway Trust Fund into the land and water conservation fund provided in Title I of the Land and Water Conservation Fund Act of 1965. Sec. 9503(c)(4)(B). After the transfer to the land and water conservation fund, motorboat fuel taxes remaining in the Highway Trust Fund are transferred to the Sport Fish Restoration Account. Sec. 9503(c)(4)(C).

boxes.[43] Examples of the items of sport fishing equipment subject to the 10-percent rate include fishing rods and poles, fishing reels, fly fishing lines and certain other fishing lines, fishing spears, spear guns, spear tips, items of terminal tackle, containers designed to hold fish, fishing vests, landing nets, and portable bait containers.[44] In addition, import duties on certain fishing tackle, yachts and pleasure craft are transferred into the Sport Fish Restoration Account.

The amounts of taxes on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment that are transferred to the Highway Trust Fund and retransferred to the Aquatic Resources Trust Fund are directed to a separate sub-account of the Sport Fish Restoration Account, the Coastal Wetlands Sub-Account.

Expenditures from the Boat Safety Account are subject to annual appropriations. Amounts transferred, paid, or credited to the Sport Fish Restoration Account (including the Coastal Wetlands Sub-Account) are authorized to be appropriated for the uses authorized in the expenditure provisions.[45]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment eliminates the Aquatic Resources Trust Fund and future transfers to the Boat Safety Account and transforms the Sport Fish Restoration Account into the Sport Fish Restoration and Boating Trust Fund. After funding of the land and water conservation fund as under present law, the balance of the taxes on motorboat fuels is transferred from the Highway Trust Fund into the Sport Fish Restoration and Boating Trust Fund. In addition, the transfers from the Highway Trust Fund to the Sport Fish Restoration and Boating Trust Fund of amounts of taxes on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment are extended through September 30, 2011.

Existing amounts in the Boat Safety Account, plus interest accrued on interest-bearing obligations of such account, are made available as provided under expenditure provisions.[46] The expenditure provisions also authorize the appropriation of amounts in the Sport Fish Restoration and Boating Trust Fund, including for boating safety, for the uses authorized in the expenditure provisions.

Effective date.—The Senate amendment is effective October 1, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Repeal of harbor maintenance tax on exports (sec. 5212 of the Senate amendment and sec. 4461 of the Code)

PRESENT LAW

The Code contains provisions imposing a 0.125-percent excise tax on the value of most commercial cargo loaded or unloaded at U.S. ports (other than ports included in the Inland Waterway Trust Fund system). The tax also applies to amounts paid for passenger transportation using these U.S. ports. Exemptions are provided for (1) cargo donated for overseas use, (2) cargo shipped between the U.S. mainland and Alaska (except for crude oil), Hawaii, and/or U.S. possessions and (3) cargo shipped between Alaska, Hawaii, and/or U.S. possessions. Receipts from this tax are deposited in the Harbor Maintenance Trust Fund.

The U.S. Supreme Court has held that the harbor maintenance excise tax is unconstitutional as applied to exported cargo because it violates the ''Export Clause'' of the U.S. Constitution.[47] The tax remains in effect for imported cargo. Imposition of the tax on passenger transportation with respect to passengers on cruises that originate, stop, or terminate, at U.S. ports has been upheld.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment conforms the Code to the Supreme Court decision and exempts exported commercial cargo from the harbor maintenance tax.

Effective date.—The Senate amendment is effective before, on, and after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Cap on excise tax on certain fishing equipment (sec. 5213 of the Senate amendment and sec. 4161 of the Code)

PRESENT LAW

In general, the Code imposes a 10-percent tax on the sale by the manufacturer, producer, or importer of specified sport fishing equipment.[48] A three-percent rate, however, applies to the sale of electric outboard motors and fishing tackle boxes.[49] Sport fishing equipment subject to the 10-percent tax includes fishing rods and poles, fishing reels, fly fishing lines, and other fishing lines not over 130 pounds test, fishing spears, spear guns, and spear tips, and tackle items including leaders, artificial lures, artificial baits, artificial flies, fishing hooks, bobbers, sinkers, snaps, drayles, and swivels. In addition the following fishing supplies and accessories are subject to the 10-percent tax: fish stringers; creels; bags, baskets, and other containers designed to hold fish; portable bait containers; fishing vests; landing nets; gaff hooks; fishing hook disgorgers; dressing for fishing lines and artificial flies; fishing tip-ups and tilts; fishing rod belts, fishing rodholders; fishing harnesses; fish fighting chairs; and fishing outriggers and downriggers.

Revenues from the excise tax on sport fishing equipment are deposited in the Sport Fish Restoration Account of the Aquatic Resources Trust Fund. Monies in the fund are spent, subject to an existing permanent appropriation, to support Federal-State sport fish enhancement and safety programs.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the tax applicable to a fishing rod or fishing pole is the lesser of 10 percent or $10.00.

Effective date.—The Senate amendment is effective for articles sold by the manufacturer, producer, or importer after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

C. Aerial Excise Taxes

1. Clarification of excise tax exemptions for agricultural aerial applicators and exemption for fixed-wing aircraft engaged in forestry operations (sec. 5221 of the Senate amendment and secs. 4261 and 6420 of the Code)

PRESENT LAW

Excise taxes are imposed on aviation gasoline (19.4 cents per gallon) and jet fuel (21.9 cents per gallon).[50] All but 0.1 cent per gallon of the revenues from these taxes are dedicated to the Airport and Airway Trust Fund. The remaining 0.1 cent per gallon rate is imposed for the Leaking Underground Storage Tank Trust Fund.

Fuel used on a farm for farming purposes is a nontaxable use. Aerial applicators (crop dusters) are allowed to claim a refund instead of farm owners and operators in the case of aviation gasoline if the owners or operators give written consent to the aerial applicators.[51] This provision applies only to fuel consumed in the airplane while operating over the farm, i.e., fuel consumed traveling to and from the farm is not exempt.

Air passenger transportation is subject to an excise tax equal to 7.5 percent of the amount paid plus $3.20 per domestic flight segment.[52] The tax on transportation by air does not apply to air transportation by helicopter if the helicopter is used for (1) the exploration, or the development or removal of oil, gas, or hard minerals exploration, or (2) certain timber operations (planting, cultivating, cutting, transporting, or caring for trees, including logging operations).[53] The exemption applies only when the helicopters are not using the Federally funded airport and airway services. Helicopters and fixed-wing aircraft providing emergency medical services also are exempt from the air passenger tax regardless of the type of airport and airway services used.[54]

HOUSE BILL

No provision.

SENATE AMENDMENT

With regard to the exemption for aerial applicators, written consent from the farm owner or operator is no longer needed for the aerial applicator to claim exemption for aviation gasoline. The exemption also is expanded to include fuels consumed when flying between the farms where chemicals are applied and the airport where the airplane takes off and lands. The present exemption for helicopters engaged in timber operations is expanded to include fixed-wing aircraft if such aircraft are not using the Federally funded airport and airway services.

Effective date.—The Senate amendment is effective for fuel use or air transportation after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Modify the definition of rural airport (sec. 5222 of the Senate amendment and sec. 4261 of the Code)

PRESENT LAW

Air passenger transportation is subject to an excise tax equal to 7.5 percent of the amount paid plus $3.20 per domestic flight segment.[55] The $3.20 tax on flight segments does not apply to a domestic segment beginning or ending at a rural airport.

With respect to any calendar year, a rural airport is an airport that had fewer than

[43] Sec. 4161(a)(2) and 4161(a)(c)(3).

[44] Items of ''sport fishing equipment'' are enumerated in section 4162(a).

[45] Act of August 9, 1950, 64 Stat. 430 (codified at 16 U.S.C. sec. 777 et seq.) (''An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes,'' commonly referred to as the Dingell-Johnson Sport Fish Restortation Act.).

[46] The expenditure provisions are codified at 16 U.S.C. sec. 777 et seq., as may be amended by the Sportfishing and Recreational Boating Safety Act of 2005.

[47] *United States Shoe Corp.* v. *United States*, 523 U.S. 360, 118 S. Ct. 1290, 140 L. Ed. 2d 453 (1998).

[48] Sec. 4161(a)(1).

[49] Sec. 4161(a)(2) and 4161(a)(3).

[50] Sec. 4081.

[51] Sec. 6420(c)(4)).

[52] Sec. 4261(a) and 4261(b).

[53] Sec. 4261(f).

[54] Sec. 4261(g).

[55] Sec. 4261(a) and 4261(b).

100,000 passengers departing by air during the second preceding calendar year for such airport and such airport either (1) is not located within 75 miles of a larger airport (one that had at least 100,000 passengers departing in the second preceding calendar year), or (2) was receiving essential air service subsidy payments as of August 5, 1997.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands the definition of qualified rural airport to include an airport that (1) is not connected by paved roads to another airport and (2) had fewer than 100,000 commercial passengers departing by air on flight segments of at least 100 miles during the second preceding calendar year.

Effective date.—The Senate amendment is effective on October 1, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Exempt from ticket taxes transportation provided by seaplanes (sec. 5223 of the Senate amendment and secs. 4261 and 4083 of the Code)

PRESENT LAW

Air passenger transportation is subject to an excise tax equal to 7.5 percent of the amount paid plus $3.20 per domestic flight segment (''air passenger tax'').[56] A 6.25-percent tax is imposed on amounts paid for transportation of property by air (''air cargo tax'').[57] The air cargo tax applies only to amounts paid to persons engaged in the business of transporting property by air for hire. The air passenger tax and air cargo tax do not apply to amounts paid for the transportation if furnished on an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less unless the aircraft is operated on an established line.[58]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the air passenger tax and the air cargo tax do not apply to transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airway Trust Fund.

Effective date.—The Senate amendment is effective for transportation beginning after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment but clarifies that for purposes of the fuel taxes, transportation by seaplane is treated as noncommercial aviation.

4. Exempt certain sightseeing flights from taxes on air transportation (sec. 5224 of the Senate amendment and sec. 4281 of the Code)

PRESENT LAW

Under present law, taxable aviation transportation is subject to a 7.5-percent excise tax on the price of an airline ticket and a $3.20 segment tax. An exception to these taxes is provided for transportation by an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less except when the aircraft is operated on an established line. Under the Treasury regulations to be ''operated on an established line'' means to be operated with ''some degree of regularity between definite points. The term implies that the air carrier maintains control over the direction, routes, time, number of passengers carried, etc.''[59] Treasury regulations provide that transportation need not be between two definite points to be taxable: a payment for continuous transportation beginning and ending at the same point is subject to the tax.[60] The IRS position is that the words ''between definite points'' do not require two separate points for purposes of determining whether an aircraft is operated on an established line. At least one court has agreed.[61]

HOUSE BILL

No provision.

SENATE AMENDMENT

For purposes of the exemption for small aircraft operated on nonestablished lines, an aircraft operated on a flight, the sole purpose of which is sightseeing, will not be considered as operated on an established line.

Effective date.—The Senate amendment is effective with respect to transportation beginning after September 30, 2005, but does not apply to any amount paid before such date for such transportation.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

D. Taxes Relating to Alcohol

1. Repeal special occupational taxes on producers and marketers of alcoholic beverages (sec. 5231 of the Senate amendment and secs. 5081, 5091, 5111, 5112, 5113, 5117, 5121, 5122, 5123, 5125, 5131, 5132, 5141, 5147, 5148, and 5276 of the Code)

PRESENT LAW

Under the law in effect prior to July 1, 2005, special occupational taxes are imposed on producers and others engaged in the marketing of distilled spirits, wine, and beer. These excise taxes are imposed as part of a broader Federal tax and regulatory structure governing the production and marketing of alcoholic beverages. The special occupational taxes are payable annually, on July 1 of each year. The tax rates in effect prior to July 1, 2005 are as follows:

Producers:[62]

Distilled spirits and wines (sec. 5081),[63] $1,000 per year, per premise.

Brewers (sec. 5091) $1,000 per year, per premise.

Wholesale dealers (sec. 5111): Liquors, wines, or beer $500 per year.

Retail dealers (sec. 5121): Liquors, wines, or beer $250 per year.

Nonbeverage use of distilled spirits (sec. 5131): $500 per year.

Industrial use of distilled spirits (sec. 5276): $250 per year.

Section 246(a) of the American Jobs Creation Act of 2004 suspends the special occupational tax for the period beginning July 1, 2005 and ending June 30, 2008.[64]

Every person engaged in a trade or business on which a special occupational tax is imposed is required to register with the Secretary.[65] In addition, every dealer in liquors, wine or beer is required to keep records of their transactions.[66] A dealer is any person who sells, or offers for sale, distilled spirits, wine, or beer.[67] A delegate of the Secretary of the Treasury is authorized to inspect the records of any dealer during business hours.[68] There are penalties for failing to comply with the recordkeeping requirements.[69] There are also registration and regulation requirements for the nonbeverage use of distilled spirits, and permit and recordkeeping requirements for the industrial use of distilled spirits.[70]

The Code limits the persons from whom dealers may purchase their liquor stock intended for resale. A dealer may only purchase from:

1. A wholesale dealer in liquors who has paid the special occupational tax as such dealer to cover the place where such purchase is made; or

2. A wholesale dealer in liquors who is exempt, at the place where such purchase is made, from payment of such tax under any provision of chapter 51 of the Code; or

3. A person who is not required to pay special occupational tax as a wholesale dealer in liquors.[71]

Violation of this restriction in punishable by $1,000 fine, imprisonment of one year, or both.[72] A violation also subjects the alcohol to seizure and forfeiture.[73]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment repeals the special occupational taxes on producers and marketers of alcoholic beverages and on the nonbeverage or industrial use of distilled spirits. The registration, recordkeeping and inspection rules applicable to wholesale and retail dealers are retained.[74] For purposes of the recordkeeping requirements for wholesale and retail liquor dealers, the Senate amendment provides a rebuttable presumption that a person who sells, or offers for sale, distilled spirits, wine, or beer, in quantities of 20 wine gallons or more to the same person at the same time is engaged in the business of a wholesale dealer in liquors or a wholesale dealer in beer. In addition, the Senate amendment retains the present-law rules that make it unlawful for any liquor dealer to purchase distilled spirits for resale from any person other than a wholesale liquor dealer subject to the recordkeeping requirements, or a proprietor of a distilled spirits plant subject to recordkeeping requirements.[75] Existing general criminal penalties

[56] Sec. 4261(a) and 4261(b).

[57] Sec. 4271.

[58] Sec. 4281.

[59] Treas. Reg. sec. 49.4263–5(c).

[60] Treas. Reg. sec. 49.4261–1(c).

[61] *Lake Mead Air Inc.* v. *United States*, 991 F. Supp. 1209 (D. Nev. 1997) (the court determined that aircraft flights providing scenic tours of the Grand Canyon were operated on an established line).

[62] A reduced rate of tax in the amount of $500.00 is imposed on small proprietors (as defined in the Code) (secs. 5081(b) and 5091(b)).

[63] Proprietors of plants producing distilled spirits exclusively for fuel use, with annual production not exceeding 10,000 proof gallons, are exempt. Secs. 5081(c) and 5181(c)(4).

[64] See sec. 5148.

[65] Secs. 5141 and 7011. The registration is of such person's name or style, place of residence, trade or business, and the place where such trade or business is to be carried on.

[66] Secs. 5114 and 5124.

[67] Sec. 5112(a). Such definition includes producers and, in general, proprietors of warehouses.

[68] Sec. 5146.

[69] Sec. 5603.

[70] Secs. 5132 and 5275.

[71] Sec. 5117. For example, purchases from a proprietor of a distilled spirits plant at his principal business office would be covered under item (2) since such a proprietor is not subject to the special occupational tax on account of sales at his principal business office (sec. 5113(a)). Purchases from a State-operated liquor store would be covered under item (3) (sec. 5113(b)).

[72] Sec. 5687.

[73] Sec. 7302.

[74] The provision also retains the present-law registration and regulation requirements for the nonbeverage use of distilled spirits, and the permit and recordkeeping requirements for the industrial use of distilled spirits.

[75] Proprietors of distilled spirits plants remain subject to present law recordkeeping requirements under section 5207. Under present law, a limited retail dealer in liquors (such as a charitable organization selling liquor at a picnic) may lawfully purchase distilled spirits for resale from a retail dealer in distilled spirits. The provision retains this rule.

relating to records and reports apply to wholesalers and retailers who fail to comply with these requirements.

Effective date.—The Senate amendment is effective on July 1, 2008. The provision does not affect liability for taxes imposed with respect to periods before July 1, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Modify limitation on rate of rum excise tax cover over to Puerto Rico and Virgin Islands (sec. 5232 of the Senate amendment)

PRESENT LAW

A $13.50 per proof gallon[76] excise tax is imposed on distilled spirits produced in or imported (or brought) into the United States.[77] The excise tax does not apply to distilled spirits that are exported from the United States, including exports to U.S. possessions (e.g., Puerto Rico and the Virgin Islands).[78]

The Code provides for cover over (payment) to Puerto Rico and the Virgin Islands of the excise tax imposed on rum imported (or brought) into the United States, without regard to the country of origin.[79] The amount of the cover over is limited under Code section 7652(f) to $10.50 per proof gallon ($13.25 per proof gallon during the period July 1, 1999 through December 31, 2005).

Tax amounts attributable to shipments to the United States of rum produced in Puerto Rico are covered over to Puerto Rico. Tax amounts attributable to shipments to the United States of rum produced in the Virgin Islands are covered over to the Virgin Islands. Tax amounts attributable to shipments to the United States of rum produced in neither Puerto Rico nor the Virgin Islands are divided and covered over to the two possessions under a formula.[80] Amounts covered over to Puerto Rico and the Virgin Islands are deposited into the treasuries of the two possessions for use as those possessions determine.[81] All of the amounts covered over are subject to the limitation.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the cover over amount of $13.25 per proof gallon is modified to $13.50 for rum brought into the United States after December 31, 2005 and before January 1, 2007. After December 31, 2006, the cover over amount reverts to $10.50 per proof gallon.

The Senate amendment additionally requires that Puerto Rico transfers a portion of the amount covered over to Puerto Rico to the Puerto Rico Conservation Trust Fund (the ''Fund'').[82] The treasury of Puerto Rico is required to transfer to the Fund amounts equal to 50 cents per proof gallon of the taxes covered over to Puerto Rico, and attributable to rum imported into the United States that was produced neither in Puerto Rico nor the Virgin Islands. The transfers are required to be made within 30 days of each such cover over payment to Puerto Rico. Each transfer payment is to be treated as principal for an endowment, the income from which is to be used by the Fund for the purposes for which the Fund was established. If Puerto Rico fails to make a timely payment to the Trust Fund, the Secretary of the Treasury shall deduct and withhold such unpaid amount from the next cover over payment, plus interest, and shall transfer such amounts directly to the Fund. Such deduction, withholding, and direct payment will not be made if the Secretary of the Interior, after consultation with the Governor of Puerto Rico, finds that the failure of the treasury of Puerto Rico to make the transfer payment was for good cause. The transfer requirement expires after December 31, 2006.

Effective date.—The change in the cover over rate is effective for articles brought into the United States after December 31, 2005. The Senate amendment regarding the Puerto Rico Conservation Trust Fund is effective January 1, 2006.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Provide an income tax credit for cost of carrying tax-paid distilled spirits in wholesale inventories and in control State bailment warehouses (sec. 5233 of the Senate amendment and new sec. 5011 of the Code)

PRESENT LAW

As is true of most major Federal excise taxes, the excise tax on distilled spirits is imposed at a point in the chain of distribution before the product reaches the retail (consumer) level. The excise tax on distilled spirits produced in the United States is imposed when the distilled spirits are removed from the distilled spirits plant where they are produced. Distilled spirits that are bottled before importation into the United States are taxed on removal from the first U.S. customs bonded warehouse to which they are landed (including a warehouse located in a foreign trade zone). Distilled spirits imported in bulk containers for bottling in the United States may be transferred to a domestic distilled spirits plant without payment of tax; subsequently, these distilled spirits are taxed in the same way as domestically produced distilled spirits.

No tax credits are allowed under present law for business costs associated with having tax-paid products in inventory. Rather, excise tax that is included in the purchase price of a product is treated the same as the other components of the product cost, i.e., deductible as a cost of goods sold.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment creates a new income tax credit for eligible wholesalers, distillers, and importers, of distilled spirits. The credit is in addition to present-law rules allowing tax included in inventory costs to be deducted as a cost of goods sold, and is treated as part of the general business credits.

The credit is calculated by multiplying the number of cases of bottled distilled spirits by the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year. A case is 12 80-proof 750-milliliter bottles. The average tax-financing cost per case is the amount of interest that would accrue at corporate overpayment rates during an assumed 60-day holding period on an assumed tax rate of $25.68 per case of 12 80-proof 750-milliliter bottles.

The wholesaler credit only applies to domestically bottled distilled spirits[83] purchased directly from the bottler of such spirits. An eligible wholesaler is any person that holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits that is not a State, or agency or political subdivision thereof.

For distillers and importers that are not eligible wholesalers, the credit is limited to bottled inventory in a warehouse owned and operated by, or on behalf of, a State or political subdivision thereof, when title to such inventory has not passed unconditionally. The credit for distillers and importers applies to distilled spirits bottled both domestically and abroad.

Effective date.—The Senate amendment is effective for taxable years beginning after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. Quarterly excise tax filing for small alcohol excise taxpayers (sec. 5234 of the Senate amendment and sec. 5061 of the Code)

PRESENT LAW

In general, excise taxes on distilled spirits, wines, and beers are collected on the basis of returns filed in accordance with rules prescribed by the Secretary of the Treasury.[84] In the case of distilled spirits, beer, and wine withdrawn under bond for deferred payment of tax (''deferred payment bond''), domestic producers are generally required to pay alcohol excise taxes within 14 days after the last day of the semi-monthly period during which the article is withdrawn.[85] In the case of distilled spirits, wines, and beer which are imported into the United States (other than in bulk containers), the importer is generally required to pay alcohol excise taxes within 14 days after the last day of the semi-monthly period during which the article is entered into the customs territory of the United States.[86] In the case of imported articles entered for warehousing, the taxes are generally due within 14 days after the last day of the semi-monthly period during which the article is removed from the first such warehouse.[87] Treasury regulations also permit certain very small wine producers to file and pay on an annual basis.[88]

Special rules apply to accelerate payments made with respect to taxes allocable to the second half of the month of September.[89]

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, domestic producers and importers of distilled spirits, wine, and beer with excise tax liability of $50,000 or less attributable to such articles in the preceding calendar year may file returns and pay taxes within 14 days after the end of the calendar quarter instead of semi-monthly. In order to qualify, the taxpayer's liability for such taxes during the immediately preceding year must have been $50,000 or less, and, as of the beginning of the current

[76] A proof gallon is a liquid gallon consisting of 50 percent alcohol. See sec. 5002(a)(10) and 5002(a)(11).

[77] Sec. 5001(a)(1).

[78] Secs. 5062(b), 7653(b), and 7653(c).

[79] Secs. 7652(a)(3), 7652(b)(3), and 7652(e)(1). One percent of the amount of excise tax collected from imports into the United States of articles produced in the Virgin Islands is retained by the United States under section 7652(b)(3).

[80] Sec. 7652(e)(2).

[81] Secs. 7652(a)(3), (b)(3), and 7652(e)(1).

[82] The Puerto Rico Conservation Trust Fund was established pursuant to a Memorandum of Understanding, dated December 24, 1968, between the United States Department of the Interior and the Commonwealth of Puerto Rico.

[83] Distilled spirits that are imported in bulk and then bottled domestically qualify as domestically bottled distilled spirits.

[84] Sec. 5061(a).

[85] Sec. 5061(d)(1).

[86] Sec. 5061(d)(2)(A).

[87] Sec. 5061(d)(2)(B).

[88] Annual filing and payment is permitted to a wine producer who has not given a deferred payment bond, and who either paid wine excise taxes in an amount less than $1,000 during the previous calendar year or is a proprietor of a new bonded wine premise and expects to pay less than $1,000 in wine excise taxes before the end of the calendar year. 27 CFR sec. 24.273(a).

[89] Sec. 5061(d)(4).

calendar year, the taxpayer must reasonably expect to pay less than $50,000 in such taxes for that year. The Senate amendment does not apply to a taxpayer for any portion of the calendar year following the first date on which the aggregate amount of tax due for that year exceeds the $50,000 threshold.

The special rules accelerating payments for taxes allocable to the second half of September do not apply to quarterly filers under the Senate amendment.

Very small wine producers who have not given deferred payment bonds may still file and pay on an annual basis as under present law.

Effective date.—The Senate amendment is effective for quarterly periods beginning on and after January 1, 2006.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the clarification that quarterly filing and payment applies only to withdrawals, removals, and entries (and articles brought into the United States from Puerto Rico) under deferred payment bonds. Transactions that are not made under deferred payment bonds do not qualify for quarterly filing and payment, but do count toward determining whether the $50,000 threshold has been reached.

E. Sport Excise Taxes

1. Custom gunsmiths (sec. 5241 of the Senate amendment and sec. 4182 of the Code)

PRESENT LAW

The Code imposes an excise tax upon the sale by the manufacturer, producer or importer of certain firearms and ammunition.[90] Pistols and revolvers are taxable at 10 percent. Firearms (other than pistols and revolvers), shells, and cartridges are taxable at 11 percent. The excise tax for firearms imposed on manufacturers, producers, and importers does not apply to machine guns and short barreled firearms. Sales to the Defense Department of firearms, pistols, revolvers, shells and cartridges also are exempt from the tax.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment exempts from the firearms excise tax firearms, pistols, and revolvers manufactured, produced, or imported by a person who manufactures, produces, and imports less than 50 of such articles during the calendar year. Controlled groups are treated as a single person for determining the 50-article limit.

Effective date.—The Senate amendment is effective for articles sold by the manufacturer, producer, or importer after September 30, 2005. No inference is intended from the prospective effective date of this provision as to the proper treatment of pre-effective date sales.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

III. MISCELLANEOUS PROVISIONS

A. Motor Fuel Tax Enforcement Advisory Commission (sec. 5301 of the Senate amendment)

PRESENT LAW

Present law does not require that there be an advisory commission on motor tax fuel enforcement.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a ''Motor Fuel Tax Enforcement Advisory Commission'' (the ''Commission''). The purpose of the Commission is to: (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 fuel taxes; (5) review the results Federal and State agency cooperative efforts regarding motor fuel taxes; and (6) review the results of Federal interagency cooperative efforts regarding motor fuel taxes. The Commission also is to evaluate and make recommendations regarding: (1) the effectiveness of existing Federal enforcement programs regarding motor fuel taxes; (2) enforcement personnel allocation; and (3) proposals for regulatory projects, legislation, and funding.

The Commission is to be composed of the following:

1. At least one 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;

2. At least one representative from the Federation of State Tax Administrators;

3. At least one representative from any State Department of Transportation;

4. Two representatives from the highway construction industry;

5. Six representatives from industries relating to fuel distribution: refiners (two representatives), distributors (one representative), pipelines (one representative), terminal operators (two representatives);

6. One representative from the retail fuel industry; and

7. Two representatives each from the staff of the Senate Committee on Finance and the House Committee on Ways and Means.

Members of the Commission are to be appointed by the Chairmen and Ranking Members of the Senate Committee on Finance and the House Committee on Ways and Means. Representatives from the Department of Treasury and the IRS shall be available to consult with the Commission upon request. The Commission is to terminate after September 30, 2009.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

B. National Surface Transportation Infrastructure Financing Commission (sec. 5302 of the Senate amendment)

PRESENT LAW

Present law does not provide for any advisory commissions related Federal highway or mass transit funding.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision establishes a ''National Surface Transportation Infrastructure Financing Commission'' (the ''Financing Commission''). The Financing Commission is to be composed of 15 members drawn from among individuals knowledgeable in the fields of public transportation finance or highway and transit programs, policy, and needs. Financing Commission members may include representatives of State and local governments or other public transportation agencies, representatives of the transportation construction industry, providers of transportation, persons knowledgeable in finance, and users of highway and transit systems.

The Financing Commission will make an investigation and study of revenues flowing into the Highway Trust Fund under present law. The Financing Commission will consider whether the amount of such revenues is likely to increase, decline or remain unchanged absent changes in the law. The Financing Commission will consider alternative approaches to generating revenues for the Highway Trust Fund, and the level of revenues that such alternatives would yield. The Financing Commission will consider highway and transit needs and whether additional revenues into the Highway Trust Fund, or other Federal revenues dedicated to highway and transit infrastructure, would be required in order to meet such needs.

The Financing Commission will develop a final report, with recommendations and the bases for those recommendations. The Financing Commission's recommendations will address: (1) what levels of revenue are required by the Highway Trust Fund in order for it to meet needs to maintain and improve the condition and performance of the nation's highway and transit systems; (2) what levels of revenue are required by the Highway Trust Fund in order to ensure that Federal levels of investment in highways and transit do not decline in real terms; and (3) the extent, if any, to which the Highway Trust Fund should be augmented by other mechanisms or funds as a Federal means of financing highway and transit infrastructure investments.

The Financing Commission will submit its report and recommendations within two years of the date of its first meeting to the Secretary of Transportation, the Secretary of the Treasury, the House Committee on Ways and Means, Senate Committee on Finance, the House Committee on Transportation and Infrastructure, the Senate Committee on Environment and Public Works, and Senate Committee on Banking, Housing, and Urban Affairs.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modification. The Commission also must consider a program that would exempt all or a portion of gasoline or other motor fuels used in a State from the Federal excise tax on such gasoline or other motor fuels if such State elects not to receive all or a portion of Federal transportation funding, including: (1) whether such State should be required to increase State gasoline or other motor fuels taxes by the amount of the decrease in the Federal excise tax on such gasoline or other motor fuels; (2) whether any Federal transportation funding should not be reduced or eliminated for States participating in such program; (3) whether there are any compliance problems related to enforcement of Federal transportation-related excise taxes; and (4) study such other matters closely related to the subjects described in the preceding subparagraphs as it may deem appropriate.

C. Expand Highway Trust Fund Expenditure Purposes to Include Funding for Studies of Supplemental or Alternative Financing for the Highway Trust Fund (sec. 5303 of the Senate amendment)

PRESENT LAW

In general

Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by provisions of the Code (sec. 9503).[91] The Code authorizes expenditures (subject to appropriations) from the Fund through July 30,

[90] Sec. 4181.

[91] The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

2005, for the purposes provided in authorizing legislation, as in effect on the date of enactment of the Surface Transportation Extension Act of 2005, Part IV.

The Highway Trust Fund has a subaccount for Mass Transit. Both the Trust Fund and its subaccount are funding sources for specific programs.

Highway Trust Fund expenditure purposes have been revised with each authorization Act enacted since establishment of the Highway Trust Fund in 1956. In general, expenditures authorized under those Acts (as the Acts were in effect on the date of enactment of the most recent such authorizing Act) are approved by the Code as Highway Trust Fund expenditure purposes.[92]

Highway Trust Fund expenditure purposes

Highway Trust Fund expenditure purposes

The Highway Trust Fund receives revenues from all non-fuel highway transportation excise taxes and revenues from all but 2.86 cents per gallon of the highway motor fuels excise taxes transferred to the Highway Trust Fund. Programs financed from the Highway Trust Fund (excluding the Mass Transit account) include:

1. Interstate maintenance program;
2. National Highway System;
3. The bridge program (bridge replacement and repair);
4. Surface transportation programs;
5. Congestion mitigation and air quality improvement program;
6. Highway safety programs and research and development, including a share of the cost of National Highway Traffic Safety Administration (''NHTSA'') programs and university research centers;
7. Appalachian development highway system program;
8. Recreational trails program;
9. Federal lands highways program;
10. National corridor planning and development and coordinated border infrastructure programs;
11. Construction of ferry boats and ferry terminal facilities;
12. National scenic byways program;
13. Value pricing pilot program;
14. High priority projects program;
15. Highway use tax evasion projects; and
16. Commonwealth of Puerto Rico highway program.

Certain administrative costs of the Federal Highway Administration and NHTSA are also funded from the Highway Trust Fund.

Mass Transit Account expenditure purposes

The Highway Fund's Mass Transit Account receives revenues equivalent to 2.86 cents per gallon of the highway motor fuels excise taxes. Mass Transit Account monies are available through July 27, 2005, for capital and capital-related expenditures under section 5338(a)(1) and 5338(b)(1) of Title 49, United States Code; the Intermodal Surface Transportation Efficiency Act of 1991; the Transportation Equity Act for the 21st Century; the Surface Transportation Extension Act of 2003; the Surface Transportation Extension Act of 2004; the Surface Transportation Extension Act of 2004 Part II; the Surface Transportation Extension Act of 2004, Part III; the Surface Transportation Extension Act of 2004, Part IV; the Surface Transportation Extension Act of 2004, Part V; the Surface Transportation Extension Act of 2005; the Surface Transportation Extension Act of 2005, Part II; the Surface Transportation Extension Act of 2005, Part III; the Surface Transportation Extension Act of 2005, Part IV; and the Surface Transportation Extension Act of 2005, Part V, as those provisions were in effect on the date of enactment of the Surface Transportation Extension Act of 2005, Part V.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands the expenditure authority and authorizes the expenditure of monies from the Highway Trust Fund to fund two comprehensive studies of supplemental or alternative funding sources for the Highway Trust Fund. One study, to receive $1 million in funding, will review funding mechanisms of other industrialized nations and examine the viability of proposals such as congestion pricing, greater reliance on tolls, privatization of facilities, and other funding proposals. This study would be due no later than December 31, 2006. The other study, to receive $16.5 million in funding, would report on a long-term field test of a new approach to assessing highway use taxes by use of an on-board computer that links to satellites to calculate road mileage traversed and compute the appropriate highway use tax for each of the Federal, State, and local government as the vehicle makes use of the roads. The results of this study would be due no later than December 31, 2011. Each study would be delivered to the Secretary of the Treasury and the Secretary of Transportation.

Effective date.—The Senate amendment is effective upon date of enactment.

CONFERENCE AGREEMENT

The conference agreement addresses authorization of expenditures for the study of alternative financing for the Highway Trust Fund elsewhere in the conference agreement and does not amend the Code for this purpose.

D. Delta Regional Transportation Plan (sec. 1806 of the House bill and sec. 5304 of the Senate amendment)

PRESENT LAW

The Delta Regional Authority is a Federal-State partnership, serving a 240-county/parish area in an eight-State region.[93] No State is required to participate with the authority. The duties of the authority are to: (1) produce a regional development plan; (2) set priorities for approval of grants in the region; (3) assess the region's needs and assets; (4) inform participating States about interstate cooperation; (5) work with States and local agencies to develop model legislation; (6) enhance the capacity of and support Local Development Districts, as well as the creation of Local Development Districts where none currently exist; (7) encourage private investment in economic development projects in the region; and (8) assist State governments with the States' economic development program.

HOUSE BILL

The provision directs the Secretary of Transportation to enter into an agreement with the Delta Regional Authority to conduct a comprehensive study of transportation assets and needs in the eight states comprising the Delta region (Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee). The agreement must be entered into within six months from the date of enactment. The study and recommendations must be submitted, no later than 24 months after the date of entry into the agreement, to the Secretary of Transportation, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

The study is to include all modes of transportation (including passenger and freight transportation). The Delta Regional Authority is to work with local planning and development districts, local and regional governments, metropolitan planning organizations, State transportation entities, and Department of Transportation to develop a regional strategic transportation plan. Upon completion of the study, the Delta Regional Authority is to create a regional strategic plan to achieve efficient transportation systems in the Delta region.

The provision authorizes the Delta Regional Authority to receive $500,000 in fiscal year 2005, and $500,000 in fiscal year 2006 to conduct a comprehensive study and plan. These funds are to remain available until spent.

Effective date.—The House bill is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment generally follows the House bill but does not require an agreement with the Secretary of Transportation, nor does it set a deadline for the submission of the report.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement addresses the Delta Region Transportation Plan elsewhere in the conference agreement and does not amend the Code for this purpose.

E. Establish Build America Corporation (sec. 5305 of the Senate amendment)

PRESENT LAW

There is no provision in Federal law establishing a nonprofit corporation dedicated to providing financing or other financial support for transportation infrastructure projects.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a nonprofit corporation, to be known as the ''Build America Corporation.'' The Build America Corporation is not an agency or establishment of the United States Government. The Build America Corporation generally shall be subject to the laws of the State of Delaware applicable to non-profit corporations.

The purpose of the corporation is to provide financial support for qualified projects. Under the provision, a ''qualified project'' generally is defined as any transportation infrastructure project of any governmental unit or other person that is proposed by a State, including a highway project, a transit system project, a railroad project, an airport project, a port project, and an inland waterways project. The provision imposes additional requirements if a qualified project is

[92] The authorizing Acts which currently are referenced in the Highway Trust Fund provisions of the Code are: the Highway Revenue Act of 1956; Titles I and II of the Surface Transportation Assistance Act of 1982; the Surface Transportation and Uniform Relocation Act of 1987; the Intermodal Surface Transportation Efficiency Act of 1991; the Transportation Equity Act for the 21st Century; the Surface Transportation Extension Act of 2003; the Surface Transportation Extension Act of 2004; the Surface Transportation Extension Act of 2004 Part II; the Surface Transportation Extension Act of 2004, Part III; the Surface Transportation Extension Act of 2004, Part IV; the Surface Transportation Extension Act of 2004, Part V; the Surface Transportation Extension Act of 2005; the Surface Transportation Extension Act of 2005, Part II; the Surface Transportation Extension Act of 2005, Part III; the Surface Transportation Extension Act of 2005, Part IV and the Surface Transportation Extension Act of 2005, Part V.

[93] The covered States and counties are: Alabama—20 counties; Arkansas—42 counties; Illinois, 16 counties; Kentucky—21 counties; Louisiana—46 parishes; Mississippi—45 counties; Missouri—29 counties; and Tennessee—21 counties. Delta Regional Authority, Legislative Matters and Overview (February 1, 2004), <*www.dra.gov/legislation.php*>.

financed by debt issued by the Build America Corporation.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

F. Increase in Dollar Limits for Qualified Transportation Fringe Benefits (sec. 5306 of the Senate amendment)

PRESENT LAW

Under present law, qualified transportation benefits are excludable from gross income and wages for employment tax purposes. Qualified transportation benefits are: (1) transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment (''van pooling''); (2) transit passes; and (3) qualified parking. For purposes of the exclusion for van pooling benefits, a commuter highway vehicle is any highway vehicle: (1) the seating capacity of which is at least six adults (excluding the driver); and (2) at least 80 percent of the mileage use of which can reasonably be expected to be (a) for purposes of transporting employees in connection with travel between their residences and their place of employment and (b) on trips during which the number of employees transported for such purposes is at least one-half of the adult seating capacity of such vehicle (not including the driver).

The maximum amount of qualified parking that is excludable from income and wages is $200 per month (for 2005). The maximum amount of transit passes and van pooling benefits that are excludable from income and wages per month is $105 (for 2005). These dollar amounts are indexed for inflation.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the maximum dollar amount of excludable van pooling and transit pass benefits is increased to $155 per month. The maximum amount of excludable qualified parking is $200 per month. The dollar amounts are indexed for inflation after 2008 (with 2007 as a base year). Beginning in 2010, the maximum dollar amount of excludable van pooling and transit pass benefits is increased so that it is equal to the maximum amount of excludable qualified parking.

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

G. Treasury Study of Highway Fuels Used by Trucks for Non-Transportation Purposes (sec. 5307 of the Senate amendment)

PRESENT LAW

Present law does not provide for a study of the fuel use by trucks.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment directs the Secretary of the Treasury to study the use by trucks of highway motor fuel that is not used for the propulsion of the vehicle, both in the case of vehicles carrying equipment that is unrelated to the transportation function of the vehicle and in the case where non-transportation equipment is run by a separate motor. In addition, the Secretary is to estimate the amount of fuel consumed and pollutants emitted by trucks due to the long-term idling of diesel engines, and report on the cost of reducing long-term idling through various technologies. The Secretary is to propose options for implementing exemptions for classes of vehicles whose nonpropulsive fuel use exceeds 50 percent.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modification that the Secretary is to propose options for implementing exemptions from tax for fuel used in non-transportation uses, but only if the Secretary determines such exemptions are administratively feasible, for the following: (1) mobile machinery whose nonpropulsive fuel use exceeds 50 percent and (2) any highway vehicle that consumes fuel for both transportation- and nontransportation-related equipment, using a single motor. With respect to item (2), it is intended that the Secretary take into consideration such factors as whether the fuel use for non-transportation equipment by the vehicle operator is significant both relative to transportation-related fuel consumption of the vehicle and relative to the vehicle operator's business. There may be significant non-transportation use of taxed fuel even if such use is small relative to the vehicle's transportation use, if the vehicle is used extensively. Also with respect to item (2), it is intended that the Secretary take into account variations in fuel use among the different types of vehicles, such as concrete mixers, refuse collection vehicles, tow trucks, mobile drills, and other vehicles that the Secretary identifies.

H. Tax-Exempt Financing of Highway Projects and Rail-Truck Transfer Facilities (sec. 5308 of the Senate amendment and sec. 142 of the Code)

PRESENT LAW

Tax-exempt bonds

In general

Interest on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of the governmental units. Interest on State or local bonds to finance activities of private persons (''private activity bonds'') is taxable unless a specific exception is contained in the Code (or in a non-Code provision of a revenue Act). The term ''private person'' generally includes the Federal government and all other individuals and entities other than States or local governments.

Qualified private activity bonds

Private activity bonds are eligible for tax-exemption if issued for certain purposes permitted by the Code (''qualified private activity bonds''). The definition of a qualified private activity bond includes an exempt facility bond, or qualified mortgage, veterans' mortgage, small issue, redevelopment, 501(c)(3), or student loan bond.[94] The definition of exempt facility bond includes bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); low-income residential rental property; privately owned and/or operated utility facilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; and, qualified green building/sustainable design projects.[95]

Issuance of most qualified private activity bonds is subject (in whole or in part) to annual State volume limitations.[96] Exceptions are provided for bonds for certain governmentally owned facilities (airports, ports, high-speed intercity rail, and solid waste disposal) and bonds which are subject to separate local, State, or national volume limits (public/private educational facilities, enterprise zone facility bonds, and qualified green building/sustainable design projects).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes new categories of exempt facility bonds: bonds issued to finance ''qualified highway facilities'' and bonds issued to finance ''qualified surface freight transfer facilities'' (collectively ''qualified highway or surface freight transfer facilities''). Under the provision, a qualified highway facility is any surface transportation or international bridge or tunnel project (for which an international entity authorized under Federal or State law is responsible) which receives Federal assistance under title 23 of the United States Code (relating to Highways). A qualified surface freight transfer facility is a facility for the transfer of freight from truck to rail or rail to truck which receives Federal assistance under title 23 or title 49 of the United States Code (relating to Transportation).

Under the provision, bonds issued to finance qualified highway or surface freight transfer facilities are not subject to the State volume limitations. Rather, there is an annual limitation on the aggregate amount of bonds that may be issued to finance such facilities for each of the calendar years 2005 through 2015, as follows: $130 million for 2005; $750 million for each of the years 2006, 2007, 2008, and 2009; $1.87 billion for 2010; $2 billion for each of the years 2011, 2012, 2013, 2014, and 2015. The Secretary of Transportation may allocate the annual bond authority among qualified highway or surface freight transfer facilities in such manner as the Secretary of Transportation determines appropriate. The authority to issue qualified highway or surface freight transfer facility bonds terminates after December 31, 2015.

The Senate amendment requires the proceeds of qualified highway or surface freight transfer facility bonds to be spent on qualified projects within five years from the date of issuance of such bonds. Proceeds that remain unspent after five years must be used to redeem outstanding bonds. However, the provision authorizes the Secretary of the Treasury (or his delegate) to extend the five-year period if the issuer establishes that the need for the extension is appropriate and due to circumstances not within the control of the issuer.

Effective date.—The Senate amendment applies to bonds issued after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment provision with modifications. The conference agreement eliminates the limitation on the aggregate amount of qualified highway or surface freight transfer facility bonds that may be issued in each of the calendar years 2005 through 2015. The Secretary of Transportation is authorized to allocate a total of $15 billion of issuance authority to qualified highway or surface freight transfer facilities in such manner as the Secretary determines appropriate. The conference agreement also clarifies that bonds are not treated as qualified highway or surface freight transfer facility bonds unless the aggregate amount of bonds issued with

[94] Sec. 141(e).

[95] Sec. 142(a).

[96] Sec. 146.

respect to qualified facilities does not exceed the amount of authority allocated to such facilities by the Secretary of Transportation. However, the aggregate limitation on bonds that may be issued does not apply to the ''current refunding'' of qualified highway or surface freight transfer facility bonds. Bonds are treated as a current refunding for this purpose if: (1) the average maturity date of the refunding bond is not later than the average maturity date of the refunded bonds; (2) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and (3) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond.

The conference agreement on this provision is not intended to expand the scope of any Federal requirement beyond its application under present law and does not broaden the application of any Federal requirement under present law in Title 49.

I. Tax Treatment of State Ownership of Railroad Real Estate Investment Trust (sec. 5309 of the Senate amendment and secs. 103, 115, 336, and 337 of the Code)

PRESENT LAW

A real estate investment trust (''REIT'') is an electing entity that is engaged primarily in passive real estate activities (as specifically defined) and that, among other requirements, must have at least 100 shareholders. If a qualified entity elects REIT status, it can pay little or no corporate level tax, since a REIT is allowed a deduction for amounts distributed to its shareholders and is required to distribute at least 90 percent of its income to shareholders annually.

If an entity does not qualify to be treated as a REIT, it would generally be treated as a regular corporation subject to corporate level tax on its income under subchapter C and section 11 of the Code. Such a corporation can elect to be taxed as a partnership or disregarded entity under Treasury regulations. However, if it made such an election, the corporation would be treated as if it had liquidated and distributed its assets to shareholders, generally resulting in corporate-level tax on the excess of the fair market value over the basis of corporate assets.[97] A corporation that itself becomes a tax-exempt entity also must pay corporate tax on the excess of the fair market value over the basis of its assets.[98]

A State or local government is not subject to Federal income tax on income that accrues to the State or any political subdivision thereof and that is derived from any public utility or the exercise of any activity that is an essential governmental function.[99]

Interest on a State and local bond is excluded from gross income, with certain exceptions.[100] Special rules are also provided as requirements for tax exemption for State and local bonds.[101] State and local bonds can be classified by the type of entity using the proceeds as either governmental or private activity bonds. In general, bonds are governmental bonds if the proceeds of the bonds are used to finance direct activities of governmental entities or if the bonds are repaid with revenues of governmental entities. Private activity bonds are bonds with respect to which a State or local government serves as a conduit providing financing to private businesses or individuals. The exclusion from income for State and local bonds does not apply to private activity bonds unless the bonds are issued for certain purposes permitted by the Code. In addition, both governmental and private activity bonds must satisfy applicable rules provided for in the Code as a condition of tax exemption.[102]

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the income of a qualified corporation that is derived from its railroad transportation and economic development activities, that constitute substantially all of its activities (as described below), is treated as accruing to the State for purposes of section 115, to the extent such activities are of a type which are an essential governmental function under section 115 of present law. For purposes of the provision, a qualified corporation is a corporation which is a REIT on the date of enactment and which is a non-operating Class III railroad that becomes 100 percent owned by a State after December 31, 2003 and before December 31, 2006. Moreover, substantially all activities of the corporation must consist of the ownership, leasing, and operation by such corporation of facilities, equipment, and other property used by the corporation or other persons for railroad transportation and for economic development for the benefit of the State and its citizens.

Under the Senate amendment, no gain or loss shall be recognized from the deemed conversion of such a REIT to such a qualified corporation and no change in the basis of the property of the entity shall occur.

Also, any obligation issued by a qualified corporation described above is treated as an obligation of a State for purposes of applying the tax exempt bond provisions if 95 percent of the net proceeds of such obligation are to be used to provide for the acquisition, construction, or improvement of railroad transportation infrastructure (including railroad terminal facilities). In addition, such an obligation shall not be treated as a private activity bond solely by reason of the ownership or use of such railroad transportation infrastructure by the corporation. All other present-law provisions relating to tax exempt bonds continue to apply to and govern bonds issued by the corporation. For example, the use by a private business of railroad property financed with the proceeds of bonds issued by a qualified corporation may cause such bonds to be taxable private activity bonds.

Effective date.—The Senate amendment applies on and after the date a State becomes the owner of all the outstanding stock of a qualified corporation through action of such corporation's board of directors, provided that the State becomes the owner of all the voting stock of the corporation on or before December 31, 2003 and becomes the owner of all the outstanding stock of the corporation on or before December 31, 2006.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

J. Incentives for Installation of Alternative Fuel Refueling Property (secs. 5310 and 2010 of Senate amendment)

PRESENT LAW

Certain costs of qualified clean-fuel vehicle refueling property may be expensed and deducted when such property is placed in service (sec. 179A). Up to $100,000 of such property at each location owned by the taxpayer may be expensed with respect to that location. Natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity and any other fuel at least 85 percent of which is methanol, ethanol, or any other alcohol or ether comprise clean-burning fuels.

The deduction is unavailable for property placed in service after December 31, 2006.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision permits taxpayers to claim a 50–percent credit for the cost of installing clean-fuel vehicle refueling property to be used in a trade or business of the taxpayer or installed at the principal residence of the taxpayer. In the case of retail clean-fuel vehicle refueling property installed as part of the taxpayer's business the allowable credit may not exceed $30,000. In the case of residential clean-fuel vehicle refueling property the allowable credit may not exceed $1,000.

Under the provision clean fuels are any fuel at least 85 percent of the volume of which consists of ethanol, natural gas, compressed natural gas, liquefied natural gas, and hydrogen.

The taxpayer's basis in the property is reduced by the amount of the credit and the taxpayer may not claim deductions under section 179A with respect to property for which the credit is claimed. In the case of refueling property installed on property owned or used by a tax-exempt person, the taxpayer that installs the property may claim the credit. To be eligible for the credit, the property must be placed in service before January 1, 2010. The credit allowable in the taxable year cannot exceed the difference between the taxpayer's regular tax (reduced by certain other credits) and the taxpayer's tentative minimum tax. The taxpayer may carry forward unused credits for 20 years.

Effective date.—The Senate amendment is effective for property placed in service after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

K. Modify Recapture of Section 197 Amortization (sec. 5311 of the Senate amendment)

PRESENT LAW

Taxpayers are entitled to recover the cost of amortizable section 197 intangibles using the straight-line method of amortization over a uniform life of fifteen years.[103] With certain exceptions, amortizable section 197 intangibles generally are purchased intangibles held by a taxpayer in the conduct of a business.[104]

Gain on the sale of depreciable property must be recaptured as ordinary income to the extent of depreciation deductions previously claimed,[105] and the recapture amount is computed separately for each item of property. Section 197 intangibles, because they are treated as property of a character subject to the allowance for depreciation,[106] are subject to these recapture rules.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, if multiple section 197 intangibles are sold (or otherwise disposed of) in a single transaction or series of transactions, the seller must calculate recapture as if all of the section 197 intangibles were a single asset. Thus, any gain on the sale (or other disposition) of the intangibles is recaptured as ordinary income to the extent of ordinary depreciation deductions previously claimed on any of the section 197 intangibles.

[97] Sec. 336. An exception to this gain recognition applies to certain liquidations into a corporation that owns 80 percent of the liquidating entity and that is not itself tax-exempt. Sec. 337.

[98] Treas. Reg. sec. 1.337(d)-4(a)(2).

[99] Sec. 115.

[100] Sec. 103.

[101] Secs. 141–150.

[102] Secs. 141–150.

[103] Sec. 197(a).

[104] Sec. 197(c).

[105] Sec. 1245.

[106] Sec. 197(f)(7).

The following example illustrates present law and the Senate amendment:

Example.—In year 1, a taxpayer acquires two section 197 intangible assets for a total of $45. Asset A is assigned a cost basis of $15 and asset B is assigned a cost basis of $30. The allocation is irrelevant for amortization purposes, as the taxpayer will be entitled to a total of $3 per year ($45 divided by 15 years).

In year 6, the basis of A is $10 and the basis of B is $20. Taxpayer sells the assets for an aggregate sale price of $45, resulting in gain of $15. The character of this gain depends on the recapture amount, which depends in turn on the relative sales prices of the individual assets. Taxpayer has claimed $5 of amortization, and therefore has $5 of recapture potential, with respect to A. Taxpayer has claimed $10 of amortization, and therefore has $10 of recapture potential, with respect to B.

Under present law, if the sale proceeds are allocated $15 to A and $30 to B, the gain on assets A and B will be $5 and $10, respectively. These amounts match the recapture potential for each asset, so the full amount of the gain will be recaptured as ordinary income. However, if the sale proceeds instead are allocated $25 to A and $20 to B, the full $15 gain will be recognized with respect to A, and only $5 (full recapture potential with respect to A) will be recaptured as ordinary income. The remaining $10 of gain attributable to A will be treated as capital gain. No gain (and thus no recapture) will be recognized with respect to Asset B, and only $5 of the $15 recapture potential is recognized.

Under the Senate amendment, the taxpayer calculates recapture as if assets A and B were a single asset. For purposes of the calculation, the proceeds are $45 and the gain is $15. Because a total of $15 of amortization has been claimed with respect to assets A and B, the full $15 gain is recaptured as ordinary income.

Effective date.—The Senate amendment is effective for dispositions of property after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

L. Diesel Fuel Tax Evasion Report (sec. 5312 of the Senate amendment)

PRESENT LAW

An excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal, (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not registered with the IRS to receive untaxed fuel, unless there was a prior taxable removal or entry.[107] The tax does not apply to any removal or entry of taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered with the Secretary.[108]

Diesel fuel and kerosene that is to be used for a nontaxable purpose will not be taxed upon removal from the terminal if it is dyed to indicate its nontaxable purpose.[109] In addition to requirement that fuel be dyed, the Secretary has the authority to prescribe marking requirements for diesel fuel and kerosene destined for a nontaxable use.[110] The Secretary has not prescribed any marking requirements.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires the Commissioner of the IRS to report on the availability of new technologies that can be employed to enhance the collections of the excise tax on diesel fuel and the plans of the IRS to employ such technologies. The report is to be submitted within 360 days from the date of enactment to the Senate Committees on Finance and Environment and Public Works, and the House Committees on Ways and Means and Transportation and Infrastructure.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except the conference agreement requires the report to contain certain additional information regarding the use of forensic or chemical molecular markers. Specifically, the conference agreement requires the report to cover the availability of forensic or chemical molecular markers, in addition to other technologies, to enhance collections of the excise tax on diesel fuel and the plans of the Internal Revenue Service to employ such technologies. The report must also cover the design of three tests: (1) the design of a test to place forensic or chemical molecular markers in any excluded liquid as that term is defined in Treasury regulations; (2) the design of a test, in consultation with the Department of Defense, to place forensic or chemical molecular markers in all nonstrategic bulk fuel deliveries of diesel fuel to the military, and (3) the design of a test to place forensic or chemical molecular markers in all diesel fuel bound for export utilizing the Gulf of Mexico.

Effective date.—The provision is effective on the date of enactment.

M. Leaking Underground Storage Tank Trust Fund (sec. 9508 of the Code)

PRESENT LAW

Leaking Underground Storage Tank Trust Fund

The Code imposes an excise tax, generally at a rate of 0.1 cents per gallon, on gasoline, diesel, kerosene, and special motor fuels (other than liquefied petroleum gas and liquefied natural gas).[111] The taxes are deposited in the Leaking Underground Storage Tank (''LUST'') Trust Fund. The tax expires on October 1, 2005.

Amounts in the LUST Trust Fund are available, subject to appropriation, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986.

Highway Trust Fund

The Highway Trust Fund provisions of the Code contain a special enforcement provision to prevent expenditure of Highway Trust Fund monies for purposes not authorized in section 9503 or a revenue Act.[112] If such unapproved expenditures occur, no further excise tax receipts will be transferred to the Highway Trust Fund. Rather, the taxes will continue to be imposed with receipts being retained in the General Fund. This enforcement provision provides specifically that it applies not only to unauthorized expenditures under the current Code provisions, but also to expenditures pursuant to future legislation that does not amend section 9503's expenditure authorization provisions or otherwise authorize the expenditure as part of a revenue Act.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement adds to the Code's LUST Trust Fund provisions a special enforcement provision similar to that applicable to the Highway Trust Fund to prevent expenditure of LUST Trust Fund monies for purposes not authorized by the Code or in a revenue Act.

Effective date.—The provision is effective on the date of enactment.

N. Revenue Provisions

1. Treatment of contingent payment convertible debt instruments (sec. 5501 of the Senate amendment)

PRESENT LAW

Under present law, a taxpayer generally deducts the amount of interest paid or accrued within the taxable year on indebtedness issued by the taxpayer. In the case of original issue discount (''OID''), the issuer of a debt instrument generally accrues and deducts, as interest, the OID over the life of the obligation, even though the amount of the OID may not be paid until the maturity of the instrument.

The amount of OID with respect to a debt instrument is equal to the excess of the stated redemption price at maturity over the issue price of the debt instrument. The stated redemption price at maturity includes all amounts that are payable on the debt instrument by maturity. The amount of OID with respect to a debt instrument is allocated over the life of the instrument through a series of adjustments to the issue price for each accrual period. The adjustment to the issue price is determined by multiplying the adjusted issue price (i.e., the issue price increased or decreased by adjustments before the accrual period) by the instrument's yield to maturity, and then subtracting any payments on the debt instrument (other than non-OID stated interest) during the accrual period. Thus, in order to compute the amount of OID and the portion of OID allocable to a particular period, the stated redemption price at maturity and the time of maturity must be known. Issuers of debt instruments with OID accrue and deduct the amount of OID as interest expense in the same manner as the holders of those instruments accrue and include in gross income the amount of OID as interest income.

Treasury regulations provide special rules for determining the amount of OID allocated to a period for certain debt instruments that provide for one or more contingent payments of principal or interest.[113] The regulations provide that a debt instrument does not provide for contingent payments merely because it provides for an option to convert the debt instrument into the stock of the issuer, into the stock or debt of a related party, or into cash or other property in an amount equal to the approximate value of that stock or debt.[114] The regulations also provide that a payment is not a contingent payment merely because of a contingency that, as of the issue date of the debt instrument, is either remote or incidental.[115]

In the case of contingent payment debt instruments that are issued for money or publicly traded property,[116] the regulations provide that interest on a debt instrument must

[107] Sec. 4081(a)(1).
[108] Sec. 4081(a)(1)(B).
[109] Sec. 4082(a)(1) and (2).
[110] Sec. 4082(a)(3).

[111] For qualified methanol and ethanol fuel the rate is 0.05 cents per gallon (sec. 4041(b)(2)(A)(ii)). Qualified methanol or ethanol fuel is any liquid at least 85 percent of which consists of methanol, ethanol or other alcohol produced from coal (including peat) (sec. 4041(b)(2)(B)).
[112] Sec. 9503(b)(6).

[113] Treas. Reg. sec. 1.1275–4.
[114] Treas. Reg. sec. 1.1275–4(a)(4).
[115] Treas. Reg. sec. 1.1275–4(a)(5).
[116] Treas. Reg. sec. 1.1275–4(b).

be taken into account (as OID) whether or not the amount of any payment if fixed or determinable in the taxable year. The amount of OID that is taken into account for each accrual period is determined by constructing a comparable yield and a projected payment schedule for the debt instrument, and then accruing the OID on the basis of the comparable yield and projected payment schedule by applying rules similar to those for accruing OID on a noncontingent debt instrument (the ''noncontingent bond method''). If the actual amount of a contingent payment is not equal to the projected amount, appropriate adjustments are made to reflect the difference. The comparable yield for a debt instrument is the yield at which the issuer would be able to issue a fixed-rate noncontingent debt instrument with terms and conditions similar to those of the contingent payment debt instrument (i.e., the comparable fixed-rate debt instrument), including the level of subordination, term, timing of payments, and general market conditions.[117]

Certain debt instruments, often referred to as ''contingent convertible'' debt instruments, are convertible into the common stock of the issuer and also provide for contingent payments (other than the conversion feature). The IRS has stated that the noncontingent bond method applies in computing the accrual of OID on these contingent convertible debt instruments.[118] In applying the noncontingent bond method, the IRS has stated that the comparable yield for a contingent convertible debt instrument is determined by reference to a comparable fixed-rate nonconvertible debt instrument, and the projected payment schedule is determined by treating the issuer stock received upon a conversion of the debt instrument as a contingent payment.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides that, in the case of a contingent convertible debt instrument,[119] any Treasury regulations which require OID to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as requiring that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock. For purposes of applying the provision, the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock. Thus, the noncontingent bond method in the Treasury regulations shall be applied in a manner such that the comparable yield for contingent convertible debt instruments shall be determined by reference to comparable noncontingent fixed-rate convertible (rather than nonconvertible) debt instruments.

Effective date.—The Senate amendment is effective for debt instruments issued on or after date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Frivolous tax submissions (sec. 5502 of the Senate amendment)

PRESENT LAW

The Code provides that an individual who files a frivolous income tax return is subject to a penalty of $500 imposed by the IRS.[120] The Code also permits the Tax Court[121] to impose a penalty of up to $25,000 if a taxpayer has instituted or maintained proceedings primarily for delay or if the taxpayer's position in the proceeding is frivolous or groundless.[122]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the IRS-imposed penalty by increasing the amount of the penalty to up to $5,000 and by applying it to all taxpayers and to all types of Federal taxes.

The Senate amendment also modifies present law with respect to certain submissions that raise frivolous arguments or that are intended to delay or impede tax administration. The submissions to which this provision applies are requests for a collection due process hearing, installment agreements, offers-in-compromise, and taxpayer assistance orders. First, the Senate amendment permits the IRS to dismiss such requests. Second, the Senate amendment permits the IRS to impose a penalty of up to $5,000 for such requests, unless the taxpayer withdraws the request after being given an opportunity to do so.

The Senate amendment requires the IRS to publish a list of positions, arguments, requests, and submissions determined to be frivolous for this purpose.

Effective date.—The Senate amendment is effective with respect to submissions made and issues raised after the date on which the Secretary first prescribes the required list of frivolous positions.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Increase in certain criminal penalties (sec. 5503 of the Senate amendment)

PRESENT LAW

Attempt to evade or defeat tax

In general, section 7201 imposes a criminal penalty on persons who willfully attempt to evade or defeat any tax imposed by the Code. Upon conviction, the Code provides that the penalty is up to $100,000 or imprisonment of not more than five years (or both). In the case of a corporation, the Code increases the monetary penalty to a maximum of $500,000.

Willful failure to file return, supply information, or pay tax

In general, section 7203 imposes a criminal penalty on persons required to make estimated tax payments, pay taxes, keep records, or supply information under the Code who willfully fails to do so. Upon conviction, the Code provides that the penalty is up to $25,000 or imprisonment of not more than one year (or both). In the case of a corporation, the Code increases the monetary penalty to a maximum of $100,000.

Fraud and false statements

In general, section 7206 imposes a criminal penalty on persons who make fraudulent or false statements under the Code. Upon conviction, the Code provides that the penalty is up to $100,000 or imprisonment of not more than three years (or both). In the case of a corporation, the Code increases the monetary penalty to a maximum of $500,000.

Uniform sentencing guidelines

Under the uniform sentencing guidelines established by 18 U.S.C. sec. 3571, a defendant found guilty of a criminal offense is subject to a maximum fine that is the greatest of: (a) the amount specified in the underlying provision, (b) for a felony[123] $250,000 for an individual or $500,000 for an organization, or (c) twice the gross gain if a person derives pecuniary gain from the offense. This Title 18 provision applies to all criminal provisions in the United States Code, including those in the Internal Revenue Code. For example, for an individual, the maximum fine under present law upon conviction of violating section 7206 is $250,000 or, if greater, twice the amount of gross gain from the offense.

HOUSE BILL

No provision.

SENATE AMENDMENT

Attempt to evade or defeat tax

The Senate amendment increases the criminal penalty under section 7201 of the Code for individuals to $500,000 and for corporations to $1,000,000. The provision increases the maximum prison sentence to ten years.

Willful failure to file return, supply information, or pay tax

The Senate amendment increases the criminal penalty under section 7203 of the Code from a misdemeanor to a felony for aggravated failures to file. Under the provision, an aggravated failure to file is any case in which the taxpayer fails to file returns for three or more consecutive years and the aggregated tax liability during such years is $100,000 or greater. The provision imposes a penalty for an aggravated failure to file up to $500,000 for individuals and up to $1,000,000 for corporations. The provision also imposes a maximum prison sentence of ten years.

In misdemeanor cases, the provision increases the criminal penalty under section 7203 of the Code for individuals to $50,000.

Fraud and false statements

The Senate amendment increases the criminal penalty under section 7206 of the Code for individuals to $500,000 and for corporations to $1,000,000. The provision increases the maximum prison sentence to five years. The provision also provides that in no event shall the amount of the monetary penalty under this provision be less than the amount of the underpayment or overpayment attributable to fraud.

Effective date.—The Senate amendment is effective for actions and failures to act occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements (sec. 5504 of the Senate amendment)

PRESENT LAW

In general

The Code contains numerous civil penalties, such as the delinquency, accuracy-related, fraud, and assessable penalties. These civil penalties are in addition to any interest that may be due as a result of an underpayment of tax. If all or any part of a tax is not paid when due, the Code imposes interest on the underpayment, which is assessed and collected in the same manner as the underlying tax and is subject to the respective statutes of limitations for assessment and collection.

Delinquency penalties

Failure to file.—Under present law, a taxpayer who fails to file a tax return on a

[117] Treas. Reg. sec. 1.1275–4(b)(4)(i)(A).

[118] Rev. Rul. 2002–31, 2002–1 C.B. 1023.

[119] Under the provision, a contingent convertible debt instrument is defined as a debt instrument that: (1) is convertible into stock of the issuing corporation, or a corporation in control of, or controlled by, the issuing corporation; and (2) provides for contingent payments.

[120] Sec. 6702.

[121] Because the Tax Court generally is the only prepayment forum available to taxpayers, it hears most of the frivolous, groundless, or dilatory arguments raised in tax cases.

[122] Sec. 6673(a).

[123] Section 7206 provides that the making of fraudulent or false statements is a felony. In addition, this offense is a felony pursuant to the classification guidelines of 18 U.S.C. sec. 3559(a)(5).

timely basis is generally subject to a penalty equal to five percent of the net amount of tax due for each month that the return is not filed, up to a maximum of five months or 25 percent. An exception from the penalty applies if the failure is due to reasonable cause. The net amount of tax due is the excess of the amount of the tax required to be shown on the return over the amount of any tax paid on or before the due date prescribed for the payment of tax.

Failure to pay.—Taxpayers who fail to pay their taxes are subject to a penalty of 0.5 percent per month on the unpaid amount, up to a maximum of 25 percent. If a penalty for failure to file and a penalty for failure to pay tax shown on a return both apply for the same month, the amount of the penalty for failure to file for such month is reduced by the amount of the penalty for failure to pay tax shown on a return. If a return is filed more than 60 days after its due date, then the penalty for failure to pay tax shown on a return may not reduce the penalty for failure to file below the lesser of $100 or 100 percent of the amount required to be shown on the return. For any month in which an installment payment agreement with the IRS is in effect, the rate of the penalty is half the usual rate (0.25 percent instead of 0.5 percent), provided that the taxpayer filed the tax return in a timely manner (including extensions).

Failure to make timely deposits of tax.—The penalty for the failure to make timely deposits of tax consists of a four-tiered structure in which the amount of the penalty varies with the length of time within which the taxpayer corrects the failure. A depositor is subject to a penalty equal to two percent of the amount of the underpayment if the failure is corrected on or before the date that is five days after the prescribed due date. A depositor is subject to a penalty equal to five percent of the amount of the underpayment if the failure is corrected after the date that is five days after the prescribed due date but on or before the date that is 15 days after the prescribed due date. A depositor is subject to a penalty equal to 10 percent of the amount of the underpayment if the failure is corrected after the date that is 15 days after the due date but on or before the date that is 10 days after the date of the first delinquency notice to the taxpayer (under sec. 6303). Finally, a depositor is subject to a penalty equal to 15 percent of the amount of the underpayment if the failure is not corrected on or before the date that is 10 days after the date of the day on which notice and demand for immediate payment of tax is given in cases of jeopardy.

An exception from the penalty applies if the failure is due to reasonable cause. In addition, the Secretary may waive the penalty for an inadvertent failure to deposit any tax by specified first-time depositors.

Accuracy-related penalties

In general.—The accuracy-related penalties are imposed at a rate of 20 percent of the portion of any underpayment that is attributable, in relevant part, to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation misstatement, and (4) any reportable transaction understatement. The penalty for a substantial valuation misstatement is doubled for certain gross valuation misstatements. In the case of a reportable transaction understatement for which the transaction is not disclosed, the penalty rate is 30 percent. These penalties are coordinated with the fraud penalty. This statutory structure operates to eliminate any stacking of the penalties.

No penalty is to be imposed if it is shown that there was reasonable cause for an underpayment and the taxpayer acted in good faith, and in the case of a reportable transaction understatement the relevant facts of the transaction have been disclosed, there is or was substantial authority for the taxpayer's treatment of such transaction, and the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

Negligence or disregard for the rules or regulations.—If an underpayment of tax is attributable to negligence, the negligence penalty applies only to the portion of the underpayment that is attributable to negligence. Negligence means any failure to make a reasonable attempt to comply with the provisions of the Code. Disregard includes any careless, reckless or intentional disregard of the rules or regulations.

Substantial understatement of income tax.—Generally, an understatement is substantial if the understatement exceeds the greater of (1) 10 percent of the tax required to be shown on the return for the tax year or (2) $5,000. In determining whether a substantial understatement exists, the amount of the understatement is reduced by any portion attributable to an item if (1) the treatment of the item on the return is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed on the return or on a statement attached to the return.

Substantial valuation misstatement.—A penalty applies to the portion of an underpayment that is attributable to a substantial valuation misstatement. Generally, a substantial valuation misstatement exists if the value or adjusted basis of any property claimed on a return is 200 percent or more of the correct value or adjusted basis. The amount of the penalty for a substantial valuation misstatement is 20 percent of the amount of the underpayment if the value or adjusted basis claimed is 200 percent or more but less than 400 percent of the correct value or adjusted basis. If the value or adjusted basis claimed is 400 percent or more of the correct value or adjusted basis, then the overvaluation is a gross valuation misstatement.

Reportable transaction understatement.—A penalty applies to any item that is attributable to any listed transaction, or to any reportable transaction (other than a listed transaction) if a significant purpose of such reportable transaction is tax avoidance or evasion.[124]

Fraud penalty

The fraud penalty is imposed at a rate of 75 percent of the portion of any underpayment that is attributable to fraud. The accuracy-related penalty does not to apply to any portion of an underpayment on which the fraud penalty is imposed.

Assessable penalties

In addition to the penalties described above, the Code imposes a number of additional penalties, including, for example, penalties for failure to file (or untimely filing of) information returns with respect to foreign trusts, and penalties for failure to disclose any required information with respect to a reportable transaction.

Interest provisions

Taxpayers are required to pay interest to the IRS whenever there is an underpayment of tax. An underpayment of tax exists whenever the correct amount of tax is not paid by the last date prescribed for the payment of the tax. The last date prescribed for the payment of the income tax is the original due date of the return.

Different interest rates are provided for the payment of interest depending upon the type of taxpayer, whether the interest relates to an underpayment or overpayment, and the size of the underpayment or overpayment. Interest on underpayments is compounded daily.

Offshore Voluntary Compliance Initiative

In January 2003, Treasury announced the Offshore Voluntary Compliance Initiative (''OVCI'') to encourage the voluntary disclosure of previously unreported income placed by taxpayers in offshore accounts and accessed through credit card or other financial arrangements. A taxpayer had to comply with various requirements in order to participate in the OVCI, including sending a written request to participate in the program by April 15, 2003. This request was required to include information about the taxpayer, the taxpayer's introduction to the credit card or other financial arrangements, and the names of parties that promoted the transaction. Taxpayers entering into a closing agreement under the OVCI are not liable for civil fraud, the fraudulent failure to file penalty, or the civil information return penalties. The taxpayer will pay back taxes, interest, and certain accuracy-related and delinquency penalties.[125]

Voluntary disclosure policy

A taxpayer's timely, voluntary disclosure of a substantial unreported tax liability has long been an important factor in deciding whether the taxpayer's case should ultimately be referred for criminal prosecution. The voluntary disclosure must be truthful, timely, and complete. The taxpayer must show a willingness to cooperate (as well as actual cooperation) with the IRS in determining the correct tax liability. The taxpayer must make good-faith arrangements with the IRS to pay in full the tax, interest, and any penalties determined by the IRS to be applicable. A voluntary disclosure does not guarantee immunity from prosecution. It creates no substantive or procedural rights for taxpayers.[126]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment doubles the total amount of civil penalties, interest, and fines applicable to a taxpayer who underreported its Federal tax liability with respect to any item involving a transaction of a type that was, or would have been, within the scope of the OVCI, if the taxpayer did not enter into a closing agreement pursuant to the OVCI or otherwise voluntarily disclose to the IRS its participation in such a transaction. For example, current arrangements which are the same as, or substantially similar to, the employee leasing arrangements described in Notice 2003–22 would have been within the scope of the OVCI.[127]

Under the Senate amendment, the determination of whether any civil penalty is to be imposed with respect to such a transaction (or underpayment attributable to such transaction) is made without regard to whether a return has been filed, whether there was reasonable cause for such underpayment, and whether the taxpayer acted in

[124] A reportable transaction is 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. A listed transaction is 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. Sec. 6707A(c).

[125] Rev. Proc. 2003–11, 2003–4 C.B. 311.

[126] Internal Revenue News Release 2002–135, IR–2002–135 (December 11, 2002).

[127] 2003–18 C.B. 851. Notice 2003–22 classified such arrangements as listed transactions.

good faith. However, the Secretary is granted the authority to waive the application of the provision if the use of such offshore payment mechanisms is incidental to the transaction and, in the case of a trade or business, such use is conducted in the ordinary course of the trade or business engaged in by the taxpayer.

The Secretary may retain an amount not to exceed 25 percent of all amounts collected under this provision, to be used for IRS enforcement and collection activities. In addition, the Secretary must annually conduct a study and report to Congress on the implementation of this provision, including statistics on the number of taxpayers affected and the amounts of interest and penalties asserted, waived, and assessed.

Effective date.—The Senate amendment generally is effective with respect to a taxpayer's open tax years on or after date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

5. Modification of coordination rules for controlled foreign corporation and passive foreign investment company regimes (sec. 5505 of the Senate amendment)

PRESENT LAW

The United States employs a ''worldwide'' tax system, under which domestic corporations generally are taxed on all income, whether derived in the United States or abroad. Income earned by a domestic parent corporation from foreign operations conducted by foreign corporate subsidiaries generally is subject to U.S. tax when the income is distributed as a dividend to the domestic corporation. Until such repatriation, the U.S. tax on such income generally is deferred. However, certain anti-deferral regimes may cause the domestic parent corporation to be taxed on a current basis in the United States with respect to certain categories of passive or highly mobile income earned by its foreign subsidiaries, regardless of whether the income has been distributed as a dividend to the domestic parent corporation. The main anti-deferral regimes in this context are the controlled foreign corporation rules of subpart F[128] and the passive foreign investment company rules.[129] Deferral of U.S. tax is considered appropriate, on the other hand, with respect to most types of active business income earned abroad. A foreign tax credit generally is available to offset, in whole or in part, the U.S. tax owed on foreign-source income, whether earned directly by the domestic corporation, repatriated as an actual dividend, or included under one of the anti-deferral regimes.[130]

Subpart F,[131] applicable to controlled foreign corporations and their shareholders, is the main anti-deferral regime of relevance to a U.S.-based multinational corporate group. A controlled foreign corporation generally is defined as any foreign corporation if U.S. persons own (directly, indirectly, or constructively) more than 50 percent of the corporation's stock (measured by vote or value), taking into account only those U.S. persons that own at least 10 percent of the stock (measured by vote only).[132] Under the subpart F rules, the United States generally taxes the U.S. 10–percent shareholders of a controlled foreign corporation on their pro rata shares of certain income of the controlled foreign corporation (referred to as ''subpart F income''), without regard to whether the income is distributed to the shareholders.[133]

Subpart F income generally includes passive income and other income that is readily movable from one taxing jurisdiction to another. Subpart F income consists of foreign base company income,[134] insurance income,[135] and certain income relating to international boycotts and other violations of public policy.[136] Foreign base company income consists of foreign personal holding company income, which includes passive income (e.g., dividends, interest, rents, and royalties), as well as a number of categories of non-passive income, including foreign base company sales income and foreign base company services income.[137]

In effect, the United States treats the U.S. 10–percent shareholders of a controlled foreign corporation as having received a current distribution out of the corporation's subpart F income. In addition, the U.S. 10–percent shareholders of a controlled foreign corporation are required to include currently in income for U.S. tax purposes their pro rata shares of the corporation's earnings invested in U.S. property.[138]

The Tax Reform Act of 1986 established an additional anti-deferral regime, for passive foreign investment companies. A passive foreign investment company generally is defined as any foreign corporation if 75 percent or more of its gross income for the taxable year consists of passive income, or 50 percent or more of its assets consists of assets that produce, or are held for the production of, passive income.[139] Alternative sets of income inclusion rules apply to U.S. persons that are shareholders in a passive foreign investment company, regardless of their percentage ownership in the company. One set of rules applies to passive foreign investment companies that are ''qualified electing funds,'' under which electing U.S. shareholders currently include in gross income their respective shares of the company's earnings, with a separate election to defer payment of tax, subject to an interest charge, on income not currently received.[140] A second set of rules applies to passive foreign investment companies that are not qualified electing funds, under which U.S. shareholders pay tax on certain income or gain realized through the company, plus an interest charge that is attributable to the value of deferral.[141] A third set of rules applies to passive foreign investment company stock that is marketable, under which electing U.S. shareholders currently take into account as income (or loss) the difference between the fair market value of the stock as of the close of the taxable year and their adjusted basis in such stock (subject to certain limitations), often referred to as ''mark to market.''[142]

Under section 1297(e), which was enacted in 1997 to address the overlap of the passive foreign investment company rules and subpart F, a controlled foreign corporation generally is not also treated as a passive foreign investment company with respect to a U.S. shareholder of the corporation. This exception applies regardless of the likelihood that the U.S. shareholder would actually be taxed under subpart F in the event that the controlled foreign corporation earns subpart F income. Thus, even in a case in which a controlled foreign corporation's subpart F income would be allocated to a different shareholder under the subpart F allocation rules, a U.S. shareholder would still qualify for the exception from the passive foreign investment company rules under section 1297(e).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment adds an exception to section 1297(e) for U.S. shareholders that face only a remote likelihood of incurring a subpart F inclusion in the event that a controlled foreign corporation earns subpart F income, thus preserving the potential application of the passive foreign investment company rules in such cases.

Effective date.—The Senate amendment is effective for taxable years of controlled foreign corporations beginning after March 2, 2005, and for taxable years of U.S. shareholders in which or with which such taxable years of controlled foreign corporations end.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

6. Declaration by chief executive officer relating to Federal annual corporate income tax return (sec. 5506 of the Senate amendment)

PRESENT LAW

The Code requires that the income tax return of a corporation must be signed by either the president, the vice-president, the treasurer, the assistant treasurer, the chief accounting officer, or any other officer of the corporation authorized by the corporation to sign the return.

The Code also imposes a criminal penalty on any person who willfully signs any tax return under penalties of perjury that that person does not believe to be true and correct with respect to every material matter at the time of filing. If convicted, the person is guilty of a felony; the Code imposes a fine of not more than $100,000 ($500,000 in the case of a corporation) or imprisonment of not more than three years, or both, together with the costs of prosecution.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires that a corporation's Federal annual income tax return include a declaration signed under penalties of perjury by the chief executive officer of the corporation that the corporation has in place processes and procedures to ensure that the return complies with the Internal Revenue Code and that the CEO was provided reasonable assurance of the accuracy of all material aspects of the return. This declaration is part of the income tax return. The provision is in addition to the requirement of present law as to the signing of the income tax return itself. Because a CEO's duties generally do not require a detailed or technical understanding of the corporation's tax return, it is anticipated that this declaration of the CEO will be more limited in scope than the declaration of the officer required to sign the return itself.

The provision provides that the Secretary of the Treasury shall prescribe the matters to which the declaration of the CEO applies. It is intended that the declaration help insure that the preparation and completion of the corporation's tax return be given an appropriate level of care. For example, it is anticipated that the CEO would declare that processes and procedures have been implemented to ensure that the return complies with the Code and all regulations and rules promulgated thereunder. Although appropriate processes and procedures can vary for each taxpayer depending on the size and nature of the taxpayer's business, in every case the CEO should be briefed on all material aspects of the corporation's tax return by the

[128] Secs. 951–964.
[129] Secs. 1291–1298.
[130] Secs. 901, 902, 960, and 1291(g).
[131] Secs. 951–964.
[132] Secs. 951(b), 957, and 958.
[133] Sec. 951(a).
[134] Sec. 954.
[135] Sec. 953.
[136] Sec. 952(a)(3) through (5).
[137] 134Sec. 954.
[138] Secs. 951(a)(1)(B) and 956.
[139] Sec. 1297.
[140] Secs. 1293 through 1295.
[141] Sec. 1291.
[142] Sec. 1296.

corporation's chief financial officer (or another person authorized to sign the return under present law).

Under the Senate amendment, if the corporation does not have a chief executive officer, the IRS may designate another officer of the corporation; otherwise, no other person is permitted to sign the declaration. It is intended that the IRS issue general guidance, such as a revenue procedure, to: (1) address situations when a corporation does not have a chief executive officer; and (2) define who the chief executive officer is, in situations (for example) when the primary official bears a different title, when a corporation has multiple chief executive officers, or when the corporation is a foreign corporation and the CEO is not a U.S. resident.[143] It is intended that, in every instance, the highest ranking corporate officer (regardless of title) sign this declaration.

The provision does not apply to the income tax returns of mutual funds;[144] they are required to be signed as under present law.

Effective date.—The Senate amendment applies to Federal annual tax returns for taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

7. Grant Treasury regulatory authority to address foreign tax credit transactions involving inappropriate separation of foreign taxes from related foreign income (sec. 5507 of the Senate amendment)

PRESENT LAW

The United States employs a ''worldwide'' tax system, under which residents generally are taxed on all income, whether derived in the United States or abroad. In order to mitigate the possibility of double taxation arising from overlapping claims of the United States and a source country to tax the same item of income, the United States provides a credit for foreign income taxes paid or accrued, subject to several conditions and limitations.

For purposes of the foreign tax credit, regulations provide that a foreign tax is treated as being paid by ''the person on whom foreign law imposes legal liability for such tax.''[145] Thus, for example, if a U.S. corporation owns an interest in a foreign partnership, the U.S. corporation can claim foreign tax credits for the tax that is imposed on it as a partner in the foreign entity. This would be true under the regulations even if the U.S. corporation elected to treat the foreign entity as a corporation for U.S. tax purposes. In such a case, if the foreign entity does not meet the definition of a controlled foreign corporation or does not generate income that is subject to current inclusion under the rules of subpart F, the income generated by the foreign entity might never be reported on a U.S. return, and yet the U.S. corporation might take the position that it can claim credits for taxes imposed on that income. This is one example of how a taxpayer might attempt to separate foreign taxes from the related foreign income, and thereby attempt to claim a foreign tax credit under circumstances in which there is no threat of double taxation.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides regulatory authority for the Treasury Department to address transactions that involve the inappropriate separation of foreign taxes from the related foreign income in cases in which taxes are imposed on any person in respect of income of an entity. Regulations issued pursuant to this authority could provide for the disallowance of a credit for all or a portion of the foreign taxes, or for the allocation of the foreign taxes among the participants in the transaction in a manner more consistent with the economics of the transaction.

Effective date.—The Senate amendment generally is effective for transactions entered into after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

8. Whistleblower reforms (sec. 5508 of the Senate amendment)

PRESENT LAW

The Code authorizes the IRS to pay such sums as deemed necessary for: ''(1) detecting underpayments of tax; and (2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same.''[146] Amounts are paid based on a percentage of tax, fines, and penalties (but not interest) actually collected based on the information provided. For specific information that caused the investigation and resulted in recovery, the IRS administratively has set the reward in an amount not to exceed 15 percent of the amounts recovered. For information, although not specific, that nonetheless caused the investigation and was of value in the determination of tax liabilities, the reward is not to exceed 10 percent of the amount recovered. For information that caused the investigation, but had no direct relationship to the determination of tax liabilities, the reward is not to exceed one percent of the amount recovered. The reward ceiling is $10 million (for payments made after November 7, 2002), and the reward floor is $100. No reward will be paid if the recovery was so small as to call for payment of less than $100 under the above formulas. Both the ceiling and percentages can be increased with a special agreement. The Code permits the IRS to disclose return information pursuant to a contract for tax administration services.[147]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment reforms the reward program for individuals who provide information regarding violations of the tax laws to the Secretary. Generally, the provision establishes a reward floor of 15 percent of the collected proceeds (including penalties, interest, additions to tax and additional amounts) if the IRS moves forward with an administrative or judicial action based on information brought to the IRS's attention by an individual. The provision caps the available reward at 30 percent of the collected proceeds. The provision permits awards of lesser amounts (but no less than 10 percent) if the action was based principally on allegations (other than information provided by the individual) resulting from a judicial or administrative hearing, government report, hearing, audit, investigation, or from the news media.

The Senate amendment creates a Whistleblower Office within the IRS to administer the reward program. The Whistleblower Office may seek assistance from the individual providing information or from his or her legal representative, and may reimburse the costs incurred by any legal representative out of the amount of the reward. To the extent the disclosure of returns or return information is required to render such assistance, the disclosure must be pursuant to an IRS tax administration contract.

Effective date.—The Senate amendment is effective for information provided on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

9. Denial of deduction for certain fines, penalties, and other amounts (sec. 5509 of the Senate amendment)

PRESENT LAW

Under present law, no deduction is allowed as a trade or business expense under section 162(a) for the payment of a fine or similar penalty to a government for the violation of any law (sec. 162(f)). The enactment of section 162(f) in 1969 codified existing case law that denied the deductibility of fines as ordinary and necessary business expenses on the grounds that ''allowance of the deduction would frustrate sharply defined national or State policies proscribing the particular types of conduct evidenced by some governmental declaration thereof.''[148]

Treasury regulation section 1.162–21(b)(1) provides that a fine or similar penalty includes an amount: (1) paid pursuant to conviction or a plea of guilty or nolo contendere for a crime (felony or misdemeanor) in a criminal proceeding; (2) paid as a civil penalty imposed by Federal, State, or local law, including additions to tax and additional amounts and assessable penalties imposed by chapter 68 of the Code; (3) paid in settlement of the taxpayer's actual or potential liability for a fine or penalty (civil or criminal); or (4) forfeited as collateral posted in connection with a proceeding which could result in imposition of such a fine or penalty. Treasury regulation section 1.162–21(b)(2) provides, among other things, that compensatory damages (including damages under section 4A of the Clayton Act (15 U.S.C. 15a), as amended) paid to a government do not constitute a fine or penalty.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the rules regarding the determination whether payments are nondeductible payments of fines or penalties under section 162(f). In particular, the Senate amendment generally provides that amounts paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government in relation to the violation of any law or the investigation or inquiry into the potential violation of any law[149] are nondeductible under any provision of the income tax provisions.[150] The Senate amendment applies to deny a deduction for any such payments, including those where there is no admission of

[143] With respect to foreign corporations, it is intended that the rules for signing this declaration generally parallel the present-law rules for signing the return. See Treas. Reg. sec. 1.6062–1(a)(3).

[144] The provision does, however, apply to the income tax returns of mutual fund management companies and advisors.

[145] Treas. Reg. sec. 1.901–2(f)(1).

[146] Sec. 7623.

[147] Sec. 6103(n).

[148] S. Rep. 91–552, 91st Cong, 1st Sess., 273–74 (1969), referring to *Tank Truck Rentals, Inc.* v. *Commissioner*, 356 U.S. 30 (1958).

[149] The Senate amendment does not affect amounts paid or incurred in performing routine audits or reviews such as annual audits that are required of all organizations or individuals in a similar business sector, or profession, as a requirement for being allowed to conduct business. However, if the government or regulator raised an issue of compliance and a payment is required in settlement of such issue, the Senate amendment would affect that payment.

[150] The Senate amendment provides that such amounts are nondeductible under chapter 1 of the Internal Revenue Code.

guilt or liability and those made for the purpose of avoiding further investigation or litigation. An exception applies to payments that the taxpayer establishes are restitution (including remediation of property) and that are identified as restitution in the court order or settlement.[151]

An exception also applies to any amount paid or incurred as taxes due.

The Senate amendment is intended to apply only where a government (or other entity treated in a manner similar to a government under the amendment) is a complainant or investigator with respect to the violation or potential violation of any law.[152]

It is intended that a payment will be treated as restitution only if substantially all of the payment is required to be paid to the specific persons, or in relation to the specific property, actually harmed by the conduct of the taxpayer that resulted in the payment. Thus, a payment to or with respect to a class substantially broader than the specific persons or property that were actually harmed (e.g., to a class including similarly situated persons or property) does not qualify as restitution.[153] Restitution is limited to the amount that bears a substantial quantitative relationship to the harm caused by the past conduct or actions of the taxpayer that resulted in the payment in question. If the party harmed is a government or other entity, then restitution includes payment to such harmed government or entity, provided the payment bears a substantial quantitative relationship to the harm. However, restitution does not include reimbursement of government investigative or litigation costs, or payments to whistleblowers.

Amounts paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, any self-regulatory entity that regulates a financial market or other market that is a qualified board or exchange under section 1256(g)(7), and that is authorized to impose sanctions (e.g., the National Association of Securities Dealers) are likewise subject to the provision if paid in relation to a violation, or investigation or inquiry into a potential violation, of any law (or any rule or other requirement of such entity). To the extent provided in regulations, amounts paid or incurred to, or at the direction of, any other nongovernmental entity that exercises self-regulatory powers as part of performing an essential governmental function are similarly subject to the provision. The exception for payments that the taxpayer establishes are restitution likewise applies in these cases.

No inference is intended as to the treatment of payments as nondeductible fines or penalties under present law. In particular, the Senate amendment is not intended to limit the scope of present-law section 162(f) or the regulations thereunder.

Effective date.—The Senate amendment is effective for amounts paid or incurred on or after the date of enactment; however the Senate amendment does not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Any order or agreement requiring court approval is not a binding order or agreement for this purpose unless such approval was obtained before the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

10. Freeze of interest suspension rules with respect to listed transactions (sec. 5510 of the Senate amendment)

PRESENT LAW

In general, interest and penalties accrue during periods for which taxes were unpaid without regard to whether the taxpayer was aware that there was tax due. The Code suspends the accrual of certain penalties and interest starting 18 months after the filing of the tax return[154] if the IRS has not sent the taxpayer a notice specifically stating the taxpayer's liability and the basis for the liability within the specified period. Interest and penalties resume 21 days after the IRS sends the required notice to the taxpayer. The provision is applied separately with respect to each item or adjustment. The provision does not apply where a taxpayer has self-assessed the tax. The suspension only applies to taxpayers who file a timely tax return. The provision applies only to individuals and does not apply to the failure to pay penalty, in the case of fraud, or with respect to criminal penalties.

The suspension of interest does not apply to interest accruing after October 3, 2004 with respect to underpayments resulting from listed transactions or undisclosed reportable transactions.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the exception for listed transactions (but not the exception for undisclosed reportable transactions) also applies to interest accruing on or before October 3, 2004. However, taxpayers remain eligible for the present-law suspension of interest if, as of May 9, 2005, (1) the taxpayer is participating in (and eventually reaches resolution via) a published IRS settlement initiative with respect to the listed transaction, or (2) the year in which the underpayment occurred is barred by the statute of limitations as of May 9, 2005.

Effective date.—The Senate amendment is effective as if included in the provisions of the American Jobs Creation Act of 2004 to which it relates.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

11. Repeal loss deferral exception for qualified transportation property (sec. 5511 of the Senate amendment)

PRESENT LAW

Present law provides for the deferral of losses attributable to certain tax exempt use property, generally effective for leases entered into after March 12, 2004. However, the deferral provision does not apply to property located in the United States that is subject to a lease with respect to which a formal application: (1) was submitted for approval to the Federal Transit Administration (an agency of the Department of Transportation) after June 30, 2003, and before March 13, 2004; (2) is approved by the Federal Transit Administration before January 1, 2006; and (3) includes a description and the fair market value of such property.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment repeals the exception for Federal Transit Administration approved leases so that the general effective date of the present law loss deferral provisions applies to such leases.

Effective date.—The Senate amendment is effective as if included in the enactment of the American Jobs Creation Act of 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

12. Impose mark to market tax on individuals who expatriate (sec. 5512 of Senate amendment)

PRESENT LAW

In general

U.S. citizens and residents generally are subject to U.S income taxation on their worldwide income. The U.S. tax may be reduced or offset by a credit allowed for foreign income taxes paid with respect to foreign source income. Nonresident aliens are taxed at a flat rate of 30 percent (or a lower treaty rate) on certain types of passive income derived from U.S. sources, and at regular graduated rates on net profits derived from a U.S. trade or business. The estates of nonresident aliens generally are subject to estate tax on U.S.-situated property (e.g., real estate and tangible property located within the United States and stock in a U.S. corporation). Nonresident aliens generally are subject to gift tax on transfers by gift of U.S.-situated property (e.g., real estate and tangible property located within the United States, but excluding intangibles, such as stock, regardless of where they are located).

Income tax rules with respect to expatriates

For the 10 taxable years after an individual relinquishes his or her U.S. citizenship or terminates his or her U.S. residency[155] with a principal purpose of avoiding U.S. taxes, the individual is subject to an alternative method of income taxation that is generally applicable to nonresident aliens (the ''alternative tax regime''). Generally, the individual is subject to income tax only on U.S.-source income[156] at the rates applicable to U.S. citizens for the 10-year period.

A former citizen or former long-term resident is subject to the alternative tax regime for a 10-year period following citizenship relinquishment or residency termination, unless the former citizen or former long-term resident: (1) establishes that his or her average annual net income tax liability for the five preceding years does not exceed $127,000 for 2005 (adjusted annually for inflation)[157] and his or her net worth does not exceed $2 million, or alternatively satisfies limited, objective exceptions for dual citizens and minors who have had no substantial contact with the United States; and (2) certifies under penalties of perjury that he or she has

[151] The Senate amendment does not affect the treatment of antitrust payments made under section 4 of the Clayton Act, which will continue to be governed by the provisions of section 162(g).

[152] Thus, for example, the Senate amendment would not apply to payments made by one private party to another in a lawsuit between private parties, merely because a judge or jury acting in the capacity as a court directs the payment to be made. The mere fact that a court enters a judgment or directs a result in a private dispute does not cause a payment to be made ''at the direction of a government'' for purposes of the provision.

[153] Similarly, a payment to a charitable organization benefiting a broader class than the persons or property actually harmed, or to be paid out without a substantial quantitative relationship to the harm caused, would not qualify as restitution. Under the Senate amendment, such a payment not deductible under section 162 would also not be deductible under section 170.

[154] If the return is filed before the due date, for this purpose it is considered to have been filed on the due date.

[155] An individual continues to be treated as a U.S. citizen or long-term resident for U.S. Federal tax purposes, including for purposes of section 7701(b)(10), until the individual: (1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security respectively; and (2) provides a statement in accordance with section 6039G.

[156] For this purpose, however, U.S.-source income has a broader scope than it does typically in the Code.

[157] Rev. Proc. 2004–71, 2004–50 I.R.B. 970.

complied with all U.S. Federal tax obligations for the preceding five years and provides such evidence of compliance as the Secretary of the Treasury may require.

The alternative tax regime does not apply to any individual for any taxable year during the 10-year period following citizenship relinquishment or residency termination if such individual is present in the United States for more than 30 days in the calendar year ending in such taxable year. Instead, such individual is treated as a U.S. citizen or resident for such taxable year and therefore is taxed on his or her worldwide income.

Gifts of stock of certain closely-held foreign corporations by a former citizen or former long-term resident who is subject to the alternative tax regime are subject to gift tax if the gift is made within the 10-year period after citizenship relinquishment or residency termination. The gift tax rule applies if: (1) the former citizen or former long-term resident, before making the gift, directly or indirectly owns 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation; and (2) directly or indirectly, is considered to own more than 50 percent of (a) the total combined voting power of all classes of stock entitled to vote in the foreign corporation, or (b) the total value of the stock of such corporation. If this stock ownership test is met, then taxable gifts of the former citizen or former long-term resident include that proportion of the fair market value of the foreign stock transferred by the individual, at the time of the gift, which the fair market value of any assets owned by such foreign corporation and situated in the United States (at the time of the gift) bears to the total fair market value of all assets owned by such foreign corporation (at the time of the gift).

This gift tax rule applies to a former citizen or former long-term resident who is subject to the alternative tax regime and who owns stock in a foreign corporation at the time of the gift, regardless of how such stock was acquired (e.g., whether issued originally to the donor, purchased, or received as a gift or bequest).

Former citizens and former long-term residents are required to file an annual return for each year following citizenship relinquishment or residency termination in which they are subject to the alternative tax regime. The annual return is required even if no U.S. Federal income tax is due. The annual return requires certain information, including information on the permanent home of the individual, the individual's country of residence, the number of days the individual was present in the United States for the year, and detailed information about the individual's income and assets that are subject to the alternative tax regime. This requirement includes information relating to foreign stock potentially subject to the special estate tax rule of section 2107(b) and the gift tax rules.

If the individual fails to file the statement in a timely manner or fails correctly to include all the required information, the individual is required to pay a penalty of $5,000. The $5,000 penalty does not apply if it is shown that the failure is due to reasonable cause and not to willful neglect.

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The Senate amendment generally subjects certain U.S. citizens who relinquish their U.S. citizenship and certain long-term U.S. residents who terminate their U.S. residence to tax on the net unrealized gain in their property as if such property were sold for fair market value on the day before the expatriation or residency termination. Gain from the deemed sale is taken into account at that time without regard to other Code provisions; any loss from the deemed sale generally would be taken into account to the extent otherwise provided in the Code. Any net gain on the deemed sale is recognized to the extent it exceeds $600,000 ($1.2 million in the case of married individuals filing a joint return, both of whom relinquish citizenship or terminate residency). The $600,000 amount would be increased by a cost of living adjustment factor for calendar years after 2005.

Individuals covered

Under the provision, the mark-to-market tax applies to U.S. citizens who relinquish citizenship and long-term residents who terminate U.S. residency. An individual is a long-term resident if he or she was a lawful permanent resident for at least eight out of the 15 taxable years ending with the year in which the termination of residency occurs. An individual is considered to terminate long-term residency when either the individual ceases to be a lawful permanent resident (i.e., loses his or her green card status), or the individual is treated as a resident of another country under a tax treaty and the individual does not waive the benefits of the treaty.

Exceptions from the mark-to-market tax are provided in two situations. The first exception applies to an individual who was born with citizenship both in the United States and in another country; provided that (1) as of the expatriation date the individual continues to be a citizen of, and is taxed as a resident of, such other country, and (2) the individual was not a resident of the United States for the five taxable years ending with the year of expatriation. The second exception applies to a U.S. citizen who relinquishes U.S. citizenship before reaching age 18 and a half, provided that the individual was a resident of the United States for no more than five taxable years before such relinquishment.

Election to be treated as a U.S. citizen

Under the provision, an individual is permitted to make an irrevocable election to continue to be taxed as a U.S. citizen with respect to all property that otherwise is covered by the expatriation tax. This election is an ''all or nothing'' election; an individual is not permitted to elect this treatment for some property but not for other property. The election, if made, would apply to all property that would be subject to the expatriation tax and to any property the basis of which is determined by reference to such property. Under this election, the individual would continue to pay U.S. income taxes at the rates applicable to U.S. citizens following expatriation on any income generated by the property and on any gain realized on the disposition of the property. In addition, the property would continue to be subject to U.S. gift, estate, and generation-skipping transfer taxes. In order to make this election, the taxpayer would be required to waive any treaty rights that would preclude the collection of the tax.

The individual also would be required to provide security to ensure payment of the tax under this election in such form, manner, and amount as the Secretary of the Treasury requires. The amount of mark-to-market tax that would have been owed but for this election (including any interest, penalties, and certain other items) shall be a lien in favor of the United States on all U.S.-situs property owned by the individual. This lien shall arise on the expatriation date and shall continue until the tax liability is satisfied, the tax liability has become unenforceable by reason of lapse of time, or the Secretary is satisfied that no further tax liability may arise by reason of this provision. The rules of section 6324A(d)(1), (3), and (4) (relating to liens arising in connection with the deferral of estate tax under section 6166) apply to liens arising under this provision.

Date of relinquishment of citizenship

Under the provision, an individual is treated as having relinquished U.S. citizenship on the earliest of four possible dates: (1) the date that the individual renounces U.S. nationality before a diplomatic or consular officer of the United States (provided that the voluntary relinquishment is later confirmed by the issuance of a certificate of loss of nationality); (2) the date that the individual furnishes to the State Department a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an expatriating act (again, provided that the voluntary relinquishment is later confirmed by the issuance of a certificate of loss of nationality); (3) the date that the State Department issues a certificate of loss of nationality; or (4) the date that a U.S. court cancels a naturalized citizen's certificate of naturalization.

Deemed sale of property upon expatriation or residency termination

The deemed sale rule of the provision generally applies to all property interests held by the individual on the date of relinquishment of citizenship or termination of residency. Special rules apply in the case of trust interests, as described below. U.S. real property interests, which remain subject to U.S. tax in the hands of nonresident noncitizens, generally are excepted from the provision. Regulatory authority is granted to the Treasury to except other types of property from the provision.

Under the provision, an individual who is subject to the mark-to-market tax is required to pay a tentative tax equal to the amount of tax that would be due for a hypothetical short tax year ending on the date the individual relinquished citizenship or terminated residency. Thus, the tentative tax is based on all income, gain, deductions, loss, and credits of the individual for the year through such date, including amounts realized from the deemed sale of property. The tentative tax is due on the 90th day after the date of relinquishment of citizenship or termination of residency.

Retirement plans and similar arrangements

Subject to certain exceptions, the provision applies to all property interests held by the individual at the time of relinquishment of citizenship or termination of residency. Accordingly, such property includes an interest in an employer-sponsored retirement plan or deferred compensation arrangement as well as an interest in an individual retirement account or annuity (i.e., an IRA).[158] However, the provision contains a special rule for an interest in a ''qualified retirement plan.'' For purposes of the provision, a ''qualified retirement plan'' includes an employer-sponsored qualified plan (sec. 401(a)), a qualified annuity (sec. 403(a)), a tax-sheltered annuity (sec. 403(b)), an eligible deferred compensation plan of a governmental employer (sec. 457(b)), or an IRA (sec. 408). The special retirement plan rule applies also, to the extent provided in regulations, to any foreign plan or similar retirement arrangement or program. An interest in a trust that is part of a qualified retirement plan or other arrangement that is subject to the special retirement plan rule is not subject to

[158] Application of the provision is not limited to an interest that meets the definition of property under section 83 (relating to property transferred in connection with the performance of services).

the rules for interests in trusts (discussed below).

Under the special rule, an amount equal to the present value of the individual's vested, accrued benefit under a qualified retirement plan is treated as having been received by the individual as a distribution under the plan on the day before the individual's relinquishment of citizenship or termination of residency. It is not intended that the plan would be deemed to have made a distribution for purposes of the tax-favored status of the plan, such as whether a plan may permit distributions before a participant has severed employment. In the case of any later distribution to the individual from the plan, the amount otherwise includible in the individual's income as a result of the distribution is reduced to reflect the amount previously included in income under the special retirement plan rule. The amount of the reduction applied to a distribution is the excess of: (1) the amount included in income under the special retirement plan rule over (2) the total reductions applied to any prior distributions. However, under the provision, the retirement plan, and any person acting on the plan's behalf, will treat any later distribution in the same manner as the distribution would be treated without regard to the special retirement plan rule.

It is expected that the Treasury Department will provide guidance for determining the present value of an individual's vested, accrued benefit under a qualified retirement plan, such as the individual's account balance in the case of a defined contribution plan or an IRA, or present value determined under the qualified joint and survivor annuity rules applicable to a defined benefit plan (sec. 417(e)).

Deferral of payment of tax

Under the provision, an individual is permitted to elect to defer payment of the mark-to-market tax imposed on the deemed sale of the property. Interest is charged for the period the tax is deferred at a rate two percentage points higher than the rate normally applicable to individual underpayments. Under this election, the mark-to-market tax attributable to a particular property is due when the property is disposed of (or, if the property is disposed of in whole or in part in a nonrecognition transaction, at such other time as the Secretary may prescribe). The mark-to-market tax attributable to a particular property is an amount that bears the same ratio to the total mark-to-market tax for the year as the gain taken into account with respect to such property bears to the total gain taken into account under these rules for the year. The deferral of the mark-to-market tax may not be extended beyond the individual's death.

In order to elect deferral of the mark-to-market tax, the individual is required to provide adequate security to the Treasury to ensure that the deferred tax and interest will be paid. Other security mechanisms are permitted provided that the individual establishes to the satisfaction of the Secretary that the security is adequate. In the event that the security provided with respect to a particular property subsequently becomes inadequate and the individual fails to correct the situation, the deferred tax and the interest with respect to such property will become due. As a further condition to making the election, the individual is required to consent to the waiver of any treaty rights that would preclude the collection of the tax.

The deferred amount (including any interest, penalties, and certain other items) shall be a lien in favor of the United States on all U.S.-situs property owned by the individual. This lien shall arise on the expatriation date and shall continue until the tax liability is satisfied, the tax liability has become unenforceable by reason of lapse of time, or the Secretary is satisfied that no further tax liability may arise by reason of this provision. The rules of section 6324A(d)(1), (3), and (4) (relating to liens arising in connection with the deferral of estate tax under section 6166) apply to liens arising under this provision.

Interests in trusts

Under the provision, detailed rules apply to trust interests held by an individual at the time of relinquishment of citizenship or termination of residency. The treatment of trust interests depends on whether the trust is a qualified trust. A trust is a qualified trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust.

Constructive ownership rules apply to a trust beneficiary that is a corporation, partnership, trust, or estate. In such cases, the shareholders, partners, or beneficiaries of the entity are deemed to be the direct beneficiaries of the trust for purposes of applying these provisions. In addition, an individual who holds (or who is treated as holding) a trust instrument at the time of relinquishment of citizenship or termination of residency is required to disclose on his or her tax return the methodology used to determine his or her interest in the trust, and whether such individual knows (or has reason to know) that any other beneficiary of the trust uses a different method.

Nonqualified trusts.—If an individual holds an interest in a trust that is not a qualified trust, a special rule applies for purposes of determining the amount of the mark-to-market tax due with respect to such trust interest. The individual's interest in the trust is treated as a separate trust consisting of the trust assets allocable to such interest. Such separate trust is treated as having sold its net assets as of the date of relinquishment of citizenship or termination of residency and having distributed the assets to the individual, who then is treated as having recontributed the assets to the trust. The individual is subject to the mark-to-market tax with respect to any net income or gain arising from the deemed distribution from the trust.

The election to defer payment is available for the mark-to-market tax attributable to a nonqualified trust interest. Interest is charged for the period the tax is deferred at a rate two percentage points higher than the rate normally applicable to individual underpayments. A beneficiary's interest in a nonqualified trust is determined under all the facts and circumstances, including the trust instrument, letters of wishes, and historical patterns of trust distributions.

Qualified trusts.—If an individual has an interest in a qualified trust, the amount of unrealized gain allocable to the individual's trust interest is calculated at the time of expatriation or residency termination. In determining this amount, all contingencies and discretionary interests are assumed to be resolved in the individual's favor (i.e., the individual is allocated the maximum amount that he or she could receive). The mark-to-market tax imposed on such gains is collected when the individual receives distributions from the trust, or if earlier, upon the individual's death. Interest is charged for the period the tax is deferred at a rate two percentage points higher than the rate normally applicable to individual underpayments.

If an individual has an interest in a qualified trust, the individual is subject to the mark-to market tax upon the receipt of distributions from the trust. These distributions also may be subject to other U.S. income taxes. If a distribution from a qualified trust is made after the individual relinquishes citizenship or terminates residency, the mark-to-market tax is imposed in an amount equal to the amount of the distribution multiplied by the highest tax rate generally applicable to trusts and estates, but in no event will the tax imposed exceed the deferred tax amount with respect to the trust interest. For this purpose, the deferred tax amount is equal to: (1) the tax calculated with respect to the unrealized gain allocable to the trust interest at the time of expatriation or residency termination; (2) increased by interest thereon; and (3) reduced by any mark-to-market tax imposed on prior trust distributions to the individual.

If any individual's interest in a trust is vested as of the expatriation date (e.g., if the individual's interest in the trust is non-contingent and non-discretionary), the gain allocable to the individual's trust interest is determined based on the trust assets allocable to his or her trust interest. If the individual's interest in the trust is not vested as of the expatriation date (e.g., if the individual's trust interest is a contingent or discretionary interest), the gain allocable to his or her trust interest is determined based on all of the trust assets that could be allocable to his or her trust interest, determined by resolving all contingencies and discretionary powers in the individual's favor. In the case where more than one trust beneficiary is subject to the expatriation tax with respect to trust interests that are not vested, the rules are intended to apply so that the same unrealized gain with respect to assets in the trust is not taxed to both individuals.

Mark-to-market taxes become due if the trust ceases to be a qualified trust, the individual disposes of his or her qualified trust interest, or the individual dies. In such cases, the amount of mark-to-market tax equals the lesser of (1) the tax calculated under the rules for nonqualified trust interests as of the date of the triggering event, or (2) the deferred tax amount with respect to the trust interest as of that date.

The tax that is imposed on distributions from a qualified trust generally is deducted and withheld by the trustees. If the individual does not agree to waive treaty rights that would preclude collection of the tax, the tax with respect to such distributions is imposed on the trust, the trustee is personally liable for the tax, and any other beneficiary has a right of contribution against such individual with respect to the tax. Similar rules apply when the qualified trust interest is disposed of, the trust ceases to be a qualified trust, or the individual dies.

Coordination with present-law alternative tax regime

The provision provides a coordination rule with the present-law alternative tax regime. Under the provision, the expatriation income tax rules under section 877, and the expatriation estate and gift tax rules under sections 2107 and 2501(a)(3) (described above), do not apply to a former citizen or former long-term resident whose expatriation or residency termination occurs on or after date of enactment. In addition, section 7701(n) does not apply with respect to any individual that expatriated on or after date of enactment.

Treatment of gifts and inheritances from a former citizen or former long-term resident

Under the provision, the exclusion from income provided in section 102 (relating to exclusions from income for the value of property acquired by gift or inheritance) does not apply to the value of any property received by gift or inheritance from a former citizen or former long-term resident (i.e., an individual who relinquished U.S. citizenship or terminated U.S. residency), subject to the

exceptions described above relating to certain dual citizens and minors. Accordingly, a U.S. taxpayer who receives a gift or inheritance from such an individual is required to include the value of such gift or inheritance in gross income and is subject to U.S. tax on such amount. Having included the value of the property in income, the recipient would then take a basis in the property equal to that value. The tax does not apply to property that is shown on a timely filed gift tax return and that is a taxable gift by the former citizen or former long-term resident, or property that is shown on a timely filed estate tax return and included in the gross U.S. estate of the former citizen or former long-term resident (regardless of whether the tax liability shown on such a return is reduced by credits, deductions, or exclusions available under the estate and gift tax rules). In addition, the tax does not apply to property in cases in which no estate or gift tax return is required to be filed, where no such return would have been required to be filed if the former citizen or former long-term resident had not relinquished citizenship or terminated residency, as the case may be. Applicable gifts or bequests that are made in trust are treated as made to the beneficiaries of the trust in proportion to their respective interests in the trust.

Immigration rules

The provision amends the immigration rules that deny tax-motivated expatriates reentry into the United States by removing the requirement that the expatriation be tax-motivated, and instead denies former citizens reentry into the United States if the individual is determined not to be in compliance with his or her tax obligations under the provision's expatriation tax provisions (regardless of the subjective motive for expatriating). For this purpose, the provision permits the IRS to disclose certain items of return information of an individual, upon written request of the Attorney General or his delegate, as is necessary for making a determination under section 212(a)(10)(E) of the Immigration and Nationality Act. Specifically, the provision would permit the IRS to disclose to the agency administering section 212(a)(10)(E) whether such taxpayer is in compliance with section 877A and identify the items of noncompliance. Recordkeeping requirements, safeguards, and civil and criminal penalties for unauthorized disclosure or inspection would apply to return information disclosed under this provision.

Effective date.—The Senate amendment generally is effective for U.S. citizens who relinquish citizenship or long-term residents who terminate their residency on or after date of enactment. The provisions relating to gifts and inheritances are effective for gifts and inheritances received from former citizens and former long-term residents on or after date of enactment, whose expatriation or residency termination occurs on or after such date. The provisions relating to former citizens under U.S. immigration laws are effective on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

13. Disallowance of deduction for punitive damages (sec. 5513 of the Senate amendment)

PRESENT LAW

In general, a deduction is allowed for all ordinary and necessary expenses that are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business.[159] However, no deduction is allowed for any payment that is made to an official of any governmental agency if the payment constitutes an illegal bribe or kickback or if the payment is to an official or employee of a foreign government and is illegal under Federal law.[160] In addition, no deduction is allowed under present law for any fine or similar payment made to a government for violation of any law.[161] Furthermore, no deduction is permitted for two-thirds of any damage payments made by a taxpayer who is convicted of a violation of the Clayton antitrust law or any related antitrust law.[162]

In general, gross income does not include amounts received on account of personal physical injuries and physical sickness.[163] However, this exclusion does not apply to punitive damages.[164]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment denies any deduction for punitive damages that are paid or incurred by the taxpayer as a result of a judgment or in settlement of a claim. If the liability for punitive damages is covered by insurance, any such punitive damages paid by the insurer are included in gross income of the insured person and the insurer is required to report such amounts to both the insured person and the IRS.

Effective date.—The Senate amendment is effective for punitive damages that are paid or incurred on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

14. Application of earnings stripping rules to partners which are corporations (sec. 5514 of the Senate amendment)

PRESENT LAW

Present law provides rules to limit the ability of U.S. corporations to reduce the U.S. tax on their U.S.-source income through earnings stripping transactions. Section 163(j) specifically addresses earnings stripping involving interest payments, by limiting the deductibility of interest paid to certain related parties (''disqualified interest''),[165] if the payor's debt-equity ratio exceeds 1.5 to 1 and the payor's net interest expense exceeds 50 percent of its ''adjusted taxable income'' (generally taxable income computed without regard to deductions for net interest expense, net operating losses, and depreciation, amortization, and depletion). Disallowed interest amounts can be carried forward indefinitely. In addition, excess limitation (i.e., any excess of the 50-percent limit over a company's net interest expense for a given year) can be carried forward three years.

Proposed Treasury regulations provide that a corporate partner's proportionate share of the liabilities of a partnership is treated as liabilities incurred directly by the corporate partner for purposes of applying the earnings stripping limitation to its own interest payments.[166] The proposed Treasury regulations provide that interest paid or accrued to a partnership is treated as paid or accrued to the partners of the partnership in proportion to each partner's distributive share of the partnership's interest income for the taxable year.[167] In addition, the proposed Treasury regulations provide that interest expense paid or accrued by a partnership is treated as paid or accrued by the partners of the partnership in proportion to each partner's distributive share, for purposes of the earnings stripping rules.[168]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment codifies the approach of the proposed Treasury regulations by providing that a corporate partner's share of partnership debt is attributed to the corporate partner for purposes of applying the earnings stripping rules to the corporate partner.

Effective date.—The Senate amendment is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

15. Prohibition on deferral of certain stock option and restricted stock gains (sec. 5515 of the Senate amendment)

PRESENT LAW

Section 83 applies to transfers of property in connection with the performance of services. Under section 83, if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of the fair market value of such property over the amount (if any) paid for the property is includible in income at the first time that the property is transferable or not subject to substantial risk of forfeiture.

Stock granted to an employee (or other service provider) is subject to the rules that apply under section 83. When stock is vested and transferred to an employee, the excess of the fair market value of the stock over the amount, if any, the employee pays for the stock is includible in the employee's income for the year in which the transfer occurs.

The income taxation of a nonqualified stock option is determined under section 83 and depends on whether the option has a readily ascertainable fair market value. If the nonqualified option does not have a readily ascertainable fair market value at the time of grant, no amount is includible in the gross income of the recipient with respect to the option until the recipient exercises the option. The transfer of stock on exercise of the option is subject to the general rules of section 83. That is, if vested stock is received on exercise of the option, the excess of the fair market value of the stock over the option price is includible in the recipient's gross income as ordinary income in the taxable year in which the option is exercised. If the stock received on exercise of the option is not vested, the excess of the fair market value of the stock at the time of vesting over the option price is includible in the recipient's income for the year in which vesting occurs unless the recipient elects to apply section 83 at the time of exercise.

Other forms of stock-based compensation are also subject to the rules of section 83.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, gains attributable to stock options (including exercises of stock options), vesting of restricted stock, and other compensation based on employer securities (including employer securities) cannot be deferred by exchanging such amounts for a right to receive a future payment. Except as provided by the Secretary, if

[159] Sec. 162(a).

[160] Sec. 162(c).

[161] Sec. 162(f).

[162] Sec. 162(g).

[163] Sec. 104(a).

[164] Sec. 104(a)(2).

[165] This interest also may include interest paid to unrelated parties in certain cases in which a related party guarantees the debt.

[166] Prop. Treas. Reg. sec. 1.163(j)–3(b)(3).

[167] Prop. Treas. Reg. sec. 1.163(j)–2(e)(4).

[168] Prop. Treas. Reg. sec. 1.163(j)–2(e)(5).

a taxpayer exchanges (1) an option to purchase employer securities, (2) employer securities, or (3) any other property based on employer securities for a right to receive future payments, an amount equal to the present value of such right (or such other amount as the Secretary specifies) is required to be included in gross income for the taxable year of the exchange. The provision applies even if the future right to payment is treated as an unfunded and unsecured promise to pay. The provision applies when there is in substance an exchange, even if the transaction is not formally structured as an exchange.

The provision is not intended to imply that such practices result in permissive deferral of income under present law.

Effective date.—The Senate amendment is effective for exchanges after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

16. Limitation on employer deduction for certain entertainment expenses (sec. 5516 of the Senate amendment)

PRESENT LAW

In general

Under present law, no deduction is allowed with respect to (1) an activity generally considered to be entertainment, amusement or recreation, unless the taxpayer establishes that the item was directly related to (or, in certain cases, associated with) the active conduct of the taxpayer's trade or business, or (2) a facility (e.g., an airplane) used in connection with such activity.[169] The Code includes a number of exceptions to the general rule disallowing deductions of entertainment expenses. Under one exception, the deduction disallowance rule does not apply to expenses for goods, services, and facilities to the extent that the expenses are reported by the taxpayer as compensation and wages to an employee.[170] The deduction disallowance rule also does not apply to expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient who is not an employee (e.g., a non-employee director) as compensation for services rendered or as a prize or award.[171] The exceptions apply only to the extent that amounts are properly reported by the company as compensation and wages or otherwise includible in income. In no event can the amount of the deduction exceed the amount of the actual cost, even if a greater amount is includible in income.

Except as otherwise provided, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. In general, an employee or other service provider must include in gross income the amount by which the fair value of a fringe benefit exceeds the amount paid by the individual. Treasury regulations provide rules regarding the valuation of fringe benefits, including flights on an employer-provided aircraft.[172] In general, the value of a non-commercial flight is determined under the base aircraft valuation formula, also known as the Standard Industry Fare Level formula or ''SIFL''.[173] If the SIFL valuation rules do not apply, the value of a flight on a company-provided aircraft is generally equal to the amount that an individual would have to pay in an arm's-length transaction to charter the same or a comparable aircraft for that period for the same or a comparable flight.[174]

In the context of an employer providing an aircraft to employees for nonbusiness (e.g., vacation) flights, the exception for expenses treated as compensation was interpreted in *Sutherland Lumber-Southwest, Inc.* v. *Commissioner (''Sutherland Lumber'')* as not limiting the company's deduction for operation of the aircraft to the amount of compensation reportable to its employees,[175] which can result in a deduction many times larger than the amount required to be included in income. In many cases, the individual including amounts attributable to personal travel in income directly benefits from the enhanced deduction, resulting in a net deduction for the personal use of the company aircraft.

Specified individuals

In the case of specified individuals, the exceptions to the general entertainment expense disallowance rule for expenses treated as compensation or includible in income apply only to the extent of the amount of expenses treated as compensation or includible in income of the specified individual. For example, a company's deduction attributable to aircraft operating costs and other expenses for a specified individual's vacation use of a company aircraft is limited to the amount reported as compensation to the specified individual. *Sutherland Lumber* was overturned with respect to specified individuals.

Specified individuals are individuals who, with respect to an employer or other service recipient, are subject to the requirements of section 16(a) of the Securities and Exchange Act of 1934, or would be subject to such requirements if the employer or service recipient were an issuer of equity securities referred to in section 16(a). Such individuals generally include officers (as defined by section 16(a)),[176] directors, and 10-percent-or-greater owners of private and publicly-held companies.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, in the case of all individuals, the exceptions to the general entertainment expense disallowance rule for expenses treated as compensation or includible in income apply only to the extent of the amount of expenses treated as compensation or includible in income. Thus, under those exceptions, no deduction is allowed with respect to expenses for (1) a non-business activity generally considered to be entertainment, amusement or recreation, or (2) a facility (e.g., an airplane) used in connection with such activity to the extent that such expenses exceed the amount treated as compensation or includible in income. The provision is intended to overturn *Sutherland Lumber* for all individuals. As under present law, the exceptions apply only if amounts are properly reported by the company as compensation and wages or otherwise includible in income.

Effective date.—The Senate amendment is effective for expenses incurred after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

17. Increase in penalty for bad checks and money orders (sec. 5517 of the Senate amendment)

PRESENT LAW

The Code imposes a penalty for bad checks and money orders on the person who tendered such check or money order.[177] The penalty is two percent of the amount of the bad check or money order. The minimum penalty is $15 (or, if less, the amount of the check), applicable to checks that are less than $750.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment increases the minimum penalty for bad checks and money orders to $25 (or, if less, the amount of the check), applicable to checks that are less than $1,250.

Effective date.—The Senate amendment applies to checks or money orders received after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

18. Elimination of double deduction of mining exploration and development costs under the minimum tax (sec. 5518 of the Senate amendment)

PRESENT LAW

Under present law, mining development costs are expensed in computing taxable income, unless either the deferred expense method is elected under section under section 616(b) or 10-year amortization is elected under section 59(e). In addition, a taxpayer may elect to expense mining exploration costs under section 617 or amortize the costs over a 10-year period under section 59(e). Also, a deduction for depletion is allowed with respect to mines. One method of computing the allowance for depletion is the percentage depletion method under section 613 that is based on the income of the mining property and is not limited by the adjusted basis of the property.

In determining alternative minimum taxable income (''AMTI'') mining exploration and development costs with respect to a mine are required to be capitalized and amortized over a 10-year period, unless the deferred expense method is elected under section 616(b).[178] In addition, the deduction for percentage depletion is limited to the adjusted basis of the property at the end of the taxable year (without regard to the depletion deduction for the year).[179] Treasury regulations provide that the adjusted basis for this purpose is the same as the adjusted basis for purposes of determining gain or loss from the sale or other disposition of the property.[180] Treasury regulations[181] further provide that the expenditures for development and exploration of mines treated as deferred expenses are chargeable to capital account and shall be an adjustment to the basis of the property to which they relate. The adjusted basis of the property is reduced by depletion deductions and the deductions for mining and exploration expenses in the taxable year the deductions are allowable.

Under the rules, notwithstanding the adjusted basis limitation on percentage depletion, a taxpayer may deduct more than 100 percent of its exploration and development costs in computing AMTI. For example, assume a taxpayer incurs $1 million in development costs in 2005 with respect to a mine that has a zero basis and that the deferred

[169] Sec. 274(a).

[170] Sec. 274(e)(2). As discussed below, a special rule applies in the case of specified individuals.

[171] Sec. 274(e)(9).

[172] Treas. Reg. sec. 1.61–21.

[173] Treas. Reg. sec. 1.61–21(g).

[174] Treas. Reg. sec. 1.61–21(b)(6).

[175] *Sutherland Lumber-Southwest, Inc.* v. *Comm.*, 114 T.C. 197 (2000), *aff'd*, 255 F.3d 495 (8th Cir. 2001), *acq.*, AOD 2002–02 (Feb. 11, 2002).

[176] An officer is defined as the president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions.

[177] Sec. 6657.

[178] Sec. 56(a)(2).

[179] Sec. 57(a)(1).

[180] Treas. Reg. sec. 1.57–1(h)(3).

[181] Treas. Reg. sec. 1.1016–5(f).

expense method is not elected. Also, assume that the deduction for percentage depletion (without regard to the basis limitation) for 2005 is $900,000. Under present law, in computing AMTI, the taxpayer is allowed to deduct $100,000 per year in development costs for each of the 10 taxable years beginning in 2005, and, in addition, is allowed to deduct percentage depletion of $900,000 in 2005, for a total of $1.9 million in deductions.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the deduction for depletion under the alternative minimum tax is amended by excluding from the adjusted basis of any mining property, the amount of mining exploration and development costs that may be allowed as a deduction to the taxpayer in computing AMTI in a future taxable year.

In the example described under present law, the $1 million development costs will be amortized over a 10-year period and no amount will be allowed as a deduction for depletion in computing AMTI.[182]

Effective date.—The Senate amendment applies to taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

19. Clarification of the economic substance doctrine (sec. 5521 of the Senate amendment)

PRESENT LAW

In general

The Code provides specific rules regarding the computation of taxable income, including the amount, timing, source, and character of items of income, gain, loss and deduction. These rules are designed to provide for the computation of taxable income in a manner that provides for a degree of specificity to both taxpayers and the government. Taxpayers generally may plan their transactions in reliance on these rules to determine the federal income tax consequences arising from the transactions.

In addition to the statutory provisions, courts have developed several doctrines that can be applied to deny the tax benefits of tax motivated transactions, notwithstanding that the transaction may satisfy the literal requirements of a specific tax provision. The common-law doctrines are not entirely distinguishable, and their application to a given set of facts is often blurred by the courts and the IRS. Although these doctrines serve an important role in the administration of the tax system, invocation of these doctrines can be seen as at odds with an objective, ''rule-based'' system of taxation. Nonetheless, courts have applied the doctrines to deny tax benefits arising from certain transactions.[183]

A common-law doctrine applied with increasing frequency is the ''economic substance'' doctrine. In general, this doctrine denies tax benefits arising from transactions that do not result in a meaningful change to the taxpayer's economic position other than a purported reduction in federal income tax.[184]

ECONOMIC SUBSTANCE DOCTRINE

Courts generally deny claimed tax benefits if the transaction that gives rise to those benefits lacks economic substance independent of tax considerations—notwithstanding that the purported activity actually occurred. The tax court has described the doctrine as follows:

The tax law . . . requires that the intended transactions have economic substance separate and distinct from economic benefit achieved solely by tax reduction. The doctrine of economic substance becomes applicable, and a judicial remedy is warranted, where a taxpayer seeks to claim tax benefits, unintended by Congress, by means of transactions that serve no economic purpose other than tax savings.[185]

Business purpose doctrine

Another common law doctrine that overlays and is often considered together with (if not part and parcel of) the economic substance doctrine is the business purpose doctrine. The business purpose test is a subjective inquiry into the motives of the taxpayer—that is, whether the taxpayer intended the transaction to serve some useful non-tax purpose. In making this determination, some courts have bifurcated a transaction in which independent activities with non-tax objectives have been combined with an unrelated item having only tax-avoidance objectives in order to disallow the tax benefits of the overall transaction.[186]

Application by the courts

Elements of the doctrine

There is a lack of uniformity regarding the proper application of the economic substance doctrine.[187] Some courts apply a conjunctive test that requires a taxpayer to establish the presence of both economic substance (i.e., the objective component) and business purpose (i.e., the subjective component) in order for the transaction to survive judicial scrutiny.[188] A narrower approach used by some courts is to conclude that either a business purpose or economic substance is sufficient to respect the transaction).[189] A third approach regards economic substance and business purpose as ''simply more precise factors to consider'' in determining whether a transaction has any practical economic effects other than the creation of tax benefits.[190]

Profit potential

There also is a lack of uniformity regarding the necessity and level of profit potential necessary to establish economic substance. Since the time of *Gregory v. Helvering*,[191] several courts have denied tax benefits on the grounds that the subject transactions lacked profit potential.[192] In addition, some courts have applied the economic substance doctrine to disallow tax benefits in transactions in which a taxpayer was exposed to risk and the transaction had a profit potential, but the court concluded that the economic risks and profit potential were insignificant when compared to the tax benefits.[193] Under this analysis, the taxpayer's profit potential must be more than nominal. Conversely, other courts view the application of the economic substance doctrine as requiring an objective determination of whether a ''reasonable possibility of profit'' from the transaction existed apart from the tax benefits.[194] In these cases, in assessing whether a reasonable possibility of profit exists, it is sufficient if there is a nominal amount of pre-tax profit as measured against expected net tax benefits.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment clarifies and enhances the application of the economic substance doctrine. The Senate amendment provides that, in a case in which a court determines that the economic substance doctrine is relevant to a transaction (or a series of transactions), such transaction (or series of transactions) has economic substance (and thus satisfies the economic substance doctrine) only if the taxpayer establishes that (1) the transaction changes in a meaningful way (apart from Federal income tax consequences) the taxpayer's economic position, and (2) the taxpayer has a substantial non-

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[182] If the taxpayer elects the deferred expense method under section 616(b) or 10-year amortization under section 59(e), the deduction for depletion will also be zero.

[183] See, e.g., *ACM Partnership* v. *Commissioner*, 157 F.3d 231 (3d Cir. 1998), *aff'g* 73 T.C.M. (CCH) 2189 (1997), *cert. denied* 526 U.S. 1017 (1999).

[184] Closely related doctrines also applied by the courts (sometimes interchangeable with the economic substance doctrine) include the ''sham transaction doctrine'' and the ''business purpose doctrine''. See, e.g., *Knetsch* v. *United States*, 364 U.S. 361 (1960) (denying interest deductions on a ''sham transaction'' whose only purpose was to create the deductions).

[185] *ACM Partnership v. Commissioner*, 73 T.C.M. at 2215.

[186] *ACM Partnership v. Commissioner*, 157 F.3d at 256 n.48.

[187] ''The casebooks are glutted with [economic substance] tests. Many such tests proliferate because they give the comforting illusion of consistency and precision. They often obscure rather than clarify.'' *Collins v. Commissioner*, 857 F.2d 1383, 1386 (9th Cir. 1988).

[188] See, *e.g., Pasternak v. Commissioner*, 990 F.2d 893, 898 (6th Cir. 1993) (''The threshold question is whether the transaction has economic substance. If the answer is yes, the question becomes whether the taxpayer was motivated by profit to participate in the transaction.'').

[189] See, *e.g., Rice's Toyota World v. Commissioner*, 752 F.2d 89, 91–92 (4th Cir. 1985) (''To treat a transaction as a sham, the court must find that the taxpayer was motivated by no business purposes other than obtaining tax benefits in entering the transaction, and, second, that the transaction has no economic substance because no reasonable possibility of a profit exists.''); *IES Industries v. United States,* 253 F.3d 350, 358 (8th Cir. 2001) (''In determining whether a transaction is a sham for tax purposes [under the Eighth Circuit test], a transaction will be characterized as a sham if it is not motivated by any economic purpose out of tax considerations (the business purpose test), and if it is without economic substance because no real potential for profit exists (the economic substance test).''). As noted earlier, the economic substance doctrine and the sham transaction doctrine are similar and sometimes are applied interchangeably. For a more detailed discussion of the sham transaction doctrine, see, *e.g.*, Joint Committee on Taxation, *Study of Present-Law Penalty and Interest Provisions as Required by Section 3801 of the Internal Revenue Service Restructuring and Reform Act of 1998 (including Provisions Relating to Corporate Tax Shelters)* (JCS–3–99) at 182.

[190] See, *e.g., ACM Partnership v. Commissioner*, 157 F.3d at 247; *James v. Commissioner*, 899 F.2d 905, 908 (10th Cir. 1995); *Sacks v. Commissioner*, 69 F.3d 982, 985 (9th Cir. 1995) (''Instead, the consideration of business purpose and economic substance are simply more precise factors to consider . . . We have repeatedly and carefully noted that this formulation cannot be used as a 'rigid two-step analysis'.'').

[191] 293 U.S. 465 (1935).

[192] See, *e.g., Knetsch*, 364 U.S. at 361; *Goldstein v. Commissioner*, 364 F.2d 734 (2d Cir. 1966) (holding that an unprofitable, leveraged acquisition of Treasury bills, and accompanying prepaid interest deduction, lacked economic substance); *Ginsburg v. Commissioner*, 35 T.C.M. (CCH) 860 (1976) (holding that a leveraged cattle-breeding program lacked economic substance).

[193] See, *e.g., Goldstein v. Commissioner*, 364 F.2d at 739–40 (disallowing deduction even though taxpayer had a possibility of small gain or loss by owning Treasury bills); *Sheldon v. Commissioner*, 94 T.C. 738, 768 (1990) (stating, ''potential for gain . . . is infinitesimally nominal and vastly insignificant when considered in comparison with the claimed deductions'').

[194] See, *e.g., Rice's Toyota World v. Commissioner*, 752 F.2d at 94 (the economic substance inquiry requires an objective determination of whether a reasonable possibility of profit from the transaction existed apart from tax benefits); *Compaq Computer Corp. v. Commissioner*, 277 F.3d at 781 (applied the same test, *citing Rice's Toyota World*); *IES Industries v. United States*, 253 F.3d at 354 (the application of the objective economic substance test involves determining whether there was a ''reasonable possibility of profit . . . apart from tax benefits.'').

tax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.[195]

The Senate amendment does not change current law standards used by courts in determining when to utilize an economic substance analysis.[196] Also, the Senate amendment does not alter the court's ability to aggregate, disaggregate or otherwise recharacterize a transaction when applying the doctrine.[197] The Senate amendment provides a uniform definition of economic substance, but does not alter the flexibility of the courts in other respects.

Conjunctive analysis

The Senate amendment clarifies that the economic substance doctrine involves a conjunctive analysis—there must be an objective inquiry regarding the effects of the transaction on the taxpayer's economic position, as well as a subjective inquiry regarding the taxpayer's motives for engaging in the transaction. Under the Senate amendment, a transaction must satisfy both tests—i.e., it must change in a meaningful way (apart from Federal income tax consequences) the taxpayer's economic position, and the taxpayer must have a substantial non-tax purpose for entering into such transaction (and the transaction is a reasonable means of accomplishing such purpose)—in order to satisfy the economic substance doctrine. This clarification eliminates the disparity that exists among the circuits regarding the application of the doctrine, and modifies its application in those circuits in which either a change in economic position or a non-tax business purpose (without having both) is sufficient to satisfy the economic substance doctrine.

Non-tax business purpose

The Senate amendment provides that a taxpayer's non-tax purpose for entering into a transaction (the second prong in the analysis) must be ''substantial,'' and that the transaction must be ''a reasonable means'' of accomplishing such purpose. Under this formulation, the non-tax purpose for the transaction must bear a reasonable relationship to the taxpayer's normal business operations or investment activities.[198]

In determining whether a taxpayer has a substantial non-tax business purpose, an objective of achieving a favorable accounting treatment for financial reporting purposes will not be treated as having a substantial non-tax purpose.[199] Furthermore, a transaction that is expected to increase financial accounting income as a result of generating tax deductions or losses without a corresponding financial accounting charge (i.e., a permanent book-tax difference)[200] should not be considered to have a substantial non-tax purpose unless a substantial non-tax purpose exists apart from the financial accounting benefits.[201]

By requiring that a transaction be a ''reasonable means'' of accomplishing its non-tax purpose, the Senate amendment reiterates the present-law ability of the courts to bifurcate a transaction in which independent activities with non-tax objectives are combined with an unrelated item having only tax-avoidance objectives in order to disallow the tax benefits of the overall transaction.[202]

Profit potential

Under the Senate amendment, a taxpayer may rely on factors other than profit potential to demonstrate that a transaction results in a meaningful change in the taxpayer's economic position; the proposal merely sets forth a minimum threshold of profit potential if that test is relied on to demonstrate a meaningful change in economic position. If a taxpayer relies on a profit potential, however, the present value of the reasonably expected pre-tax profit must be substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected.[203] Moreover, the profit potential must exceed a risk-free rate of return. In addition, in determining pre-tax profit, fees and other transaction expenses and foreign taxes are treated as expenses.

In applying the profit potential test to a lessor of tangible property, depreciation, applicable tax credits (such as the rehabilitation tax credit and the low income housing tax credit), and any other deduction as provided in guidance by the Secretary are not taken into account in measuring tax benefits.

Transactions with tax-indifferent parties

The Senate amendment also provides special rules for transactions with tax-indifferent parties. For this purpose, a tax-indifferent party means any person or entity not subject to Federal income tax, or any person to whom an item would have no substantial impact on its income tax liability. Under these rules, the form of a financing transaction will not be respected if the present value of the tax deductions to be claimed is substantially in excess of the present value of the anticipated economic returns to the lender. Also, the form of a transaction with a tax-indifferent party will not be respected if it results in an allocation of income or gain to the tax-indifferent party in excess of the tax-indifferent party's economic gain or income or if the transaction results in the shifting of basis on account of overstating the income or gain of the tax-indifferent party.

Other rules

The Secretary may prescribe regulations which provide (1) exemptions from the application of the proposal, and (2) other rules as may be necessary or appropriate to carry out the purposes of the proposal.

No inference is intended as to the proper application of the economic substance doctrine under present law. In addition, except with respect to the economic substance doctrine, the bill shall not be construed as altering or supplanting any other common law doctrine (including the sham transaction doctrine), and the Senate amendment shall be construed as being additive to any such other doctrine.

Effective date.—The Senate amendment applies to transactions entered into after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

20. Penalty for understatements attributable to transactions lacking economic substance, etc. (sec. 5522 of the Senate amendment)

PRESENT LAW

General accuracy-related penalty

An accuracy-related penalty under section 6662 applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation misstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement. If the correct income tax liability exceeds that reported by the taxpayer by the greater of 10 percent of the correct tax or $5,000 (or, in the case of corporations, by the lesser of (a) 10 percent of the correct tax (or $10,000 if greater) or (b) $10 million), then a substantial understatement exists and a penalty may be imposed equal to 20 percent of the underpayment of tax attributable to the understatement.[204] Except in the case of tax shelters,[205] the amount of any understatement is reduced by any portion attributable

[195] If the tax benefits are clearly contemplated and expected by the language and purpose of the relevant authority, it is not intended that such tax benefits be disallowed if the only reason for such disallowance is that the transaction fails the economic substance doctrine as defined in this provision.

[196] See, *e.g.*, Treas. Reg. sec. 1.269–2, stating that characteristic of circumstances in which a deduction otherwise allowed will be disallowed are those in which the effect of the deduction, credit, or other allowance would be to distort the liability of the particular taxpayer when the essential nature of the transaction or situation is examined in the light of the basic purpose or plan which the deduction, credit, or other allowance was designed by the Congress to effectuate.

[197] See, *e.g.*, *Minnesota Tea Co. v. Helvering*, 302 U.S. 609, 613 (1938) (''A given result at the end of a straight path is not made a different result because reached by following a devious path.'').

[198] See, *e.g.*, Treas. Reg. sec. 1.269–2(b) (stating that a distortion of tax liability indicating the principal purpose of tax evasion or avoidance might be evidenced by the fact that ''the transaction was not undertaken for reasons germane to the conduct of the business of the taxpayer''). Similarly, in *ACM Partnership v. Commissioner*, 73 T.C.M. (CCH) 2189 (1997), the court stated: ''Key to [the determination of whether a transaction has economic substance] is that the transaction must be rationally related to a useful nontax purpose that is plausible in light of the taxpayer's conduct and useful in light of the taxpayer's economic situation and intentions. Both the utility of the stated purpose and the rationality of the means chosen to effectuate it must be evaluated in accordance with commercial practices in the relevant industry. A rational relationship between purpose and means ordinarily will not be found unless there was a reasonable expectation that the nontax benefits would be at least commensurate with the transaction costs.'' [citations omitted]

See also Martin McMahon Jr., *Economic Substance, Purposive Activity, and Corporate Tax Shelters*, 94 Tax Notes 1017, 1023 (Feb. 25, 2002) (advocates ''confining the most rigorous application of business purpose, economic substance, and purposive activity tests to transactions outside the ordinary course of the taxpayer's business—those transactions that do not appear to contribute to any business activity or objective that the taxpayer may have had apart from tax planning but are merely loss generators.''); Mark P. Gergen, *The Common Knowledge of Tax Abuse*, 54 SMU L. Rev. 131, 140 (Winter 2001) (''The message is that you can pick up tax gold if you find it in the street while going about your business, but you cannot go hunting for it.'').

[199] However, if the tax benefits are clearly contemplated and expected by the language and purpose of the relevant authority, such tax benefits should not be disallowed solely because the transaction results in a favorable accounting treatment. An example is the repealed foreign sales corporation rules.

[200] This includes tax deductions or losses that are anticipated to be recognized in a period subsequent to the period the financial accounting benefit is recognized. For example, FAS 109 in some cases permits the recognition of financial accounting benefits prior to the period in which the tax benefits are recognized for income tax purposes.

[201] Claiming that a financial accounting benefit constitutes a substantial non-tax purpose fails to consider the origin of the accounting benefit (i.e., reduction of taxes) and significantly diminishes the purpose for having a substantial non-tax purpose requirement. See, *e.g.*, *American Electric Power, Inc. v. U.S.*, 136 F. Supp. 2d 762, 791–92 (S.D. Ohio, 2001) (''AEP's intended use of the cash flows generated by the [corporate-owned life insurance] plan is irrelevant to the subjective prong of the economic substance analysis. If a legitimate business purpose for the use of the tax savings 'were sufficient to breathe substance into a transaction whose only purpose was to reduce taxes, [then] every sham tax-shelter device might succeed,' '') (citing *Winn-Dixie v. Commissioner*, 113 T.C. 254, 287 (1999)).

[202] See, e.g., *ACM Partnership v. Commissioner*, 157 F.3d at 256 n.48.

[203] Thus, a ''reasonable possibility of profit'' will not be sufficient to establish that a transaction has economic substance.

[204] Sec. 6662.

[205] A tax shelter is defined for this purpose as a partnership or other entity, an investment plan or

to an item if (1) the treatment of the item is supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed and there was a reasonable basis for its tax treatment. The Treasury Secretary may prescribe a list of positions which the Secretary believes do not meet the requirements for substantial authority under this provision.

The section 6662 penalty generally is abated (even with respect to tax shelters) in cases in which the taxpayer can demonstrate that there was ''reasonable cause'' for the underpayment and that the taxpayer acted in good faith.[206] The relevant regulations provide that reasonable cause exists where the taxpayer ''reasonably relies in good faith on an opinion based on a professional tax advisor's analysis of the pertinent facts and authorities [that] . . . unambiguously concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged'' by the IRS.[207]

Listed transactions and reportable avoidance transactions

In general

A separate accuracy-related penalty under section 6662A applies to ''listed transactions'' and to other ''reportable transactions'' with a significant tax avoidance purpose (hereinafter referred to as a ''reportable avoidance transaction''). The penalty rate and defenses available to avoid the penalty vary depending on whether the transaction was adequately disclosed.

Both listed transactions and reportable transactions are allowed to be described by the Treasury department under section 6707A(c), which imposes a penalty for failure adequately to report such transactions under section 6011. A reportable transaction is defined as one that the Treasury Secretary determines is required to be disclosed because it is determined to have a potential for tax avoidance or evasion.[208] A listed transaction is defined as 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 the reporting disclosure requirements.[209]

Disclosed transactions

In general, a 20-percent accuracy-related penalty is imposed on any understatement attributable to an adequately disclosed listed transaction or reportable avoidance transaction.[210] The only exception to the penalty is if the taxpayer satisfies a more stringent reasonable cause and good faith exception (hereinafter referred to as the ''strengthened reasonable cause exception''), which is described below. The strengthened reasonable cause exception is available only if the relevant facts affecting the tax treatment are adequately disclosed, there is or was substantial authority for the claimed tax treatment, and the taxpayer reasonably believed that the claimed tax treatment was more likely than not the proper treatment.

Undisclosed transactions

If the taxpayer does not adequately disclose the transaction, the strengthened reasonable cause exception is not available (i.e., a strict-liability penalty generally applies), and the taxpayer is subject to an increased penalty equal to 30 percent of the understatement.[211] However, a taxpayer will be treated as having adequately disclosed a transaction for this purpose if the IRS Commissioner has separately rescinded the separate penalty under section 6707A for failure to disclose a reportable transaction.[212] The IRS Commissioner is authorized to do this only if the failure does not relate to a listed transaction and only if rescinding the penalty would promote compliance and effective tax administration.[213]

A public entity that is required to pay a penalty for an undisclosed listed or reportable transaction must disclose the imposition of the penalty in reports to the SEC for such periods as the Secretary shall specify. The disclosure to the SEC applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear; and any failure to disclose such penalty in the reports is treated as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the SEC once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid).[214]

Determination of the understatement amount

The penalty is applied to the amount of any understatement attributable to the listed or reportable avoidance transaction without regard to other items on the tax return. For purposes of this provision, the amount of the understatement is determined as the sum of: (1) the product of the highest corporate or individual tax rate (as appropriate) and the increase in taxable income resulting from the difference between the taxpayer's treatment of the item and the proper treatment of the item (without regard to other items on the tax return);[215] and (2) the amount of any decrease in the aggregate amount of credits which results from a difference between the taxpayer's treatment of an item and the proper tax treatment of such item.

Except as provided in regulations, a taxpayer's treatment of an item shall not take into account any amendment or supplement to a return if the amendment or supplement is filed after the earlier of when the taxpayer is first contacted regarding an examination of the return or such other date as specified by the Secretary.[216]

Strengthened reasonable cause exception

A penalty is not imposed under the provision with respect to any portion of an understatement if it is shown that there was reasonable cause for such portion and the taxpayer acted in good faith. Such a showing requires: (1) adequate disclosure of the facts affecting the transaction in accordance with the regulations under section 6011;[217] (2) that there is or was substantial authority for such treatment; and (3) that the taxpayer reasonably believed that such treatment was more likely than not the proper treatment. For this purpose, a taxpayer will be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief: (1) is based on the facts and law that exist at the time the tax return (that includes the item) is filed; and (2) relates solely to the taxpayer's chances of success on the merits and does not take into account the possibility that (a) a return will not be audited, (b) the treatment will not be raised on audit, or (c) the treatment will be resolved through settlement if raised.[218]

A taxpayer may (but is not required to) rely on an opinion of a tax advisor in establishing its reasonable belief with respect to the tax treatment of the item. However, a taxpayer may not rely on an opinion of a tax advisor for this purpose if the opinion (1) is provided by a ''disqualified tax advisor'' or (2) is a ''disqualified opinion.''

Disqualified tax advisor

A disqualified tax advisor is any advisor who: (1) is a material advisor[219] and who participates in the organization, management, promotion or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates; (2) is compensated directly or indirectly[220] by a material advisor with respect to the transaction; (3) has a fee arrangement with respect to the transaction that is contingent on all or part of the intended tax benefits from the transaction being sustained; or (4) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

A material advisor is considered as participating in the ''organization'' of a transaction if the advisor performs acts relating to the development of the transaction. This may include, for example, preparing documents: (1) establishing a structure used in connection with the transaction (such as a partnership agreement); (2) describing the transaction (such as an offering memorandum or other statement describing the transaction); or (3) relating to the registration of the transaction with any federal, state or local government body.[221] Participation in the ''management'' of a transaction means involvement in the decision-making process regarding any business activity with respect to the transaction. Participation in the ''promotion or sale'' of a transaction means involvement in the marketing or solicitation of the transaction to others. Thus, an advisor who provides information about the transaction to a potential participant is involved in the promotion or sale of a transaction, as is any advisor who recommends the transaction to a potential participant.

Disqualified opinion

An opinion may not be relied upon if the opinion: (1) is based on unreasonable factual

arrangement, or any other plan or arrangement if a significant purpose of such partnership, other entity, plan, or arrangement is the avoidance or evasion of Federal income tax. Sec. 6662(d)(2)(C).

[206] Sec. 6664(c).

[207] Treas. Reg. sec. 1.6662–4(g)(4)(i)(B); Treas. Reg. sec. 1.6664–4(c).

[208] Sec. 6707A(c)(1).

[209] Sec. 6707A(c)(2).

[210] Sec. 6662A(a).

[211] Sec. 6662A(c).

[212] Sec. 6664(d).

[213] Sec. 6707A(d).

[214] Sec. 6707A(e).

[215] For this purpose, any reduction in 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. Sec. 6662A(b).

[216] Sec. 6662A(e)(3).

[217] See the previous discussion regarding the penalty for failing to disclose a reportable transaction.

[218] Sec. 6664(d).

[219] The term ''material advisor'' means any person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and who derives gross income in excess of $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons ($250,000 in any other case). Sec. 6111(b)(1).

[220] This situation could arise, for example, when an advisor has an arrangement or understanding (oral or written) with an organizer, manager, or promoter of a reportable transaction that such party will recommend or refer potential participants to the advisor for an opinion regarding the tax treatment of the transaction.

[221] An advisor should not be treated as participating in the organization of a transaction if the advisor's only involvement with respect to the organization of the transaction is the rendering of an opinion regarding the tax consequences of such transaction. However, such an advisor may be a ''disqualified tax advisor'' with respect to the transaction if the advisor participates in the management, promotion or sale of the transaction (or if the advisor is compensated by a material advisor, has a fee arrangement that is contingent on the tax benefits of the transaction, or as determined by the Secretary, has a continuing financial interest with respect to the transaction).

or legal assumptions (including assumptions as to future events); (2) unreasonably relies upon representations, statements, finding or agreements of the taxpayer or any other person; (3) does not identify and consider all relevant facts; or (4) fails to meet any other requirement prescribed by the Secretary.

Coordination with other penalties

To the extent a penalty on an understatement is imposed under section 6662A, that same amount of understatement is not also subject to the accuracy-related penalty under section 6662(a) or to the valuation misstatement penalties under section 6662(e) or 6662(h). However, such amount of understatement is included for purposes of determining whether any understatement (as defined in sec. 6662(d)(2)) is a substantial understatement as defined under section 6662(d)(1) and for purposes of identifying an underpayment under the section 6663 fraud penalty.

The penalty imposed under section 6662A does not apply to any portion of an understatement to which a fraud penalty is applied under section 6663.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment imposes a penalty for an understatement attributable to any transaction that lacks economic substance (referred to in the statute as a ''non-economic substance transaction understatement'').[222] The penalty rate is 40 percent (reduced to 20 percent if the taxpayer adequately discloses the relevant facts in accordance with regulations prescribed under section 6011). No exceptions (including the reasonable cause or rescission rules) to the penalty are available (i.e., the penalty is a strict-liability penalty).

A ''non-economic substance transaction'' means any transaction if (1) the transaction lacks economic substance (as defined in the earlier proposal regarding the economic substance doctrine),[223] (2) the transaction was not respected under the rules relating to transactions with tax-indifferent parties (as described in the immediately preceding proposal regarding the economic substance doctrine),[224] or (3) any similar rule of law. For this purpose, a similar rule of law would include, for example, an understatement attributable to a transaction that is determined to be a sham transaction.

For purposes of the Senate amendment, the calculation of an ''understatement'' is made in the same manner as in the present law provision relating to accuracy-related penalties for listed and reportable avoidance transactions (sec. 6662A). Thus, the amount of the understatement under the proposal would be determined as the sum of (1) the product of the highest corporate or individual tax rate (as appropriate) and the increase in taxable income resulting from the difference between the taxpayer's treatment of the item and the proper treatment of the item (without regard to other items on the tax return),[225] and (2) the amount of any decrease in the aggregate amount of credits which results from a difference between the taxpayer's treatment of an item and the proper tax treatment of such item. In essence, the penalty will apply to the amount of any understatement attributable solely to a non-economic substance transaction.

As in the case of the understatement penalty for reportable and listed transactions under present law section 6662A(e)(3), except as provided in regulations, the taxpayer's treatment of an item will not take into account any amendment or supplement to a return if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted regarding an examination of such return or such other date as specified by the Secretary.

As in the case of the understatement penalty for undisclosed reportable transactions under present law section 6707A, a public entity that is required to pay a penalty under the provision (but in this case, regardless of whether the transaction was disclosed) must disclose the imposition of the penalty in reports to the SEC for such periods as the Secretary shall specify. The disclosure to the SEC applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear, and any failure to disclose such penalty in the reports is treated as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the SEC once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid).

Regardless of whether the transaction was disclosed, once a penalty under the Senate amendment has been included in the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals, the penalty cannot be compromised for purposes of a settlement without approval of the Commissioner personally. Furthermore, the IRS is required to keep records summarizing the application of this penalty and providing a description of each penalty compromised under the proposal and the reasons for the compromise.

Any understatement on which a penalty is imposed under the provision will not be subject to the accuracy-related penalty under section 6662 or under 6662A (accuracy-related penalties for listed and reportable avoidance transactions). However, an understatement under the Senate amendment is taken into account for purposes of determining whether any understatement (as defined in sec. 6662(d)(2)) is a substantial understatement as defined under section 6662(d)(1). The penalty imposed under the Senate amendment will not apply to any portion of an understatement to which a fraud penalty is applied under section 6663.

Effective date.—The Senate amendment applies to transactions entered into after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

21. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions (sec. 5523 of the Senate amendment)

PRESENT LAW

No deduction for interest is allowed for interest paid or accrued on any underpayment of tax which is attributable to the portion of any reportable transaction understatement with respect to which the relevant facts were not adequately disclosed.[226] The Secretary of the Treasury is authorized to define reportable transactions for this purpose.[227]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment extends the disallowance of interest deductions to interest paid or accrued on any underpayment of tax which is attributable to any noneconomic substance underpayment (whether or not disclosed).

Effective date.—The Senate amendment applies to transactions after the date of enactment in taxable years ending after such date.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

22. Waiver of user fee for installment agreements using automated withdrawals (sec. 5531 of the Senate amendment)

PRESENT LAW

The Code authorizes the IRS to enter into written agreements with any taxpayer under which the taxpayer is allowed to pay taxes owed, as well as interest and penalties, in installment payments if the IRS determines that doing so will facilitate collection of the amounts owed.[228]

An installment agreement does not reduce the amount of taxes, interest, or penalties owed. Generally, during the period installment payments are being made, other IRS enforcement actions (such as levies or seizures) with respect to the taxes included in that agreement are held in abeyance.

The IRS charges a $43 user fee if a request for an installment agreement is approved.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment waives the user fee for installment agreements in which the parties agree to the use of automated installment payments (such as automated debits from a bank account).

Effective date.—The Senate amendment applies to agreements entered into on or after the date which is 180 days after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

23. Termination of installment agreements (sec. 5532 of the Senate amendment)

PRESENT LAW

The Code authorizes the IRS to enter into written agreements with any taxpayer under which the taxpayer is allowed to pay taxes owed, as well as interest and penalties, in installment payments, if the IRS determines that doing so will facilitate collection of the amounts owed.[229] An installment agreement

[222] Thus, unlike the present-law accuracy-related penalty under section 6662A (which applies only to listed and reportable avoidance transactions), the new penalty under this provision applies to any transaction that lacks economic substance.

[223] The Senate amendment generally provides that in any case in which a court determines that the economic substance doctrine is relevant, a transaction has economic substance only if: (1) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and (2) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose. Specific other rules also apply. See ''Senate Amendment'' for the immediately preceding provision, ''Clarification of the economic substance doctrine.''

[224] The Senate amendment provides that the form of a transaction that involves a tax-indifferent party will not be respected in certain circumstances.

[225] For this purpose, any reduction in the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses that would (without regard to section 1211) be allowed for such year, would be treated as an increase in taxable income.

[226] Sec. 162(m). Under section 6664(d)(2)(A), in such a case of nondisclosure, the taxpayer also is not entitled to the ''reasonable cause and good faith'' exception to the section 6662A penalty for a reportable transaction understatement.

[227] See the description of present law under the immediately preceding proposal, ''Penalty for understatements attributable to transactions lacking economic substance, etc.''

[228] Sec. 6159.

[229] Sec. 6159.

does not reduce the amount of taxes, interest, or penalties owed. Generally, during the period installment payments are being made, other IRS enforcement actions (such as levies or seizures) with respect to the taxes included in that agreement are held in abeyance.

Under present law, the IRS is permitted to terminate an installment agreement only if: (1) the taxpayer fails to pay an installment at the time the payment is due; (2) the taxpayer fails to pay any other tax liability at the time when such liability is due; (3) the taxpayer fails to provide a financial condition update as required by the IRS; (4) the taxpayer provides inadequate or incomplete information when applying for an installment agreement; (5) there has been a significant change in the financial condition of the taxpayer; or (6) the collection of the tax is in jeopardy.[230]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment grants the IRS authority to terminate installment agreement when a taxpayer fails to timely make a required Federal tax deposit or fails to timely file a tax return (including extensions). Under the Senate amendment, the IRS may terminate an installment agreement even if the taxpayer remained current with payments under the installment agreement.

Effective date.—The Senate amendment is effective for failures occurring on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

24. Office of Chief Counsel review of offers-in-compromise (sec. 5533 of the Senate amendment)

PRESENT LAW

The IRS has the authority to settle a tax debt pursuant to an offer-in-compromise. IRS regulations provide that such offers can be accepted if the taxpayer is unable to pay the full amount of the tax liability and it is doubtful that the tax, interest, and penalties can be collected or there is doubt as to the validity of the actual tax liability. Offers to compromise tax liabilities of $50,000 or more can only be accepted if the reasons for the acceptance are documented in detail and supported by a written opinion from the IRS Chief Counsel.[231]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment repeals the requirement that offers to compromise liabilities of $50,000 or more must be supported by a written opinion from the IRS Chief Counsel. Under the Senate amendment, written opinions must only be provided if the Secretary determines that an opinion is required with respect to a compromise.

Effective date.—The Senate amendment applies to offers-in-compromise submitted or pending on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

25. Partial payments required with submissions of offers-in-compromise (sec. 5534 of the Senate amendment)

PRESENT LAW

The IRS has the authority to compromise any civil or criminal case arising under the internal revenue laws.[232] In general, taxpayers initiate this process by making an offer-in-compromise, which is an offer by the taxpayer to settle an outstanding tax liability for less than the total amount due. The IRS currently imposes a user fee of $150 on most offers, payable upon submission of the offer to the IRS. Taxpayers may justify their offers on the basis of doubt as to collectibility or liability or on the basis of effective tax administration. In general, enforcement action is suspended during the period that the IRS evaluates an offer. In some instances, it may take the IRS 12 to 18 months to evaluate an offer.[233] Taxpayers are permitted (but not required) to make a deposit with their offer; if the offer is rejected, the deposit is generally returned to the taxpayer. There are two general categories[234] of offers-in-compromise, lump-sum offers and periodic payment offers. Taxpayers making lump-sum offers propose to make one lump-sum payment of a specified dollar amount in settlement of their outstanding liability. Taxpayers making periodic payment offers propose to make a series of payments over time (either short-term or long-term) in settlement of their outstanding liability.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires a taxpayer to make partial payments to the IRS while the taxpayer's offer is being considered by the IRS. For lump-sum offers, taxpayers must make a down payment of 20 percent of the amount of the offer with any application. For purposes of this provision, a lump-sum offer includes single payments as well as payments made in five or fewer installments. For periodic payment offers, the provision requires the taxpayer to comply with the taxpayer's own proposed payment schedule while the offer is being considered. Offers submitted to the IRS that do not comport with these payment requirements are returned to the taxpayer as unprocessable and immediate enforcement action is permitted. The provision eliminates the user fee requirement for offers submitted with the appropriate partial payment.

The Senate amendment also provides that an offer is deemed accepted if the IRS does not make a decision with respect to the offer within two years from the date the offer was submitted. With respect to offers submitted more than five years after the date of enactment, an offer is deemed accepted if the IRS does not make a decision with respect to the offer within 12 months of its submission.

Effective date.—The Senate amendment applies to offers-in-compromise submitted or pending on and after the date which is 60 days after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

26. Joint task force on offers-in-compromise (sec. 5535 of the Senate amendment)

PRESENT LAW

The IRS has the authority to compromise any civil or criminal case arising under the internal revenue laws.[235] In general, taxpayers initiate this process by making an offer-in-compromise, which is an offer by the taxpayer to settle an outstanding tax liability for less than the total amount due. The IRS currently imposes a user fee of $150 on most offers, payable upon submission of the offer to the IRS. Taxpayers may justify their offers on the basis of doubt as to collectibility or liability or on the basis of effective tax administration. In general, enforcement action is suspended during the period that the IRS evaluates an offer. Taxpayers are permitted (but not required) to make a deposit with their offer; if the offer is rejected, the deposit is generally returned to the taxpayer. There are two general categories[236] of offers-in-compromise, lump-sum offers and periodic payment offers. Taxpayers making lump-sum offers propose to make one lump-sum payment of a specified dollar amount in settlement of their outstanding liability. Taxpayers making periodic payment offers propose to make a series of payments over time (either short-term or long-term) in settlement of their outstanding liability.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires the Secretary to establish a joint task force to review the IRS's determinations with respect to offers-in-compromise, including offers which raise equitable, public policy, or economic hardship as grounds for compromising a tax liability. The task force shall consist of one representative each from the Department of Treasury, the IRS Oversight Board, the Office of Chief Counsel, the Office of the Taxpayer Advocate, the Office of Appeals, and the IRS office charged with operating the offer-in-compromise program. The task force is required to report annually to Congress regarding its findings and recommendations with respect to the offer-in-compromise program. The provision requires the filing of annual reports beginning in 2006.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

O. Additional Revenue Provisions Relating to the Highway Trust Fund

1. Suspension of transfers from Highway Trust Fund for certain repayments and credits (sec. 5601 of the Senate amendment)

PRESENT LAW

Under sec. 9503(c)(2), certain transfers are made from the Highway Trust Fund to reimburse the General Fund, for amounts paid in respect of gasoline used on farms,[237] amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems,[238] amounts relating to fuels not used for taxable purposes,[239] and income tax credits allowed with respect to the nontaxable uses of fuels.[240]

HOUSE BILL

No provision.

SENATE AMENDMENT

Section 9503(c)(2), relating to certain transfers from the Highway Trust Fund to the General Fund, is suspended between April 1, 2005 and October 1, 2005.

Effective date.—The Senate amendment applies to amounts paid for which no transfer has been made before April 1, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

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[230] Sec. 6159(b)(2), (3), and (4).

[231] Sec. 7122.

[232] Sec. 7122.

[233] Olsen v. United States, 326 F. Supp. 2d 184 (D. Mass. 2004).

[234] The IRS categorizes payment plans with more specificity, which is generally not significant for purposes of the proposal. See Form 656, Offer in Compromise, page 6 of instruction booklet (revised July 2004).

[235] Sec. 7122.

[236] The IRS categorizes payment plans with more specificity, which is generally not significant for purposes of the proposal. See Form 656, Offer in Compromise, page 6 of instruction booklet (revised July 2004).

[237] Sec. 6420.

[238] Sec. 6421.

[239] Sec. 6427.

[240] Sec. 34.

2. Dedicate gas guzzler tax to the Highway Trust Fund (sec. 5602 of the Senate amendment)

PRESENT LAW

Under present law, the Code imposes a tax (''the gas guzzler tax'') on automobiles that are manufactured primarily for use on public streets, roads, and highways and that are rated at 6,000 pounds unloaded gross vehicle weight or less. The tax applies to limousines without regard to the weight requirement. The tax is imposed on the sale by the manufacturer of each automobile of a model type with a fuel economy of 22.5 miles per gallon or less. The tax range begins at $1,000 and increases to $7,700 for models with a fuel economy less than 12.5 miles per gallon. Taxes imposed under this provision are deposited into the General Fund.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment temporarily dedicates the gas guzzler tax (as modified by the Senate amendment[241]) to the Highway Trust Fund. The Highway Trust Fund will be credited with gas guzzler taxes imposed on or after July 1, 2005 and before October 1, 2005.

Effective date.—The Senate amendment applies to taxes imposed on or after July 1, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Treatment of kerosene for use in aviation (sec. 5611 of the Senate amendment and secs. 4041, 4081, 4082, 6427, 9502, and 9503 of the Code)

PRESENT LAW

In general, aviation-grade kerosene is taxed at a rate of 21.8 cents per gallon upon removal of such fuel from a refinery or terminal (or entry into the United States) and on the sale of such fuel to any unregistered person unless there was a prior taxable removal or entry of such fuel.[242] Aviation-grade kerosene may be removed at a reduced rate, either 4.3 or zero cents per gallon, if the aviation fuel is removed directly into the fuel tank of an aircraft for use in commercial aviation[243] or for a use that is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax),[244] or is removed or entered as part of an exempt bulk transfer.[245] These taxes are credited to the Airport and Airway Trust Fund.[246] If taxed aviation-grade kerosene is used for a nontaxable use, a claim for credit or refund may be made.[247] Such claims are paid from the Airport and Airway Trust Fund to the general fund of the Treasury.[248] All other removals and entries of kerosene used for surface transportation are taxed at the diesel tax rate of 24.3 cents per gallon,[249] and these taxes are credited to the Highway Trust Fund.[250] If aviation-grade kerosene is taxed upon removal or entry but fraudulently diverted for surface transportation, the taxes remain in the Airport and Airway Trust Fund, and the Highway Trust Fund is not credited for the taxes on such fuel.

A special rule of present law addresses whether a removal from a refueler truck, tanker, or tank wagon may be treated as a removal from a terminal for purposes of determining whether aviation-grade kerosene is removed directly into the wing of an aircraft for use in commercial aviation, and so eligible for the 4.3 cents per gallon rate.[251] For the special rule to apply, a qualifying truck, tanker, or tank wagon must be loaded with aviation-grade kerosene from a terminal: (1) that is located within a secured area of an airport, and (2) from which no vehicle licensed for highway use is loaded with aviation fuel, except in exigent circumstances identified by the Secretary in regulations. In order to qualify for the special rule, a refueler truck, tanker, or tank wagon must: (1) be loaded with fuel for delivery only into aircraft at the airport where the terminal is located; (2) have storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft; (3) not be registered for highway use; and (4) be operated by the terminal operator (who operates the terminal rack from which the fuel is unloaded) or by a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or tank wagon.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment imposes the kerosene tax rate of 24.3 cents per gallon upon the entry or removal of aviation-grade kerosene and on the sale of such fuel to any unregistered person unless there was a prior taxable removal or entry of the fuel. The present law reduced rates for removals of aviation-grade kerosene directly into the fuel tank of an aircraft apply,[252] except that in addition, under the proposal, if kerosene is removed directly into the fuel tank of an aircraft for use in aviation other than commercial aviation, the rate of tax is 21.8 cents per gallon.

The Senate amendment provides that amounts may be claimed as credits or refunds for kerosene that is taxed at the 24.3 cents per gallon rate and used for aviation purposes. If kerosene is used for noncommercial aviation, the amount is 2.5 cents; if kerosene is used for commercial aviation, the amount is 20 cents; if kerosene is used for a use that is exempt from tax (as determined under present law), the amount is 24.3 cents. Present law rules with respect to claims apply, except for claims with respect to kerosene used in noncommercial aviation, which may be claimed by the ultimate vendor. To be eligible to receive a payment, a vendor must be registered and must show either that the price of the fuel did not include the tax and the tax was not collected from the purchaser, the amount of tax was repaid to the ultimate purchaser, or the written consent of the purchaser to the making of the claim was filed with the Secretary.

Under the Senate amendment, all taxes collected at the 24.3 cents per gallon rate (under section 4081) initially are credited to the Highway Trust Fund. The Senate amendment requires the Secretary to transfer from time to time from the Highway Trust Fund into the Airport and Airway Trust Fund amounts equivalent to the taxes received under sections 4041 and 4081 with respect to fuels used in a nontaxable use to the extent such amounts exceed the amounts paid with respect to such use. Transfers are required to be made with respect to taxes received on or after October 1, 2005, and before October 1, 2011.

Effective date.—The Senate amendment is effective for fuels or liquids removed, entered, or sold after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modifications.

The conference agreement provides that the rate of tax on kerosene is 21.8 cents per gallon if the kerosene is removed from refueler trucks, tankers, and tank wagons that are loaded with fuel from a terminal that is located in an airport, without regard to whether the terminal is located in a secured area of the airport, as long as all the other requirements of the present law special rule related to such trucks, tankers, and wagons are met. The conference agreement clarifies that the rate of tax upon removal of kerosene is zero if the removal is from a refueler truck, tanker, or tank wagon that meets all of the requirements of present law, including the security requirement, the kerosene is delivered directly into the fuel tank of an aircraft, and the kerosene is exempt from the tax imposed by section 4041(c) (other than by prior imposition of tax).

The Senate amendment is clarified to provide that claims for payment for kerosene that is used for noncommercial aviation may be claimed by the ultimate vendor only.

The conference agreement clarifies the transfer mechanism for payments from the Highway Trust Fund to the Airport and Airway Trust Fund to provide that such transfers shall be made monthly in amounts equivalent to 21.8 cents per gallon for claims made with respect to kerosene used for noncommercial aviation purposes, 4.3 cents per gallon for claims made with respect to kerosene used for commercial aviation purposes, and the amounts attributable to taxes received with respect to amounts allowed as a credit under section 34 for kerosene used for aviation purposes. The conference agreement requires that transfers be made on the basis of estimates by the Secretary, with proper adjustments to be made subsequently to the extent prior estimates were in excess of or less than the amounts required to be transferred. The conference agreement clarifies that the Airport and Airway Trust Fund does

[241] The Senate amendment repeals the tax as it applies to limousines rated at greater than 6,000 pounds unloaded gross vehicle weight.

[242] Sec. 4081(a)(2)(A)(iv). (An additional 0.1 cent is imposed on aviation-grade kerosene and credited to the Leaking Underground Storage Tank (''LUST'' Trust Fund.) Sec. 4081(a)(2)(B). The LUST Trust Fund tax is set to expire after September 30, 2005. Sec. 4081(d)(3).

[243] Sec. 4081(a)(2)(C).

[244] Sec. 4082(e). Exempt uses include use in commercial aviation as supplies for vessels or aircraft, which includes use by certain foreign air carriers and for the international flights of domestic carriers, secs. 4082(e), 6427(l)(2), and 4221(d)(3).

[245] Sec. 4081(a)(1)(B).

[246] Sec. 4081(a)(3).

[247] Sec. 6427(l)(1) and 6427(l)(4). Nontaxable uses include: (1) use other than as fuel in an aircraft (such as use in heating oil); (2) use on a farm for farming purposes; (3) use in a military aircraft owned by the United States or a foreign country; (4) use in a domestic air carrier engaged in foreign trade or trade between the United States and any of its possessions; (5) use in a foreign air carrier engaged in foreign trade or trade between the United States and any of its possessions (but only if the foreign carrier's country of registration provides similar privileges to United States carriers); (6) exclusive use of a State or local government; (7) sales for export, or shipment to a United States possession; (8) exclusive use by a nonprofit educational organization; (9) use by an aircraft museum exclusively for the procurement, care, or exhibition of aircraft of the type used for combat or transport in World War II, and (10) use as a fuel in a helicopter or a fixed-wing aircraft for purposes of providing transportation with respect to which certain requirements are met. Secs. 4041(f)(2), 4041(g), 4041(h), 4041(l), and 6427(l)(2)(B)(i).

[248] Sec. 9502(d)(2).

[249] Sec. 4081(a)(2)(iii).

[250] Sec. 9503(b)(1)(D).

[251] Sec. 4081(a)(3).

[252] For example, for kerosene removed directly into the fuel tank of an aircraft for use in commercial aviation by a person registered for such use, the rate of tax is 4.3 cents per gallon. Kerosene removed directly into the fuel tank of an aircraft for an exempt use is not taxed. For purposes of these reduced rates, it is intended that the following airports be included on the Secretary's list of airports that include a secured area in which a terminal is located. The airports are listed by airport name, and the terminal with respect to the airport is identified by terminal control number: Los Angeles International Airport (T–95–CA–4812) and Federal Express Corporation Memphis Airport (T–62–TN–2220).

not reimburse the General Fund for claims with respect to kerosene that is taxed at the 24.3 cents per gallon rate and used for aviation purposes, or with respect to credits allowed under section 34 to the extent the Highway Trust Fund is credited initially with the amount of tax with respect to which the credit is claimed.

4. Repeal of ultimate vendor refund claims with respect to farming (sec. 5612 of the Senate amendment and sec. 6427(l) of the Code)

PRESENT LAW

In general—ultimate purchaser refunds for nontaxable uses

In general, the Code provides that if diesel fuel or kerosene on which tax has been imposed is used by any person in a nontaxable use, the Secretary is to refund (without interest) to the ultimate purchaser the amount of tax imposed.[253] The refund is made to the ultimate purchaser of the taxed fuel by either income tax credit or refund payment.[254] Not more than one claim may be filed by any person with respect to fuel used during its taxable year. However, there are exceptions to this rule.

An ultimate purchaser may make a claim for a refund payment for any quarter of a taxable year for which the purchaser can claim at least $750.[255] If the purchaser cannot claim at least $750 at the end of quarter, the amount can be carried over to the next quarter to determine if the purchaser can claim at least $750. If the purchaser cannot claim at least $750 at the end of the taxable year, the purchaser must claim a credit on the person's income tax return.

As discussed below, these ultimate purchaser refund rules do not apply to diesel fuel or kerosene used on a farm. The Code precludes the ultimate purchaser from claiming a refund for such use. Instead, the refund claims are made by registered vendors as described below.

Special vendor rule for use on a farm for farming purposes

In the case of diesel fuel or kerosene used on a farm for farming purposes refund payments are paid to the ultimate, registered vendors (''registered ultimate vendor'') of such fuels. Thus a registered ultimate vendor that sells undyed diesel fuel or undyed kerosene to any of the following may make a claim for refund: (1) the owner, tenant, operator of a farm for use by that person on a farm for farming purposes; and (2) a person other than the owner, tenant, or operator of a farm for use by that person on a farm in connection with cultivating, raising or harvesting. The registered ultimate vendor is the only person who may make the claim with respect to diesel fuel or kerosene used on a farm for farming purposes. The purchaser of the fuel cannot make the claim for refund.

Registered ultimate vendors may make weekly claims if the claim is at least $200 ($100 or more in the case of kerosene).[256] If not paid within 45 days (20 days for an electronic claim), the Secretary is to pay interest on the claim.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment repeals ultimate vendor refund claims in the case of diesel fuel or kerosene used on a farm for farming purposes. Thus, refunds for taxed diesel fuel or kerosene used on a farm for farming purposes would be paid to the ultimate purchaser under the rules applicable to nontaxable uses of diesel fuel or kerosene.

Effective date.—The Senate amendment is effective for sales after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

5. Refunds of excise taxes on exempt sales of taxable fuel by credit card (sec. 5613 of the Senate amendment and secs. 6206, 6416, 6427, and 6675 of the Code)

PRESENT LAW

Under the rules in effect prior to 2005, in the case of gasoline on which tax had been paid and sold to a State or local government, to a nonprofit educational organization, for supplies for vessels or aircraft, for export, or for the production of special fuels, the wholesale distributor that sold such gasoline was treated as the only person who paid the tax and thereby was the proper claimant for a credit or refund of the tax paid. A ''wholesale distributor'' included any person, other than an importer or producer, who sold gasoline to producers, retailers, or to users who purchased in bulk quantities and accepted delivery into bulk storage tanks. A wholesale distributor also included any person who made retail sales of gasoline at 10 or more retail motor fuel outlets.

Under a special administrative exception to these rules, a sale of gasoline charged on an oil company credit card issued to an exempt person described above is not considered a direct sale by the person actually selling the gasoline to the ultimate purchaser if the seller receives a reimbursement of the tax from the oil company (or indirectly through an intermediate vendor). Thus, the person that actually paid the tax, in most cases the oil company, is treated as the only person eligible to make the refund claim.[257]

The American Jobs Creation Act of 2004 (''AJCA'')[258] modified the pre-existing statutory rules with respect to certain sales. Under AJCA, if a registered ultimate vendor purchases any gasoline on which tax has been paid and sells such gasoline to a State or local government or to a nonprofit educational organization, for its exclusive use, such ultimate vendor is treated as the only person who paid the tax and thereby is the proper claimant for a credit or refund of the tax paid.[259] However, AJCA did not change the special administrative oil company credit card rule described above.[260]

In addition, under AJCA, refund claims made by such an ultimate vendor may be filed for any period of at least one week for which $200 or more is payable. Any such claim must be filed on or before the last day of the first quarter following the earliest quarter included in the claim. The Secretary must pay interest on refunds unpaid after 45 days. If the refund claim was filed by electronic means, and 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 for highway exempt use as a State or local government or a nonprofit educational organization, refunds unpaid after 20 days must be paid with interest.[261]

In the case of diesel fuel or kerosene used in a nontaxable use, the ultimate purchaser is generally the only person entitled to claim a refund of excise tax.[262] However, in the case of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, aviation-grade kerosene, and certain nonaviation-grade kerosene, an ultimate vendor may claim the refund if the ultimate vendor is registered and bears the tax (or receives the written consent of the ultimate purchaser to claim the refund).[263]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment replaces the oil company credit card rule with a new set of rules applicable to certain credit card sales. The new rules apply to all taxable fuels. Under the Senate amendment, if a purchase of taxable fuel is made by means of a credit card issued to an ultimate purchaser that is either a State or local government or, in the case of gasoline, a nonprofit educational organization, for its exclusive use, a credit card issuer who is registered and who extends such credit to the ultimate purchaser with respect to such purchase shall be the only person entitled to apply for a credit or refund if the following two conditions are met: (1) such registered person has not collected the amount of the tax from the purchaser, or has obtained the written consent of the ultimate purchaser to the allowance of the credit or refund; and (2) such registered person has either repaid or agreed to repay the amount of the tax to the ultimate vendor, has obtained the written consent of the ultimate vendor to the allowance of the credit or refund, or has otherwise made arrangements that directly or indirectly provide the ultimate vendor with reimbursement of such tax. It is anticipated that such indirect arrangements may consist of the contractual undertaking of the relevant oil company to the credit card issuer that it will pay the amount of the tax to the ultimate vendor, and the corresponding contractual undertaking of the oil company to the ultimate vendor.

A credit card issuer entitled to claim a refund under the provision is responsible for collecting and supplying all the appropriate documentation currently required from ultimate vendors. The present-law refund amount and timing rules applicable to ultimate vendors, including the special rules for electronic claims, apply to refunds to credit card issuers under the provision.[264]

The Senate amendment also conforms present-law penalty provisions to the new rules.

The Senate amendment does not change the present-law rules applicable to non-credit card purchases.

Effective date.—The Senate amendment is effective for sales after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modifications.

Under the conference agreement, if a credit card issuer is not registered, or if either condition (1) or (2) described above is not

[253] Sec. 6427(l)(1).

[254] Generally, refund payments are only made to governmental units and tax-exempt organizations. Sec. 6427(k). The quarterly payment claim rules for ultimate purchasers are an exception to this rule.

[255] Sec. 6427(i)(2).

[256] Sec. 6427(i)(4)(A).

[257] Notice 89–29, 1989–1 C.B. 669.

[258] Pub. L. No. 108–357.

[259] AJCA, sec. 865(a), effective January 1, 2005. See Code sec. 6416(a)(4)(A).

[260] In Notice 2005–4, 2005–2 I.R.B. 289, the Treasury Department confirmed that it would continue to apply the oil company credit card rule until March 1, 2005. On February 28, 2005, the Treasury Department issued Notice 2005–24, 2005–12 I.R.B. 1, modifying Notice 2005–4. Notice 2005–24 stated that the oil company credit card rule will remain in effect until it is modified by a statutory change or by future guidance.

[261] Sec. 6146(a)(4)(B).

[262] Sec. 6427(l)(1).

[263] See sec. 6427(l)(4)(B), (l)(5)(B), and (l)(5)(C), and sec. 6416(a)(1)(A), (B), and (D).

[264] See sec. 6416(a)(4)(B). Present law would continue to apply to the timing of ultimate purchaser claims. Under present law, claims by an ultimate purchaser are generally made on an annual basis. However, claims aggregating over $750 may be made quarterly. See secs. 6421(d) and 6427(i)(2).

met (or if the ultimate purchaser is not exempt), then the credit card issuer is required to collect an amount equal to the tax from the ultimate purchaser and only an (exempt) ultimate purchaser may claim a credit or payment from the IRS.[265] The conferees intend that tax-paid fuel shall not be sold tax free to an exempt entity by means of a credit card unless the credit card issuer is registered. An unregistered credit card issuer that does not collect an amount equal to the tax from the exempt entity is liable for present-law penalties for failure to register.[266] The present-law regulatory authority of the Secretary to prescribe the form, manner, terms, conditions of registration, and conditions of use of registration extends to registration under this provision.[267] Such authority may include rules that preclude persons which are registered credit card issuers from issuing nonregistered credit cards.[268] The conferees also intend that the IRS will review the registration of a registered credit card issuer that has engaged in multiple or flagrant violations of the requirements of the provision.

6. Recertification of exempt status (sec. 5614 of the Senate amendment)

PRESENT LAW

If gasoline is sold to any person for an exempt use, an ultimate purchaser that has borne the tax is entitled to claim a refund.[269] However, a registered ultimate vendor is the appropriate person to claim a refund of Federal excise taxes on gasoline sold to a State or local government or to a nonprofit educational organization.[270]

In general, in order to claim a refund of Federal excise taxes on gasoline (and on other articles subject to manufacturers excise taxes under Chapter 32 of the Code) sold to a State or local government or to a nonprofit educational organization, for its exclusive use, a claimant must submit a statement indicating that it possesses evidence of the exempt use giving rise to the overpayment of tax.[271] Such evidence consists of a certificate executed and signed by the ultimate purchaser, and must identify the article, show the name and address of the ultimate purchaser, and state the exempt use made or to be made of the article. In the case where the certificate sets forth the use to be made of the article, rather than its actual use, it must show that the ultimate purchaser has agreed to notify the claimant if the article is not in fact used as specified in the certificate.[272]

However, if the article to which the claim relates has passed through a chain of sales from the claimant to the ultimate purchaser, a certificate executed and signed by the ultimate vendor is sufficient to document the exempt use. The ultimate vendor certificate must contain the exempt sales information, and a statement that it possesses the ultimate purchaser certificates and will forward them to the claimant within three years from the date of the statement. An ultimate vendor statement may be made covering no more than 12 consecutive calendar quarters.[273]

In general, an ultimate purchaser is the proper party to claim a refund of Federal excise tax on diesel fuel or kerosene used by any person in a nontaxable use.[274] However, in the case of diesel or kerosene used by a State or local government, the ultimate vendor is the proper person if such vendor is registered and has borne the tax (or receives the written consent of the ultimate purchaser to claim the refund).[275] A registered ultimate vendor claiming a refund under this provision must provide a statement that it has in its possession an unexpired exemption certificate of the purchaser and that the claimant has no reason to believe any information in the certificate is false.[276]

A State or local government includes any political subdivision of a State, or the District of Columbia.[277] A nonprofit educational organization means an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on, and which either is exempt from income tax under section 501(a) or is a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a).[278]

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, additional documentation requirements are imposed with respect to purchases of taxable fuel and certain other articles on a nontaxable basis by State or local governments and nonprofit educational organizations and with respect to refunds or credits by any person with respect to such purchases. The Senate amendment covers Federal excise taxes on sales of liquids for use as a fuel (including taxable fuels), compressed natural gas (except if sold for use on school buses or intracity buses), heavy trucks and trailers, recreational equipment (bows and arrows, sport fishing equipment and firearms), and tires (except for tires sold for use on qualified buses). The Senate amendment does not cover Federal excise taxes on sales of coal and vaccines.

In addition to present-law documentation requirements, in order for a State or local governmental entity to claim exemption from tax on sales of such covered articles, or for any person to claim a credit or refund based upon the State or local governmental status of the purchaser of such articles, the State must certify that the article is sold to a State or local government for the exclusive use of a State or local government. In the case of articles sold to a qualified volunteer fire department, as defined in section 150(e)(2),[279] the State must so certify, and the article must be sold for the exclusive use of the qualified volunteer fire department.

In order for a nonprofit educational organization to claim exemption from tax on such articles, or for any person to claim a credit or refund of tax on such articles based upon the nonprofit educational status of an organization, the State in which such organization is providing educational services must certify that such organization is in good standing.

For purposes of this provision, an Indian tribal government is treated as a State.[280] Consequently, it is intended that the applicable Indian tribal government will provide the certifications under this provision.

It is intended that the certifications required under this provision will be provided by exempt purchasers to the refund claimants (in addition to documentation required under present law), and that the IRS may require that such certifications be submitted as part of the claims. The Secretary may prescribe forms for such certifications.

Effective date.—The Senate amendment is effective for all sales after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

7. Reregistration in event of change in ownership (sec. 5615 of the Senate amendment and secs. 4101, 6719, 7232, and 7272 of the Code)

PRESENT LAW

Blenders, enterers, pipeline operators, position holders, refiners, terminal operators, and vessel operators are required to register with the Secretary with respect to fuels taxes imposed by sections 4041(a)(1) and 4081.[281] An assessable penalty for failure to register is $10,000 for each initial failure, plus $1,000 per day that the failure continues.[282] A non-assessable penalty for failure to register is $10,000.[283] A criminal penalty of $10,000, or imprisonment of not more than five years, or both, together with the costs of prosecution also applies to a failure to register and to certain false statements made in connection with a registration application.[284] Treasury regulations require that a registrant notify the Secretary of any change (such as a change in ownership) in the information a registrant submitted in connection with its application for registration within 10 days of the change.[285] The Secretary has the discretion to revoke the registration of a noncompliant registrant.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires that upon a change in ownership of a registrant, the registrant must reregister with the Secretary, as provided by the Secretary. A change in ownership means that after a transaction (or series of related transactions), more than 50 percent of the ownership interests in, or assets of, a registrant are held by persons other than persons (or persons related thereto) who held more than 50 percent of such interests or assets before the transaction (or series of related transactions). The provision does not apply to companies, the stock of which is regularly traded on an established securities market. There is an assessable penalty for failure to reregister of $10,000 for each initial failure, plus $1,000 per day that the failure continues,

[265] Sec. 6421(c).

[266] Secs. 6719, 7232, and 7272.

[267] Sec. 4101(a)(1).

[268] Because registration occurs at the ''person'' (legal entity) level, it is anticipated that a credit card issuer will use a separate (registered) entity for the issuance of credit cards entitled to the benefits of this provision.

[269] Sec. 6421(c).

[270] Sec. 6416(a)(4)(A).

[271] Treas.Reg. sec. 48.6416(b)(2)–3(a)(5).

[272] Treas. Reg. sec. 48.6416(b)(2)–3(b)(1)(i) and (ii). The certificate must also contain a statement that the ultimate purchaser understands that it and any other party may, for fraudulent use of the certificate, be subject under section 7201 to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

[273] Treas. Reg. sec. 48.6416(b)(2)–3(b)(1)(i) and (iii).

[274] Sec. 6427(l)(1). In the case of diesel fuel or kerosene, a nontaxable use is any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax. Sec. 6427(l)(2).

[275] Sec. 6427(l)(5)(C).

[276] Treas. Reg. Sec. 48.6427–9(e)(1)(vi).

[277] Sec. 4221(d)(4); Treas. Reg. sec. 48.6416(b)(2)–2(d).

[278] Sec. 4221(d)(5); Treas. Reg. sec. 48.6416(b)(2)–2(e).

[279] In general, as defined in section 150(e)(2), a qualified volunteer fire department is any organization organized and operated to provide firefighting or emergency medical services for persons in an area that is not provided with any other firefighting services, and which is required by written agreement with the political subdivision to furnish firefighting services in such area.

[280] See sec. 7871(a)(2). Section 7871(b) provides that in order for an excise tax exemption (with respect to chapter 31 or 32) to apply to an Indian tribal government, the transaction must involve the exercise of an essential governmental function of the Indian tribal government.

[281] Sec. 4101; Treas. Reg. secs. 48.4101–1(a) and 48.4101–1(c)(1).

[282] Sec. 6719.

[283] Sec. 7272(a).

[284] Sec. 7232.

[285] Treas. Reg. sec. 48.4101–1(h)(1)(v).

and a criminal penalty for failure to reregister of $10,000, or imprisonment of not more than five years, or both, together with the costs of prosecution. The Senate amendment applies to changes in ownership occurring prior to, on, or after the date of enactment.

Effective date.—The Senate amendment is effective for actions or failures to act after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment and in addition makes the penalties for failure to reregister identical to the present-law penalties for failure to register by also providing for a non-assessable penalty for failure to reregister of $10,000.

8. Reconciliation of on-loaded cargo to entered cargo (sec. 5616 of the Senate amendment and sec. 343 of the Trade Act of 2002)

PRESENT LAW

The Trade Act of 2002 directed the Secretary to promulgate regulations pertaining to the electronic transmission to the Bureau of Customs and Border Patrol (''Customs'') of information pertaining to cargo destined for importation into the United States or exportation from the United States, prior to such importation or exportation.[286] The Department of the Treasury issued final regulations on October 31, 2002. The regulations require the advance and accurate presentation of certain manifest information prior to lading at the foreign port and encourage the presentation of this information electronically. Customs must receive from the carrier the vessel's Cargo Declaration (Customs Form 1302) or the electronic equivalent within 24 hours before such cargo is laden aboard the vessel at the foreign port.[287]

Certain carriers of bulk cargo, however, are exempt from these filing requirements. Such bulk cargo includes that composed of free flowing articles such as oil, grain, coal, ore and the like, which can be pumped or run through a chute or handled by dumping.[288] Thus, taxable fuels are not required to file the Cargo Declaration within 24 hours before such cargo is laden aboard the vessel at the foreign port. Instead the Cargo Declaration must be filed within 24 hours prior arrival in the United States.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that not later than one year after the date of enactment of this paragraph, the Secretary of Homeland Security, together with the Secretary of the Treasury, is to establish an electronic data interchange system through which Customs shall transmit to the Internal Revenue Service information pertaining to cargoes of taxable fuels (as defined in section 4083) that Customs has obtained electronically under its regulations adopted to carry out the Trade Act of 2002 requirement. For this purpose, not later than one year after the date of enactment, all filers of required cargo information for such taxable fuels, as defined, must provide such information to Customs through its approved electronic data interchange system.

Effective date.—The Senate amendment is effective upon date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

[286] Sec. 343(a) of Pub. L. No. 107–210 (2002).
[287] 19 CFR sec. 4.7(b)(2).
[288] 19 CFR sec. 4.7(b)(4)(i)(A).

9. Registration of operators of deep-draft vessels (sec. 5617 of Senate amendment and secs. 4081 and 4101 of the Code)

PRESENT LAW

Blenders, enterers, pipeline operators, position holders, refiners, terminal operators, and vessel operators are required to register with the Secretary with respect to fuels taxes imposed by sections 4041(a)(1) and 4081.[289] Treasury regulations define a vessel operator as any person that operates a vessel within the bulk transfer/terminal system, excluding deep-draft ocean-going vessels.[290] Accordingly, operators of deep-draft ocean-going vessels are not required to register. A deep-draft ocean-going vessel is a vessel that is designed primarily for use on the high seas that has a draft of more than 12 feet.[291]

An assessable penalty for failure to register is $10,000 for each initial failure, plus $1,000 per day that the failure continues.[292] A non-assessable penalty for failure to register is $10,000.[293] A criminal penalty of $10,000, or imprisonment of not more than five years, or both, together with the costs of prosecution also applies to a failure to register and to certain false statements made in connection with a registration application.[294]

In general, gasoline, diesel fuel, and kerosene (''taxable fuel'') are taxed upon removal from a refinery or a terminal.[295] Tax also is imposed on the entry into the United States of any taxable fuel for consumption, use, or warehousing. The tax does not apply to any removal or entry of a taxable fuel transferred in bulk (a ''bulk transfer'') by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered with the Secretary as required by section 4101.[296] Transfer to an unregistered party subjects the transfer to tax.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the Secretary of the Treasury shall require the registration of every operator of a deep-draft ocean going vessel. Under the provision, if a deep-draft ocean-going vessel is used as part of a bulk transfer of taxable fuel, the transfer is subject to tax unless the operator of such vessel is registered.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except that an operator of a deep-draft ocean-going vessel is not required to register under the provision if such operator uses such vessel exclusively for purposes of the entry of the taxable fuel. For purposes of the bulk transfer exemption, a deep-draft ocean-going vessel operator is not required to be registered for the exemption to be available with respect to the entry of taxable fuel by such vessel.

10. Gasoline blend stocks and kerosene (sec. 5618 of the Senate amendment and sec. 4083 of the Code)

PRESENT LAW

In general

A ''taxable fuel'' is gasoline, diesel fuel (including any liquid, other than gasoline, which is suitable for use as a fuel in a diesel-powered highway vehicle or train), and kerosene.[297] An excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal, (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not registered with the IRS to receive untaxed fuel, unless there was a prior taxable removal or entry.[298] The tax does not apply to any removal or entry of taxable fuel transferred in bulk to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered with the Secretary.[299]

Gasoline blend stocks

Definition

Under the regulations, ''gasoline'' includes all products commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel, and that have an octane rating of 75 or more. Gasoline also includes, to the extent provided in regulations, gasoline blend stocks and products commonly used as additives in gasoline. By regulation, the Treasury has identified certain products as gasoline blend stocks,[300] however, the term ''gasoline blend stocks'' does not include any product that cannot be blended into gasoline without further processing or fractionation (''off-spec gasoline'').

Gasoline blend stock exemptions

If certain conditions are met, the removal, entry, or sale of gasoline blend stocks is not taxable. Generally, the exemption from tax applies if a gasoline blend stock (1) is not used to produce finished gasoline (2) is received at an approved terminal or refinery (3) or in bulk transfer to an industrial user.[301]

Gasoline blend stocks not used to produce finished gasoline.—Pursuant to Treasury regulation, no tax is imposed on nonbulk removals from a terminal or refinery, or nonbulk entries into the United States of any gasoline blend stocks if (1) the person liable for the tax is a taxable fuel registrant, and (2) such person does not use the gasoline blend stocks to produce finished gasoline. In connection with a sale, no tax is imposed on the nonbulk removal or entry if (1) the person liable for the tax is a gasoline registrant and (2) at the time of sale such party has an unexpired certificate from the buyer, and has no reason to believe any information in the certificate is false.[302]

Any sale (or resale) of a gasoline blend stock that was not subject to tax on nonbulk removal or entry is taxable unless the seller has an unexpired certificate from the buyer and has no reason to believe that any information in the certificate is false.

The certificate to be provided by a buyer of gasoline blend stocks contains a statement that the gasoline blend stocks covered by the

[289] Sec. 4101; Treas. Reg. sec. 48.4101–1(a) and 48.4101–1(c)(1).
[290] Treas. Reg. sec. 48.4101–1(b)(8).
[291] Sec. 4042(c)(1).
[292] Sec. 6719.
[293] Sec. 7272(a).
[294] Sec. 7232.
[295] Sec. 4081(a)(1)(A).
[296] Sec. 4081(a)(1)(B). The sale of a taxable fuel to an unregistered person prior to a taxable removal or entry of the fuel is subject to tax. Sec. 4081(a)(1)(A).
[297] Sec. 4083(a).
[298] Sec. 4081(a)(1).
[299] Sec. 4081(a)(1)(B).
[300] Treas. Reg. sec. 48.4081–1(c)(3)(ii). The term ''gasoline blend stocks'' means alkylate; butane; catalytically cracked gasoline; coker gasoline; ethyl tertiary butyl ether (ETBE); hexane; hydrocrackate; isomerate; methyl tertiary butyl ether (MTBE); mixed xylene (not including any separated isomer of xylene); natural gasoline; pentane; pentane mixture; polymer gasoline; raffinate; reformate; straight-run gasoline; straight-run naphtha; tertiary amyl methyl ether (TAME); tertiary butyl alcohol (gasoline grade) (TBA); thermally cracked gasoline; and toluene. Treas. Reg. sec. 48.4081–1(c)(3)(i). Effective January 1, 2005, transmix containing gasoline was removed from the definition of gasoline blend stocks. Internal Revenue Service, Notice 2005–4 (December 15, 2004).
[301] Treas. Reg. sec. 48.4081–4.
[302] Treas. Reg. secs. 48.4081–4(b)(1) and 48.4081–4(b)(1)(2).

certificate will not be used to produce finished gasoline, identifies the type (or types of blend stocks) covered by the certificate and provides that the buyer will not claim a credit or refund for any gasoline covered by the certificate. The certificate is signed under penalties of perjury by a person with authority to bind the buyer. The certificate expires on the earliest of one year from the effective date of the certificate, the date a new certificate is provided to the seller or the date the seller is notified by the IRS or the buyer that the buyer's right to provide a certificate has been withdrawn.

Gasoline blend stocks received at an approved terminal or refinery.—Treasury regulations provide that tax is not imposed on the removal or entry of gasoline blend stocks that are received at a terminal or refinery if the person liable for tax is a taxable fuel registrant, has an unexpired notification certificate from the operator of the terminal or refinery where the gasoline blend stocks are received; and has no reason to believe that any information in the certificate is false.[303] A notification certificate is used to notify another person of the taxable fuel registrant's registration status.

Bulk transfer to an industrial user.—Tax is not imposed if upon removal of the gasoline blend stocks from a pipeline or vessel, the gasoline blend stocks are received by a taxable fuel registrant that is an industrial user.[304] An industrial user means any person that receives gasoline blend stocks by bulk transfer for its own use in the manufacture of any product other than finished gasoline.

Refunds or credits for tax imposed on gasoline blend stocks not used for producing gasoline

If any gasoline blend stock or additive is not used by a person to produce gasoline and that person establishes that the ultimate use of the gasoline blend stock or additive is not used to produce gasoline, then the Secretary is to pay (without interest) to such person, an amount equal to the aggregate amount of tax imposed on such person with respect to such gasoline or blend stock.[305]

If gasoline is used in an off-highway business use, the ultimate purchaser of the gasoline is entitled to a credit or refund for the excise taxes imposed on the fuel. ''Off-highway business use'' means any use by a person in a trade or business of such person otherwise than as a fuel in a highway vehicle that meets certain requirements.[306] Gasoline for this purpose includes gasoline blend stocks.[307]

The Code also provides for a refund of tax for tax-paid fuel sold to a subsequent manufacturer or producer if the subsequent manufacturer or producer uses the fuel, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.[308]

Kerosene

Definition of kerosene

By regulation, kerosene is defined as the kerosene described in ASTM Specification D 3699 (No. 1–K and No. 2–K), ASTM Specification D 1655 (kerosene-type jet fuel), and military specifications MIL–DTL–5624T (Grade JP–5) and MIL–DTL–83133E (Grade JP–8). Kerosene does not include any liquid that is an excluded liquid.[309]

An ''excluded liquid'' is (1) any liquid that contains less than four percent normal paraffins, or (2) any liquid that has a distillation range of 125 degrees Fahrenheit or less, sulfur content of 10 ppm or less, and minimum color of +27 Saybolt. These liquids are commonly known as ''mineral spirits'' and are obtained by distillation of crude oil. Mineral spirits are used for a wide variety of purposes, such as in dry-cleaning fluids, paint thinners, varnishes, photocopy toners, inks, adhesives, and as general purpose cleaners and degreasers.

Exemptions

Diesel fuel and kerosene that is to be used for a nontaxable purpose will not be taxed upon removal from the terminal if it is dyed to indicate its nontaxable purpose. Kerosene received by pipeline or vessel to satisfy a feedstock purpose is exempt from the dyeing requirement.[310] Pursuant to Treasury regulations, nonbulk removals of kerosene for a feedstock purpose by a registered feedstock user also are exempt.[311] The person receiving the kerosene must be registered with the IRS and provide a certificate noting that the kerosene will be used for a feedstock purpose in order for the exemption to apply. Pursuant to the Treasury regulations, tax also does not apply upon the removal or entry of kerosene if the person otherwise liable for tax is a taxable fuel registrant and such person uses the kerosene for a feedstock purpose.[312]

''Feedstock purpose'' means the use of kerosene for nonfuel purposes in the manufacture or production of any substance (other than gasoline, diesel fuel or special fuels subject to tax).[313] Thus, for example, kerosene is used for a feedstock purpose when it is used as an ingredient in the production of paint and is not used for a feedstock purpose when it is used to power machinery at a factory where paint is produced.

Refunds and payments for nontaxable uses of kerosene

If tax-paid kerosene is used by any person in a nontaxable use, the Secretary is required to pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel. For this purpose, a nontaxable use is any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of prior imposition of tax. Claims relating to kerosene used on a farm for farming purposes and by a State are made by registered ultimate vendors. Claims relating to undyed kerosene sold from a blocked pump[314] or sold for blending with heating oil to be used during periods of extreme or unseasonable cold are also made by registered ultimate vendors. Special rules apply with respect to aviation-grade kerosene.

The Code also provides for a refund of tax for tax-paid fuel sold to a subsequent manufacturer or producer if the subsequent manufacturer or producer uses the fuel, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.[315]

HOUSE BILL

No provision.

SENATE AMENDMENT

Gasoline blend stocks

The Senate amendment partially repeals exemptions provided in Treas. Reg. sec. 48.4081–4, which, under certain conditions, exempts from tax gasoline blend stocks that are not used to produce finished gasoline or that are received at an approved terminal or refinery. Under the Senate amendment, tax is imposed on all nonbulk entries and removals of gasoline blend stocks, regardless of whether they will be used to produce finished gasoline or received at an approved terminal or refinery. The Senate amendment does not change the exemption for bulk transfers to registered industrial users.

Kerosene and mineral spirits

The Senate amendment requires that with respect to fuel entered or removed after September 30, 2005, the Secretary shall include mineral spirits in the definition of kerosene. Thus, for entries and removals after September 30, 2005, mineral spirits are taxed and exempt from tax in the same manner as kerosene.

Effective date.—The Senate amendment is effective for fuel removed or entered after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

11. Nonapplication of export exemption to delivery of fuel to motor vehicles removed from United States (sec. 5619 of the Senate amendment)

PRESENT LAW

A ''taxable fuel'' is gasoline, diesel fuel (including any liquid, other than gasoline, which is suitable for use as a fuel in a diesel-powered highway vehicle or train), and kerosene.[316] An excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal, (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not registered with the IRS to receive untaxed fuel, unless there was a prior taxable removal or entry.[317] The tax does not apply to any removal or entry of taxable fuel transferred in bulk to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered with the Secretary.[318]

Special provisions under the Code provide for a refund of tax to any person who sells gasoline to another for exportation.[319] Section 6421(c) provides ''If gasoline is sold to any person for any purpose described in paragraph (2), (3), (4), or (5) of section 4221(a), the Secretary shall pay (without interest) to such person an amount equal to the product of the number of gallons so sold multiplied by the rate at which tax was imposed on such gasoline by section 4081.'' Section 4221 provides, in pertinent part, ''Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter . . . on the sale by the manufacturer . . . of an article . . . for export, or for resale by the purchaser to a second purchaser for export. . . but only if such exportation or use is to occur before any other use. . . .''

It is the IRS administrative position that the exemption from manufacturers excise tax by reason of exportation does not apply to the sale of motor fuel pumped into a fuel tank of a vehicle that is to be driven, or shipped, directly out of the United States.[320]

A duty-free sales facility that meets certain conditions may sell and deliver for export from the customs territory of the

[303] Treas. Reg. sec. 48.4081–4(b)(1).
[304] Treas. Reg. sec. 48.4081–4(d).
[305] Sec. 6427(h)(1).
[306] Secs. 6421(a) and 6421(e).
[307] Sec. 6421(e)(1) and sec. 4083(a)(2)(B).
[308] Sec. 6416(b)(3)(B).
[309] Treas. Reg. sec. 48.4081–1(b).
[310] Sec. 4082(d)(1).
[311] Treas. Reg. sec. 48.4082–7(c).
[312] Treas. Reg. sec. 48.4082–7(c).
[313] Treas. Reg. sec. 48.4082–7(b).
[314] A blocked pump is a fuel pump that is used to dispense undyed kerosene that is sold at retail for use by the buyer in any nontaxable use; is at a fixed location; is identified with a legible and conspicuous notice stating ''Undyed Untaxed Kerosene, Nontaxable Use Only''; and cannot reasonably be used to dispense fuel directly into the fuel supply tank of a diesel-powered highway vehicle or diesel-powered train; or is locked by the vendor after each sale and unlocked only in response to a request by a buyer for undyed kerosene for use other than as a fuel in a diesel-powered highway vehicle or diesel-powered train.
[315] Sec. 6416(b)(3)(B).
[316] Sec. 4083(a).
[317] Sec. 4081(a)(1).
[318] Sec. 4081(a)(1)(B).
[319] Secs. 6421(c) and 4221(a)(2).
[320] Rev. Rul. 69–150, 1969–1 C.B. 286.

United States duty-free merchandise. Duty-free merchandise is merchandise sold by a duty-free sales facility on which neither Federal duty nor Federal tax has been assessed pending exportation from the customs territory of the United States. The statutes covering duty-free facilities do not contain any limitation on what goods may qualify for duty-free treatment.

The issue of whether fuel sold from a duty-free facility and placed into the tank of an automobile that is then driven out of the country is exported fuel has been litigated in the courts.[321] The cases involved the same operator of a duty-free facility seeking a refund of excise tax. The facility is near the Canadian border and is configured in such a way that anyone leaving the facility must depart the United States and enter into Canada. Both the Federal Circuit and the Sixth Circuit Court of Appeals are in accord with the IRS position and ruled that the operator of the duty-free facility did not have standing to pursue a claim for refund.[322]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment reaffirms the long-standing IRS position taken in Rev. Rul. 69–150 and restates present law by amending the Code definition of export to exclude the delivery of a taxable fuel into a fuel tank of a motor vehicle that is shipped or driven out of the United States. It also imposes a tax on the sale of taxable fuel at a duty-free sales enterprise unless there was a prior taxable removal, or entry of such fuel.

Ammex was not entitled to a payment pursuant to sec. 6421(c) because it failed to prove at trial that it did not pass the tax on to its customers. Ammex Inc. v. United States, 2003 U.S. Claims LEXIS 63 (Fed. Cl. Mar. 26, 2003). The Claims Court finding that the plaintiff had standing was reversed on appeal.

Effective date.—The Senate amendment applies to sales or deliveries made after the date of enactment.

CONFERENCE AGREEMENT

The conferees believe that it is beyond dispute that the delivery of fuel into a fuel tank of a motor vehicle that is shipped or driven out of the United States is not an act of exportation of such fuel. The fuel in the fuel tank is not carried in the vehicle for the purpose of transporting the fuel as a commodity from one place to another; the fuel is there to power the vehicle. The conference agreement does not include the Senate amendment because it is present law, supported by the decisions of two Federal appellate courts.

12. Impose assessable penalty on dealers of adulterated fuel (sec. 5620 of the Senate amendment and new sec. 6720A of the Code)

PRESENT LAW

Diesel fuel, gasoline, and kerosene are taxable fuels. Diesel fuel is defined as (1) any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel powered train, (2) transmix, and (3) diesel fuel blend stocks identified by the Secretary.[323] As a defense to Federal and State excise tax liability, some taxpayers have contended that certain diesel fuel mixtures or additives do not meet the requirements of (1) above because they are not approved as additives or mixtures by the EPA. In addition, under present law, untaxed fuel additives, including certain contaminants, may displace taxed diesel fuel in a mixture.

The Code provides that any person who, in connection with a sale or lease (or offer for sale or lease) of an article, knowingly makes any false statement ascribing a particular part of the price of the article to a tax imposed by the United States, or intended to lead any person to believe that any part of the price consists of such a tax, is guilty of a misdemeanor.[324] Another Code provision provides that any person who has in his custody or possession any article on which taxes are imposed by law, for the purpose of selling the article in fraud of the internal revenue laws or with design to avoid payment of the taxes thereon, is liable for ''a penalty of $500 or not less than double the amount of taxes fraudulently attempted to be evaded.''[325]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment adds a new assessable penalty. Any person other than a retailer who knowingly transfers for resale, sells for resale, or holds out for resale for use in a diesel-powered highway vehicle (or train) any liquid that does not meet applicable EPA regulations (as defined in section 45H(c)(3))[326] is subject to a penalty of $10,000 for each such transfer, sale or holding out for resale, in addition to the tax on such liquid, if any. Any retailer who knowingly holds out for sale (other than for resale) any such liquid, is subject to a $10,000 penalty for each such holding out for sale, in addition to the tax on such liquid, if any.

The penalty is dedicated to the Highway Trust Fund.

Effective date.—The Senate amendment is effective for any transfer, sale, or holding out for sale or resale occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

IV. FUELS-RELATED TECHNICAL CORRECTIONS

A. Fuels-Related Technical Corrections to American Jobs Creation Act of 2004 (''AJCA'')

The provision includes technical corrections to AJCA. Such technical corrections take effect as if included in the section of AJCA to which the correction relates.

1. Volumetric ethanol excise tax credit (sec. 10003(a) of the House bill, sec. 5401(a) of the Senate amendment, sec. 301 of AJCA, and sec. 6427 of the Code)

HOUSE BILL

AJCA repealed the reduced tax rates for alcohol fuels and taxable fuels to be blended with alcohol. The technical correction makes a conforming amendment to eliminate the refund provisions based on those reduced rates (secs. 6427(f) and 6427(o)).

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Aviation fuel (sec. 10003(b) of the House bill, sec. 5401(b) of the Senate amendment, sec. 853 of AJCA, and sec. 4081 of the Code)

HOUSE BILL

Section 853 of AJCA moved the taxation of jet fuel (aviation-grade kerosene) from section 4091 to section 4081 of the Code and repealed section 4091. The termination date for the 21.8 cent per gallon rate for noncommercial aviation jet fuel was inadvertently omitted from the Act. The technical correction clarifies that after September 30, 2007, the rate for jet fuel used in noncommercial aviation will be 4.3 cents per gallon (sec. 4081(a)(2)(C)).

An additional technical correction clarifies that users of aviation fuel in commercial aviation are required to be registered with the IRS in order for the 4.3-cents-per-gallon rate to apply (including for purposes of the self-assessment of tax by commercial aircraft operators).

SENATE AMENDMENT

The Senate amendment generally follows the House bill with certain technical drafting changes to accommodate changes made by other provisions of the Senate amendment. The Senate amendment also corrects cross-references in section 6421(f)(2) to the definition of noncommercial aviation to reflect changes made by the AJCA change in the tax treatment of fuel used in aviation.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

B. Fuels-Related Technical Corrections to Transportation Equity Act for the 21st Century (''TEA 21'')

The provision includes a technical correction to TEA 21. The amendment made by the technical correction takes effect as if included in the section of TEA 21 to which it relates.

1. Coastal Wetlands sub-account (sec. 5401(c) of the Senate amendment, sec. 9005 of TEA 21, and sec. 9504 of the Code)

HOUSE BILL

No provision.

SENATE AMENDMENT

Section 9005(b)(3) of TEA 21 redesignated Code section 9504(b)(2)(B), referring to the purposes of the Coastal Wetlands Planning, Protection and Restoration Act, as 9504(b)(2)(C), but did not cross reference the limitation for such purposes of taxes on gasoline used in the nonbusiness use of small-engine outdoor power equipment. The technical correction makes a conforming cross-reference amendment (sec. 9504(b)(2)).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

C. Correction to the Energy Tax Incentives Act of 2005

The provision includes a technical correction to the Energy Tax Incentives Act

[321] See *Ammex Inc. v. United States*, 52 Fed. Cl. 303 (2002) (on cross-motions for summary judgment, the court found that plaintiff established standing to proceed to trial pursuant to sec. 6421(c) respecting its gasoline purchases only); and *Ammex Inc. v. United States*, 2002 U.S. Dist. LEXIS 25771 (E.D. Mich. July 31, 2002) (granting defendant's motion for summary judgment), reconsideration denied, *Ammex, Inc. v. United States*, 2002 U.S. Dist. LEXIS 22893 (E.D. Mich. Oct. 22, 2002). Although the Claims Court ruled that Ammex had standing to challenge the excise tax on gasoline, it subsequently held that Ammex was not entitled to a payment pursuant to sec. 6421(c) because it failed to prove at trial that it did not pass the tax on to its customers. *Ammex Inc. v. United States*, 2003 U.S. Claims LEXIS 63 (Fed. Cl. Mar. 26, 2003). The Claims Court finding that the plaintiff had standing was reversed on appeal.

[322] See *Ammex Inc. v. United States*, 384 F.3d 1368 (Fed. Cir. 2004) *cert. denied* 125 S.Ct. 1697 (2005); and *Ammex Inc. v. United States*, 367 F.3d 530 (6th Cir. 2004) *cert. denied* 125 S.Ct. 1695 (2005).

[323] Sec. 4083(a)(3)(A).

[324] Sec. 7211. Such a violation is punishable by a fine not to exceed $1,000, or by imprisonment for not more than one year, or both.

[325] Sec. 7268.

[326] Section 45H(c)(3) refers to ''the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.''

(''ETIA'') of 2005. The amendment made by the technical correction takes effect as if included in the section of the ETIA to which it relates.

1. Erroneous reference to highway reauthorization bill (sec. 38 of the Code)

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement corrects an erroneous reference to the highway reauthorization bill in section 38 as added by the Energy Policy Act of 2005.

V. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the ''IRS Reform Act'') requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the ''Code'') and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that have ''widespread applicability'' to individuals or small businesses.

From the Committee on Transportation and Infrastructure, for consideration of the House bill (except title X) and the Senate amendment (except title V), and modifications committed to conference:

DON YOUNG,
THOMAS E. PETRI,
SHERWOOD BOEHLERT,
HOWARD COBLE,
JOHN J. DUNCAN, Jr.,
JOHN L. MICA,
PETE HOEKSTRA,
STEVEN C. LATOURETTE,
SPENCER BACHUS,
RICHARD H. BAKER,
GARY G. MILLER,
ROBIN HAYES,
ROB SIMMONS,
HENRY E. BROWN, Jr.,
SAM GRAVES,
BILL SHUSTER,
JOHN BOOZMAN,
JAMES L. OBERSTAR,
NICK RAHALL,
PETER A. DEFAZIO,
JERRY F. COSTELLO,
ELEANOR HOLMES NORTON,
JERROLD NADLER,
ROBERT MENENDEZ,
CORRINE BROWN,
BOB FILNER,
EDDIE BERNICE JOHNSON,
GENE TAYLOR,
JUANITA MILLENDER-MCDONALD,
ELIJAH E. CUMMINGS,
EARL BLUMENAUER,
ELLEN O. TAUSCHER,

From the Committee on the Budget, for consideration of secs. 8001–8003 of the House bill, and title III of the Senate amendment, and modifications committed to conference:

JIM NUSSLE,
MARIO DIAZ-BALART,
JOHN SPRATT,

From the Committee on Education and the Workforce, for consideration of secs. 1118, 1605, 1809, 3018, and 3030 of the House bill, and secs. 1304, 1819, 6013, 6031, 6038, and 7603 of the Senate amendment, and modifications committed to conference:

RIC KELLER,
JOHN BARROW,

From the Committee on Energy and Commerce, for consideration of provisions in the House bill and Senate amendment relating to Clean Air Act provisions of transportation planning contained in secs. 6001 and 6006 of the House bill, and secs. 6005 and 6006 of the Senate amendment; and secs. 1210, 1824, 1833, 5203, and 6008 of the House bill, and secs. 1501, 1511, 1522, 1610–1619, 1622, 4001, 4002, 6016, 6023, 7218, 7223, 7251, 7252, 7256–7262, 7324, 7381, 7382, and 7384 of the Senate amendment, and modifications committed to conference:

JOE BARTON,
CHIP PICKERING,
JOHN D. DINGELL,

From the Committee on Government Reform, for consideration of sec. 4205 of the House bill, and sec. 2101 of the Senate amendment, and modifications committed to conference:

TOM DAVIS,
TODD R. PLATTS,

From the Committee on Homeland Security, for consideration of secs. 1834, 6027, 7324, and 7325 of the Senate amendment, and modifications committed to conference:

CHRIS COX,
DANIEL E. LUNGREN,
BENNIE G. THOMPSON,

From the Committee on the Judiciary, for consideration of secs. 1211, 1605, 1812, 1832, 2013, 2017, 4105, 4201, 4202, 4214, 7018–7020, and 7023 of the House bill, and secs. 1410, 1512, 1513, 6006, 6029, 7108, 7113, 7115, 7338, 7340, 7343, 7345, 7362, 7363, 7406, 7407, and 7413 of the Senate amendment, and modifications committed to conference:

LAMAR SMITH,
JOHN CONYERS,

From the Committee on Resources, for consideration of secs. 1119, 3021, 6002, and 6003 of the House bill, and secs. 1501, 1502, 1505, 1511, 1514, 1601, 1603, 6040, and 7501–7518 of the Senate amendment, and modifications committed to conference:

GREG WALDEN,
RON KIND,

From the Committee on Rules, for consideration of secs. 8004 and 8005 of the House bill, and modifications committed to conference:

DAVID DREIER,
SHELLEY MOORE CAPITO,
JIM MCGOVERN,

From the Committee on Science, for consideration of secs. 2010, 3013, 3015, 3034, 3039, 3041, 4112, and title V of the House bill, and title II and secs. 6014, 6015, 6036, 7118, 7212, 7214, 7361, and 7370 of the Senate amendment, and modifications committed to conference:

VERNON J. EHLERS,
DAVID REICHERT,
BART GORDON,

From the Committee on Ways and Means, for consideration of title X of the House bill, and title V of the Senate amendment, and modifications committed to conference:

WILLIAM M. THOMAS,
JIM MCCRERY,

For consideration of the House bill and Senate amendment, and modifications committed to conference:

TOM DELAY,
Managers on the Part of the House.

JAMES M. INHOFE,
JOHN WARNER,
KIT BOND,
GEORGE V. VOINOVICH,
LINCOLN CHAFEE,
LISA MURKOWSKI,
JOHN THUNE,
JIM DEMINT,
JOHNNY ISAKSON,
DAVID VITTER,
CHUCK GRASSLEY,
ORRIN HATCH,
RICHARD SHELBY,
WAYNE ALLARD,
TED STEVENS,
TRENT LOTT,
JIM JEFFORDS,
MAX BAUCUS,
JOE LIEBERMAN,
BARBARA BOXER,
TOM CARPER,
HILLARY RODHAM CLINTON,
FRANK R. LAUTENBERG,
BARACK OBAMA,
KENT CONRAD,
DANIEL K. INOUYE,
JAY ROCKEFELLER,
PAUL SARBANES,
JACK REED,
TIM JOHNSON,
Managers on the Part of the Senate.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

3362. A letter from the Acting Administrator, AMS, Department of Agriculture, transmitting the Department's final rule — Pistachios Grown in California; Establishment of Reporting Requirements [Docket No. FV05-983-1 FR] received July 25, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

3363. A letter from the Acting Administrator, AMS, Department of Agriculture, transmitting the Department's final rule — Increase in Fees and Charges for Egg, Poultry, and Rabbit Growing [Docket No. PY-05-001] (RIN: 0581-AC44) received July 22, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

3364. A letter from the Acting Administrator, AMS, Department of Agriculture, transmitting the Department's final rule — Pistachios Grown in California; Establishment of Procedures for Exempting Handlers from Minimum Quality Testing [Docket No. FV05-983-4 IFR] received July 22, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

3365. A letter from the Director, Office of Energy Policy and New Uses, Department of Agriculture, transmitting the Department's final rule — Guidelines for Designating Biobased Products for Federal Procurement (RIN: 0503-AA26) received January 19, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

3366. A letter from the Director, Regulations Policy and Mgmt. Staff, FDA, Department of Health and Human Services, transmitting the Department's final rule — Food Additives Permitted for Direct Addition to Food for Human Consumption; Glycerol Ester of Gum Rosin [Docket No. 2003F-0471] received April 18, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

3367. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Two Isopropylamine Salts of Alkyl C4 and Alkyl C8-10 Ethoxyphosphate Esters; Exemption from the Requirement of a Tolerance; Technical Correction [OPP-2005-0115; FRL-7725-1] received July 13, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

3368. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Sulfuryl Fluoride; Pesticide